

PART 54 – UNIVERSAL SERVICE

Description

Sections 214(e) and 254 of the Communications Act of 1934 direct the Commission to establish specific, predictable, and sufficient mechanisms to preserve and advance universal service.¹⁹¹ Part 54 implements these provisions of the Act. Part 54 contains rules governing the operation of the Commission's four basic universal service programs: (1) the high-cost support mechanism, which provides support to keep rates affordable in high-cost areas; (2) the low-income support mechanism, which provides support to keep rates affordable for low-income consumers; (3) the schools and libraries support mechanism, which provides support for telecommunications and Internet access and internal connections for eligible schools and libraries; and (4) the rural health care support mechanism, which provides support for telecommunications services for eligible rural health care providers. In addition, Part 54 contains administrative rules governing the collection of universal service contributions and the distribution of support, as well as provisions for the creation of the Universal Service Administrative Company (USAC) to administer the universal service support mechanisms.

Part 54 is organized into ten lettered sub-parts:

- A – General Information
- B – Services Designated for Support
- C – Carriers Eligible for Universal Service Support
- D – Universal Service Support for High Cost Areas
- E – Universal Service Support for Low-Income Consumers
- F – Universal Service Support for Schools and Libraries
- G – Universal Service Support for Health Care Providers
- H – Administration
- I – Review of Decisions Issued by the Administrator
- J – Interstate Access Universal Service Support Mechanism

Purpose

Part 54 implements the requirements found in section 214(e) and 254. Part 54 is designed to promote universal service by ensuring that all consumers, including consumers living in rural, insular, and high-cost areas as well as low-income consumers, have access to affordable telecommunications services. It is also designed to ensure that schools, libraries, rural health care providers, and the members of the public that they serve, have access to affordable telecommunications and information services. Part 54 is designed to accomplish these goals in a competitively neutral manner by collecting support from every telecommunications carrier that provides interstate telecommunications service, and by making support available on a technologically neutral basis to any eligible service provider. This is intended to encourage the provision of service by wireless and other emerging technologies that have not been eligible to receive universal service support in the past, but may prove to be efficient alternatives to traditional wireline service in high-cost and rural areas.

¹⁹¹ See 47 U.S.C. §§ 214(e), 254.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

Part 54 serves the public interest by establishing explicit universal service mechanisms to ensure that all consumers have access to affordable telecommunications services. It also promotes competition by making explicit universal service support available to any eligible telecommunications carrier in a competitively and technologically neutral manner. This also encourages efficient entry in high-cost areas. Finally, Part 54 benefits the public by making telecommunications and information services available to qualifying schools, libraries, and rural health care providers at reduced rates.

Disadvantages

The reporting requirements necessary for the collection, calculation, and disbursement of universal service support may place administrative burdens on certain carriers. The current procedures for review of USAC's funding decisions concerning schools, libraries, and rural health care providers may also place unnecessary administrative burdens on the Commission.

Recent Efforts

Many of the Part 54 rules were adopted in 1997, and they have been revised a number of times since.¹⁹² On June 30, 2000, the Commission released an order to promote telecommunications subscribership by those living on tribal lands.¹⁹³

Recommendation

The staff does not recommend any major new initiatives concerning the Commission's universal service rules as part of the 2000 Biennial Regulatory Review. The staff, however, recommends that the Commission consider modifying Part 54 to streamline the process for appeals of USAC funding decisions by requiring applicants to file appeals with USAC in the first instance unless the appeals raise new or novel questions of fact, law, or policy.¹⁹⁴ The staff also recommends certain minor revisions to the Part 54 rules to remove transitional provisions that are no longer applicable. For example, section 54.701(b)-(e), concerning the now-completed merger of the

¹⁹² See, e.g., *Federal-State Joint Board on Universal Service, Fifth Order on Reconsideration and Fourth Report and Order*, 13 FCC Rcd 14915 (1998); *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432 (1999).

¹⁹³ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, FCC 00-208 (rel. June 30, 2000).

¹⁹⁴ See 47 C.F.R. § 54.719.

Schools & Libraries Corporation and the Rural Health Care Corporation into the Universal Service Administrative Company, should be deleted.

PART 59 – INFRASTRUCTURE SHARING

Description

Section 259 of the Communications Act of 1934, as amended, requires the Commission to prescribe regulations that require incumbent LECs to make available to qualifying carriers certain public switched network infrastructure, technology, information, and telecommunications facilities and functions used to provide telecommunications services, or access to information services. Part 59 implements section 259 of the Act, by specifying the general duty of incumbent LECs to share such infrastructure with qualifying carriers (*i.e.*, carriers that fulfill universal service obligations) and setting out general terms and conditions for such sharing. Part 59 applies only when the qualifying carrier does not seek to use the shared infrastructure to offer certain services within the incumbent LEC's telephone exchange area.

Purpose

Part 59 is designed to implement the requirements of section 259. Part 59 is intended to foster the provision of advanced telecommunications and information services by small carriers. It is intended to accomplish this by allowing qualifying carriers to take advantage of the economies of scale and scope possessed by larger incumbent LECs.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

Part 59 fosters the availability of advanced telecommunications and information services by articulating general rules and guidelines to define the obligations imposed by section 259 and by relying in large part on negotiations between interested parties. This negotiation-driven approach allows the parties to craft section 259 agreements that best meet their needs with minimal regulatory supervision.

Disadvantages

The rules implementing section 259 may impose costs on incumbent LECs that must share infrastructure with qualifying carriers. Part 59 minimizes these costs by relying on private negotiations to establish the precise terms for infrastructure sharing.

Recent Efforts

The Commission recently reaffirmed its negotiation-based approach to implementing section 259.¹⁹⁵

¹⁹⁵ *Order on Reconsideration, Implementation of Infrastructure Sharing Provisions of the Telecommunications Act of 1996*, 62 FR 9704 (rel. Apr. 27, 2000). This Order also addressed a number of

Recommendation

The staff recommends that the negotiation-driven, minimally-regulatory approach adopted in Part 59 be maintained and that no substantial changes be made to this Part. During the three years since Part 59 was adopted, no evidence has been presented to the Commission indicating that parties have been unable to negotiate section 259 infrastructure sharing agreements.

issues concerning the use of section 259 to facilitate resale, access to intellectual property rights, and pricing of section 259 arrangements. *Id.*

PART 61 – TARIFFS

Description

Sections 203 and 204 of the Communications Act of 1934, as amended, establish tariff filing requirements applicable to common carriers.¹⁹⁶ Sections 201 and 202 require rates, terms and conditions to be “just and reasonable,”¹⁹⁷ and prohibit “unjust or unreasonable discrimination.”¹⁹⁸ Part 61 implements these sections of the Act by establishing rules that perform two major functions. First, the Part 61 rules establish requirements governing the filing, form, content, public notice periods, and accompanying support materials for tariffs. Second, Part 61 sets forth the pricing rules and related requirements that apply to incumbent local exchange carriers (LECs) that are subject to price cap regulation.

Part 61 is organized into ten lettered sub-parts:

- A – General
- B – Rules for Electronic Filing
- C – General Rules for Nondominant Carriers
- D – General Tariff Rules for International Dominant Carriers
- E – General Rules for Dominant Carriers
- F – Specific Rules for Tariff Publications of Dominant and Nondominant Carriers
- G – Concurrences
- H – Applications for Special Permission
- I – Adoption of Tariffs and Other Documents of Predecessor Carriers
- J – Suspensions

Purpose

Part 61 is intended to implement sections 203 and 204. The Part 61 tariffing rules are designed to provide consumers with information on the rates, terms and conditions for telecommunications services. They are also intended to ensure that the carriers provide the Commission and the public with information necessary for evaluating the lawfulness of tariff rates, terms and conditions. The price cap rules in Part 61 are designed to ensure that the rates of price cap carriers are “just and reasonable” and “not unjustly or unreasonably discriminatory.” At the same time, the price cap rules, in conjunction with the Part 69 access charge rules, are designed to create incentives for increased carrier efficiency, to streamline the tariff review process, and to allow the carriers some degree of pricing flexibility.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitors still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential

¹⁹⁶ 47 U.S.C. §§ 203-04.

¹⁹⁷ 47 U.S.C. § 201.

¹⁹⁸ 47 U.S.C. § 202.

customers or customers in rural areas. The domestic U.S. long distance market is competitive, although there is greater competition for high volume customers than for low volume customers. Competition in the international services markets is also increasing. These markets are rapidly changing from being dominated by a small number of national telecommunications providers to having a large number of competitors.

Advantages

The Part 61 tariffing rules benefit the public by providing information on the rates, terms, and conditions for telecommunications services. In addition, the requirements for support materials facilitate review of the lawfulness of the tariffs. The requirements for support materials thus reduce the cost of enforcing Commission pricing rules, and permit interested parties to challenge tariff provisions.

The price cap rules contained in Part 61 protect customers by capping the rates charged by the LECs and limiting the potential for LECs to exercise market power in an anticompetitive manner. They also foster carrier efficiency, streamline the tariff process, and allow the carriers some degree of pricing flexibility.

Disadvantages

The tariff filing requirements may impede competition by reducing carrier flexibility and potentially foster oligopoly pricing by requiring the public disclosure of rates, terms, and conditions. Furthermore, the requirement for tariff support materials imposes some preparation costs on the carriers. Over time, the price cap rules may reduce economic efficiency by limiting carrier pricing flexibility.

Recent Efforts

As part of the 1998 Biennial Regulatory Review process, the Commission conducted a comprehensive review of Part 61, and eliminated a number of rules that were no longer necessary.¹⁹⁹ More recently, the Commission also addressed the price cap rules in a comprehensive manner in the CALLS proceeding.²⁰⁰ In addition, the Commission is in the process of implementing mandatory de-tariffing for domestic interexchange toll service,²⁰¹ and is considering doing the same for competitive local exchange carrier services.²⁰²

Recommendation

At this time, the staff generally recommends retaining the existing Part 61 requirements, with continued monitoring of competitive developments to permit changes as warranted by increased competition. The staff recommends, however, that the Commission extend mandatory de-tariffing to the international services of non-dominant interexchange carriers, including

¹⁹⁹ *1998 Biennial Regulatory Review – Part 61 of the Commission’s Rules and Related Tariff Requirements, Report and Order and Further Order on Reconsideration*, 14 FCC Rcd 12293 (1999).

²⁰⁰ *CALLS Order*, 15 FCC Rcd 12962.

²⁰¹ *Access Charge Reform*, DA 00-1268 (rel. June 16, 2000)

²⁰² *Access Charge Reform, Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221, 14234 (1999).

Commercial Mobile Radio Service providers and U.S. carriers classified as dominant solely due to foreign affiliations. We also note that the inter-carrier compensation proceeding recommended elsewhere in this report could result in some revisions to Part 61.

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

Description

Section 214 of the Communications Act of 1934, as amended, provides that no carrier shall undertake the construction of a new line or extension of any line, or shall acquire or operate any line, or extension thereof, without first having obtained a certificate from the Commission that the present or future public convenience and necessity require the construction and/or operation of such extended line. Section 214 also provides that no carrier shall discontinue, reduce or impair service to a community without first having obtained a certificate from the Commission that neither the present nor future public convenience and necessity will be adversely affected by such action.²⁰³ Part 63 of our rules sets forth specific information that must be included in a section 214 application for market entry or exit by a common carrier.²⁰⁴

Part 63 is organized into five sub-designations:

- Extensions and Supplements (§§ 63.01-63.25)
- General Provisions Relating to All Applications Under Section 214 (§§ 63.50-63.53)
- Discontinuance, Reduction, Outage and Impairment (§§ 63.60-63.100)
- Contents of Applications; Examples (§§ 63.500-63.601)
- Request for Designation as a Recognized Private Operating Agency (§§ 63.701-63.702)

Purpose

Part 63 sets out the requirements for obtaining a section 214 authorization to provide or discontinue service. A section 214 application is a request for authority to provide or to discontinue services pursuant to section 214 of the Communications Act. A carrier must receive a section 214 authorization prior to initiating or discontinuing service.

The primary purpose in adopting entry criteria under section 214 is to promote effective competition in the U.S. telecommunications services market. With regard to the construction of facilities, Commission authorization is needed to protect consumers from being charged by carriers for unneeded facilities. Commission authorization for discontinuance of service protects consumers from loss of service. Domestic markets have become sufficiently competitive that the Commission has substantially deregulated the procedures for obtaining section 214 authorizations. For international telecommunications services, the section 214 authorization requirement serves several purposes. It enables the Commission to screen applications for risks to competition and to deny or condition authorizations as appropriate. The review process also includes consultation with Executive Branch agencies on national security, law enforcement, foreign policy, and trade concerns that may be unique to the provision of international services. The section 214 authorization requirement also helps us monitor competitive conditions along U.S. international routes as well as each carrier's compliance with our rules and policies governing the provision of international services, and it also serves to inform small carriers of their special obligations as providers of international service.

²⁰³ 47 U.S.C. § 214(a).

²⁰⁴ 47 C.F.R. Part 63.

Part 63 also contains rules to protect U.S. consumers and carriers from foreign telecommunications carriers exerting market power in the U.S. telecommunications market. For example, the No Special Concessions rule prohibits U.S. international carriers from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market.²⁰⁵ Part 63 also contains procedures for a party to be designated as a Recognized Private Operating Agency.²⁰⁶

Analysis

Status of Competition

There is a significant amount of competition in the provision of domestic long distance services. Competition for local exchange services is increasing. Competition in international services is also increasing, and the market is rapidly changing from a system that used to be dominated by a small number of national telecommunications providers (generally the incumbent national monopoly telephone companies) to a system with large numbers of new entrants and competitors.

Advantages

Part 63 provides carriers and the public with procedures to be followed to obtain authorization to construct facilities, provide service, and discontinue service. The rules provide certainty regarding what information must be filed with the Commission, how long action on the application will take, the types of services that can be provided over the facilities, and in what circumstances a carrier may discontinue service.

Disadvantages

The rules can be administratively burdensome on the carriers and the Commission. Some of the rules are duplicative, and some are unclear. The requirement for Commission authorization may also delay the introduction of new services to the public.

Recent Efforts

The increasing number of common carriers providing service and the resulting growth of competition have allowed the Commission to reduce the administrative burdens placed on carriers regarding market entry and exit. In 1999, the Commission amended the rules in Part 63 to deregulate market entry and streamline market exit filing requirements, under section 214, for domestic carriers.²⁰⁷ The new rules confer "blanket" section 214 certification for new lines of all domestic carriers, exempt line extensions and video programming services from section 214 requirements, and provide that all section 214 applications to discontinue domestic service will be automatically granted unless the Commission notifies the applicant otherwise. As a result of this deregulation, the only section 214 applications the Commission receives for domestic service are

²⁰⁵ 47 C.F.R. § 63.14.

²⁰⁶ 47 C.F.R. §§ 63.701, 63.702.

²⁰⁷ *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, 14 FCC Rcd 11364 (1999).

for market exit, under which a carrier must get discontinuance authority and notify customers when it stops providing service to a community. Market entry for domestic services is self-executing, and no applications are needed.

Regarding section 214 authorizations for international telecommunications services, in 1996 the Commission created global section 214 authorizations, reduced paperwork obligations, streamlined tariff requirements for non-dominant international carriers, and ensured that essential information is readily available to all carriers and users.²⁰⁸ In 1999, the Commission further streamlined its procedures for granting international section 214 authorizations so that now approximately 99 percent of international section 214 applications filed qualify for streamlined processing. As a result, most new carriers are authorized to provide international services on most international routes 14 days after public notice of an application. Carriers already providing service are able to complete *pro forma* transactions and assignments of their authorizations without prior Commission approval and to provide service through their wholly owned subsidiaries without separate Commission approval. Carriers under common ownership with an already-authorized carrier are able to provide the same authorized services after only a minimal waiting period.²⁰⁹

Recommendation

The staff recommends that certain sections of Part 63 be amended or deleted, but that most of the existing sections be retained at this time. We recommend that the sections which were amended in 1999 to lower entry barriers for domestic carriers be retained because they minimize transaction costs, streamline the applications process, promote competition, and increase consumer choice. The sections related to the form of applications to be filed (*i.e.*, amendments, additional information, copies, fees, filing periods, and form (such as paper size)) should be retained because administratively they provide clear and predictable rules. We find, on the other hand, that the rules describing and defining the types of discontinuance of services for which section 214 authorization must be obtained are largely obsolete, and are duplicative, and thus recommend that they be considered for modification and consolidation. The staff has also identified several duplicative rules that should be considered for elimination, and a number of rules that are unclear, ambiguous or contain errors that the staff recommends be clarified or corrected.

²⁰⁸ *Streamlining the International Section 214 Authorization Process and Tariff Requirements, Report and Order*, 11 FCC Rcd 12884, (1996).

²⁰⁹ *See 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations, Report and Order*, 14 FCC Rcd 4909 (1999) (*1998 International Common Carrier Biennial Regulatory Review Order*), recon. pending.

**PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS,
SUBPART A – TRAFFIC DAMAGE CLAIMS**

Description

Subpart A requires carriers engaged in radio-telegraph, wire-telegraph, or ocean-cable service to maintain separate files for each damage claim of a traffic nature filed with the carrier. Subpart A also prohibits such carriers from making payments as a result of any traffic damage claim in excess of the total amount collected for the message or messages from which the claim arose unless the claim is presented in writing and sets forth the reason for the claim. These rules are based on the Commission's authority pursuant to sections 1, 4, 201-205, and 220 of the Communications Act, as amended.²¹⁰

Purpose

Subpart A requires that certain types of carriers maintain records concerning damage claims, and limits damage payments absent a written claim.

Analysis

Status of Competition

Telegraph service, which appears to be the primary focus of this subpart, is no longer a major service offering.

Advantages

Ensures that certain carriers maintain records concerning damage claims.

Disadvantages

Subpart A appears to focus on the provision of telegraph service, which is no longer a major service offering.

Recent Efforts

No recent action.

Recommendation

The staff recommends the Commission consider removing subpart A since it appears to be outdated.

²¹⁰ 47 U.S.C. §§ 151, 154, 201-205 and 220.

PART 64, SUBPART B – RESTRICTIONS ON INDECENT TELEPHONE MESSAGE SERVICES

Description

Section 223(b) of the Communications Act of 1934, as amended, prohibits use of the telephone for the purpose of obscene commercial communications. It also prohibits use of the telephone for indecent commercial communications without the consent of the other party and prohibits use of the telephone for indecent commercial communications which are available to anyone under 18 years of age.²¹¹ Section 223(b) also provides for certain defenses to prosecution for making indecent commercial communications.

Subpart B implements the provisions of section 223(b) relating to defenses to prosecution for indecent commercial communications. Under section 64.201, a provider of indecent commercial telephone communications has a defense to prosecution if the provider has notified the common carrier that the provider is engaged in providing indecent commercial communications, and does one of the following: (1) requires credit card payment before transmitting the message; (2) requires an authorized access or identification code, which has been established by mail, before transmitting the message; or (3) scrambles the message so that the audio is unintelligible and incomprehensible without a descrambler. Subpart B also provides a defense to prosecution for message sponsor subscribers to mass announcement services if they ask the carrier to take certain precautions. In addition, subpart B bars common carriers, to the extent technically feasible, from providing access to obscene or indecent communications from the telephone of anyone who has not previously requested access to such services in writing if the carrier provides billing and collection for the provider of the obscene or indecent communications.

Purpose

Subpart B is intended to implement the statutory restrictions on the commercial provision by telephone of indecent communications, consistent with the First Amendment. In particular, subpart B is intended to protect minors and non-consenting adults from indecent communications.

Analysis

Status of Competition

Not relevant.

Advantages

Subpart B protects minors and non-consenting adults from indecent commercial telephone communications within a framework designed to be consistent with the First Amendment.

Disadvantages

Restrictions affecting speech are subject to potential challenge as inconsistent with the First Amendment.

²¹¹ 47 U.S.C. § 223(b).

Recent Efforts

No recent developments.

Recommendation

The staff does not recommend changes to subpart B as part of the 2000 Biennial Review.

PART 64, SUBPART C – FURNISHING OF FACILITIES TO FOREIGN GOVERNMENTS FOR INTERNATIONAL COMMUNICATIONS

Description

Subpart C, consisting of section 64.301 of the Commission's rules, requires U.S. common carriers to provide services and facilities for communications to any foreign government, upon reasonable request. If a foreign government refuses to provide services or facilities for communications to the U.S. Government, U.S. carriers, to the extent specifically ordered by the Commission, shall deny equivalent services or facilities to the foreign government.²¹² This rule was adopted pursuant to the Commission's authority under sections 201, 214, 303, and 308 of the Communications Act, as amended.²¹³

Purpose

Section 64.301 is intended to ensure that the U.S. Government has access to communications services overseas. It permits the Commission to order U.S. carriers to deny foreign governments access to communications services in the United States if the foreign government has denied the U.S. government access to communications services or facilities overseas.

Analysis

Status of Competition

Competition in the international services markets is increasing. These markets are rapidly changing from being dominated by a small number of national telecommunications providers to having a large number of competitors.

Advantages

The rule helps to ensure that the U.S. Government has access to communications services and facilities overseas.

Disadvantages

The Commission rarely exercises this authority.

Recent Efforts

The Commission last revised this rule in 1963, and would need to consult with the State Department before doing so again.

Recommendation

The staff recommends retaining the rule at this time.

²¹² 47 C.F.R. § 64.301.

²¹³ 47 U.S.C. §§ 201, 214, 303 and 308.

PART 64, SUBPART D – PROCEDURES FOR HANDLING PRIORITY SERVICES IN EMERGENCIES

Description

Subpart D requires that common carriers maintain, provision, and, if disrupted, restore facilities and services in accordance with the policies and procedures in Appendix A to Part 64. Appendix A establishes policies and procedures and assigns responsibilities for the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System. These requirements are based on the Commission's authority under sections 1, 201-05 of the Communications Act as amended.²¹⁴

Purpose

Subpart D is designed to ensure that critical communications services are available during times of national emergency.

Analysis

Status of Competition

Not Relevant.

Advantages

Subpart D promotes public safety and national security by establishing clear procedures and criteria for ensuring that critical communications services are available in times of national emergency.

Disadvantages

Complying with these requirements may impose administrative costs on carriers.

Recent Effort

There have not been any recent actions.

Recommendation

The staff does not recommend changes in subpart D.

²¹⁴ 47 U.S.C. §§ 151, 201-05.

PART 64, SUBPART E – USE OF RECORDING DEVICES BY TELEPHONE COMPANIES

Description

Subpart E governs the use of recording devices by telephone common carriers to record interstate or foreign telephone conversations between members of the public and telephone company agents or employees. Subpart E requires that telephone companies wishing to record such conversations must: (1) obtain the prior consent of all parties; (2) give a verbal notification prior to recording; and (3) accompany the use of the recording device with an automatic tone warning device that produces a distinct signal at regular intervals. These requirements are based on the Commission's authority under sections 1, 2, 4, 201, and 205 of the Communications Act as amended.²¹⁵

Purpose

Subpart E is intended to protect privacy interests.

Analysis

Status of Competition

Not relevant.

Advantages

Subpart E is designed to protect privacy.

Disadvantages

Subpart E appears to duplicate federal and state electronic privacy statutes, including 18 U.S.C. § 2510 *et seq.*, and 47 U.S.C. §1004. It also references outdated technology.

Recent Effort

There have not been any recent changes.

Recommendation

The staff recommends that the Commission consider removal of subpart E.

²¹⁵ 47 U.S.C. §§ 151, 152, 154, 201 and 205.

PART 64, SUBPART F – TELECOMMUNICATIONS RELAY SERVICES AND RELATED CUSTOMER PREMISES EQUIPMENT FOR PERSONS WITH DISABILITIES

Description

Title IV of the Americans with Disabilities Act of 1990 (ADA), codified as section 225 of the Communications Act of 1934, as amended, requires the Commission to ensure that telecommunications relay service (TRS) is available, “to the extent possible and in the most efficient manner,” to individuals with hearing or speech disabilities in the United States.²¹⁶ Section 225 defines TRS as telephone transmission services that make it possible for an individual with a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner functionally equivalent to someone without such a disability.

Part 64, subpart F was adopted to implement section 225 of the Act. The rules provide minimum functional, operational, and technical standards for TRS programs. The rules also establish a cost recovery and a carrier contribution mechanism for the provision of interstate TRS and require states to establish cost recovery mechanisms for the provision of intrastate TRS.

The rules give states a strong role in ensuring the availability of TRS by treating carriers as in compliance with their statutory obligations if they operate in a state that has a relay program certified as compliant by this Commission pursuant to rules in subpart F.

Purpose

Subpart F is designed to implement section 225. Subpart F is intended to facilitate communication by persons with a hearing or speech disability by ensuring that interstate and intrastate TRS is available throughout the country, and by ensuring uniform minimum quality standards for such relay services.

Analysis

Status of Competition

There is competition in the interstate TRS market, but very little competition in the intrastate TRS market.

Advantages

The Commission’s TRS rules ensure that individuals with hearing or speech disabilities receive the same quality of service when they make relay calls, regardless of where their call originates or terminates. The rules also ensure that the telecommunications service they receive is “functionally equivalent” to that available to persons who do not have such disabilities. The rules are particularly important to ensure service quality because there is so little intrastate competition among intrastate TRS providers.

²¹⁶ Pub. Law No. 101-336, § 401, 104 Stat. 327, 366-69 (1990) (adding section 225 to the Communications Act of 1934, as amended, 47 U.S.C. § 225).

Disadvantages

Technology is changing rapidly, and the regulations require relatively frequent modification to ensure functional equivalence to voice telephone service. For instance, in March 2000, the Commission adopted rules modifying Part 64, subpart F to address the provision of new types of relay services.

Recent Efforts

In March 2000, the Commission revised subpart F to, among other things: (1) modify the definition of telecommunications relay services to include speech-to-speech (STS) relay services (which provide a telecommunications link for persons with speech disabilities), video relay interpreting (VRI), (which facilitates telecommunications for individuals who use sign language), and non-English language relay services; (2) require that all relay services, whether mandatory or voluntary, funded by intrastate and interstate TRS funds, comply with minimum service quality standards; (3) require provision of STS relay services and permit reimbursement for the voluntary provision of VRI service; (4) modify the minimum service quality standards to better ensure functional equivalency; (5) clarify that the existing rules require outreach to all callers and for all forms of TRS; and (6) improve the Commission's process for handling TRS complaints.²¹⁷

In August 2000, the Commission revised subpart F to require all carriers providing telephone voice transmission service to provide access via the 711 dialing code to all relay services as a toll free call.²¹⁸

Recommendation

The staff does not recommend modification of subpart F as part of the 2000 Biennial Review.

²¹⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking*, FCC 00-56 (rel. Mar. 6, 2000) (*Improved TRS Order*)

²¹⁸ *The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Second Report and Order*, FCC 00-257 (rel. Aug. 9, 2000) (*N11 Second Report and Order*).

PART 64, SUBPART G – FURNISHING OF ENHANCED SERVICES AND CUSTOMER PREMISES EQUIPMENT BY BELL OPERATING COMPANIES; TELEPHONE OPERATOR SERVICES

Description

Subpart G addresses two distinct sets of issues. First, it contains rules concerning the provision of enhanced services and customer premises equipment (CPE) by Bell Operating Companies. Second, it contains rules governing the provision of operator services. These rules were adopted pursuant to the Commission's authority under sections 4, 201-205, 403, and 404 of the Act, as amended.²¹⁹

The Bell Operating Companies may provide enhanced services and CPE pursuant to nonstructural safeguards established in the *Computer III*²²⁰ (enhanced services) and *Furnishing of CPE*²²¹ proceedings, or through a separate subsidiary as provided in section 64.702 of the Commission's rules. If a Bell Operating Company provides enhanced services or CPE through a separate subsidiary, the separate subsidiary must: (1) obtain all transmission facilities necessary for the provision of enhanced services pursuant to tariff; (2) operate independently, with its own books of accounts, separate officers, personnel, and computer facilities; (3) deal with any affiliated manufacturing entity on an arm's length basis; and (4) compensate the Bell Operating Company for any research or development performed for the subsidiary. Section 64.702 requires that transactions between the subsidiary and the parent or any other affiliate be put in writing, and bars Bell Operating Companies from engaging in marketing or sales on behalf of a CPE or enhanced services subsidiary. The Bell Operating Company must also obtain Commission approval of the capitalization plans for any such separate subsidiary. In addition, section 64.702 bars all common carriers from providing CPE in conjunction with common carrier communications services.

The remainder of subpart G addresses the provision of telephone operator services, and certain activities by call aggregators.²²² These rules require that operator service providers identify themselves at the beginning of each call and provide consumers with information concerning their rates. The rules also prohibit call blocking and require that customers be able to obtain access to the operator services provider of their choice. In addition, subpart G contains restrictions on charges related to the provision of operator services, minimum standards for routing and handling of emergency telephone calls, and rules governing the filing of informational tariffs and the provision of operator services for prison inmates

²¹⁹ 47 U.S.C. §§ 154, 201-205, 403 and 404.

²²⁰ *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), Report and Order, Phase I*, 104 FCC 2d 958 (1986) (subsequent citations omitted).

²²¹ *Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies*, 2 FCC Rcd 143 (1987), *aff'd sub nom., Illinois Bell Telephone Co. v. FCC*, 883 F.2d 104 (D.C. Cir.1989).

²²² Operator services refer to "any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call," subject to certain exceptions. 47 C.F.R. § 64.708(i). An "aggregator" is "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls, using a provider of operator services." 47 C.F.R. § 64.708(b).

Purpose

Subpart G establishes safeguards for the provision of enhanced services and CPE by Bell Operating Companies. These measures are intended to prevent the Bell Operating Companies from using their power in the local exchange market to adversely affect competition in other adjacent markets.

The subpart G rules governing the provision of operator services protect consumers by ensuring that they have access to useful information about the rates charged by operator service providers, and that they are able to reach the operator service provider of their choice. The rules also promote public safety by prescribing minimum standards for operator service provider and call aggregator handling of emergency telephone calls.

Analysis

Status of Competition

The markets for both enhanced services and CPE are competitive. The operator services market is becoming increasingly competitive, although consumers may not benefit fully from this competition due to a lack of consumer awareness about the choices available to them, especially when using payphones.

Advantages

Subpart G is designed to foster competition by preventing the Bell Operating Companies from using their power in the local exchange market to adversely affect competition in the provision of enhanced services and CPE. The provisions of subpart G concerning operator services are designed to protect consumers from excessive charges for such services and ensure that consumers are able to reach the interexchange carrier of their choice.

Disadvantages

The separate subsidiary requirements impose additional costs on the Bell Operating Companies. The rules concerning operator services impose some administrative costs on aggregators and operator service providers.

Recent Efforts

As part of its 1998 Biennial Review, the Commission is considering eliminating section 64.702(c), which prohibits common carriers from bundling CPE with regulated communications services. The Commission tentatively concluded that the CPE market is sufficiently competitive to justify eliminating this restriction.²²³

The Commission adopted amendments to the subpart G rules governing operator service providers on July 12, 1999. These rule changes require that aggregators update the consumer

²²³ *Policy and Rules Concerning the Interstate, Interexchange Marketplace; 1998 Biennial 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 Rcd 21531 (1998).*

information they must post on or near public telephones as soon as possible, but no later than 30 days after the aggregator changes the pre-subscribed operator service provider.²²⁴

Recommendation

The staff does not recommend further changes in subpart G as part of the 2000 Biennial Review.

²²⁴ *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators, CC Docket No. 94-58, Second Report and Order, 14 FCC Rcd 16569 (1999).*

PART 64, SUBPART H – EXTENSION OF UNSECURED CREDIT FOR INTERSTATE AND FOREIGN COMMUNICATIONS SERVICES TO CANDIDATES FOR FEDERAL OFFICE

Description

Part 64 subpart H, implements section 401 of the Federal Election Campaign Act of 1971 which requires the Commission to promulgate rules governing the extension of unsecured credit for foreign or interstate communications services to candidates for Federal office.²²⁵ Part 64, subpart H requires certain carriers²²⁶ to file periodic reports with the Commission detailing the terms of any unsecured credit extended by the carrier to, or on behalf of, a candidate for federal office. In addition, subpart H requires carriers to extend unsecured credit on substantially equal terms to all candidates and other persons on behalf of any candidate for the same office.²²⁷

Purpose

The purpose of subpart H is to assist the Commission in monitoring unsecured credit arrangements between carriers and candidates for federal office, pursuant to the Federal Election Campaign Act. It is also intended to ensure that such agreements are extended on substantially equal terms to all candidates for the same office.²²⁸

Analysis

Status of Competition

Competition in the local exchange access market is growing, although competitors still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed much more rapidly than competition for residential customers or customers in rural areas. The U.S. market for domestic long distance service is competitive, although there is greater competition for higher volume business and residential customers than for low volume customers.

Advantages

The subpart H reporting requirements and limited disclosure rules provide an efficient means of monitoring unsecured credit arrangements between carriers and candidates for federal office. The rules also are designed to ensure that carriers do not favor any one candidate with regard to unsecured credit arrangements.

Disadvantages

These rules involve some additional administrative burdens for carriers.

²²⁵ 47 C.F.R. § 64.801.

²²⁶ The report filing requirement is limited to carriers with operating revenues exceeding \$1 million for the preceding year. 47 C.F.R. § 64.804 (g).

²²⁷ 47 C.F.R. § 64.804 (b)

²²⁸ Section 401, Federal Election Campaign Act of 1971, Pub. Law No. 92-225.

Recent Efforts

There have been no significant changes in recent years.

Recommendation

The staff recommends the Commission retain subpart H.

PART 64, SUBPART I – ALLOCATION OF COSTS

Description

Section 254(k) of the Communications Act, as amended, requires the Commission, with respect to interstate services, to establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included within the definition of universal service bear no more than a reasonable allocation of joint and common costs of facilities used to provide these services. The requirements in subpart I are also based on the Commission's authority under sections 201 and 220 of the Communications Act, as amended.²²⁹ Subpart I of the Commission's rules prescribes procedures for the allocation of carriers' costs between regulated and non-regulated services. It provides that all incumbent LECs required to separate regulated and non-regulated costs²³⁰ shall use the attributable cost method of cost allocation and lists a number of cost allocation principles that such carriers must follow. Subpart I provides that all carriers required to allocate costs between regulated and non-regulated activities are also subject to the affiliate transactions rules. Subpart I also requires that all incumbent LECs with annual operating revenues at or above a specified indexed level (currently \$114 million) file cost allocation manuals (CAMs) with the Commission. Finally, subpart I provides that all carriers required to file CAMs must also engage independent auditors to audit their compliance with the Commission's cost allocation requirements.

Purpose

The subpart I rules are designed to implement section 254(k) and are intended to foster competition and protect consumers by preventing cross-subsidization between regulated and non-regulated services provided by carriers subject to the cost allocation requirement.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

The subpart I rules protect consumers by helping to ensure that carriers' less competitive regulated services do not subsidize competitive ventures. This also helps to prevent carriers from competing unfairly in other markets.

Disadvantages

The cost allocation and affiliate transaction rules impose administrative costs on carriers subject to these requirements.

²²⁹ 47 U.S.C. §§ 201 and 220.

²³⁰ Average Schedule companies do not do cost studies and do not perform cost allocations pursuant to Part 64, subpart I.

Recent Efforts

Subpart I has been amended within the past few years to eliminate pre-filing requirements for CAM cost apportionment and time reporting changes, and to reduce the auditing requirements for mid-sized incumbent local exchange carriers.²³¹ The Common Carrier Bureau has held workshops to discuss, among other things, proposals for additional changes to CAM requirements for mid-size carriers.²³²

Recommendation

The staff recommends that the Commission consider additional changes to CAM requirements in Phase II of the *Comprehensive Accounting Review* proceeding.

²³¹ See *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1, Report and Order*, FCC 00-78 (rel. Mar. 8, 2000) (*Comprehensive Accounting Review* proceeding).

²³² Common Carrier Bureau Announces A Series of Workshops for Phase 2 of the Comprehensive Review of Accounting and Reporting Requirements, *Public Notice*, DA 00-754, Apr. 5, 2000, at 1. See also Common Carrier Bureau Announces Mid-Sized Carrier Workshop for Phase 2 of the Comprehensive Review of Accounting and Reporting Requirements, *Public Notice*, DA 00-926, Apr. 26, 2000.

**PART 64, SUBPART J – INTERNATIONAL SETTLEMENTS POLICY AND
• MODIFICATION REQUESTS**

Description

subpart J requires that carriers request Commission approval for changes in the accounting rates for international telecommunications services unless the route involved is exempt from the Commission's International Settlements Policy (ISP).²³³ The ISP requires that U.S. telecommunications carriers pay nondiscriminatory rates for termination of international traffic in foreign countries.²³⁴ subpart J also sets forth the information which must be contained in a modification request and the procedures that govern Commission consideration of such requests.²³⁵ These requirements are based on the Commission's authority pursuant to sections 1, 201, 202, 203, and 309 of the Communications Act, as amended.²³⁶

Purpose

The requirement for filing accounting rate modification requests set out in Subpart J is intended to prevent the exercise of market power by foreign carriers. In particular, it assists the Commission in ensuring compliance with the ISP and the Commission's Benchmarks Policy.²³⁷ The ISP was adopted as a result of the Commission's concern that a foreign carrier with market power would have the ability to "whipsaw" competing U.S. international carriers by discriminating among them, and /or by unilaterally setting the prices, terms, and conditions under which U.S. carriers are able to exchange traffic.²³⁸ Such actions by foreign carriers would prevent U.S. carriers from obtaining lower accounting rates that would benefit U.S. consumers.

Analysis

Status of Competition

Competition in the international services markets is increasing. These markets are rapidly changing from being dominated by a small number of national telecommunications providers to having a large number of competitors.

²³³ An accounting rate is the price a U.S. facilities-based carrier negotiates with a foreign carrier for handling one minute of international traffic. Each carrier's portion of the accounting rate is referred to as the settlement rate.

²³⁴ 47 C.F.R. § 43.51(e).

²³⁵ 47 C.F.R. § 64.1001.

²³⁶ 47 U.S.C. §§ 151, 201, 202, 203 and 309.

²³⁷ The Commission has established benchmarks that govern the international settlement rates that U.S. carriers may pay foreign carriers to terminate international traffic originating in the United States. See *International Settlement Rates, Report and Order*, 12 FCC Rcd 19806 (1997), *aff'd sub nom. Cable and Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999), *Report and Order on Reconsideration and Order Lifting Stay*, 14 FCC Rcd 9256 (1999).

²³⁸ See *1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration*, 14 FCC Rcd 7963, 7974 ¶ 31 (1999).

Advantages

Subpart J is designed to prevent the exercise of market power by foreign carriers, and facilitate the negotiation of lower accounting rates by U.S. international carriers to the benefit of American consumers.

Disadvantages

The subpart J requirements may be too restrictive or over-broad.

Recent Efforts

The Commission reviewed its International Settlements Policy as part of its 1998 biennial review.²³⁹ In that proceeding, the Commission made several changes to the ISP, deregulating inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes. The Commission, among other things, eliminated the international settlements policy and contract filing requirements for arrangements with foreign carriers that lack market power, and eliminated the international settlements policy for arrangements with all carriers on routes where rates to terminate U.S. calls are at least 25 percent lower than the relevant settlement rate benchmark. The Commission also adopted procedural changes to simplify the accounting rate filing requirements, including the elimination of the requirement that carriers making accounting rate filings with the Commission serve every carrier that provides service on the international route with a copy of the filing. Instead, the Commission encouraged carriers to make their accounting rate filings electronically over the International Bureau Electronic Filing System.²⁴⁰

Recommendation

The staff does not believe that further amendments to subpart J are necessary at this time, and recommends retaining the rule.

²³⁹ *1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration*, 14 FCC Rcd 7963 (1999); see also, FCC Announces Elimination of Existing Service Requirement in 64.1001(k), Public Notice, DA 99-1558 (rel. Aug. 6, 1999).

²⁴⁰ See FCC Announces Elimination of Existing Service Requirement in 64.1001(k), Public Notice, DA 99-1558 (rel. Aug. 6, 1999).

PART 64, SUBPART K – CHANGING LONG DISTANCE SERVICE

Description

Section 258 of the Communications Act of 1934, as amended,²⁴¹ requires the Commission to prescribe verification procedures for telecommunications carriers to use in confirming subscribers' decisions to change local exchange or long distance telephone carriers. Section 258 provides that a carrier that fails to comply with the Commission's verification procedures will be liable to the subscriber's authorized carrier for all amounts paid by the subscriber after the violation. Subpart K implements section 258 of the Act by requiring telecommunications carriers to follow specific procedures with respect to changes in subscribers' preferred carriers. The rules also absolve subscribers of liability for charges billed by unauthorized carriers in certain cases, impose liability on unauthorized carriers for all charges collected from subscribers, and establish procedures to govern preferred carrier freezes.

Purpose

Subpart K is intended to implement section 258 of the Act by attempting to eliminate the fraudulent practice of "slamming," or changing a subscriber's authorized carrier without the subscriber's knowledge or explicit authorization. Subpart K is also designed to foster consumer choice and facilitate fair competition in the market for telecommunications services

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart K reduces fraud by deterring slamming, fosters consumer choice, and facilitates fair competition.

Disadvantages

Compliance with the safeguards in subpart K may increase carriers' costs to some degree.

Recent Efforts

In May 2000, the Commission modified the slamming liability rules and the procedures contained in subpart K.²⁴² Among other things, the Commission modified the liability rules in response to

²⁴¹ 47 U.S.C. § 258.

²⁴² *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, First Order on Reconsideration, FCC 00-135 (rel. May 3, 2000).*

industry concerns about complexity and expense of implementation and permitted state regulatory commissions to become the primary forums for resolving slamming complaints. In June 2000, the D.C. Circuit lifted its May 1999 stay of the previous liability rules. The new rules will become effective later this year.

In July 2000, the Commission revised other aspects of its slamming rules to improve the carrier change process for both subscribers and carriers while making it more difficult for unscrupulous carriers to perpetrate slams.²⁴³ Among other things, the Commission allowed the authorization and verification of carrier changes using the Internet, consistent with the provisions of the Electronic Signatures in Global and National Commerce Act.²⁴⁴ The revised rules will become effective later this year.

Recommendation

The staff does not recommend further changes to subpart K as part of the 2000 Biennial Review.

²⁴³ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Third Report and Order and Second Order on Reconsideration*, FCC 00-255 (rel. Aug. 15, 2000).

²⁴⁴ S. 761, 106th Cong., 2nd Sess. (signed into law June 30, 2000).

PART 64, SUBPART L – RESTRICTIONS ON TELEPHONE SOLICITATION

Description

Section 227 of the Communications Act, as amended, imposes restrictions on the use of automatic telephone dialing systems ("autodialers"), artificial or prerecorded messages, and telephone facsimile machines, and it specifically requires that the Commission adopt rules to implement these protections.²⁴⁵ Section 227 also directs the Commission to conduct proceedings to consider the need to protect residential telephone subscribers from unsolicited telephone calls. The subpart L rules contain measures designed to implement these provisions of the statute. Among other things, the subpart L rules require that telephone solicitors maintain company-specific lists of residential subscribers who do not wish to receive further solicitations. In addition, the subpart L rules contain restrictions on the disclosure of subscriber billing name and address information.

Purpose

The subpart L rules are intended to implement section 227 of the Act, and protect subscriber privacy and public safety without unnecessarily restricting legitimate telephone marketing and sales.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart L protects subscriber privacy and public safety without unnecessarily interfering with legitimate telephone marketing.

Disadvantages

Subpart L restricts the ability of telemarketers to place unsolicited calls at will.

Recent Efforts

There have not been any significant recent actions.

Recommendation

The staff does not recommend changes in subpart L at this time.

²⁴⁵ 47 U.S.C. § 227. *See also* 47 U.S.C. § 152(b).

PART 64, SUBPART M – PROVISION OF PAYPHONE SERVICE

Description

Subpart M implements section 276 of the Communications Act of 1934, as amended, concerning the provision of payphone service.²⁴⁶ The subpart governs the compensation of payphone providers by carriers that receive calls from payphones, requires states to review and remove any of their regulations that limit the ability of payphone service providers to enter or exit the market, and establishes regulations designed to ensure the accessibility of payphone service to individuals with disabilities. With respect to payphone compensation, the subpart provides for contracts between providers, but sets a default compensation rate should the parties not reach an agreement. The subpart also requires carriers to establish arrangements and track the data necessary for the calculation, verification, billing, and collection of payphone compensation.

Purpose

Subpart M is designed to implement section 276 of the Act and help ensure that payphone providers receive fair compensation for completed intrastate and interstate calls that use their payphones, to encourage competition among payphone service providers, and to promote the widespread deployment of payphone services.

Analysis

Status of Competition

Incumbent local exchange carriers have significant market power in the provision of payphone service. Independent payphone providers have captured approximately fifteen percent of the payphone market.

Advantages

The payphone regulations act to restrain the market power of incumbent LECs and ensure that payphone providers are fairly compensated through a default rate.

Disadvantages

By establishing a default payphone compensation rate, the payphone rules may discourage negotiated, market-based compensation arrangements because neither side has the incentive to disadvantage itself in relation to the default rate.

Recent Efforts

The U.S. Court of Appeals for the D.C. Circuit issued a decision on June 16, 2000 upholding the Commission's decision to establish a default compensation rate of \$.24 per call for payphone calls.²⁴⁷

²⁴⁶ See 47 U.S.C. § 276.

²⁴⁷ *American Public Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000).

Recommendation

The staff recommends retention of the payphone rules, but recommends continued monitoring to assess future competitive developments in the payphone market. The staff recommends deletion of section 64.1320, which applies only to activities prior to January 1, 1999.

PART 64, SUBPART N – EXPANDED INTERCONNECTION

Description

Subpart N provides that Class A local exchange carriers, which do not participate in the National Exchange Carrier Association tariff, must provide expanded interconnection.²⁴⁸ Subpart N requires that these incumbent LECs allow interconnection with their networks through physical or virtual collocation for the provision of interstate special access and switched transport services. Any interested party may take expanded interconnection. Subpart N was adopted pursuant to the Commission's authority under Sections 1, 4, and 201 through 205 of the Communications Act, as amended.²⁴⁹

Purpose

Subpart N is designed to increase competition in the provision of interstate services by removing barriers to the competitive provision of special access and switched transport services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart N fosters competition in the provision of special access and switched transport services. In particular, subpart N makes collocation and interconnection available to a broader group of interested parties than section 251 of the Communications Act and Part 51 of the Commission's rules. Any interested party, including end users such as large businesses and universities, for example, can take advantage of expanded interconnection under subpart N, while interconnection and collocation under section 251 of the Communications Act and Part 51 of the Commission's rules are limited to telecommunications carriers.

Disadvantages

Subpart N imposes some costs on incumbent LECs, which are passed on to requesting parties.

Recent Efforts

No recent action.

²⁴⁸ Bell South, SBC, USWest and Verizon are subject to this requirement.

²⁴⁹ 47 U.S.C. §§ 151, 154, and 201-05.

Recommendation

The staff recommends that the Commission retain subpart N because it covers more interested parties than section 251 of the Act and Part 51 of the rules, and serves to promote competition.

PART 64, SUBPART O – INTERSTATE PAY-PER-CALL AND OTHER INFORMATION SERVICES

Description

Subpart O contains provisions concerning pay-per-call and certain other information services. Subpart O requires that common carriers assigning telephone numbers to providers of interstate pay-per-call services require that the provider comply with this subpart as well as certain other laws and regulations. Subpart O restricts the provision of pay-per-call services over 800 and other “toll free” numbers, and effectively bars the provision of interstate pay-per-call services on a collect basis. Subpart O provides for the assignment of the 900 service access code to pay-per-call services. It requires that local exchange carriers offer subscribers the option of blocking access to 900 numbers from their telephones. Subpart O also bars the disconnection or interruption of local exchange or long distance service for the non-payment of charges for interstate pay-per-call and certain information services. In addition, subpart O establishes conditions for common carrier provision of billing and collection for pay-per-call services. The requirements in subpart O are based on the Commission’s authority under Sections 1, 4, and 201 through 205 of the Communications Act, as amended.²⁵⁰

Purpose

Subpart O is designed to protect consumers from the fraudulent or unscrupulous provision of pay-per-call services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart O protects consumers from the fraudulent or unscrupulous provision of pay-per-call services.

Disadvantages

Compliance with the requirements of subpart O increases the cost of providing pay-per-call services.

Recent Efforts

There have not been any recent actions.

²⁵⁰ 47 U.S.C. §§ 151, 154, and 201-05.

Recommendation

The staff does not recommend changes to subpart O as part of the current biennial review.

PART 64, SUBPART P – CALLING PARTY TELEPHONE NUMBER; PRIVACY (ALSO KNOWN AS “CALLER ID”)

Description

Subpart P contains the Commission’s rules concerning Calling Party Number (CPN) services, including “Caller ID,” which depend on capabilities that use out-of-band signaling techniques, such as Signaling System Seven (SS7). Subpart P provides that common carriers using SS7 must, subject to certain exceptions, transmit the CPN associated with interstate calls to interconnecting carriers without additional charge. Originating carriers using SS7 must recognize *67 as a caller’s request for privacy when dialed as the first three digits of an interstate call. Carriers providing line blocking services are required to recognize *82 as a caller’s request that privacy not be provided and that the CPN be passed on an interstate call. Subpart P restricts the use of telephone subscriber information provided as part of Automatic Number Identification or Charge Number services. Carriers are also required to notify customers of their *67 and *82 capabilities. The requirements in subpart P are based on the Commission’s authority under sections 1, 4, and 201 through 205 of the Communications Act, as amended.²⁵¹

Purpose

Subpart P provides a clear and consistent regulatory framework for deployment of CPN-based services which protects subscriber privacy while fostering the development of new and innovative services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart P protects the privacy interests of telephone users, and provides for consumer education concerning CPN-based interstate services.

Disadvantages

Compliance with subpart P imposes some costs on carriers.

Recent Efforts

No recent actions.

²⁵¹ 47 U.S.C. §§ 151, 154, and 201-05.

Recommendation

The staff does not recommend that the Commission modify subpart P as part of this biennial review.

**PART 64, SUBPART Q – IMPLEMENTATION OF SECTION 273(D)(5) OF THE
COMMUNICATIONS ACT: DISPUTE RESOLUTION REGARDING EQUIPMENT
STANDARDS**

Description

Section 273(d) of the Communications Act, as amended, establishes procedures to be followed by non-accredited standards organizations when setting industry-wide standards or generic requirements for telecommunications equipment or customer premises equipment (CPE). Section 273(d)(5) of the Act directs the Commission to prescribe a dispute resolution process to be used when all parties involved in such standards setting cannot agree on a dispute resolution process. Subpart Q establishes a default dispute resolution process in response to section 273(d)(5). It provides for resolution of technical disputes by a three-member panel, whose recommendation can be overturned if three-fourths of the funding parties vote to do so.

Purpose

Subpart Q is designed to implement section 273(d) and ensure the fair, prompt and economical resolution of disputes that arise in the context of private sector development of technical standards for telecommunications equipment and CPE.

Analysis

Status of Competition

The market for CPE is competitive, with vibrant competition among a wide variety of CPE manufacturers.

Advantages

The default dispute resolution process prescribed in subpart Q provides for the fair, prompt and economical resolution of disputes when the parties are unable to agree on a mutually satisfactory process.

Disadvantages

Since this dispute resolution process is only used when the parties cannot agree on another approach, it does not appear to have any significant disadvantages.

Recent Efforts

No recent action.

Recommendation

The staff recommends that the Commission retain subpart Q.

PART 64, SUBPART R – GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION

Description

Section 254(g) of the Communications Act, as amended,²⁵² requires interexchange rate averaging and rate integration. The rate averaging provisions require interexchange carriers to charge customers in rural and high cost areas no more than they charge urban customers. The rate integration provisions require carriers to charge customers in one state the same rates for interexchange service charged to customers in any other state. Subpart R implements this requirement.

Purpose

Subpart R is designed to implement section 254(g) of the Act and ensure that all customers, regardless of where they live, have access to interexchange services at comparable rates.

Analysis

Status of Competition

The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

The rate averaging and rate integration requirements help ensure that all domestic interexchange toll service customers, regardless of where they live, share in the benefits of rate reductions and new technologies that result from the competitive nature of the interexchange market.

Disadvantages

By requiring carriers to average their rates across all of their service areas, the rate averaging and rate integration provisions in the statute create implicit subsidies running from low-cost areas to high-cost areas. This has the potential to distort the market by discouraging carriers from serving high cost areas. It can also make it difficult for national interexchange carriers serving both high and low cost areas to compete effectively with carriers that provide targeted interexchange services in low-cost areas.

Recent Efforts

The U.S. Court of Appeals for the D.C. Circuit recently affirmed the Commission's ruling that an interexchange carrier and all of its affiliates must charge the same integrated long distance rates. The court, however, vacated the Commission's decision that Section 254(g) unambiguously applies rate integration to CMRS carriers and remanded to the Commission the question of whether rate integration should apply to these carriers.²⁵³

²⁵² See 47 U.S.C. § 254(g).

²⁵³ *GTE Service Corp. v. FCC*, No. 97-1538 (D.C. Cir., July 14, 2000).

Recommendation

The staff recommends review of the applicability of rate integration to CMRS carriers pursuant to the court remand, but does not recommend that this be treated as a part of the 2000 Biennial Review. The staff recommends retention of the other rate integration and rate averaging rules that implement the statutory mandate of the 1996 Act. The staff recommends that the Commission monitor the potential effect of these provisions on the development of competition in the interexchange market.

**PART 64, SUBPART S – NONDOMINANT INTEREXCHANGE CARRIER
CERTIFICATIONS REGARDING GEOGRAPHIC RATE AVERAGING AND RATE
INTEGRATION REQUIREMENTS**

Description

Section 254(g) of the Communications Act, as amended, requires interexchange carrier rate averaging and rate integration.²⁵⁴ Subpart S implements this requirement by requiring that nondominant carriers that provide detariffed interstate domestic interexchange service file an annual certification with the Commission (signed by an officer under oath), stating that they comply with the rate averaging and rate integration requirements in section 254(g).

Purpose

Subpart S is intended to implement section 254(g) and insure compliance with the statutory requirement that all customers, regardless of where they live, have access to interexchange services at comparable rates.

Analysis

Status of Competition

The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

The rate averaging and rate integration certification requirements facilitate enforcement of the statutory requirement in section 254(g) of the Act that all domestic interexchange toll service customers, regardless of where they live, share in the benefits of rate reductions and new technologies that result from the competitive nature of the interexchange market.

Disadvantages

Requiring that nondominant interexchange carriers file annual certifications may impose some administrative costs on these carriers.

Recent Efforts

There have been no recent actions.

Recommendation

The staff recommends retention of subpart S.

²⁵⁴ 47 U.S.C. § 254(g).

**PART 64, 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**

Description

Subpart T establishes separate subsidiary requirements applicable to the provision of in-region, interstate domestic, interexchange services and in-region international interexchange services by incumbent independent local exchange carriers. Subpart T generally requires that the separate affiliate: (1) maintain separate books of account, although these books of account need not comply with Part 32 requirements; (2) not own transmission or switching facilities jointly with its affiliated exchange company, although the separate affiliate may share personnel or other assets or resources with an affiliated exchange company; (3) take, pursuant to tariff, any services for which its affiliated exchange carrier is required to file a tariff, although the separate affiliate may also take unbundled network elements and services for resale pursuant to the terms of pre-existing negotiated agreements approved under section 252 of the Act; and (4) be a separate legal entity from the affiliated exchange company, although the separate affiliate may share personnel, office space and marketing with the affiliated exchange companies. Subpart T was adopted pursuant to sections 1, 2, 4, 201, 202, 220, 251, 271, 272 and 303(r) of the Communications Act, as amended.²⁵⁵

Purpose

Subpart T is designed to prevent incumbent independent local exchange carriers from exercising market power in the provision of in-region long distance services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

By requiring a separate affiliate for the provision of in-region long distance service by independent incumbent local exchange carriers, subpart T helps to prevent these carriers from exercising market power in the provision of in-region long distance services.

Disadvantages

Subpart T may increase independent incumbent local exchange carriers' costs of providing in-region, interstate, interexchange services. Additionally, section 64.1903(c) is no longer applicable since it addresses exclusively the time period prior to August 30, 1999.

²⁵⁵ 47 U.S.C. §§ 151, 152, 154, 201, 202, 220, 251, 271, 272, and 303(r).

Recent Efforts

In August 1999, the Commission revised subpart T to allow independent LECs providing in-region long distance services solely on a resale basis to do so through a separate corporate division rather than through a separate legal entity.²⁵⁶

Recommendation

The staff recommends that the Commission modify subpart T to provide for triennial review of the requirement that independent incumbent LECs provide interexchange service through a separate affiliate. The staff also recommends that the Commission delete section 64.1903(c), since it pertains exclusively to the time period prior to August 31, 1999.

²⁵⁶ *Regulatory Treatment of LEC Provision of Interexchange Services, Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Market Place, Second Order on Reconsideration*, 14 FCC Rcd 10771 (1999).

PART 64, SUBPART U – CUSTOMER PROPRIETARY NETWORK INFORMATION

Description

Section 222 of the Communications Act, as amended,²⁵⁷ restricts carrier use of customer proprietary network information (CPNI), which, among other things, identifies to whom, where, and when a customer places a call, and identifies the types of service offerings to which the customer subscribes and the extent to which the service is used. The Commission adopted CPNI rules pursuant to section 222, but the order adopting those rules was overturned on appeal, as discussed in more detail below.²⁵⁸ Section 222 remains in effect, however, and the Commission has authority to enforce the CPNI protections in that section.

Purpose

The Commission adopted the CPNI rules in order to implement the provisions of section 222 and protect consumer privacy and foster competition.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is fully competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

The CPNI rules protect consumer privacy and foster competition.

Disadvantages

The CPNI rules adopted by the Commission impose some costs on carriers. The 10th Circuit Court of Appeals decision concerning the Commission's CPNI rules is discussed below.

Recent Efforts

The 10th Circuit Court of Appeals found that the Commission's interpretation of the customer approval requirement for the use of CPNI in certain circumstances violated the First Amendment. Although the court did not discuss other aspects of the Commission's rules, its opinion concluded by vacating the Commission order adopting the CPNI rules. The court did not address the constitutionality of section 222, which remains in effect and continues to protect customer CPNI. The Commission is in the process of addressing the court's ruling.

²⁵⁷ 47 U.S.C. § 222.

²⁵⁸ *US West v. FCC*, 182 F.3d 1224 (10th Cir. 1999), *cert. denied*, 120 S Ct. 2215 (June 5, 2000) (No. 99-1427).

Recommendation

The staff does not recommend that the Commission take action concerning subpart U as part of the 2000 Biennial Review.

PART 64, SUBPART V – TELECOMMUNICATIONS CARRIER SYSTEMS SECURITY AND INTEGRITY PURSUANT TO THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)

Description

Section 105 of CALEA,²⁵⁹ requires that telecommunications carriers establish safeguards to ensure that interception of communications or access to call-identifying information can be activated only in accordance with a court order or other lawful authorization, and with the affirmative intervention of an officer or employee. Subpart V implements this CALEA requirement by mandating that carriers adopt policies and procedures for supervision and control of their employees and officers in this regard, and by requiring that carriers maintain secure records of each interception of communications or access to call-identifying information. Each telecommunication carrier is required to submit its policies and procedures to the Commission for review.

Purpose

Subpart V is intended to implement section 105 of CALEA and help protect subscribers' privacy rights by ensuring that any interception is in accordance with legal authorization.

Analysis

Status of Competition

Not relevant.

Advantages

Subpart V helps protect subscriber privacy.

Disadvantages

Compliance with these requirements increases carrier costs.

Recent Efforts

Subpart V was adopted in September 1999.²⁶⁰

Recommendation

The staff does not recommend that the Commission modify subpart V as part of its 2000 Biennial Review.

²⁵⁹ 47 U.S.C. § 1004.

²⁶⁰ *Communications Assistance for Law Enforcement Act, Report and Order*, 14 FCC Rcd 4151 (1999).

PART 64, SUBPART W – REQUIRED NEW CAPABILITIES PURSUANT TO THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)

Description

Subpart W establishes the technical requirements and standards that telecommunications carriers must satisfy to ensure that, when properly authorized, law enforcement officials have access to communications and call-identifying information, as required by section 103 of CALEA.²⁶¹

Subpart W parallels requirements and standards for wireless telecommunications carriers set out in Part 22, subpart J and Part 24, subpart J.

Purpose

Subpart W is intended to implement section 103 of CALEA and assist in enforcement of criminal laws, and to clarify what telecommunications carriers must do in order to satisfy the requirements of section 103(a) of CALEA.²⁶²

Analysis

Status of Competition

Not relevant.

Advantages

Subpart W facilitates enforcement of criminal law and clarifies what carriers must do in order to comply with CALEA.

Disadvantages

Compliance with these requirements increases carriers' costs.

Recent Efforts

On August 15, 2000, the D.C. Circuit affirmed in part and vacated and remanded in part the requirements contained in subpart W.²⁶³

Recommendation

The staff recommends that the Commission reassess its subpart W rules pursuant to the D.C. Circuit's remand.

²⁶¹ 47 U.S.C. § 1002.

²⁶² See *Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, *Third Report and Order*, 14 FCC Rcd 16794 (1999).

²⁶³ *Aff'd in part and rev'd in part, United States Telecom Ass'n v. FCC*, Nos. 99-1442 *et al.* (D.C. Cir. Aug. 15, 2000).

PART 64, SUBPART X – SUBSCRIBER LIST INFORMATION

Description

Section 222(e) of the Communications Act²⁶⁴ requires carriers providing telephone exchange service to provide subscriber list information to requesting directory publishers “on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions.” Subpart X implements this statutory provision, addressing third party rights to subscriber list information, which includes listed subscribers’ names, addresses and telephone numbers, as well as headings under which businesses are listed in the yellow pages.

Purpose

Subpart X is intended to implement section 222(e) of the Act and encourage the development of competition in directory publishing by ensuring that competing directory publishers can obtain subscriber list information from local exchange carriers.

Analysis

Status of Competition

The market for directory publishing has been dominated by incumbent LEC publishing operations, but is becoming increasingly competitive. Much of this increased competition is due to section 222 and the Commission’s implementing rules in subpart X.

Advantages

Subpart X fosters competition in directory publishing, and prevents incumbent local exchange carriers from using control of their subscriber information lists to undermine competition in the directory publishing business.

Disadvantages

These requirements may place some administrative burdens on local exchange carriers.

Recent Efforts

The Commission adopted the subpart X rules on August 23, 1999.²⁶⁵

Recommendation

The staff does not recommend that the Commission modify subpart X at this time.

²⁶⁴ 47 U.S.C. § 222(e).

²⁶⁵ *Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *Third Report and Order*, FCC 99-227 (rel. Sept. 9, 1999).

PART 64, SUBPART Y – TRUTH-IN-BILLING REQUIREMENTS FOR COMMON CARRIERS

Description

The Commission adopted the rules in subpart Y pursuant to its authority under sections 201(b) and 258 of the Communications Act of 1934, as amended.²⁶⁶ Subpart Y contains binding truth-in-billing guidelines that apply to carriers selling telecommunications services. Subpart Y requires carriers to provide customers with necessary information about the services and charges that are shown on the customer's bill in a user-friendly format. Specifically, subpart Y requires carriers to separate charges on the bill by provider, to describe clearly the services involved, to display clearly the name of the service provider in association with its charges, to display a toll-free number (or, in certain cases, a website) for consumer inquiries, to identify those charges for which failure to pay will not result in disconnection of the customer's basic local service, and to highlight new service providers.

Purpose

Subpart Y is designed to implement sections 201(b) and 258 of the Act and make telephone bills easier for consumers to understand, so that customers can make informed choices among carriers and services in the increasingly competitive telecommunications market. Subpart Y is also intended to make it easier for consumers to identify and report fraud, such as slamming (unauthorized change of consumer's telecommunications carrier) and cramming (placement of unauthorized, misleading, or deceptive charges on a consumer's telephone bill).

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart Y makes telephone bills easier for customers to understand and ensures that consumers have the information necessary to make informed choices among carriers and services. These rules also make it easier for consumers to detect and report fraud in the provision of telecommunications services such as slamming and cramming.

Disadvantages

These requirements may increase carrier costs somewhat.

²⁶⁶ 47 U.S.C. §§ 201(b) and 258. These rules were inadvertently placed in subpart U in the 1999 Code of Federal Regulations. This error was subsequently corrected and the rules were placed in subpart Y. 65 Fed. Reg. 36637 (June 9, 2000).

Recent Efforts

Some of the truth-in-billing rules contained in subpart Y took effect in November 1999, and several more took effect in April 2000.

In March 2000, the Commission modified the truth in billing rules slightly, specifying that the requirement that telephone bills highlight new service providers does not apply to services billed solely on a per-transaction basis, and making other minor modifications.²⁶⁷ These changes became effective on August 28, 2000.

Recommendation

The staff does not recommend further changes to subpart Y as part of the 2000 Biennial Review.

²⁶⁷ *Truth-in-Billing and Billing Format, Order on Reconsideration*, CC Docket No. 98-170, FCC 00-111 (rel. Mar. 29, 2000); *Errata*, DA 00-745 (rel. Mar. 31, 2000).

PART 65 – INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

Description

Section 201 of the Communications Act, as amended, requires that rates for common carrier communications services be just and reasonable.²⁶⁸ Part 65 sets forth procedures and methodologies used by the Commission to prescribe an authorized interstate rate-of-return for the exchange access services of incumbent local exchange carriers subject to rate-of-return regulation. Price cap incumbent local exchange carriers also use the Commission prescribed rate-of-return for certain limited purposes. The Part 65 rules describe the methodologies to be used in calculating the cost of equity, the cost of debt, the weighted average cost of capital (both equity and debt), the interstate ratebase, and the carriers' interstate rate-of-return. These rules also require the filing of certain rate-of-return reports.

Part 65 is organized into seven lettered subparts.

- A – General
- B – Procedures
- C – Exchange Carriers
- D – Interexchange Carriers
- E – Rate-of-Return Reports
- F – Maximum Allowable Rates of Return
- G – Rate Base

Purpose

The Part 65 rules are designed to protect consumers from excessive rates by prescribing an authorized interstate rate of return used to set local exchange access rates for incumbent local exchange carriers subject to rate-of-return regulation. (End users pay the subscriber line charge element of interstate access charges directly. Other interstate access charges are paid by the interexchange carriers and reflected in their interstate long distance rates.)

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers in rural areas.

Advantages

The Part 65 rules protect consumers from excessive interstate access charges by incumbent local exchange carriers subject to rate-of-return regulation. The authorized interstate rate of return is also used by incumbent local exchange carriers for certain purposes, for example, calculating

²⁶⁸ 47 U.S.C. § 201 (b).

payments to and disbursements from the universal service fund and in the low end adjustment formula.

Disadvantages

The Part 65 rules impose some paperwork burdens on carriers.

Recent Efforts

In 1995, the Commission substantially reformed the Part 65 rules. The major changes made by the 1995 order were the elimination of the biennial prescription schedule, and simplification of the prescription process. The Commission replaced the existing rule, which called for the initiation of rate return prescription proceedings every two years, with a semiautomatic trigger activated by changes in capital costs.²⁶⁹

In October 1998, the Common Carrier Bureau initiated a proceeding to represcribe the rate of return.²⁷⁰ This proceeding has not yet been completed.

Recommendation

The staff does not recommend changes in the Part 65 rules at this time.

²⁶⁹ *Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Prescription and Enforcement Process, Report and Order*, 10 FCC Rcd 6788 (1995).

²⁷⁰ *Prescribing the Authorized Unitary Rate of Return for Interstate Services of Local Exchange Carriers, Notice Initiating a Prescription Proceeding and Notice of Proposed Rulemaking*, 13 FCC Rcd 20561 (1998).

PART 68 – CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

Description

Part 68 was established in 1974 as the result of a court decision ruling that the Bell Operating Companies could not bar direct connection of customer premises equipment (CPE) (such as telephones, fax machines, modems, etc.) to the public switched telephone network (PSTN), so long as the CPE would not cause harm to the PSTN.²⁷¹ Part 68 requires that CPE be tested to show that it will not harm the PSTN or carrier personnel, and then registered with the Commission. Carriers are obligated to permit the free connection of registered CPE to the PSTN, but they can require disconnection of unregistered CPE or of CPE that causes harm to the PSTN without recourse to litigation. Part 68 also establishes the right of customers to use competitively provided inside wiring.

In addition, Part 68 implements a statutory requirement for telephone equipment compatibility with hearing aids,²⁷² and contains two consumer protection provisions mandated by statute: a requirement that all fax transmissions include source labeling,²⁷³ and a requirement that CPE support equal access to providers of operator services.²⁷⁴

Part 68 is organized into six lettered subparts:

- A – General
- B – Conditions on Use of Terminal Equipment
- C – Registration Procedures
- D – Conditions for Registration
- E – Complaint Procedures
- F – Connectors

Purpose

The Part 68 rules are designed to foster competition in the provision of CPE and inside wiring by permitting the connection of competitively provided CPE and inside wiring to the PSTN. Part 68 is also intended to ensure that the connection of CPE and inside wiring does not harm the PSTN or injure personnel. In addition, Part 68 is designed to ensure the compatibility of hearing aids and telephone receivers so that persons with hearing aids will be able to use virtually all telephones.

²⁷¹ *Hush-A-Phone v. United States*, 238 F.2d 266 (D.C. Cir. 1956).

²⁷² Hearing Aid Compatibility Act of 1988, 47 U.S.C. § 610.

²⁷³ 47 U.S.C. § 227(d)(2).

²⁷⁴ 47 U.S.C. § 227(d)(1).

Analysis

Status of Competition

The market for CPE and the market for the installation of inside wiring in single family residences are fully competitive.

Advantages

Part 68 benefits consumers by fostering competition in the provision of CPE and inside wiring. The competition engendered by Part 68 has greatly increased innovation in CPE and reduced prices. Part 68 also benefits consumers and the industry by preventing harm to the PSTN and carrier personnel. In addition, Part 68 benefits people with hearing disabilities and those who communicate with these people by requiring that telephone receivers be compatible with hearing aids.

Disadvantages

The present Part 68 requirements for CPE registration impose additional costs on manufacturers and may delay customer access to new CPE. The present Part 68 registration program also uses Commission resources that might otherwise be available for other priorities.

Recent Efforts

The Commission is taking steps to streamline the Part 68 CPE registration process. On June 2, 2000, the Commission implemented measures allowing private entities to register CPE, ending the policy of having the Commission perform this function on an exclusive basis.²⁷⁵ A Notice of Proposed Rulemaking, released May 22, 2000 in CC Docket No. 99-216, proposes that the Commission cease performing all registration functions other than consideration of appeals, thus entirely privatizing CPE registration.²⁷⁶ In the May 22 Notice, the Commission also proposes to privatize the development of technical criteria that CPE must meet in order to be registered.

Recommendation

The staff recommends continuation of the basic Part 68 requirement that LECs must allow the connection of Part 68-compliant CPE and inside wiring to the PSTN. The staff also recommends continuing the requirements for hearing aid compatibility and the other consumer protection requirements in Part 68. In addition, the staff recommends continuation of the Commission's ongoing efforts in CC Docket No. 99-216 to streamline and privatize the development of technical standards and the CPE registration process.

²⁷⁵ *Office of Engineering and Technology and Common Carrier Bureau Announce the Designation of Telecommunications Certification Bodies (TCBs) to Approve Radiofrequency and Telephone Terminal Equipment, Public Notice, DA 00-1223 (rel. June 2, 2000); see also, 1998 Biennial Regulatory Review – Amendment of Parts 2, 25, and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements, Report and Order, 13 FCC Rcd 24687 (1998).*

²⁷⁶ *2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations, CC Docket No. 99-216, Notice of Proposed Rulemaking, FCC 00-171 (rel. May 22, 2000).*

PART 69 – ACCESS CHARGES

Description

Sections 201 and 202 of the Communications Act of 1934, as amended, require that rates, terms and conditions for telecommunications services be just and reasonable,²⁷⁷ and prohibit unjust or unreasonable discrimination.²⁷⁸ Part 69 implements these sections of the Act by establishing rules that perform the following major functions. First, the Part 69 rules establish the rate structure for access charges to be paid by interexchange carriers for the origination and termination of long distance calls, as well as the access charges to be paid directly by end users.²⁷⁹ These rate structure rules establish the access charge rate elements as well as the nature of the charges, such as whether they are assessed on a per minute or a flat-rate basis. Second, the Part 69 rules govern how rate-of-return LECs calculate their access charge rates. Third, the Part 69 rules, in conjunction with the Part 61 price cap rules, establish the degree of pricing flexibility available to price-cap LECs. Finally, Part 69 provides for the establishment of the National Exchange Carrier Association (NECA), which files tariffs on behalf of many of the smaller, rate-of-return LECs.

Part 69 is organized into eight lettered subparts:

- A – General
- B – Computation of Charges
- C – Computation of Charges for Price Cap Local Exchange Carriers
- D – Apportionment of Net Investment
- E – Apportionment of Expenses
- F – Segregation of Common Line Element Revenue Requirement
- G – Exchange Carrier Association
- H – Pricing Flexibility

Purpose

The Part 69 rules are designed to implement the provisions of sections 201 and 202 of the Act and protect consumers by preventing the exercise of market power by incumbent LECs and ensuring that rates are just, reasonable, and not unjustly or unreasonably discriminatory. The requirement for a certain minimum set of access charge rate elements and the rate calculation rules for rate-of-return carriers also greatly reduce the resources required in the tariff review process.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

²⁷⁷ 47 U.S.C. § 201.

²⁷⁸ 47 U.S.C. § 202.

²⁷⁹ Local exchange carriers subject to price cap regulation must offer a basic set of access rate elements, but are free to offer additional access services.

Advantages

The Part 69 rules protect customers from the exercise of market power by incumbent LECs. The requirement for a minimum set of access charge rate elements and the pricing rules for both rate-of-return and price-cap LECs greatly reduce the Commission resources required to ensure carrier compliance with sections 201 and 202 of the Act. These requirements also greatly facilitate analysis of access charges by other interested parties. The creation of NECA facilitates the filing of access charge tariffs by smaller rate-of-return LECs and reduces the administrative costs involved.

Disadvantages

The requirement that the LECs offer a minimum set of access charge rate elements limits their flexibility and could over time reduce their ability to respond appropriately to competition. The pricing rules for both price-cap and rate-of-return LECs could also undermine their ability to respond to competition if not adjusted over time. The pooling of revenues and costs under the NECA tariffs reduces the incentives of individual carriers to improve efficiency.

Recent Efforts

The Commission recently addressed the access charge rules applicable to price cap LECs in the CALLS proceeding.²⁸⁰ The Commission has also established rules permitting price cap LECs greater pricing flexibility as they achieve specified competitive milestones.²⁸¹ In addition, the Commission is seeking comment on issues relating to further pricing flexibility. The Commission has also initiated a rulemaking proceeding addressing issues relating to access charge reform for rate-of-return LECs.²⁸²

Recommendation

In light of recent Commission decisions concerning Part 69 discussed above, the staff does not recommend any new initiatives relating to Part 69 in the context of this biennial regulatory review. The ongoing proceedings addressing issues of access charge reform provide an appropriate means of addressing competitive developments in the exchange access market. We also note that the inter-carrier compensation proceeding that the staff recommends in the text of this report could result in revisions to Part 69 that would address anticipated competitive developments.

The staff recommends deleting a number of provisions that apply only to past time periods, or are otherwise no longer in effect, including sections 69.116, 69.117, 69.126, 69.127, and 69.612.

²⁸⁰ *Access Charge Reform*, CC Docket No. 96-262, FCC 00-193, (rel. May 31, 2000).

²⁸¹ *Access Charge Reform*, 14 FCC Rcd 14221 (1999).

²⁸² *Access Charge Reform for Incumbent LECs Subject to Rate-of-Return Regulation*, 13 FCC Rcd 14236 (1998).

PART 73, –RADIO BROADCAST SERVICES, SECTION 73.3555 – THE BROADCAST OWNERSHIP RULES

Description

Statutory authority for section 73.3555 of the Commission's rules is found in sections 308, 309 and 310 of the Communications Act of 1934, as amended. Section 308 requires the filing of a written application for licenses and construction permits (except in certain narrow enumerated cases) and states that such applications shall set forth such facts as the Commission may prescribe, including the ownership and location of the proposed station. Section 309 requires the Commission, except in the case of certain designated applications, to determine whether the grant of an application would serve the public interest, and to grant the application upon such a finding. Section 310(d) specifies that no construction permit or license shall be transferred without first filing an application with the Commission and without the Commission's finding that the public interest would be served thereby. Section 73.3555 contains the rules limiting the degree of common ownership of radio and television stations. It also contains attribution rules that specify when interests in mass media facilities will be considered cognizable for purposes of applying the mass media ownership rules.

Purpose

The broadcast ownership rules are intended to foster diversity and competition in broadcasting.

Analysis

Status of Competition

For an assessment of competition in broadcasting, see section V of the Report.

Advantages

The Commission is precluded from regulating the content of programming by section 326 of the Communications Act of 1934, as amended, and by the First Amendment. The ownership rules are a structural method of ensuring diversity of viewpoints in broadcasting. The rules are also intended to foster competition in broadcasting.

Disadvantages

Broadcasters allege that the rules restrict mass media entities in competing with other content providers that are not subject to ownership rules and restrict scale efficiencies.

Recent Efforts

Section V of the Report details the Commission's recent reviews of the ownership rules, including that contained in the recently released 1998 Biennial Regulatory Review Report.

Recommendation

Section V of the Report details a recommendation with respect to each of the ownership rules contained in section 73.3555.

PART 80 – STATIONS IN THE MARITIME SERVICES, SUBPARTS J (PUBLIC COAST STATIONS) AND Y (COMPETITIVE BIDDING PROCEDURES)

Description

Part 80²⁸³ contains licensing, technical, and operational rules for radio stations in the maritime services, which provide for the distress, operational, and personal communications needs of vessels at sea and on inland waterways.²⁸⁴ Maritime frequencies are allocated internationally by geographic region and type of communication in order to facilitate interoperable radio communications among vessels of all nations and stations on land worldwide. Land stations in the maritime services are the links between vessels at sea and activities on shore. They are spread throughout the coastal and inland areas of the United States to carry radio signals and messages to and from ships.

For purposes of the Biennial Regulatory Review, the analysis of Part 80 in this report focuses on the rules affecting public coast stations (subparts J and Y), which are unique in the Maritime Services in that they are used for commercial applications, are licensed on a geographic exclusive-use basis, and are subject to licensing by the Commission's competitive bidding procedures.

Public coast stations are commercial mobile radio service (CMRS) providers that allow ships to send and receive messages and to interconnect with the public switched telephone network.²⁸⁵ VHF band (156-162 MHz) public coast stations (VPC) provide short-range communications for vessels not more than 30 nautical miles from shore. High seas band (2-27.5 MHz) public coast stations serve vessels far from shore. Automated Maritime Telecommunications System (AMTS) stations are a special type of public coast station operating in the 216-220 MHz band. AMTS stations are licensed to provide coverage over an entire inland waterway or a substantial portion of an ocean coastline.

Public coast stations are common carriers, and thus charge a fee for providing voice, telex, fax, or data transmission services. Public coast stations also provide a vital public service because they can reach well beyond the limits of terrestrial radio systems and are required by statute to relay distress messages free of charge.

Purpose

The primary purpose of the Maritime Services is to provide for the safety of life and property at sea.²⁸⁶ The specific purpose of the Part 80 public coast station rules is to establish the mechanism for allocating licenses, to ensure spectrum use that provides public coast licensees with maximum flexibility while concurrently respecting the unique nature of maritime spectrum, and to prevent

²⁸³ 47 C.F.R. Part 80.

²⁸⁴ *See Amendment of the Commission's Rules Concerning Maritime Communications, Second Report and Order and Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd 16949 (1997) (*Second Further Notice*).

²⁸⁵ *Amendment of the Commission's Rules Concerning Maritime Communications, Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998) (*Maritime Third Report and Order*).

²⁸⁶ *Id.*, 13 FCC Rcd at 19856 ¶ 2.

interference. Public coast stations provide commercial operational and general purpose communications between ship and shore and between ships that are out of each others' radio range.

Analysis

Status of Competition

While competition in the CMRS industry as a whole continues to benefit from the effects of increased competition, as evidenced by lower prices to consumers and increased diversity of service offerings, competition is generally less robust in the public coast services, due in part to the unique nature of maritime communications and the predominant safety-of-life communications responsibilities required of licensees. In addition, other CMRS services – such as cellular and PCS – can serve as substitutes for commercial ship-to-shore communications, particularly for vessels operating near the coast and on inland waterways. Large-scale public coast operators – particularly MariTel – are becoming predominant in VPC as many small and independent licensees leave the business. Competition is stronger in AMTS than on the high seas band.

Advantages

The public coast station rules promote the safety of life and property at sea, while concurrently providing public coast licensees with the opportunity to compete as CMRS providers. For example, the rules provide for licensing of VPC on a geographic basis, allow partitioning and disaggregation, and permit VPC licensees to utilize capacity not needed for maritime service to provide other types of services.²⁸⁷ These characteristics are consistent with the regulatory flexibility the Commission has provided in other competitive services.

The subpart Y competitive bidding rules establish procedures for the efficient licensing of spectrum. Use of auction procedures allows for substantially faster licensing than alternative licensing methods such as lotteries and comparative hearings, and is more likely to result in award of licenses to those entities that value the spectrum the most and will use it most efficiently. Auction rules also enable the Commission to recover a portion of the value of the spectrum for the benefit of the public.

Disadvantages

Because of the unique characteristics of the maritime services, public coast station licensees are subject to responsibilities that other CMRS providers do not face. The international allocation of maritime frequencies and the associated statutes, treaties, and agreements limit the flexibility of use of maritime frequencies. Because two frequency blocks are allocated to AMTS, competition is limited to two competitors at any location and disaggregation is not currently available in AMTS. There are additional administrative burdens associated with the competitive bidding of public coast station licenses, including filing and reporting requirements, as well as the cost of maintaining staff and electronic resources to participate in auctions. Nevertheless, the delays associated with this process are significantly less than those historically associated with licensing by lottery or hearing.

²⁸⁷ See *Second Further Notice*, 12 FCC Rcd at 16965.

Recent Efforts

In the 1998 *Maritime Third Report and Order* in the Maritime Services proceeding, the Commission substantially revised the public coast service rules to provide opportunities for the development of competitive new services, streamline licensing procedures, promote technological innovation, and enhance regulatory symmetry between maritime CMRS providers and other CMRS providers.²⁸⁸ For example, VPS and AMTS stations may now provide service to units on land, provided that priority is given to marine originating communications. In addition, in December 1998, the Commission held its first auction of spectrum in the public coast service, which resulted in the award of 26 VHF public coast station licenses.²⁸⁹

Recommendation

The Maritime Services proceeding has established the framework for increased competition within the public coast service, and between public coast stations and other CMRS providers. Moreover, licensees that acquired their licenses in the 1998 auction are still engaged in buildout of their networks. For these reasons, the staff does not believe that there is a need to revise the existing maritime rules in order to further competition. The staff recommends that for the time being, only nonsubstantive revisions be made to the structure of the Part 80 rules, to simplify and provide clarity to licensees and applicants.

²⁸⁸ *Maritime Third Report and Order*, 13 FCC Rcd at 19856 ¶ 2.

²⁸⁹ See Auction Fact Sheet at <http://www.fcc.gov/wtb/auctions/coast/coastfct.html>.

PART 90 – PRIVATE LAND MOBILE RADIO SERVICES.

Description

Part 90²⁹⁰ contains licensing, technical, and operational rules for the group of mobile services historically described as “private land mobile radio services” or “PLMRS.” Services regulated under this rule part include commercial services such as Specialized Mobile Radio (SMR) and private carrier paging (PCP), non-commercial services such as public safety, and services that are used by utilities, transportation companies, and other businesses for both commercial and private internal purposes.

Prior to the passage of the Omnibus Budget Reconciliation Act of 1993 (OBRA),²⁹¹ all Part 90 services were classified as private, *i.e.*, non-common carrier, services. With the passage of OBRA, however, Congress reclassified 800 MHz and 900 MHz SMR, PCP, and some 220 MHz and Business Radio services as commercial mobile radio services or “CMRS,” and required CMRS providers in these services to be regulated as common carriers.²⁹² The regulatory status of non-CMRS Part 90 services was not affected by OBRA, and these services continue to be classified as private services.

Part 90 contains 22 subparts. Some of these subparts apply generally to all Part 90 licensees, while others establish licensing, technical, and operational rules for specific services.²⁹³ In general, the rules in this part: (1) specify the frequency bands in which each service operates; (2) define the service area of licenses in each frequency band; (3) establish minimum construction or coverage requirements for licensees; and (4) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference. For certain CMRS services, Part 90 also contains subparts dealing with the auction and award of licenses,²⁹⁴ although many of these rules have since been consolidated in Part 1.

For purposes of the Biennial Regulatory Review, the analysis of Part 90 in this report focuses on those subparts that affect CMRS providers:

- Subpart L - Authorizations in 470-512 MHz Band
- Subparts M, X - Intelligent Transportation Systems Radio Service/Auction Rules
- Subpart P - Paging Operations
- Subparts S, U, V - 800/900 MHz SMR Service/Auction Rules
- Subparts T, W - 220 MHz Service/Auction Rules

²⁹⁰ 47.C.F.R. Part 90.

²⁹¹ Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66, 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*) (1993 Budget Act or OBRA).

²⁹² *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411 (1994) (CMRS Second Report and Order).

²⁹³ *See, e.g.*, Part 90, subpart L (“Authorization and Use of Frequencies in the 470-512 MHz Band”).

²⁹⁴ *See, e.g.*, Part 90, subpart U (“Competitive Bidding Procedures for the 900 MHz Specialized Mobile Radio Service”).

Purpose

The purpose of the Part 90 rules is to establish basic ground rules for assignment of spectrum in Part 90 services, to ensure efficient spectrum use by licensees, and to prevent interference.

Analysis

Status of Competition

As detailed in the *Fifth Competition Report*, Part 90 CMRS providers operate in an environment that is marked by significant and increasing competition in mobile telephony, paging/messaging, and mobile data.²⁹⁵

Advantages

The Part 90 rules provide a clear, predictable structure for the assignment and use of spectrum. In Part 90 frequency bands that are licensed exclusively to CMRS providers (e.g., SMR), auction rules promote efficient licensing of spectrum to those entities that value it the most. In other bands, site-specific licensing and frequency coordination are used to promote efficient spectrum use.

Disadvantages

The Part 90 rules impose limited administrative and technical burdens that are inherent to the licensing process and that require compliance with technical and operational rules.

Recent Efforts

The Commission has recently made changes to Part 90 in several rulemaking proceedings, as described in greater detail within this Staff Report. In the *Universal Licensing* proceeding, the Commission eliminated many of the service-specific licensing rules in Part 90 as part of its consolidation of all wireless licensing rules into Part 1.²⁹⁶ The Commission also made numerous changes to Part 90 rules in the recently adopted Report and Order in the Part 90 Biennial Regulatory Review proceeding.²⁹⁷

Recommendation

In general, the rules in this part are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for these rules is also not significantly affected by changes in the level of competition in wireless services. Moreover, as noted above, the Commission has significantly revised and streamlined the Part 90 rules in several recent

²⁹⁵ *Fifth Competition Report, supra*, at 9-27, 36-63.

²⁹⁶ *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, Report and Order*, 13 FCC Rcd 21027 (1998); *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11145 (1998).

²⁹⁷ *In the Matter of 1998 Biennial Regulatory Review – 47 C.F.R. Part 90 - Private Land Mobile Radio Services*, WT Docket No. 98-182, RM-9222, *Report and Order and Further Notice of Proposed Rule Making*, FCC 00-235 (rel. July 12, 2000).

proceedings. Therefore, the staff concludes that significant modification or repeal of the Part 90 rules is not necessary at this time. However, where modifications could be made to streamline the rules in specific subparts, the staff has so noted in the detailed analysis of those Part 90 subparts.

**PART 90, SUBPART L – REGULATIONS FOR AUTHORIZATION AND USE OF
FREQUENCIES IN THE 470-512 MHZ BAND**

Description

Part 90, subpart L²⁹⁸ governs the authorization and use of the 470-512 MHz band by both commercial and private land mobile stations. Frequencies in the 470-512 MHz band are shared with UHF-TV channels 14-20, and are therefore only available in eleven cities, with different frequencies allocated in each market. Originally, channels in the 470-512 MHz band were allocated to seven frequency pools based on category of eligibility. In 1997, the Commission eliminated the separate allocation to these pools and created a General Access Pool to permit greater flexibility and foster more effective and efficient use of the 470-512 MHz band. Under current rules, all unassigned channels, including those that subsequently become unassigned, are considered to be in the General Access Pool and are available to all eligible licensees on a first-come, first-served basis. If a channel is assigned in an urbanized area, however, subsequent authorizations on that channel will only be granted to users from the same category.²⁹⁹

In general, the rules in subpart L: (1) specify the frequencies available for assignment in the 470-512 MHz band; (2) define the location of stations and service area of licenses in each frequency block; (3) establish minimum loading requirements for licensees; and (4) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference. In accordance with these rules, new applicants may apply for only one channel at a time.³⁰⁰ Licensees are required to show that any assigned channels in this band in a particular urbanized area are at full capacity before they can be assigned additional 470-512 MHz channels in that area.³⁰¹ The rules in this part also specify the minimum allowable distance between co-channel stations.³⁰² For purposes of loading requirements, licensees in the 470-512 MHz band are divided into two groups: the Public Safety Pool and the Industrial/Business Pool.³⁰³ After loading a channel to full capacity, a licensee may apply for another channel.³⁰⁴ Current licensees may use existing loading to satisfy this requirement and apply for more than one channel at one time. Licensees in the 470-512 MHz band that are operating above full capacity may use those units to qualify for additional channels. Licensees operating in other frequency bands may also use existing licensed units to qualify for more than one channel at one time.

²⁹⁸ 47 C.F.R. Part 90, subpart L.

²⁹⁹ The seven categories of eligible users are: (1) Public safety; (2) Power and telephone maintenance licensees; (3) Special industrial licensees; (4) Business licensees; (5) Petroleum, forest products, and manufacturers licensees; (6) Railroad, motor carrier, and automobile emergency licensees; and (7) Taxicab licensees. 47 C.F.R. § 90.311.

³⁰⁰ 47 C.F.R. § 90.311.

³⁰¹ *Id.*

³⁰² 47 C.F.R. § 90.307.

³⁰³ 47 C.F.R. § 90.313(a).

³⁰⁴ 47 C.F.R. § 90.313(c).

Purpose

The purpose of the subpart L rules is to establish basic ground rules for assignment of spectrum in the 470-512 MHz service, to ensure efficient spectrum use by licensees, and to prevent interference with UHF television stations operating on the shared frequencies.

Analysis

Status of Competition

Because land mobile use of the 470-512 MHz band is limited by the sharing of the band with broadcast channels 14-20, service in the band has been narrowly geared to industrial and public safety use in a limited number of urban locations. Demand for these channels to provide commercial services to consumers has been largely absent.

Advantages

The subpart L rules provide a clear, predictable structure for the assignment and use of spectrum. Site-specific licensing and frequency coordination are used to promote efficient spectrum use.

Disadvantages

The subpart L rules impose limited administrative and technical burdens that are inherent to the licensing process and compliance with technical and operational rules. Because the band is shared with television broadcast stations, the technical burden imposed on licensees to prevent interference with co-channel operations is somewhat greater than in other bands allocated exclusively to wireless services.

Recent Efforts

In the *Second Report and Order* in the Refarming proceeding, the Commission authorized centralized trunking in the 470-512 MHz band if a licensee has an exclusive service area or obtains consent from all co-channel and adjacent channel licensees and frequency coordination is obtained.³⁰⁵

Recommendation

In general, the rules in this part are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for these rules is also not significantly affected by changes in the level of competition in wireless services. The staff concludes that significant modification or repeal of the subpart L rules is not necessary at this time.

³⁰⁵ See *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Report and Order*, 10 FCC Rcd 10076 (1995); *Memorandum Opinion and Order*, 11 FCC Rcd 17676 (1996); *Second Report and Order*, FCC 97-61 (rel. Mar. 12, 1997). See 47 C.F.R. § 90.187(b). The FCC has recognized two types of trunking: centralized and decentralized. A centralized trunked system uses one or more control channels to transmit channel assignment information to the mobile radios. In a decentralized trunked system, the mobile radios scan the available channels and find one that is clear.

PART 90, SUBPARTS M (INTELLIGENT TRANSPORTATION SYSTEMS RADIO SERVICE) AND X (COMPETITIVE BIDDING RULES FOR THE LOCATION AND MONITORING SERVICE)

Description

Part 90, subpart M³⁰⁶ contains licensing, technical, and operational rules for the Intelligent Transportation Systems (ITS) radio service. ITS radio service consists of two sub-categories: the Location and Monitoring Service (LMS) and the Dedicated Short Range Communications Service (DSRCS).

Location and Monitoring Systems (LMS)

LMS systems are used for such functions as vehicle tracking and location, automated toll collection, and other communications functions related to vehicles. LMS systems operate in the 902-928 MHz band, which they share with federal government radiolocation systems, Industrial, Scientific and Medical devices (LMS use is secondary to both of these uses), licensed amateur radio operations, and unlicensed Part 15 equipment (both of which are secondary to LMS and all other uses of the band).

The subpart M LMS service rules, governing the licensing of LMS in the 902-928 MHz band, were adopted in 1995.³⁰⁷ In general, the subpart M rules: (1) specify the frequency bands in which LMS licensees operate; (2) define the service area of LMS licenses in each frequency band; (3) establish minimum construction or coverage requirements for LMS licensees; and (4) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference.³⁰⁸ The technical rules for the 902-928 MHz band contain additional provisions governing secondary operation by Part 15 equipment users and amateur licensees in the LMS band to reduce potential interference between these uses and LMS operations. The rules also establish limitations on LMS systems' interconnection with the public switched network and set forth a number of technical requirements intended to ensure successful coexistence of all the services authorized to operate in the band.

The LMS competitive bidding rules, set forth in Part 90, subpart X,³⁰⁹ were adopted in 1998.³¹⁰ Section 90.1101³¹¹ states that the auction of LMS licenses is generally subject to the competitive

³⁰⁶ 47 C.F.R. Part 90, subpart M.

³⁰⁷ *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Report and Order*, 10 FCC Rcd 4695 (1995) (*LMS Report and Order*).

³⁰⁸ The definition of LMS also includes existing Automatic Vehicle Monitoring operations below 512 MHz. Unlike other LMS operations, LMS systems below 512 MHz may neither offer service to the public nor provide service on a commercial basis. *See LMS Report and Order*, 10 FCC Rcd at 4738, ¶ 86.

³⁰⁹ 47 C.F.R. Part 90, subpart X.

³¹⁰ *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Second Report and Order*, 13 FCC Rcd 15182 (1998) (*Second LMS Report and Order*).

³¹¹ 47 C.F.R. § 90.1101.

bidding procedures set forth in Part 1, subpart Q. Section 90.1103³¹² sets forth service-specific rules defining designated entities in LMS. Pursuant to these rules, LMS licenses were auctioned by the Commission in 1999.

Dedicated Short Range Communications Service (DSRCS)

In October 1999, the Commission allocated 75 MHz of spectrum at 5.850-5.925 GHz for use by DSRCS systems operating in the Intelligent Transportation System radio service.³¹³ The Commission amended subpart M by adding technical rules establishing power, emission, and frequency stability limits for DSRCS operations. However, the Commission has deferred consideration of DSRCS licensing and service rules and spectrum channelization plans to a later proceeding, pending promulgation of standards by the Department of Transportation.

Purpose

The purpose of Part 90, subpart M is to provide a regulatory framework that allows entities to effectively deploy radio-based devices and systems to enhance safety of life and protection of property on the nation's highways, railways and other transportation corridors, without causing harmful interference to other radio services.

Analysis

Status of Competition

The services provided by LMS operators, such as vehicular tracking, tend to be niche services, and competition in these sectors appears to be more limited than in other types of wireless services. In addition, many LMS licensees are state and local government entities rather than commercial enterprises. The number of LMS licensees has increased, however, since the Commission completed its auction of multilateration LMS licenses in March 1999. As these licensees begin to deploy services, the level of competition in LMS could increase.

Advantages

The Part 90, subpart M rules provide a clear, predictable structure for the assignment and use of spectrum. Geographic area licensing of multilateration systems minimizes the administrative burden involved in obtaining a license and thus avoids undue delay in the authorization of new services to the public. Minimal technical standards facilitate the introduction of new technologies.

Disadvantages

The Part 90, subpart M rules impose some administrative burdens inherent to the licensing process and to compliance with technical and operational rules. The provisions relating to secondary use of the LMS band by Part 15 users and amateur licensees impose some additional

³¹² 47 C.F.R. § 90.1103.

³¹³ *Amendment of Parts 2 and 90 of the Commission's Rules to Allocate the 5.850-5.925 GHz Band to the Mobile Service for Dedicated Short Range Communications of Intelligent Transportation Services, Report and Order*, 13 FCC Rcd 14321 (1999).

technical burdens on LMS licensees to avoid and resolve interference between their systems and these other uses.

Recent Efforts

Aside from the DSRC proceeding discussed above, the Commission has not significantly revised the Part 90, subpart M rules since the LMS auction.

Recommendation

In general, the rules in subparts M and X are integral to the basic licensing and spectrum management functions performed by the Commission, and the necessity for these rules is not significantly affected by changes in competition. Therefore, the staff concludes that significant modification or repeal of the rules is not necessary at this time. The staff recommends continuing to monitor developments in order to determine whether any additional rule modifications are necessary to foster competition.

PART 90, SUBPART P – PAGING OPERATIONS IN THE 929 MHZ BAND

Description

Part 90 subpart P contains licensing, technical, and operational rules for paging operations in the 929 MHz Band. This rule part includes services such as commercial paging and private carrier paging (PCP). Licensees may operate on exclusive channels or designated shared channels on a CMRS or PMRS basis.

In general, the rules in this subpart (1) specify the exclusive channels and shared channels; and (2) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference. For paging operations on exclusive channels, the licensees are subject to Part 22 of the Commission's rules regarding the Paging and Radiotelephone Service.

Purpose

The purpose of the Part 90, subpart P rules is to establish basic ground rules for assignment and use of exclusive or shared channels in the 929 MHz Band and to prevent interference.

Analysis

Status of Competition

As detailed in the *Fifth Competition Report*, Part 90 paging providers operate in an environment that is marked by significant and increasing competition in mobile telephony, paging/messaging, and mobile data.³¹⁴

Advantages

The Part 90, subpart P rules provide a clear, predictable structure for the assignment and use of spectrum. In Part 90, Subpart P, frequency bands that are licensed on an exclusive basis are subject to competitive bidding. The shared channels are available to all eligible entities.

Disadvantages

The Part 90, subpart P rules impose limited administrative and technical burdens that are inherent to the licensing process and compliance with technical and operational rules.

Recent Efforts

The Commission has made significant changes to its Part 90, subpart P rules in recent years. In the mid-1990s, the Commission converted the authorization of stations in the 929 MHz Band from the original site-by-site procedure to a geographic area licensing process. The *Second Report and Order* established geographic area licensing for 929 MHz paging and adopted competitive bidding procedures.³¹⁵ The *Third Report and Order* changed the geographic area

³¹⁴ *Fifth Competition Report, supra*, at 9-27, 36-63.

³¹⁵ See *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732 (1997) (*Second Report and Order*).

licensing of 929 MHz paging from MTAs to MEAs and clarified that spectrum will automatically revert to the geographic area licensee in all instances where a non-geographic area incumbent licensee permanently discontinues service, as well as allowing geographic area licensees to partition their licenses.³¹⁶ The Commission auctioned geographic licenses for the exclusive channels in the 929 MHz band.³¹⁷ Furthermore, the Part 22 Rules regarding paging now apply to all 929 MHz licensees on exclusive channels. More recently, most of the application filing rules were moved from this subpart to Part 1 in connection with implementation of electronic filing procedures and the Universal Licensing System.

Recommendation

In general, the rules in this part are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for these rules is also not significantly affected by changes in the level of competition in wireless services. Moreover, as noted above, the Commission has significantly revised and streamlined the Part 90, subpart P rules and consolidated them with the Part 22 rules. The remaining rules are necessary for the operation and interference protection for licensees in the shared channels in the 929 MHz Band. Therefore, the staff concludes that significant modification or repeal of the Part 90, subpart P rules is not necessary at this time.

³¹⁶ See *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030 (1999) (*Third Report and Order*).

³¹⁷ See *929 and 931 MHz Paging Auction Closes, Public Notice, DA 00-508* (rel. Mar. 6, 2000).

**PART 90, SUBPARTS S (REGULATIONS FOR LICENSING AND USE OF
FREQUENCIES IN THE 800 AND 900 MHZ BANDS), AND U AND V (COMPETITIVE
BIDDING PROCEDURES FOR THE 900 AND 800 MHZ SERVICE)**

Description

Subpart S³¹⁸ contains licensing, technical, and operational rules the 800 MHz and 900 MHz Specialized Mobile Radio (SMR) services, as well as non-commercial services above 800 MHz, *i.e.*, public safety services and services that are used by utilities, transportation companies, and other businesses for internal purposes. Prior to the passage of the Omnibus Budget Reconciliation Act of 1993 (OBRA),³¹⁹ all of these services were described as “private land mobile radio services” or “PLMRS,” and were classified as private, *i.e.*, non-common carrier, services. With the passage of OBRA, however, Congress reclassified 800 MHz and 900 MHz SMR services as commercial mobile radio services or “CMRS,” and required all CMRS providers to be regulated as common carriers.³²⁰ The regulatory status of non-CMRS Part 90 services was not affected by OBRA, and these services continue to be classified as private land mobile radio services.

In general, the rules in Subpart S: (1) specify the frequency bands in which each service operates; (2) define the service area of licenses in each frequency band; (3) establish minimum construction or coverage requirements for licensees; and (4) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference.

Subparts U and V³²¹ contain competitive bidding rules and procedures for 900 MHz SMR and 800 MHz SMR services, respectively. The rules in these subparts: (1) identify the licenses to be sold by competitive bidding; (2) establish the competitive bidding mechanisms to be used in 900 and 800 MHz SMR auctions; (3) establish application, disclosure and certification procedures for short- and long-form applications; (4) specify down payment, withdrawal, and default mechanisms; (5) provide definitions of gross revenues for designated entities and specify the bidding credits for which designated entities qualify; and (6) provide eligibility and technical requirements for partitioning and disaggregation.

The original Subpart S rules for were adopted by the Commission in 1982, and provided for site-based licensing of 800 and 900 MHz channels.³²² Following the passage of OBRA, the Commission initiated rulemakings to use geographic licensing and auctions in the 800 MHz and 900 MHz services. In PR Docket 89-553, the Commission revised Subpart S to provide for geographic licensing of the 900 MHz SMR service, and replaced the previous site-based licensing

³¹⁸ 47 C.F.R. Part 90, subpart S.

³¹⁹ Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66. Title VI § 6002(b)(2)(a), (b). 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*)

³²⁰ *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411 (1994).

³²¹ 47 C.F.R. Part 90, subparts U and V.

³²² *Amendment of Part 90 of the Commission's Rules to Release Spectrum in the 806-821/851-866 MHz Bands and to Adopt Rules and Regulations Which Govern Their Use, Second Report and Order*, 90 FCC 2d 1281 (1982), *recon. Memorandum Opinion and Order*, 95 FCC 2d 477 (1983).

rules with competitive bidding rules by adding Subpart U to Part 90.³²³ In PR Docket No. 93-144, the Commission adopted geographic licensing rules for 800 MHz SMR, and adopted the competitive bidding rules in Subpart V.³²⁴ In both services, the Commission grandfathered all previously granted site-based SMR licenses. Consequently, many of the Subpart S rules governing operation by site-based SMR licensees remain in effect as to these grandfathered licensees. In 1997, the Commission conducted the 900 MHz auction and awarded geographic area licenses. Geographic licensing of 800 MHz licensing has been divided into phases. The 800 MHz upper band auction was held in December 1997; the 800 MHz lower band and General Category auctions are scheduled for later this year.

Purpose

The purpose of the Subpart S rules is to establish basic ground rules for the assignment of spectrum to the affected SMR licensees, to ensure efficient spectrum use by licensees, and to prevent interference. The competitive bidding rules of Subparts U and V help to ensure access to new telecommunications offerings by ensuring that market forces guide the allocation of licenses so that all customer segments are served with the greatest economic efficiency. Additionally, the designated entity provisions of the competitive bidding rules are intended to provide opportunities for small businesses to participate in the provision of telecommunications services.

Analysis

Status of Competition

As detailed in the *Fifth Competition Report*, Part 90 SMR providers operate in an environment that is marked by significant and increasing competition in mobile telephony, paging/messaging, and mobile data. Some of the larger SMR carriers, particularly Nextel and Southern, provide digital wide-area voice services that compete with cellular and PCS. Other SMR carriers provide more traditional dispatch service on a local or regional basis. Although SMR channels have been used primarily for voice communications, systems are also being developed to carry data and facsimile services. Additionally, new digital SMR technology is leading to the development of new features and services, such as two-way acknowledgment paging, teleconferencing, and voicemail.

Advantages

The Subpart S rules provide a clear and predictable structure for the assignment and use of SMR spectrum, and afford substantial flexibility to licensees to choose the type of service they will provide based on market demand. The Subpart U and V auction rules promote efficient licensing of SMR spectrum to those entities that value it the most.

³²³ *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Second Report and Order and Second Further Notice of Proposed Rule Making*, 10 FCC Rcd 6884 (1995) (900 MHz Second Report and Order).

³²⁴ *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, First Report and Order, Eighth Report and Order and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463 (1995) (800 MHz First Report and Order).

Disadvantages

There continue to be differences between the licensing, technical, and operational rules that apply to grandfathered site-based SMR licenses and those that apply to geographic area licenses. This multiplicity of rules is potentially burdensome to SMR licensees who have both geographic and site-based systems, which may result in inconsistent regulatory obligations (e.g., buildout requirements) for different portions of their systems.

Recent Efforts

In the past year, the Commission has reconsidered and revised some of its 800 MHz SMR rules in anticipation of the SMR lower band and General Category auctions.³²⁵ The Commission has also given incumbent SMR licensees with wide-area systems the option of applying the same buildout and coverage requirements as geographic licensees, thus giving these incumbents greater flexibility and parity with geographic licensees.³²⁶

Recommendation

In general, the rules in Subpart S are integral to the basic licensing and spectrum management functions performed by the Commission. Additionally, the need for these rules is not significantly affected by changes in the level of competition in wireless services. However, there are several rule sections that contain outdated or burdensome requirements. For example, the staff recommends that the Commission consider eliminating section 90.655,³²⁷ which requires individual end user licensing of SMR facilities that require Federal Aviation Administration clearance, have a significant environmental effect, or are located in a radio frequency “quiet zone.” The staff recommends that similar consideration be given to removing the requirement that site-based SMR licensees provide loading data in order to renew their licenses.³²⁸ We also recommend removal of section 90.607(a),³²⁹ which requires SMR applicants to provide a statement describing the applicant’s “planned mode of operation.” Such a requirement appears to serve no regulatory purpose, and is inconsistent with the Commission’s policies regarding flexible use of spectrum.

³²⁵ *Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Second Report and Order*, 12 FCC Rcd 19079 (1997) (*Second Report and Order*).

³²⁶ *Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Memorandum Opinion and Order on Remand*, 14 FCC Rcd 21679 (*Fresno Remand Order*).

³²⁷ 47 C.F.R. § 90.655.

³²⁸ 47 C.F.R. § 90.658.

³²⁹ 47 C.F.R. § 90.607(a).

**PART 90, SUBPARTS T (REGULATIONS FOR LICENSING AND USE OF
FREQUENCIES IN THE 220-222 MHz BAND) AND W (COMPETITIVE BIDDING
PROCEDURES FOR THE 220 MHz SERVICE)**

Description

Part 90, subpart T³³⁰ contains licensing, technical, and operational rules for the 220-222 MHz (220 MHz) service. In general, the rules in this part: (1) define the service area of 220 MHz licenses; (2) specify the permissible operations for authorized systems; (3) specify the frequencies available to 220 MHz licensees; (4) establish license terms; (5) establish the minimum construction or coverage requirements for 220 MHz licensees; and (6) define technical limits on operation (e.g., antenna height, field strength) to prevent interference.

Part 90, subpart W³³¹ contains competitive bidding rules and procedures for commercial licenses in the 220 MHz service. The rules in this subpart: (1) specify which 220 MHz licenses are eligible for competitive bidding; (2) establish the competitive bidding mechanisms to be used in 220 MHz auctions; (3) establish application, disclosure and certification procedures for short- and long-form applications; and (4) specify down payment, withdrawal, and default mechanisms.

The original Subpart T rules for the 220 MHz service were adopted by the Commission in 1991.³³² The Commission intended the 220 MHz band to be used for the development of new spectrally efficient technologies that would support provision of two-way narrowband services, including mobile voice, dispatch, and messaging. In order to stimulate greater spectral efficiency in the band, the Commission adopted a band plan for the 220 MHz service based on 5 kHz channels, a narrower bandwidth than was generally used in other private land mobile services. As originally designed, the band plan provided for site-based licensing of 220 MHz channels. Between 1991 and 1993, the Commission awarded approximately 3,800 site-based licenses, as well as a small number of nationwide licenses, using lotteries to select from among mutually exclusive applicants (referred to as "Phase I" licensing). However, the Commission discontinued licensing under this approach due to the large volume of applications received, concerns regarding possible speculation in applications, and judicial challenges to the Phase I licensing procedures.

In 1993, Congress passed the Omnibus Budget Reconciliation Act, which conferred authority on the Commission to award licenses by competitive bidding.³³³ Based on its new authority, the Commission sought to develop new licensing rules for 220 MHz spectrum that was not licensed in Phase I. In 1997, the Commission adopted "Phase II" licensing rules, substantially revising Subpart T to provide for licensing based on regional and nationwide geographic areas rather than

³³⁰ 47 C.F.R. Part 90, subpart T.

³³¹ 47 C.F.R. Part 90, subpart W.

³³² The 220-222 MHz band was initially allocated in 1988. *See Amendment of Part 2 of the Commission's Rules Regarding the Allocation of the 216-225 MHz Band, Report and Order*, 3 FCC Rcd 5287 (1988). Service rules were adopted in 1991. *See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Report and Order*, 6 FCC Rcd 2356 (1991).

³³³ Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66, Title VI § 6002(b)(2)(a), (b), 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*).

site-specific licenses.³³⁴ The Commission also replaced the previous lottery-based licensing rules with competitive bidding rules by adding Subpart W to Part 90.³³⁵ As part of the conversion to geographic licensing and auctions, the Commission grandfathered all previously granted Phase I licenses. Consequently, the Subpart T rules governing operation by site-based 220 MHz licensees remain in effect as to these grandfathered licensees. In September-October 1998 and June 1999, the Commission conducted Phase II auctions of 220 MHz spectrum pursuant to the rules and procedures set forth in Subpart W.

Purpose

The purpose of the Subparts T and W rules is to facilitate the assignment of spectrum in the 220-222 MHz service, to ensure efficient spectrum use by licensees, and to prevent interference through establishment of technical limits on operation (*e.g.*, siting requirements and limits on transmitter power).

Analysis

Status of Competition

Licensees in the 220 MHz service are permitted to provide voice, data, paging, and fixed communications. Because of the limited amount of spectrum in the 220 MHz band, most licensees offer narrowband services that are not spectrum-intensive. Trunked dispatch has become a particularly prevalent application, particularly as the 800/900 MHz SMR bands are used increasingly for mobile telephony. Since the award of Phase II licenses in 1998 and 1999, many 220 MHz licensees have begun to deploy their networks, and dispatch subscribership in the 220 MHz band grew 35 percent in 1999.³³⁶ Suppliers of 220 MHz equipment anticipate that there will be increased buildout and demand for service in the next several years.³³⁷ Thus, there is potential for the 220 MHz service to be increasingly competitive and to contribute to inter-service CMRS competition.

Advantages

The Subpart T rules, particularly the rules applicable to Phase II geographic licensees, provide a clear and predictable structure for the assignment and use of 220-222 MHz band spectrum, and afford substantial flexibility to licensees to choose the type of service they will provide based on market demand. The Subpart W auction rules promote efficient licensing of 220 MHz spectrum to those entities that value it the most.

Disadvantages

Although the Commission has recently simplified and streamlined the 220 MHz rules in many respects (see below), there continue to be differences among the licensing, technical, and

³³⁴ See *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Third Report and Order*, 12 FCC Rcd 10943 (1997) (220 MHz Third Report and Order).

³³⁵ *Id.*

³³⁶ *Fifth Competition Report.*

³³⁷ *Id.*

operational rules that apply to grandfathered Phase I site-based licenses and those that apply to Phase II geographic area licenses. This multiplicity of rules is potentially burdensome to 220 MHz licensees who have systems comprised of both Phase I and Phase II licenses, which may result in inconsistent regulatory obligations (e.g., buildout requirements) for different portions of their systems.

Recent Efforts

In several recent orders, the Commission has taken steps to reduce regulatory burdens and afford greater flexibility to 220 MHz licensees. For example, the original 220 MHz rules required licensees to provide two-way land mobile service on a primary basis, and allowed use of the band for fixed services or for paging only on an “ancillary” basis. In the *220 MHz Third Report and Order*, the Commission eliminated the ancillary use limitation, thus allowing licensees to provide any or all of these services on a co-primary basis.³³⁸ The Commission has also adopted rules permitting partitioning and disaggregation of 220 MHz licenses, and has eliminated the “40-mile rule” that previously limited the number of Phase I licenses that an individual licensee could hold in a given geographic area.³³⁹ Finally, the Commission recently eliminated mandatory spectrum efficiency standards that had previously been adopted for provision of voice and data over 220 MHz systems that combined contiguous 5 kHz channels.³⁴⁰ The Commission concluded that mandating technical standards was unnecessary because market forces would spur efficient spectrum use, and that retaining mandatory standards could impair rather than encourage technical innovation.³⁴¹

Recommendation

In general, the rules in Subpart T are integral to the basic licensing and spectrum management functions performed by the Commission. Moreover, as noted above, the Commission has significantly revised and streamlined the 220 MHz rules in recent proceedings. Therefore, the staff concludes that substantial modification or repeal of the 220 MHz rules is not necessary at this time. However, the staff recommends that consideration be given to whether certain rules applicable to Phase I licensees continue to be necessary. For example, section 90.737 imposes certain reporting requirements and restrictions on assignments of unconstructed Phase I licenses that were intended to prevent speculation and trafficking in licenses awarded by lottery.³⁴² Now that licensing by lottery has been discontinued, however, these rules may actually impede the transferability of 220 MHz spectrum. The staff therefore recommends that consideration be given to eliminating these rules.

Similarly, as noted elsewhere in this Staff Report, the Commission has consolidated its competitive bidding rules in Part 1, with the goal of having future auctions be conducted in

³³⁸ See *220 MHz Third Report and Order*, 12 FCC Rcd 10943 (1997).

³³⁹ See *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Fourth Report and Order*, 12 FCC Rcd 13453 (1997).

³⁴⁰ See *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Memorandum Opinion Order on Reconsideration*, 13 FCC Rcd 14569 (1998).

³⁴¹ *Id.*

³⁴² 47 C.F.R. § 90.737.

accordance with Part 1 rules. Therefore, to the extent that future auctions are necessary in the 220 MHz service, they will be governed by Part 1, and the continued presence of separate 220 MHz auction rules in Subpart W appears to be redundant. The staff recommends that consideration be given to eliminating these rules.

PART 95 – PERSONAL RADIO SERVICES, SUBPART F – 218-219 MHZ SERVICE

Description

Part 95³⁴³ contains licensing, technical, and operational rules for the Personal Radio Services, a collection of wireless services that are generally used by individuals for personal communications and to support the radio needs of their activities and interests. These services include the General Mobile Radio Service (Subpart A), the Family Radio Service (Subpart B), the Radio Control (R/C) Radio Service (Subpart C), and the Citizens Band (CB) Radio Service (Subpart D). The Personal Radio Services also include the Low Power Radio Service (Subpart G) and the Wireless Medical Telemetry Service (Subpart H), which are used to support auditory assistance and medical applications.

For purposes of the Biennial Regulatory Review, the analysis of Part 95 in this report focuses on the 218-219 MHz Service (Subpart F), which is unique among the Personal Radio Services in that it may be used for commercial applications, it is licensed on a geographic exclusive-use basis, and its licensure is subject to the Commission's competitive bidding procedures.

Part 95, subpart F was originally created to support the Interactive Video and Data Service (IVDS), a short-distance communications service by which licensees could provide information, products, or services to, and allow interactive responses from, subscribers within the licensee's service area. In 1998, the Commission renamed IVDS the 218-219 MHz Service and revised Subpart F to allow 218-219 MHz licensees greater flexibility to identify and structure services in response to market demand.³⁴⁴ Under the current service rules, both common carrier and private operations are permitted, and both one- and two-way communications are allowed.

The licensing and technical rules for the 218-219 MHz Service are contained in Subpart F, although certain rules that are broadly applicable to all wireless telecommunications services (including the 218-219 MHz Service) have been consolidated in Part 1.³⁴⁵

Purpose

Part 95, subpart F contains the licensing and technical rules for the administration of a radio service in the 218-219 MHz band. The rules are intended to provide licensees with the maximum flexibility to structure their services while protecting over-the-air television reception of TV Channel 13.

Analysis

Status of Competition

The original IVDS service was generally not commercially successful, and little or no competition emerged to use the 218-219 MHz band to provide interactive television applications.

³⁴³ 47 C.F.R. Part 95.

³⁴⁴ *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 13 FCC Rcd 19064 (1988).

³⁴⁵ 47 C.F.R. Part 1.

Under the revised service rules, 218-219 MHz Service licensees have proposed wireless data applications such as meter reading and vehicle tracking services. Accordingly, the expectation is that the 218-219 MHz Service could soon provide sources of competition for other wireless services. However, this competition is developing slowly, due in part to (1) the limited permissible use of the service before its recent restructuring; (2) the fact that many 218-219 MHz Service markets are not currently licensed due to payment defaults; and (3) the on-going implementation of the service restructuring.

Advantages

The Part 95, subpart F rules provide licensees with the flexibility to identify and implement services in response to market demand. Licensees no longer have to operate within the context of rules designed to support a specific application – interactive television – and instead enjoy a freer hand in structuring service under their licenses. For example, technical rules that mandated specific antenna height-power ratios have been replaced with general interference protection requirements, and rigid construction benchmarks have been replaced with a “substantial service” requirement that is more suitable to niche services that may develop in the 218-219 MHz Service.

Disadvantages

There are no significant disadvantages to the Subpart F rules at this time, although the rules do impose limited administrative and technical burdens that are inherent to the licensing process and that are necessary for compliance with technical and operational rules. As more licensees begin providing service and we gain more experience in the administration of the 218-219 MHz Service, we will continue to examine whether any of these rules impose unnecessary burdens and costs and could therefore be candidates for additional streamlining.

Recent Efforts

The Commission has made significant changes to its Part 95, subpart F rules in recent years. As noted above, the Commission renamed the service and revised the rules in 1998 to afford more flexibility to licensees over use of the spectrum. The Commission adopted additional sweeping changes to the 218-219 MHz service in September 1999.³⁴⁶ The Wireless Telecommunications Bureau is still implementing these changes, and several petitions for reconsideration remain pending in the docket. In addition, the 218-219 MHz Service has been affected by a number of broadly applicable rulemaking actions, such as the Universal Licensing System (ULS) proceeding that was initiated in conjunction with the 1998 Biennial Regulatory Review.

Recommendation

Due to the recent comprehensive evaluation and restructuring of the 218-219 MHz Service, no changes are recommended to this subpart at this time. The rules that were retained in the 1999 restructuring are an integral part of the basic licensing and spectrum management functions performed by the Commission and should be retained. Although there is presently only limited competition within the 218-219 MHz Service, this fact is primarily attributable to the narrow focus of the former rules that supported interactive television applications and the uncertainty surrounding the restructuring of the service. The staff anticipates the provision of competitive

³⁴⁶ *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999).

services within the 218-219 MHz Service, and will continue to monitor developments in order to determine whether any additional rule modifications are necessary to foster competition.

PART 100 – DIRECT BROADCAST SATELLITE SERVICE

Description

Part 100 was issued pursuant to the provisions of Title III of the Communications Act of 1934, as amended, which gives the Federal Communications Commission authority to regulate radio transmissions and to issue licenses for radio stations. Part 100 sets forth rules applicable to the Direct Broadcast Satellite Service (DBS), including public interest obligations, general licensing and application filing requirements, technical and operating requirements, and competitive bidding procedures.

Part 100 is organized into five sub-parts:

- A- General Information
- B- Administrative Procedures
- C- Technical Requirements
- D- Operating Requirements
- E- Competitive Bidding Procedures for DBS

Purpose

Part 100 provides rules under which the International Bureau licenses DBS systems. The rules are designed to promote fair competition in the multi-channel video programming distribution market. Sections of Part 100 also have provisions: (1) to assure protection from impermissible levels of interference; (2) to assure compliance with international regulations; (3) to assure the timely construction and operation of authorized space stations; (4) to assure the timely provision of sufficient information to allow for processing of applications; (5) to assure compliance with license specifications and conditions, as well as with Commission rules and regulations; and (6) to provide competitive bidding procedures for the provision of DBS services.

Analysis

Status of Competition

The DBS service competes with other multi-channel video program distribution services (*e.g.*, cable). Today there are two major providers of DBS. The service as a whole, and the individual companies are growing rapidly in subscribership and have the capital to offer new digital technologies to consumers. Additionally, the Commission has permitted mergers in the DBS industry that have placed the two DBS licensees in a stronger position to compete with other suppliers of multi-channel video program distribution services (*e.g.*, cable TV systems, which are still today the dominant suppliers of multi-channel video program distribution services). Furthermore, the U.S. has entered into agreements with Mexico and Argentina, which allow those countries to provide Direct-to-Home services (similar to DBS) into the U.S. Finally, we anticipate auctioning additional DBS orbital slots that are allotted to the U.S. which will provide existing or new DBS providers the opportunity to further expand the service to U.S. consumers.

Advantages

Subpart A- General Information: This subpart includes the basis and purpose of this rule subpart. Specifically, it sets forth the Commission's statutory authority to regulate DBS, which fosters

efficient spectrum use. This subpart increases consumer choice and diversity in programming, as well as imposes political advertising rules on DBS providers.

Subpart B- Administrative Procedures: This subpart describes the eligibility criterion for DBS authorizations, including foreign ownership restrictions. It provides clear procedures for filing applications and procedures for evaluating whether applications are complete. This allows for efficient use of resources and ensures compliance with the Commission's rules.

Subpart C—Technical Requirements: This subpart provides technical standards and operating rules to minimize interference among DBS licensees.

Subpart D- Operating Requirements: Section 100.51 describes the Equal Employment Opportunities policy for DBS. This section promotes diversity in employment and creates expanded opportunities to provide service. Section 100.53 sets out geographic service rules for DBS providers. This ensures delivery of service to the public.

Subpart E- Competitive Bidding Procedures for DBS: This subpart describes the mechanism for competitive bidding for satellite DBS service. Competitive bidding awards DBS licenses to those firms that will most efficiently use orbital resources to compete in providing service. Further, it fosters efficient use of spectrum and the development of a competitive DBS market.

Disadvantages

Subpart A- General Information: Section 100.5 (DBS public interest obligations) may increase a licensee's operating administrative and compliance costs. Further, this section may restrict the alternative uses of the resources that must now be set aside for public interest programming.

Subpart B- Administrative Procedures: This subpart could increase a licensee's administrative costs and hamper the introduction of new services. For example, if the milestone schedule for construction and operation of DBS systems is too long, it may result in the deployment of inefficient technologies. In the alternative, if the schedule is too short, it may result in a loss of a license if build out is delayed because of unforeseen technical problems.

Subpart C- Technical Requirements: These standards and operating rules, while preserving the operating environment today, could hamper the introduction of new services and restrict alternative uses of resources in the future.

Subpart D-Operating Requirements: Rules in this section might increase operating costs and limit potential use of resources.

Subpart E- Competitive Bidding Procedures for DBS: Satellite services in the planned frequency bands require international coordination prior to the commencement of operations (*e.g.*, when the plans are modified to accommodate new services). The value of the orbital location resource is uncertain if the international coordination process has not yet been completed.

Recent Efforts

As described in the staff report, the Commission has taken steps to streamline the regulation of DBS. The Commission issued an Notice of Proposed Rulemaking, which seeks comment on its proposals to streamline the DBS rules by integrating the Part 100 DBS service rules into Part 25

(Satellite Communications), by eliminating duplicative rule sections, and by consolidating existing rule sections as appropriate.

Recommendation

Consistent with the outstanding Notice of Proposed Rulemaking, the staff recommends that all of the DBS rules contained in Part 100 be retained. It is anticipated that the entire Part 100 will be incorporated into Part 25 and Part 100 will be eliminated as a result of the outstanding proceeding.

PART 101 – FIXED MICROWAVE SERVICES

Description

Part 101³⁴⁷ contains licensing, technical, and operational rules for the microwave services. Fixed microwave spectrum is primarily used to deliver video, audio, data, and control functions for other specific communications services from one point and/or hub to other points and/or subscribers for distribution. Most Part 101 application processing rules, technical standards, and operational requirements apply to all Part 101 services, but others apply only to specific services,³⁴⁸ or to common carrier services but not private services (or vice versa).³⁴⁹

Part 101 was created in 1996 through consolidation of the rules for the common carrier and private operational fixed (POFS) microwave services contained in Parts 21 and 94.³⁵⁰

Part 101 contains 14 lettered subparts:

- A – General
- B – Applications and Licenses
- C – Technical Standards
- D – Operational Requirements
- E – Miscellaneous Common Carrier Provisions
- F – Developmental Authorizations
- G – 24 GHz Services and Digital Electronic Message Service
- H – Private Operational Fixed Point-to-Point Microwave Service
- I – Common Carrier Fixed Point-to-Point Microwave Service
- J – Local Television Transmission Service
- K – [Reserved]
- L – Local Multipoint Distribution Service
- M – Competitive Bidding Procedures for LMDS
- N – Competitive Bidding Procedures for the 38.6-40.0 GHz Band

Purpose

Part 101 sets forth application processing procedures, technical standards, and operational requirements for the microwave services. The Commission created the Part 101 rules to reduce or eliminate the differences in processing applications between common carriers and private operational fixed microwave service licensees, and to further the regulatory parity among these microwave services.³⁵¹

³⁴⁷ 47 C.F.R. Part 101.

³⁴⁸ *See, e.g.*, 47 C.F.R. §§ 101.21(e), 101.61(c).

³⁴⁹ *See, e.g.*, 47 C.F.R. §§ 101.13, 101.15.

³⁵⁰ *Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, Report and Order*, 11 FCC Rcd 13449 (1996) (*Part 101 Order*).

³⁵¹ *Id.*, 11 FCC Rcd at 13452-53.

Analysis

Status of Competition

Because the Part 101 microwave services encompass a variety of private and common carrier applications, and because some services are licensed on a point-to-point basis while others are licensed geographically, the level of competition varies greatly among individual microwave services.

The largest commercial deployment of Part 101 microwave services has occurred in the 24 GHz (DEMS), 28 GHz (LMDS), and 39 GHz bands. The most significant operators in these bands, Teligent, Inc. (Teligent) and WinStar Communications, Inc. (WinStar), are currently concentrating on business customers. These operators are either now offering or are planning in the future to offer subscribers a variety of one- and two-way broadband services, such as video programming distribution, wireless local loop telephony, Internet access and other high speed data transmission services. Thus, if successful, licensees in these bands have the potential to create facilities-based competition in numerous industries, including high-speed broadband services. In other Part 101 services, licensees continue to rely on traditional point-to-point microwave systems to meet their operational support and critical infrastructure needs as opposed to using microwave technologies to directly access customers.

Advantages

The Part 101 rules provide for a unified regulatory approach for the microwave services, and eliminate the differences in processing applications between common carriers and POFS licensees that existed in the former rules. The Part 101 rules were adopted at the same time the microwave industry was developing new collaboration and coordination agreements, and took into consideration the industry's expressed desire to have common carrier and POFS microwave services treated in the same fashion when appropriate.³⁵² Because each of the microwave services share at least some frequencies with other microwave services, and because some frequencies are shared with government users, the rules minimize repetition, reduce the potential for interference, and aid different microwave users in efficient use of the microwave spectrum.

Part 101 also contains competitive bidding rules (Subparts M and N) that, in conjunction with our spectrum allocation rules, promote economic growth and enhance access to telecommunications service offerings for consumers, producers, and new entrants. The competitive bidding rules are structured to promote opportunity and competition. This has resulted in the rapid implementation of new and innovative services and the efficient use of spectrum use, thereby fostering economic growth. In contrast to lotteries and comparative hearings, auctions are faster, more efficient, and more likely to get spectrum to entities that value it the most. Through these rules, the Commission has recovered a portion of the value of the public spectrum.

Disadvantages

Because the Part 101 rules represent a relatively new consolidation of Parts 21 and 74, licensees and applicants have identified certain rules that are ambiguous or confusing, and certain technical characteristics – including those relating to frequency tolerance, spectrum efficiency, and antenna

³⁵² See *Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 15 FCC Rcd 3129 (2000) (*Part 101 NPRM*) at ¶ 7.

standards – that could be modified.³⁵³ In addition, some rules could be candidates for further consolidation or streamlining.³⁵⁴ For example, the current rules do not allow shared use among providers and between POFS and common carrier licensees.

Recent Efforts

The Commission is in the midst of a comprehensive re-evaluation of the Part 101 rules.³⁵⁵ The *Part 101 NPRM*, which was released on February 14, 2000, proposes to eliminate rules that are duplicative, outmoded, or otherwise unnecessary; it also seeks comment on specific proposals to “examine the[] rules and procedures and offer their view and explanations of ways to streamline them and to make sure that the regulations conform with the Communications Act of 1934, as amended.”³⁵⁶ The pleading cycle for the *Part 101 NPRM* closed August 4, 2000.³⁵⁷

The Commission has made significant changes to the competitive bidding rules of Part 1, subpart Q. In the *Part 1 Third Report and Order*,³⁵⁸ the Commission made substantive amendments and modifications to the competitive bidding rules for all auctionable services. These changes to the competitive bidding rules are intended to streamline regulations and eliminate unnecessary rules wherever possible, increase the efficiency of the competitive bidding process, and provide more specific guidance to auction participants. The changes also advance our auction program by reducing the burden on the Commission and the public of conducting service-by-service auction rule makings, such as those rule makings that created the competitive bidding rules of Subparts M and N.

Recommendation

Because of the ongoing rulemaking embodied in the *Part 101 NPRM*, staff does not recommend that any additional changes be made to the rules within the context of the biennial regulatory review. Indeed, the pending rulemaking engages in the same type of comprehensive examination of our service and technical rules that we are undertaking as part of the larger biennial regulatory review process.

In general, the competitive bidding rules in this subpart are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for these rules is also not significantly affected by changes in the level of competition in the auctionable services. In addition, the Commission has significantly revised and streamlined the competitive bidding rules in this subpart in several proceedings. Therefore, the staff concludes that significant modification or repeal of the Part 101 competitive bidding rules is not necessary at this time.

³⁵³ *Id.* at ¶ 1.

³⁵⁴ *Id.*

³⁵⁵ *See Id.*

³⁵⁶ *Id.* at ¶ 2.

³⁵⁷ *See* 65 Fed Reg 38333-01 (June 20, 2000).

³⁵⁸ *See* Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374 (1997) (modified by *Erratum*, DA 98-419 (rel. Mar. 2, 1998) (*Part 1 Third Report and Order*)).

However, to the extent that service-specific auction rules are duplicative of the consolidated auction rules in Part 1, the staff recommends that they be modified or eliminated.

PART 101, SUBPART G – 24 GHZ SERVICE AND DIGITAL ELECTRONIC MESSAGE SERVICE

Description

Part 101 contains licensing, technical, and operational rules for fixed operational microwave services that require operating facilities on land or in certain offshore coastal areas. This report focuses on subpart G, which contains rules for the 24 GHz Service and the Digital Electronic Message Service (DEMS). DEMS systems are common carrier point-to-multipoint microwave networks designed to communicate information between a fixed (nodal) station and a multiple fixed user terminals,³⁵⁹ and this subpart was originally intended to accommodate operation of high-speed, two-way, point-to-multipoint terrestrial microwave transmission systems.³⁶⁰

DEMS was originally licensed for use in the 18.82-18.92 GHz and 19.16-19.26 GHz bands. It was subsequently reallocated to the 24.25-24.45 GHz and 25/05-25.25 GHz bands.³⁶¹

Purpose

The purpose of the Part 101 subpart G rules is to establish the rules for allocation and use of wireless services at 24 GHz (including DEMS), to ensure efficient spectrum use, and to prevent interference.

Analysis

Status of Competition

Under the original DEMS grants in the 1980s, the service was not initially commercially successful.³⁶² In the early 1990s, a small number of companies began acquiring licenses in approximately thirty of the nation's largest markets.³⁶³ The majority of licenses are currently held by Teligent. The 24 GHz spectrum used by DEMS has been identified as a potential competitor in the local exchange telephone market.³⁶⁴ Teligent, which recently completed its initial plan to roll out service in 40 U.S. markets, provides a bundle of broadband fixed wireless telecommunication services to small- and medium-sized businesses.

³⁵⁹ See *Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules to Allocate Spectrum at 18 GHz for, and to Establish other Rules and Policies Pertaining to, the Use of Radio in Digital Termination Systems and in Point-to-Point Microwave Radio Systems for the Provision of Digital Electronic Message Services, and for other Common Carrier, Private Radio, and Broadcast Auxiliary Services; and to Establish Rules and Policies for the Private Radio Use of Digital Termination Systems at 10.6 GHz*, 54 Rad. Reg. 2d 1091 (1983).

³⁶⁰ See *id.*

³⁶¹ See *Amendment to Parts 1, 2, and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, Notice of Proposed Rulemaking, 14 FCC Rcd 19263, 19267 ¶ 5 (1999) (24 GHz NPRM).

³⁶² *Id.* at 14 FCC Rcd 19265 ¶ 2.

³⁶³ See *Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service From the 18 GHz to the 24 GHz Band and to Allocate the 24 GHz Band for Fixed Service, Memorandum Opinion and Order*, 13 FCC Rcd 15147, 15149 ¶ 6 (1998) (DEMS MO&O).

³⁶⁴ See 24 GHz NPRM, 14 FCC Rcd at 19275 ¶ 20.

Advantages

The current rules provide a clear regulatory framework for the development of competitive fixed wireless services. The existing technical and operational rules are necessary for administration of a radio service at 24 GHz.

Disadvantages

The current subpart G rules were written when the primary use of DEMS was expected to be by businesses requiring internal networks to distribute documents, share data, and hold teleconferences. Accordingly, some of the terminology reflects this initial service concept. Mobile service is not permitted in the 24 GHz band.

Recent Efforts

In 1999, the Commission initiated a rulemaking proceeding (WT Docket No. 99-327) in which it undertook a comprehensive review of use of the 24 GHz band. In a Report and Order adopted July 25, 2000, the Commission revised Part 101 subpart G to comprehensively regulate operations within the 24 GHz band. Under the newly adopted changes, the Commission will license the 24 GHz band in 40 MHz channel pairs, provide 24 GHz band licensees more flexibility in system design, implement a ten-year license term and a "substantial service" requirement at renewal, allow 24 GHz band licensees to partition and/or disaggregate their licenses, and introduce flexible technical standards. Existing DEMS licensees are treated as incumbent licensees subject to the new 24 GHz rules.

Recommendation

In light of the Commission's comprehensive review of its 24 GHz rules in WT Docket No. 99-327, the staff concludes that issues pertaining to Subpart G are being adequately addressed in that proceeding.

PART 101, SUBPARTS L (LOCAL MULTIPOINT DISTRIBUTION SERVICE (LMDS)) AND M (COMPETITIVE BIDDING PROCEDURES FOR LMDS)

Description

Part 101³⁶⁵ contains licensing, technical, and operational rules for the fixed microwave radio services. Local Multipoint Distribution Service (LMDS) systems are fixed point-to-point or point-to-multipoint radio systems that consist of hub and subscriber stations. LMDS licensees may provide a variety of services, including high-speed data and Internet services and multi-channel video programming distribution.³⁶⁶

Subpart L contains licensing, technical, and operational rules for LMDS. In general, the rules in this part: (1) provide eligibility restrictions in this service; (2) define the service area of LMDS licenses; (3) specify the permissible operations for authorized systems; (3) specify the frequencies available to LMDS licensees; (4) establish license terms; (5) establish the minimum construction or coverage requirements for LMDS licensees; and (6) define system operations and permissible communication services.

Subpart M contains competitive bidding rules and procedures for commercial licenses in LMDS. In particular, the rules, on a service-specific basis: (1) provide competitive bidding mechanisms and design options; (2) establish application, disclosure and certification procedures for short- and long-form applications; (3) specify down payment, unjust enrichment, withdrawal and default mechanisms; (4) provide definitions of gross revenues for designated entities and specify the bidding credits for which designated entities qualify; and (5) provide eligibility and technical requirements for partitioning and disaggregation.

Purpose

The purpose of the Part 101 rules is to establish basic ground rules for assignment of spectrum for private operational, common carrier, and LMDS fixed microwave operations that require operating facilities on land or in specified offshore coastal areas. Subpart L contains the basic licensing and operational rules for LMDS. Subpart M helps to ensure access to new telecommunications offerings by ensuring that all customer segments are served, that there is not an excessive concentration of licenses, and that small businesses, rural telephone companies, and businesses owned by women and minorities will have genuine opportunities to participate in the provision of service.

Analysis

Status of Competition

LMDS is a “nascent market.”³⁶⁷ The initial LMDS operator, Cellularvision, no longer provides multi-channel video programming distribution services, and has announced plans to offer high-

³⁶⁵ 47 C.F.R. Part 101.

³⁶⁶ *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Sixth Notice of Proposed Rulemaking*, 14 FCC Rcd 21520 ¶ 32 (1999) (*LMDS 6th NPRM*).

³⁶⁷ *Id.*

speed data access on a portion of its original spectrum. The remaining licenses were issued by auctions held in March 1998 and April and May 1999. Accordingly, LMDS equipment is still subject to limited availability and the majority of licensees are still developing their systems.³⁶⁸ LMDS will most likely compete with wireless and wireline broadband service providers targeting small and medium businesses.³⁶⁹

Advantages

The Subpart L rules provide licensees with broad flexibility to identify and implement services in response to market demand. The Commission recently allowed LMDS eligibility restrictions for incumbent local exchange carrier and cable companies to sunset;³⁷⁰ this development should provide access to additional capital to develop LMDS fully, make administration of LMDS consistent with other competitive services, and aid the development of LMDS in rural markets.³⁷¹

The Subpart M competitive bidding rules, in conjunction with our spectrum allocation rules, promote economic growth and enhance access to telecommunications service offerings for consumers, producers, and new entrants. The competitive bidding rules of Subpart M were structured to promote opportunity and competition. This has resulted in the rapid implementation of new and innovative services and the efficient use of spectrum use, thereby fostering economic growth. In contrast to lotteries and comparative hearings, auctions are faster, more efficient, and more likely to get spectrum to entities that value it the most. Through these rules, the Commission has recovered a portion of the value of the public spectrum.

Disadvantages

There are no discernable disadvantages to the LMDS rules. The existing rules consist of technical and operational rules that are necessary for administration of the service.

The Subpart M competitive bidding rules have no significant disadvantages. Nevertheless, the rules impose higher transaction costs to auction participants. For example, auction transaction costs are higher than the transaction costs for lotteries. In addition, because the need remains for service-specific notice and comment proceedings prior to the auction event, there is some delay in licensing. These delays, however, are far less than other licensing mechanisms.

Recent Efforts

The June 23, 2000, *LMDS Third R&O* allowed the cross-ownership restriction that prohibited incumbent local exchange carriers and cable companies from having an attributable interest in the LMDS A block license that overlaps with ten percent or more of the population in their service

³⁶⁸ See *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Third Report and Order and Memorandum Opinion and Order*, FCC 00-223 (June 27, 2000) at App. B (*LMDS 3rd R&O*) for a comprehensive list of LMDS launches and the types of service each carrier is providing.

³⁶⁹ *LMDS 3rd R&O*.

³⁷⁰ *LMDS 3rd R&O*.

³⁷¹ *Id.* at ¶ 33.

areas to expire on June 30. The decision to allow the cross-ownership rule to sunset was based on a thorough analysis of competitive issues and the LMDS market.

The Commission has made significant changes to the competitive bidding rules of Part 1 Subpart Q. In the *Part 1 Third Report and Order*,³⁷² the Commission made substantive amendments and modifications to the competitive bidding rules for all auctionable services. These changes to the competitive bidding rules are intended to streamline regulations and eliminate unnecessary rules wherever possible, increase the efficiency of the competitive bidding process, and provide more specific guidance to auction participants. The changes also advance our auction program by reducing the burden on the Commission and the public of conducting service-by-service auction rule makings, such as those rule makings that created the competitive bidding rules of Subpart M.

Recommendation

The staff recommends that no substantive changes be made to this subpart at this time. Certain nonsubstantive revisions could be made to the LMDS rules for the purposes of simplification and to provide clarity to licensees and applicants.³⁷³ The staff also concludes that substantive modification of the Subpart M competitive bidding rules is not necessary at this time. In general, the competitive bidding rules in this subpart are integral to the basic licensing and spectrum management functions performed by the Commission in LMDS. However, the Commission has consolidated its competitive bidding rules in Part 1, with the goal of having future auctions be conducted in accordance with Part 1 rules. Therefore, to the extent that future auctions are necessary in LMDS, the staff recommends that they be governed by Part 1, and that consideration be given to eliminating or phasing out the separate rules in this subpart to the extent they are redundant.

³⁷² See *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374 (1997) (modified by *Erratum*, DA 98-419 (rel. Mar. 2, 1998)) (*Part 1 Third Report and Order*).

³⁷³ For example, Section 101.1001, 47 C.F.R. § 101.1001, should be amended to remove the cross-reference to now-deleted Section 100.1003.