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

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In the Matter of	)	
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	)	
The 2000 Biennial Regulatory Review	)	CC Docket No. 00-175
	)	
	)	

REPORT

Adopted: December 29, 2000 **Released:** January 17, 2001

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

I. INTRODUCTION

1. This Report fulfills the Commission's year 2000 biennial regulatory review obligations under section 11(a) of the Communications Act of 1934, 47 U.S.C. § 161(a), and section 202(h) of the Telecommunications Act of 1996, to make determinations every two years regarding certain regulations.[1] The Commission agrees with staff recommendations detailed in the 2000 Biennial Regulatory Review Updated Staff Report (Staff Report)[2] being released concurrently, to consider repealing or modifying a number of rules that may no longer be necessary in the public interest, as a result of competitive, technological, legal, or other changes. We also agree with a number of other staff recommendations to make Commission processes more streamlined, flexible, or deregulatory.

2. This Report also discusses some ongoing and recently completed deregulatory initiatives undertaken by the Commission. As detailed below, some of these actions we have taken were a result of the 1998 Biennial Regulatory Review. In other cases, we have already initiated proceedings pursuant to the 2000 Biennial Regulatory Review. In addition, we have also adopted other deregulatory measures independent of the Biennial Regulatory Review process, as part of our longstanding efforts to continuously review, revise, streamline and update our rules and Commission processes.

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[1] 47 U.S.C. § 161; Telecommunications Act of 1996, Pub. Law No. 104-104, § 202, 110 Stat. 56 (1996).

[2] All references in this Report are to the Staff Report being released concurrently herewith unless otherwise noted.

3. In conjunction with the release of this Commission Report, we are also releasing a more detailed Staff Report. The Staff Report contains four appendices, one of which provides analyses of each rule part and recommendations as to whether individual rules within the parts should be modified or repealed by individual Commission actions. We released an initial Staff Report (initial staff report) in September 2000[3] and sought comment on its recommendations. In response to the Staff Report, we received 18 comments and 4 reply comments. The Staff Report we release today has been updated to reflect the comments we received.

4. In addition, we agree with the staff recommendation that we consider using similar criteria that we used to evaluate rules in this biennial review process for any *new* rules that we consider in individual Commission actions.[4] Although this report does not adopt binding rules or procedures, we expect that when the Commission adopts new rules it will take into account the criteria staff used to evaluate existing rules. We agree with staff that conducting such an analysis and examining the advantages and disadvantages of proposed rules at the time we consider new rules might help ensure that we carefully tailor any new regulatory requirements to achieve their intended regulatory goal, thereby avoiding the imposition of excessive or unnecessary regulatory burdens.[5] We also agree that such analysis might also significantly reduce the burdens associated with future biennial reviews.[6]

II. BACKGROUND

A. Procedural History

5. In the Telecommunications Act of 1996 (the 1996 Act), Congress added section 11 to the Communications Act of 1934 (Communications Act) and passed section 202(h), which collectively require the Commission: (1) to review biennially its regulations that pertain to (a) the operations or activities of telecommunications service providers, and (b) broadcast ownership; and (2) to determine whether those regulations are no longer necessary in the public interest as a result of meaningful economic competition. Following such review, the Commission is required to modify or repeal any

[3] Federal Communications Commission Biennial Regulatory Review 2000, CC Docket No. 00-175, Staff Report (rel. Sept. 19, 2000) (September Staff Report or Initial Staff Report).

[4] September Staff Report at para. 11. In evaluating rules for the 2000 Biennial Regulatory Review, staff applied a consistent analysis to determine whether to recommend modifications or elimination of Commission rules. Staff's review considered (1) the purpose of the rule; (2) the advantages of the rule; (3) the disadvantages of the rule; (4) what impact competitive developments have had on the rule; and (5) whether to recommend modification or revocation of the rule based thereon. *Id* at 12. We recognize that criteria 4 and 5 are not directly applicable or relevant to new rules. Accordingly, it would be appropriate to apply the second and third criteria when we adopt new rules.

[5] *Id.* at para. 11.

[6] *Id.*

such regulations that are no longer in the public interest.[7]

6. When the Commission undertook the first Biennial Regulatory Review of its regulations in 1998, it broadened its review to apply to the rules of all Offices and Bureaus in the Commission, rather than just those applying to telecommunications service providers and broadcast ownership. The Commission did not limit its review to whether meaningful economic competition alone justified changes, but instead looked for any justification to modify or eliminate a rule which would serve the public interest. Our biennial reviews, thus, go beyond the minimal statutory requirements of examining our rules pertaining to telecommunications service providers or broadcast ownership that are no longer necessary as a result of meaningful economic competition.

7. The 1998 Biennial Regulatory Review led to the initiation of a wide range of deregulatory and streamlining proposals. For example, in conjunction with the 1998 Biennial Regulatory Review, the Commission initiated 32 proceedings, 28 of which have either been completed or have resulted in the issuance of significant orders.[8]

8. The Commission staff has devoted substantial time and resources to the 2000 Biennial Regulatory Review, which attempts to build upon the work completed in the 1998 Biennial Regulatory Review, and establishes a foundation for future regulatory reviews. In particular, the 2000 Biennial Regulatory Review provides a significantly more comprehensive documentation of the staff's analysis of our rules and the biennial review than did the 1998 Biennial Regulatory Review.

9. In the fall of 1999, a team began to develop a method for conducting the staff review. The team agreed to deploy an analytical framework to review all Commission rules, which included the following:

a) **Scope** – Each Bureau and Office would endeavor to review all of its rules – not merely the rules that are specifically implicated by sections 11 and 202(h) and consider whether a repeal or modification of any rule might be appropriate.

b) **Analysis** – Each Bureau and Office would use a consistent analysis, which would consider the advantages and disadvantages of the existing rules and what impact, if any, competitive developments may have had on each rule. Each Bureau and Office would consider whether a revocation or modification of any rule might be appropriate for any reason such as technological, legal or competitive reasons.

c) **Report and Rule Part Analysis** – Staff was to prepare a report that summarizes the review conducted by each Bureau and Office. In addition,

[7] For more discussion of legal authority issues, *see* Staff Report at paras. 2-6.

[8] *See* Appendix I of Staff Report for a listing of the completed and ongoing proceedings that were initiated as a result of the 1998 Biennial Regulatory Review.

staff was to provide a written description of the analysis used in each rule part, giving priority to rule parts implicated by sections 11 or 202(h).

10. Staff prepared an initial report which summarized its review of the Commission's rules, the status of ongoing and recent initiatives, and recommendations on whether specific rules should be kept in place, modified, or repealed. In September 2000, we released and sought comment on the initial staff report and rule part analysis.

11. Based on comments, staff has updated its recommendations and rule part analysis. We are concurrently releasing the updated Staff Report separately.

B. Biennial Review Determination

12. Sections 11(a)(1), 11(a)(2) and 202(h) require the Commission to review certain of its rules biennially and determine whether those rules are no longer necessary in the public interest as a result of meaningful economic competition. Subsequent to making those determinations, the Commission is directed to "repeal or modify any regulation it determines to be no longer in the public interest."[9] Congress thus distinguished between *making determinations* (that certain rules are no longer in the public interest), which must occur within a specified time period i.e., every even numbered year, and *taking action* (to repeal or modify rules that are no longer in the public interest) which is not required to be completed within that specific time period.

13. Based on the language and structure of Section 11 and by distinguishing between the requirement to make determinations and the requirement to implement those determinations, Congress intended the biennial review determinations to establish the framework for further action, rather than to constitute the final action. This Commission Report sets forth the determinations that will form the basis for further action. The Commission Report itself does not set forth final Commission decisions, nor does it represent rulemaking action.

14. The staff has conducted an initial review of the rules subject to the biennial review requirements and has made certain recommendations about those rules. The staff has identified certain rules that it believes may no longer be necessary in the public interest and may warrant modification or repeal. In accepting these staff recommendations, with respect to such rules, the Commission will initiate rulemaking proceedings to determine whether, and in what manner, those rules should be modified or repealed. As part of any such rulemaking proceedings, the Commission will seek further comment about relevant competitive developments and the impact of those developments on the rules at issue. With respect to rules about which we have not yet committed to initiating rulemaking proceedings, we did not, on our own, find a basis for initiating a rulemaking, but this of course is without prejudice to petitions for rulemaking in which parties may attempt to present us with such a basis.[10] The fact that the Commission has

[9] 47 U.S.C. § 11(b); 1996 Act, § 202(h).

[10] Several commenting parties recognize that they may ask the Commission to initiate rulemaking proceedings with respect to rules that the Commission does not identify in its biennial review as needing to

not committed to initiating rulemaking proceedings for all of the rules it reviewed thus should not be construed as an affirmative, final decision to retain those rules without any modifications.

C. Comments on the Procedures Used in the Staff Report

15. Several commenters complimented the Commission's extensive review of its rules and supported the analysis staff undertook to make recommendations about which rules should be modified or repealed pursuant to the biennial review requirements.[11] Other commenters, however, expressed some concerns about the procedures used in the staff report, and we address those concerns below.

16. Two commenters suggested that the Commission did not provide an adequate opportunity to comment on the Staff Report.[12] We believe that the comment period (21 days for comments, 10 days for reply comments) was legally sufficient. As a preliminary matter, because the report is neither a rulemaking nor an adjudicatory proceeding, but instead *precedes* the initiation of rulemaking proceedings, the Commission was not required to provide an opportunity for public comment.[13] And although we acknowledge that the initial staff report (including appendices) was lengthy, each party that filed comments was interested in, and responded to, only a portion of the report. Because the staff report encompasses rules covering a number of industry segments, such as common carriers, wireless telecommunications, cable service providers, not all of which are necessarily of interest to any single party, and because the report was divided into discrete subject categories, parties could readily identify and focus on the sections of the report that pertained to their respective interests. For example, NAB's comments focused "solely on section V of the Staff Report."[14] Section V was approximately 12 pages long. Moreover, no one requested additional time for comment, and only four parties took advantage of the opportunity to file reply comments. The fact that neither NAB nor NAA filed reply comments or requested additional time leads us to believe that parties had an adequate opportunity to comment.

17. A few commenters asserted that the initial staff report did not fully evaluate the development of competition and its effect on the Commission's rules.[15] The

be repealed or modified. *See e.g.*, NAB comments at p. 7 (reserving the right to file petitions for rulemaking); CTIA comments at p. 9 (noting that it filed a petition for rulemaking on section 24.16 of the Commission's rules in 1999 and asking the Commission to include that petition in the 2000 Biennial Review or seek comment on the petition in a separate proceeding).

[11] *See e.g.*, CTIA comments at p. 2; ITTA comments at pp. 2, 4; OPATSCO comments at p. 2; USTA comments at p. 2 (supporting the staff's analysis but encouraging the Commission to make clear that the rule would continue to be reviewed every two years).

[12] NAB comments at p. 6; NAA comments at pp. 4, 5.

[13] 5 U.S.C. §§ 553, 554.

[14] NAB comments at p. 1.

[15] *See e.g.*, Alloy LLC comments at p. 2; NAB comments at pp. 2, 3, 5-6; NAA comments at pp. ii, 3.

initial staff report considered the state of competition in making recommendations pursuant to this biennial review. The commenters have augmented the record on this issue, and the initial staff report has been updated to reflect such comments. We have a sufficient basis to allow us to make the determinations required by sections 11 and 202(h). In addition, when it implements its determinations through rulemaking proceedings, the Commission intends to conduct a more comprehensive analysis of competitive developments, and the precise way in which such developments should shape the Commission's rules and allow us to modify or repeal the rules, as appropriate. As Alloy LLC stated, although the analysis in the staff report "is certainly a useful starting point," the Commission seems to recognize that ultimately it needs to conduct a more detailed analysis of competitive conditions before accepting a specific regulatory proposal.[16] Rulemaking proceedings will give parties a better opportunity to present detailed evidence of competitive developments and to suggest, with greater specificity, which rules should be modified or repealed.

18. USTA recommends that the Commission accept a process to ensure that the rulemakings identified in the biennial review process are initiated and completed in a timely manner. [17] Specifically, USTA suggests that any rule that the Commission determines might warrant repeal should sunset within nine months, unless a party petitions the Commission to retain the rule.[18] In addition, USTA proposes that any such rulemaking proceedings be completed within nine months after a rule has been identified as warranting possible modification.[19] We agree with USTA that excessive delay in taking further action to modify or repeal rules that the Commission identifies in its biennial reviews would undermine the purpose of sections 11 and 202(h). On the other hand, we are concerned that imposing strict time limits for concluding all proceedings identified in the biennial review would unduly restrict our ability to establish priorities for action. The Commission needs to be able to use its limited resources to undertake the most crucial proceedings first, even if that might delay, to a limited degree, the completion of other proceedings. In addition, the Commission needs flexibility to establish schedules that enable the agency to develop a full record, protect the due process rights of all parties, consider the impact of various possible rule modifications or repeals, and set forth the reasons for its decisions. Therefore, although we will not accept a specific time limit for concluding all of the rulemakings to be initiated pursuant to the biennial review, we urge parties to provide input regarding which proceedings are most critical to their public policy goals, and to provide comment regarding any matters that might influence the Commission's schedule for action. We direct all Bureaus and Offices to prioritize rulemaking proceedings stemming from this biennial review on the basis of

[16] Alloy LLC comments at p. 2 (noting that in its rulemaking proceeding regarding the CMRS spectrum cap, the Commission is conducting a thorough analysis of the competitive conditions that could affect the continued need for a cap).

[17] USTA comments at p. 2.

[18] *Id.* at p. 3.

[19] *Id.*

various public policy considerations and a comprehensive evaluation of comments received from the parties in response to the Notices of Proposed Rule Makings we intend to continue to release as a result of our 2000 Biennial Regulatory Review.

19. ITTA asserts that the Commission should not consider imposing new regulations as part of the biennial review process.[20] A key purpose of sections 11 and 202(h) is to repeal or modify certain regulations that are no longer necessary as a result of competition, and the primary focus of the Commission's review was to evaluate its regulations in light of that purpose. But the Commission is not *prohibited* from expanding the scope of its review to consider other matters. For example, the Commission considered whether modification or repeal was appropriate for rules that are outside the scope of sections 11 and 202(h). And as the Commission examines its rules every two years, it is an efficient use of Commission resources to consider factors beyond the impact of competition. The Commission thus considered whether other factors, such as technological changes or changes in the law, may have made certain regulations appropriate for repeal or modification. Similarly, when it reviews its rules and considers competitive developments pursuant to the biennial review requirements, the Commission may consider whether new, less burdensome regulations are more appropriate. For example, in some instances, the process of repealing or modifying regulations may necessarily involve the creation of new, less burdensome regulations, such as if we were to decide that we should eliminate burden of proof requirements for a party seeking approval of an activity, but may impose new, less burdensome obligations requiring the party to file periodic status reports. Thus, as a part of the biennial review process, we do not intend to impose new obligations on parties in lieu of current ones, unless we are persuaded that the former are less burdensome than the latter and are necessary to protect the public interest.

III. RECENT AND ONGOING DEREGULATORY ACTIONS TAKEN BY THE COMMISSION

A. Overview

20. The biennial review process complements, but does not replace, the Commission's longstanding efforts to continuously review, revise, and update its rules. In many cases, staff does not advocate further action precisely because the Commission recently initiated or completed rulemaking activities, either pursuant to or independent of the biennial review requirements. Below we highlight some of these activities, dividing our discussion into (1) actions to repeal or modify rules that are no longer in the public interest because of competitive, technological, legal or other changes; and (2) actions to make Commission processes more streamlined, flexible, or deregulatory.

[20] ITTA reply comments at p. 1.

B. Actions to repeal or modify rules which are no longer in the public interest because of competitive, technological, legal or other changes

1. Common Carrier Bureau

21. In March 2000, we completed Phase 1 of our reform plan for the Part 32 accounting rules and the Automated Reporting Management Information System (ARMIS) reporting requirements. In Phase 1, we streamlined our accounting rules and reduced the ARMIS reporting burdens for incumbent LECs.[21] In October 2000, we launched Phases 2 and 3 of our accounting and ARMIS reform proceeding, in which we are closely examining the fundamental need for these rules and requirements.[22] In a notice of proposed rulemaking, we have proposed extensive rule changes to reduce significantly reporting and compliance burdens on affected carriers.[23] In November 2000, we sought comment on streamlining service quality reporting in ARMIS.[24]

22. We have also made changes to Parts 61 and 69 of our rules, which govern tariffs and access charges, obviating certain proposals from USTA in its August 1999

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[21] *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1*, Report and Order, CC Docket No. 99-253, FCC 00-78, Mar. 8, 2000.

[22] *2000 Biennial Review - - Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3*, CC Docket No. 00-199, Notice of Proposed Rulemaking, FCC 00-364 (rel. October 18, 2000).

[23] Specifically, in Phase 2, the Commission: (1) proposed eliminating one-fourth of the Class A accounts in Part 32 of our rules, because the level of detail in these accounts may no longer needed; (2) sought comment on USTA's proposal to move to Class B accounting for the largest carriers as well as the smaller carriers; (3) sought comment on adding a few additional accounts to assist state commissions in implementing the Telecommunications Act of 1996; (4) proposed streamlining other accounting rules such as our inventory requirements, construction thresholds, and expense limits; (5) sought comment on whether we should change the accounting for contributions and thereby eliminate the final area in which our system did not comply with GAAP; (6) sought comment on revising and streamlining our affiliate transactions rules by raising certain thresholds and exempting certain transactions; (7) sought comment on whether we should specify that the requirements imposed on Class A and Class B companies are limited to incumbent LECs; (8) sought comment on USTA's proposal to eliminate our rules requiring forecasts for allocating network plant between regulated and nonregulated activities; (9) proposed simplifying the reporting requirements for both large incumbent LECs and mid-sized incumbent LECs by eliminating or revising ARMIS Reports; (10) proposed eliminating the cost allocation manual (CAM) filing requirements for mid-sized carriers; and (11) proposed eliminating ARMIS 43-02, 43-03, and 43-04 reporting requirements for mid-sized carriers. In Phase 3, the Commission: (1) sought comment on whether there are triggers for more drastic deregulation of accounting and reporting requirements in a competitive marketplace; (2) sought to undertake a broader examination of its accounting requirements and ARMIS reporting requirements with the goal of determining what additional changes can be made a competition develops in the local exchange market; (3) sought comment on a roadmap to follow for accounting and reporting deregulation; and (4) sought comment on whether deregulation should proceed differently for companies with fewer than two percent of the nation's access lines.

[24] 2000 Biennial Review – Telecommunications Service Quality reporting Requirements, CC Docket 00-229, Notice of Proposed Rulemaking, FCC 00-399 (rel. Nov. 9, 2000).

petition for rulemaking addressing numerous 2000 Biennial Regulatory Review issues.[25] Specifically, in May 2000, we significantly revised these rule Parts, as they relate to price cap incumbent local exchange carriers (LECs), during the Coalition for Affordable Local and Long Distance Services (CALLS) proceeding.[26] In that proceeding, we adopted a five-year plan that reduces access charges, rationalizes the access charge rate structure, and creates an explicit interstate access universal service support mechanism - providing regulatory certainty for the industry.

23. In the *Part 68 Order*, we completely eliminated significant portions of Part 68 of our rules, which govern the connection of customer premises equipment to the public switched telephone network (PSTN), and privatized the standards development and terminal equipment approval processes.[27] This streamlined, deregulatory approach allowed us to replace approximately 130 pages of technical criteria currently in our rules with only a few pages of simple principles that terminal equipment shall not cause harm to the PSTN, that carriers must allow the connection of compliant terminal equipment to their networks, and that we will enforce diligently compliance with these rules.[28] This is a major deregulatory and privatization initiative arising out of the 2000 Biennial Regulatory Review.

2. International Bureau

24. We have taken action to remove regulatory impediments and increase competition in the international telecommunications marketplace through reform of the longstanding international settlements policy. In 1999, in the *International Settlements Policy (ISP) Reform Order*, we adopted sweeping deregulatory inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes.[29]

25. In October, as part of the 2000 Biennial Regulatory Review, we released an NPRM proposing to extend the complete detariffing regime that we adopted for

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[25] Petition for Rulemaking of the United States Telephone Association, filed Aug. 11, 1999. The Cincinnati Bell Telephone Company, Roseville Telephone Company and SBC Communications filed comments in response to the USTA petition. The Bell Atlantic Telephone Company, MCI WorldCom, and USTA filed replies.

[26] *See Access Charge Reform*, Sixth Report and Order in CC Docket No. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, FCC 00-103 (rel. May 31, 2000).

[27] *2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations,* Order, FCC 00-400 (rel. Dec. 21, 2000).

[28] The Commission retained the technical criteria relating to inside wiring, hearing aid compatibility and volume control, and consumer protection provisions.

[29] *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements* (Phase II), Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (1999) (*ISP Reform Order*).

domestic, interexchange services to the international services of non-dominant interexchange carriers, including Commercial Mobile Radio Service providers and U.S. carriers classified as dominant solely due to foreign affiliations.[30] In that proceeding, we also proposed to amend section 43.51 of our rules to clarify which carrier contracts must be filed with the Commission.[31]

26. In November, we released an NPRM in which we tentatively concluded that it is no longer necessary to apply the settlement rate benchmarks condition to section 214 authorizations to provide facilities-based international private line services.[32] We also proposed to modify our rules to relieve dominant international carriers of the requirement to seek prior approval to discontinue service, except where such carriers possess market power in the provision of international service on the U.S. end of the route.[33] Finally, we proposed to amend several rules to clarify the intent of those rules and to eliminate certain rules that no longer have any application, including section 43.81, which concerns reporting requirements on carriers owned by foreign telecommunication entities.[34]

27. In addition, we have ongoing proceedings on a number of other issues related to international telecommunications services. For example, we have already initiated a proceeding to streamline the Direct Broadcast Satellite (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.[35]

3. Wireless Telecommunications Bureau

28. On November 9, 2000, we adopted a *Notice of Proposed Rulemaking* (*Notice*) seeking comment on a proposed framework for promoting more robust "secondary markets" in wireless services.[36] In the *Notice*, we tentatively concluded that

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[30] *2000 Biennial Regulatory Review; Policy and Rules Concerning the International Interexchange Marketplace*, IB Docket No. 00-202, Notice of Propose Rule Making, 15 FCC Rcd 20008 (2000) (*International Detariffing NPRM*).

[31] *International Detariffing NPRM* at paras. 32-40.

[32] *2000 Biennial Regulatory Review, Amendment of Parts 43 and 63 of the Commission's Rules*, IB Docket 00-231, Notice Of Proposed Rule Making, FCC 00-407 (rel. Nov. 30, 2000).

[33] *Id.*

[34] 47 C.F.R. § 43.81.

[35] *Policies and Rules for the Direct Broadcast Satellite Service*, IB Docket No. 98-21, Notice of Proposed Rule Making, 13 FCC Rcd 6907 (1998).

[36] *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, FCC 00-402 (adopted November 9, 2000; released November 27, 2000). The *Notice* was a companion item to the broader *Policy Statement* on secondary markets that we adopted concurrently. *See Principles for Encouraging the Development of Secondary Markets, Policy Statement*, FCC 00-401 (rel. Dec. 1, 2000)(*Secondary Markets Policy Statement*). The *Policy Statement* sets forth the

allowing leasing of spectrum usage rights by existing Commission licensees of wireless radio spectrum would increase the efficient use of spectrum and would enable more entities to gain access to spectrum. We further sought comment on a specific proposal that would allow certain classes of wireless radio licensees to lease spectrum usage rights to third party users, subject to certain safeguards, without having to secure prior FCC approval.

29. In June 2000, we adopted an Order which allowed the Local Multipoint Distribution Service (LMDS) eligibility restriction on local exchange carriers and incumbent cable companies to sunset.[37] And in 1999, we granted a petition by the Cellular Telecommunications Industry Association to apply section 10 forbearance and to extend the deadline for Commercial Mobile Radio Service (CMRS) providers to establish a local number portability (LNP) capability in their networks.[38]

4. Mass Media Bureau

30. On August 6, 1999, we released the Local Television Ownership Report and Order[39] and the National Television Ownership Report and Order.[40] In the Local Television Ownership Report and Order, we revised the local television ownership rules – the "TV duopoly" rule, 47 C.F.R. § 73.3555(b), and the radio-television cross-ownership or "one-to-a-market" rule, 47 C.F.R. § 73.3555(c) – to respond to ongoing changes in the broadcast television industry. In the National Television Ownership Report and Order, we modified the method of calculating stations' audience reach and made some minor changes in which stations would be counted for purposes of the national TV ownership rule.

31. On June 20, 2000, we released the *1998 Biennial Regulatory Review*

Commission's certain principles for promoting the efficient use of radio spectrum by encouraging the development of secondary markets.

[37] *In the Matter of 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*, CC Docket No. 92-237, Third Report and Order and Memorandum Opinion and Order, FCC 00-223 (rel. June 27, 2000).

[38] *Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations,* Memorandum Opinion and Order, 14 FCC Rcd 3092 (1999), *recon.*, 15 FCC Rcd 4727 (2000).

[39] *In the Matter of Review of the Commission's Regulations Governing Television Broadcasting; and Television Satellite Stations Review of Policy and Rules*, Report and Order, 14 FCC Rcd 12903 (1999) (*1999 Local Television Ownership Report and Order*).

[40] *In the Matter of Broadcast Television National Ownership Rules; Review of the Commission's Regulations Governing Television Broadcasting; and Television Satellite Stations Review of Policy and Rules*, MM Docket Nos. 96-222, 91-221, and 87-8, Report and Order, 15 FCC Rcd. 20743 (1999)(*1999 National Television Ownership Report and Order*).

Report,[41] which discusses all of the Commission's broadcast ownership rules not already considered in the *1999 Local and National Television Ownership Report and Orders*. The *1998 Biennial Regulatory Review Report* considered (1) the local radio ownership rules, including the radio market definition; (2) the daily newspaper/broadcast cross-ownership rule; (3) the national television ownership rule, including the "UHF discount;" (4) the dual network rule; (5) the experimental broadcast station ownership rule; and (6) the cable/television cross-ownership rule.[42]

32. Simultaneously to our release of the *1998 Biennial Regulatory Review Report,* we issued two notices of proposed rulemakings. One considered eliminating the restriction on the ownership of UPN or WB by one of the four established networks and sought comment on what, if any, safeguards should be imposed.[43] The other proposed eliminating the experimental broadcast station multiple ownership rule.[44] We have recently issued a notice of proposed rulemaking on whether we need to modify the methodology for defining radio markets, counting the number of stations within those markets, and counting the number of stations that a party owns in a radio market.[45] In the near future, we will also issue a notice of proposed rulemaking seeking comment on whether we need to modify the daily newspaper/ broadcast cross-ownership rule in order to address contemporary market conditions.

33. We have also taken deregulatory steps with respect to other parts of our broadcast rules. For example, the *Main Studio and Public File Rules Report and Order*, released in 1999, provided broadcasters greater flexibility in choosing where to locate their main studios, required commercial and noncommercial educational stations to locate the public files at their main studio, and allowed licensees to maintain all or part of the files in a computer database, rather than in paper files.[46]

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[41] *In the Matter of 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MM Docket No. 98-35, *Biennial Regulatory Review Report*, FCC 00-191, June 20, 2000 (*1998 Biennial Regulatory Review Report*).

[42] For a summary of what the 1998 Biennial Regulatory Review Report concluded with respect to each of these rules, see Staff Report, Section V, and Appendix IV, Part 73.

[43] *In the Matter of Amendment of Section 73.658(g) of the Commission's Rules – The Dual Network Rule,* MM Docket No. 00-108, Notice of Proposed Rule Making, FCC 00-213, June 20, 2000.

[44] *In the Matter of Elimination of Experimental Broadcast Ownership Restrictions,* MM Docket No. 00-105, Notice of Proposed Rule Making, FCC 00-203, June 20, 2000. Section 74.134 of the Commission's rules, 47 C.F.R. § 74.134, prohibits any person from controlling two or more experimental broadcast stations unless it can show that the research program requires the licensing of two or more separate stations.

[45] *In the Matter of Definition of Radio Markets*, MM Docket No. 00-244, FCC 00-427 (adopted Dec. 6, 2000).

[46] *In the Matter of Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691 (1998), *revised in part on reconsideration*, 14 FCC Rcd 11113 (1999) (*Main Studio and Public File Rules Report and Order*). *See also* 47 C.F.R. §§ 73.1125; 73.3526 and 73.3527. The Commission's goals in amending

5. Cable Services Bureau

34. Under the 1992 Cable Act and the Commission's implementing rules, only cable systems that are not subject to effective competition may be regulated under the cable rate rules. A cable operator that believes it should not be subject to the cable rate rules must file a petition with the Commission showing that it is subject to effective competition in its franchise area. Since 1992, the Cable Services Bureau has addressed over 200 effective competition petitions.

35. Consumers have more choices in receiving broadcasts at home due to recent amendments to the Satellite Home Viewers Improvement Act (SHVIA). Most significantly, the amendments give satellite carriers the right to retransmit local stations back into local markets. We have already issued five Orders, four Notices of Proposed Rulemaking and a Notice of Inquiry addressing SHVIA issues and the Cable Services Bureau continues to work on additional requirements.

36. Local television stations receive access to a cable operator's cable system either through request. as with must carry, or through negotiation, as with retransmission consent. Sections 614 and 615 of the Communications Act contain the must carry requirements for commercial and noncommercial television stations. The Communications Act of 1934, as amended by the 1992 Cable Act, instructs the Commission to commence a proceeding to determine whether changes in the mandatory carriage rules are necessary to accommodate advances in television broadcast signal standards such as the advent of digital broadcast television signals on cable television systems.[47] We released the *Fourth Further Notice of Proposed Rulemaking* in MM Docket 87-268 and an additional *Notice of Proposed Rulemaking* to receive comments and information on digital television signal carriage issues. We are also considering the adoption of satellite broadcast signal carriage rules.

37. The Commission is currently reviewing Petitions for Reconsideration and comments filed pursuant to the *Report and Order and Second Further Notice Of Proposed Rulemaking,* which amended the cable inside wiring rules to enhance competition in the video distribution marketplace.[48] The *Report and Order* was intended to provide opportunities for new entrants seeking to compete in distributing video programming, particularly multichannel video programming distributors (MVPDs) seeking to provide service in multi-dwelling units (MDUs). Specifically, our rules establish procedures for the disposition of cable "home run" wiring where the incumbent MVPD no longer has a legally enforceable right to remain in the building. The *Second*

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these rules was to strike an appropriate balance between ensuring that the public has reasonable access to each station's main studio and public file, minimizing regulatory burdens on licensees, and establishing rules that are easy to administer and understand.

[47] 47 U.S.C. § 534(b)(4)(B).

[48] *Telecommunications Services Inside Wiring: Customer Premises Equipment and Implementation and Competition Act of 1992: Cable Home Wiring,* Report and Order and Second Notice of Proposed Rulemaking, 13 FCC Rcd 3659(1997).

Further Notice seeks comments on the benefits or disadvantages of exclusive contracts in promoting a competitive environment, and whether there are circumstances where the Commission should adopt restrictions on exclusive contracts in order to further promote competition in the MDU marketplace.

6. Office of Engineering and Technology

38. We recently proposed permitting operation of one of the newest innovative wireless technologies, ultra-wideband technology.[49] This new technology can be used for a variety of applications such as radar imaging of objects under the ground or behind walls, and for wireless communications such as short-range high-speed data transmissions suitable for broadband access to the Internet. We proposed rule changes to facilitate the development and deployment of software defined radios.[50] In a software defined radio, functions formerly performed solely in hardware are performed by software. This innovation, which makes a radio programmable, could facilitate interoperability between radio services, improve efficient use of spectrum, expand opportunities for broadband communication access for all persons, increase competition among telecommunications service providers, decrease equipment costs for consumers, and increase worldwide market opportunities for US manufacturer of all sizes.

39. We also adopted a Secondary Markets Policy Statement setting forth principles for promoting the efficient use of radio spectrum by encouraging the development of secondary markets and identifying key areas the Commission will focus on in its efforts to foster the development of secondary markets for spectrum use.[51] As a first step in this effort, we have proposed rule changes to enable wider use of spectrum rights leasing by licenses of wireless radio spectrum.[52] In the past year we have also proposed to revise or modify our rules to facilitate different types of spread spectrum devices,[53] and modified the Table of Allocations.[54] Each of these proceedings is targeted at enhancing the ability of new and innovative telecommunications systems and services

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[49] *Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems,* Notice of Inquiry, 13 FCC Rcd 16376 (1998); Notice of Proposed Rulemaking, FCC 00-163 (rel. May 15, 2000).

[50] *Inquiry Regarding Software Defined Radios,* ET Docket No. 00-47, Notice of Inquiry, 15 FCC Rcd 5930 (2000), Notice of Proposed Rulemaking, FCC 00-430 (rel. Dec. 8, 2000).

[51] *Secondary Markets Policy Statement*, note 36, *supra.*

[52] *Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets,* Notice of Proposed Rulemaking, WT Docket No. 00-230, FCC 00-402 (rel. Nov. 27, 2000).

[53] *Amendment of Part 15 of the Commission's Rules Regarding Spread Spectrum Devices,* Notice of Proposed Rulemaking, 14 FCC Rcd 13046 (1999), First Report and Order, FCC 00-312 (rel. Aug. 31, 2000).

[54] Staff Report at 186-87.

to be developed and deployed.[55]

C. Actions Already Underway To Make Commission Processes More Streamlined, Flexible, and Deregulatory

1. Common Carrier Bureau

40. There are several common carrier proceedings in progress that are designed to achieve the goals of the Biennial Regulatory Review. For example, we instituted a review of the Part 36 jurisdictional separations procedures, which govern the division of the carriers' regulated costs between the state and federal jurisdictions, by referring separations reform to the Federal-State Joint Board on separations.[56] The separations Joint Board recommended that the Commission freeze certain elements of the separations process, including the jurisdictional allocation factors, for five years while the Joint Board and the Commission continue to review issues regarding comprehensive separations reform.[57] We are currently considering the Joint Board's recommendations to streamline and provide stability to the separations process and jurisdictional cost allocations.

41. We have also taken steps to begin consideration of rural carrier high-cost universal service issues in consultation with the Federal-State Joint Board on universal service. The Joint Board submitted to the Commission a Recommended Decision regarding the Rural Task Force plan for reforming the distribution of universal service support to rural carriers on December 22, 2000.[58] In addition, the Commission recently issued a Notice of Proposed Rulemaking seeking comment on a Petition for Rulemaking submitted by the Multi-Association Group (MAG), a coalition of incumbent local exchange carrier associations.[59] The Petition sets forth an interstate access reform and universal service support proposal for incumbent local exchange carriers subject to rate-of-return regulation (typically small, rural carriers). The MAG proposal affects many of

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[55] *Id.*

[56] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, Notice of Proposed Rulemaking, 12 FCC Rcd 22120 (1997) (*Separations Reform Notice*).

[57] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, *Recommended Decision*, FCC 00-2 (rel. July 21, 2000).

[58] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 00J-4 (released December 22, 2000). The Joint Board concluded that the Rural Task Force plan is a "good foundation for implementing a rural universal service plan that benefits consumers and provides a stable environment for rural carriers to invest in rural America." *Id.* at para. 1.

[59] *MAG Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, *Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Notice of Proposed Rulemaking, FCC 00-448 (released January 5, 2001).

the rate-of-return LEC pricing issues raised by USTA in its Biennial Review 2000 petition for rulemaking.

42. We also recently streamlined the Part 69 tariff process for access services in response to a petition for rulemaking filed by the National Exchange Carrier Association (NECA).[60] By taking advantage of NECA's advancements in data collection and processing methods, the Commission was able to extend the annual tariff notification deadline, thus assisting smaller companies in making better-informed decisions regarding participation in NECA tariffs.

2. International Bureau

43. Prior to the 2000 Biennial Regulatory Review, we took several steps to streamline the space segment portion of the satellite licensing process. First, we eliminated section 319(d) waiver procedures to permit companies to begin construction, at their own risk, prior to being licensed.[61] Second, we relaxed the rules governing space station licensee reports. Third, we eliminated the distinction between U.S.-licensed domestic satellites and international "separate" satellite systems, allowing satellites to provide both domestic and international services.[62] Fourth, we adopted a framework to evaluate requests by foreign satellite operators to provide service in the United States.[63] In addition, the International Bureau instituted an "auto-grant" process that automatically grants routine satellite earth station applications proposing to use the Ku-band fixed-satellite service frequencies (14.0-14.5 GHz / 11.7-12.2 GHz) to communicate with all satellites authorized to provide service to the United States (the "Permitted List").[64]

44. We also modified our Part 25 rules to provide earth station applicants greater flexibility in applying for and renewing earth stations. For example, we simplified rules for license renewals for temporary fixed earth stations and very small aperture terminal earth stations (VSATs).[65] In addition, the International Bureau (IB) issued a Public Notice that committed to placing routine applications on public notice

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[60] *National Exchange Carrier Association, Inc.*, CC Docket No. 99-316, Order, FCC 00-384 (rel. Oct. 25, 2000).

[61] *See Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, Report and Order, 11 FCC Rcd 21581 (1996) (*1996 Satellite Streamlining Order*).

[62] *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, and DBS Petition for Declaratory Rulemaking Regarding the Use of Transponders to provide International DBS Service*, Report and Order, 11 FCC Rcd 2429, 2430 (1996) (*DISCO I*).

[63] *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Report and Order, 12 FCC Rcd 24094 (1997) (*DISCO II*), recon., 15 FCC Rcd. 7207 (*DISCO II First Reconsideration Order*).

[64] *See Commission Launches Earth Station Streamlining Initiative*, Public Notice, DA 99-1259 (June 25, 1999).

[65] *See 1996 Satellite Streamlining Order*, 11 FCC Rcd at 21594-96.

within 10 business days of receipt by the IB, provided the application includes all required information.[66]

45. We also created an expedited process for global, facilities-based section 214 applications.[67] We 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. These regulations facilitated entry into the international telecommunications market and the expansion of international services. As part of our 1998 Biennial Regulatory Review process, we streamlined our procedures for granting international section 214 authorizations to provide international services, and significantly increased the categories of applications eligible for streamlined processing.[68]

46. In the *Foreign Participation Order*,[69] we broadened the class of foreign-affiliated applicants eligible for post notification of foreign carrier affiliation. In that proceeding, we reduced the prior notification period from 60 to 45 days, and exempted certain classes of foreign carriers from the requirement to submit prior notification.[70]

47. In June, we adopted a Notice of Proposed Rule Making to continue our efforts to streamline the submarine cable landing licensing process.[71] In November 2000, we released an NPRM proposing to amend our rule governing *pro forma* assignments and transfers of control of international section 214 authorizations to more closely correspond to those used for the assignment and transfer of control of CMRS licenses.[72]

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[66] *See International Bureau to Streamline Satellite and Earth Station Processing* Public Notice, Report No. SPB-140 (rel. Oct. 28, 1998).

[67] *See Streamlining the International Section 214 Authorization Process and Tariff Requirements*, Report and Order, 11 FCC Rcd 12884 (1996). The Commission had begun the international Section 214 streamlining process in 1985. *See International Competitive Carrier Policies*, Report and Order, 102 FCC 2d 812 (1985); *recon. denied*, 60 RR2d 1435 (1986); *modified, Regulation of International Common Carrier Services*, Report and Order, 7 FCC Rcd 7331 (1992).

[68] *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*.

[69] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23 891 (1997) (*Foreign Participation Order*), *recon.* 15 FCC Rcd 18158 (2000).

[70] *Id.*

[71] *See Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, Notice of Proposed Rulemaking, 15 FCC Rcd. 20789 (2000).

[72] *2000 Biennial Regulatory Review -- Amendment of Parts 43 and 63 of the Commission's Rules*, IB Docket No. 00-231, Notice of Proposed Rule Making, FCC 00-407 (rel. Nov. 30, 2000). Furthermore, the Commission recently proposed rules to streamline the coordination process between satellite and terrestrial services in shared frequency bands. *See FWLL Request for Declaratory Ruling*, IB Docket No. 00-203;

48. In December 2000, as part of our 2000 Biennial Regulatory Review, we adopted a Notice of Proposed Rule Making proposing changes to Part 25 to streamline the earth station licensing process.[73] In the NPRM, we proposed rule revisions to streamline licensing of applications for "non-routine" earth stations and address the use of power levels that exceed the limits contained in our rules. The NPRM proposes a simplified license application form for "routine" earth stations so that they may be processed more efficiently. The NPRM also seeks comment on streamlining the VSAT rules, and whether the blanket-licensing provisions developed for VSATs can be extended to other types of earth stations. Finally, the NPRM considers other streamlining efforts and revisions to other miscellaneous rules applicable to earth stations and space stations.

3. Wireless Telecommunications Bureau

49. In the Universal Licensing proceeding, which was part of the 1998 Biennial Regulatory Review, the Commission furthered the implementation of the Universal Licensing System (ULS) by consolidating and streamlining its licensing rules and procedures for all wireless services.[74] Furthermore, as part of a proceeding initiated during the 1998 Biennial Regulatory Review, we recently adopted a Report and Order which streamlined, clarified, and eliminated the rules applicable to Part 90 private land mobile licensees.[75] Also in conjunction with the 1998 Biennial Regulatory Review, we amended our Part 97 Amateur Radio rules to simplify licensing classifications in this service, streamline and update Amateur license examination procedures, and eliminate other outdated rules.[76]

50. In addition to these actions that were part of the 1998 Biennial Review, we have also granted section 10 forbearance of section 310(d). This action enables telecommunications carriers to carry out *pro forma* assignments and transfers without regulatory delay, subject only to the requirement that they notify the Commission of the

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OnSat Petition for Declaratory Order, SAT-PDR-19990910-0091, Notice of Proposed Rulemaking, FCC 00-369 (rel. Oct. 24, 2000).

[73] *2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, IB Docket 00-248, Notice of Proposed Rule Making, FCC 00-435 (rel. Dec. 14, 2000).

[74] *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*, Notice of Proposed Rulemaking, 13 FCC Rcd 9672 (1998); Report and Order, 13 FCC Rcd 21027 (1998); Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11145 (1998).

[75] *1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Radio Services*, Notice of Proposed Rulemaking, 13 FCC Rcd 21133 (1998); Report and Order, FCC 00-235 (rel. July 12, 2000).

[76] *1998 Biennial Regulatory Review – Amendment of Part 97 of the Commission's Amateur Service Rules*, Notice of Proposed Rulemaking, 13 FCC Rcd 15798 (1998); Report and Order, 15 FCC Rcd 315 (1999).

change.[77] The Wireless Telecommunications Bureau has also engaged in a comprehensive effort to streamline its procedures, including deploying the Universal Licensing Service and expanding the use of electronic filing, expanding and expediting the licensing process via auctions, eliminating the case backlog, resolving pending matters quickly, and processing license transfers and assignments efficiently.

4. Mass Media Bureau

51. In the *Call Sign Report and Order,* we amended several rules to ease and speed call sign request processing.[78] We further amended our low-power television station identification rules to allow low-power television permittees and licensees to be assigned four-letter call signs, *via* the Internet on-line process, in lieu of five-character alphanumeric call signs.[79] Implementation of the on-line system enhances the speed and certainty of radio and television broadcast station call sign assignments, thereby providing better service to all broadcast station licensees and permittees.

52. In the *Competitive Bidding First Report and Order,*[80] we adopted new competitive bidding rules to select among mutually exclusive applications for new commercial full-power radio station licenses, analog television station licenses, and a variety of secondary commercial broadcast service licenses (low-power television, FM translator, and television translator services).[81] In contrast to the comparative hearing process, previously used, the competitive bidding rules provide a more streamlined method for awarding authorizations, and, as a result, expedite service to the public.

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[77] *Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers,* Memorandum Opinion and Order, 13 FCC Rcd 6293 (1998).

[78] *In the Matter of 1998 Biennial Regulatory Review – Amendment of Parts 73 and 74 Relating to Call Sign Assignments for Broadcast Stations*, Report and Order, 14 FCC Rcd 1235 (1998) (*Call Sign Report and Order*). Specifically, the *Call Sign Report and Order* amended the Commission's rules to replace the requirement that parties file written requests for the registration or change of call signs with a new on-line call sign inquiry, reservation, and authorization system that is accessible through the Internet, 47 C.F.R. § 73.3550.

[79] 47 C.F.R. § 74.783.

[80] *In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses; Reexamination of the Policy Statement on Comparative Broadcast Hearings; and Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases*, First Report and Order, 13 FCC Rcd 15920 (1998), *on reconsideration,* 14 FCC Rcd 8724, *on further reconsideration,* 14 FCC Rcd 12541 (1999).

[81] While concluding in the Report and Order that the channels reserved for ITFS were not exempt from competitive bidding, the Commission announced that, given the instructional nature of the ITFS service and the long-standing reservation of the ITFS spectrum for noncommercial educational use, it would request Congress to clarify whether it intended the Commission's expanded auction authority to include ITFS. First Report and Order, 13 FCC Rcd at 15999-16002.

53. In the *Nontechnical Streamlining Report and Order*, we made fundamental changes in our broadcast application and licensing procedures to reduce unwarranted applicant and licensee burdens, while preserving the public's ability to participate fully in the broadcast licensing process.[82] The Commission also has adopted new certification-based application procedures and mandatory electronic filing rules for fifteen key Mass Media Bureau broadcast application and reporting forms. These changes are designed to make filings easier, faster, and more resistant to error. In April, the Mass Media Bureau implemented electronic filing procedures for six broadcast application forms. Electronic filing of three of these forms became mandatory on November 1, 2000.

54. We have also streamlined our AM and FM, noncommercial educational (NCE) FM, and FM translator technical rules.[83]

5. Cable Services Bureau

55. Earlier this year, we adopted a proposal to revise the rules governing the filing of applications and forms to facilitate electronic filing.[84] The Cable Operations and Licensing System (COALS) is a new electronic filing system that should significantly enhance the availability of cable system information to the cable industry and the public, and reduce the cost of filing applications and obtaining information.

6. Enforcement Bureau

56. We revised and streamlined the formal complaint rules in 1997 and 1998 in light of the Telecommunications Act of 1996. The 1997 rule changes, in general, were designed to: (1) promote settlement efforts to enable parties to resolve disputes on their own; (2) improve the utility and content of pleadings; and (3) streamline the formal complaint process by eliminating or limiting procedural devices and pleading opportunities that contributed to undue delay.[85] The 1998 rule changes created the Accelerated Docket, a procedure that results in quicker formal decisions from the Commission for certain complaints selected by the staff at the request of the parties, and

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[82] *In the Matter of 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities,* Report and Order, 13 FCC Rcd 23056 (1998), *on reconsideration*, 14 FCC Rcd 17525 (1999) (*1998 Nontechnical Streamlining Report and Order*).

[83] *See In the Matter of 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, First Report and Order*, 14 FCC Rcd 5272 (1999) (*1999 Technical Streamlining First Report and Order*) and *Second Report and Order on Technical Streamlining,* FCC 00-368, (rel. November 1, 2000).

[84] *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System,* CSB Docket 00-78, Notice of Proposed Rulemaking, FCC 00-165, May 23, 2000.

[85] *See In the Matter of Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers,* Report and Order, 12 FCC Rcd. 22497 (1997).

helps structure settlement discussions.[86]

7. Office of Communications Business Opportunities

57. The Commission recently completed its second report under section 257(c) of the Communications Act, 47 U.S.C. § 257(c), regarding steps the Commission has taken to eliminate market entry barriers for entrepreneurs and other small businesses in telecommunications.[87] The Commission continues to meet its substantial statutory obligations under the Regulatory Flexibility Act (RFA) and the Small Business Act before any new rules are adopted.[88] In comments, USTA recommends that the Commission "add to its analysis a determination that it has complied with the definition of small business as articulated by the U.S. Small Business Administration by including small incumbent LECs within that definition when contemplating the adoption of a new regulation."[89] We note that, as a result of past, close coordination with the Small Business Administration, we include small incumbent LECs in our RFA analyses and certifications. This is consistent with the views of the SBA's Office of Advocacy that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[90] Although we already include small incumbent LECs under RFA, we emphasize in those rulemakings that such RFA actions "ha[ve] no effect on FCC analyses and determinations in other, non-RFA contexts."

8. Office of Engineering and Technology

58. As part of the ongoing efforts to privatize and streamline the equipment authorization process to allow designated private parties to issue equipment authorizations, the Commission announced the identification of private laboratories accredited by the National Institute of Standards and Technology as certified Telecommunications Certification Bodies for issuing equipment authorizations.[91] The

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[86] *See In the Matter of Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Second Report and Order, 13 FCC Rcd. 17018 (1998).

[87] Staff Report at paras. 174-175; *see In the Matter of Section 257 Report to Congress: Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses*, Report, FCC 00-279 (released Aug. 10, 2000) (*see* http://www.fcc.gov/Bureaus/OCBO/fcc00279.html).

[88] Staff Report at paras. 176-180; *see generally* Regulatory Flexibility Act of 1980, *as amended*, 5 U.S.C. § 601 *et seq.*; Small Business Act, 15 U.S.C. § 632.

[89] USTA comments at p. 2.

[90] Letter *from* Jere W. Glover, Chief Counsel for Advocacy, SBA, *to* William E. Kennard, Chairman, FCC (May 27, 1999).

[91] *Office of Engineering and Technology and Common Carrier Bureau Announces the Designation of Telecommunication Certification Bodies (TCBs) to Approve Radiofrequency and Telephone Terminal Equipment*, Public Notice, DA 00-1223 (rel. June 2, 2000), 15 FCC Rcd 18705 (2000).

Commission has also initiated preliminary work with NTIA and Department of Defense to address prospective commercial uses of the 90 GHz band.[92]

9. Office of General Counsel

59. We recently modified our rules regarding *ex parte* presentations in order to make those rules simpler and clearer. In 1998 we also revised our rules and clarified our policies regarding the treatment of competitively sensitive information.

10. Office of Managing Director

60. We are working to make our website as accessible and useful as possible. Specifically, we plan to develop electronic systems or sub-systems to provide Internet tracking information about Commission proceedings and processes, including licensing, policy development, and issues resolutions. During Fiscal year 2001, the agency plans to define requirements for an agency-wide Intelligent Gateway. For Fiscal year 2002, the agency plans to implement the Intelligent Gateway to provide the public, via the Internet, electronic access to tracking and status information about Commission proceedings including licensing and auctions matters, policy development, and issue resolution among parties.

IV. STAFF RECOMMENDATIONS ACCEPTED IN THIS REPORT

A. Overview

61. The staff recommendations we accept in this report are divided into substantive and procedural areas: (1) recommendations to consider repealing or modifying rules which are no longer in the public interest because of competitive, technological, legal or other changes; and (2) recommendations to make Commission processes more streamlined, flexible, or deregulatory. Most, but not all, of the staff recommendations remain unchanged since the initial staff report. We note in discussions throughout this report the views of commenters and how, where applicable, staff recommendations have been modified.

B. Recommendations to consider repealing or modifying rules which are no longer in the public interest because of competitive, technological, legal or other changes

1. Common Carrier Bureau

62. We accept staff's recommendation that we seek comment on a broad range of economic, legal and policy issues raised by the current system of intercarrier compensation for the origination and termination of telecommunications traffic, and seek to identify alternative approaches that are more consistent with the long term

[92] *FCC's Office of Engineering and Technology to Host Forum on 90 GHz Technologies*, Public Notice, DA 00-1191, May 31, 2000, and Public Notice, DA 00-1504, July 6, 2000.

development of competition.[93] We agree with staff that an appropriate, consolidated set of rules could reduce opportunities for arbitrage, eliminate incentives for inefficient market entry strategies, and reduce transaction costs.[94]

63. We also accept staff's revised recommendation regarding the separate subsidiary requirement for independent incumbent local exchange carriers (ILECs) in Part 64, Subpart T.[95] Specifically, we will initiate a proceeding to seek comment on modifying Part 64, Subpart T to exclude those ILECs that qualify as rural telephone companies, as defined in section 153(37) of the Act, from the requirement that independent incumbent LECs provide interexchange service through a separate subsidiary. In addition, we agree with staff that, with respect to all other independent ILECs, the Commission should consider limited waivers of the separate subsidiary requirements in circumstances where the prohibition on joint ownership of equipment creates hardship for an ILEC's equipment choices.[96] We also accept the staff recommendation that the Commission consider simplifying review of the average schedules and changing the schedule for NECA Board elections. Changes in these areas could reduce NECA's administrative costs.

64. In addition, we accept staff's recommendation to initiate a proceeding to remove portions of rules that are date-specific or transitional and that have since become outdated.[97] For example, section 69.117 of the Commission's rules concerns the Lifeline Assistance program and states that the provisions in this section shall be effective from August 1, 1988 through December 31, 1997.[98] Thus, this section expired almost 3 years ago, yet it remains part of the Commission's rules. The elimination of these outdated provisions, such as section 69.117, will streamline our rules and avoid confusion among parties affected by those rules.

2. International Bureau

65. We accept staff's recommendation that we initiate a proceeding on

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[93] Such a proceeding would potentially affect provisions of Parts 51, 61, and 69.

[94] *See* Staff Report at paras 49-51.

[95] *See* Staff Report at para 52.

[96] *See* ITTA Comments at 8-9.

[97] Specifically, the staff identified the following rule sections: 36.701 – Lifeline connection assistance expense allocation – general; 51.211 – Toll Dialing Parity Implementation; 51.515(b)-(c) – Application of access charges; 53.101 – Joint marketing of local and long distance services by interLATA carriers; 53.201(a)-(b) – Services for which a separate 272 affiliate is required; 54.701(b)-(e) – Administrator of universal service support mechanisms; 64.1320 – Payphone compensation verification and reports; 64.1903(c) – Obligations of all incumbent independent local exchange carriers; 69.116 – Universal service fund; 69.117 – Lifeline assistance; 69.126 – Nonrecurring charges; 69.127 – Transitional equal charge rule; 69.612 – Long term and transitional support.

[98] The Lifeline Assistance program was significantly revised and moved to Part 54 in 1997.

extending the detariffing regime adopted for domestic interexchange services[99] to the international services of non-dominant interexchange carriers, including Commercial Mobile Radio Service providers and U.S. carriers classified as dominant solely because of foreign affiliations.[100] The staff found that detariffing international interexchange services will reduce the burdens placed on carriers and the Commission. All of the parties that commented on this issue support the staff recommendation.[101] We also accept staff's recommendation that we consider amending, as part of the detariffing process, the rule relating to the filing of contracts between carriers.[102] In addition, we accept staff's recommendation that we review the financial qualification rules contained in section 25.140 to determine if those rules are still necessary, or if a different showing of financial qualifications might be appropriate.[103]

66. Staff also recommends that we consider repealing or modifying several other rules, and we accept those recommendations here. We agree to consider repealing section 25.141 because the Commission reallocated radio-determination satellite service spectrum (RDSS) to the Mobile Satellite Service (MSS), and thus the RDSS rules in section 25.141 do not appear to serve any purpose at this time. We also agree to consider repealing subpart H since it implements section 304 of the Communications Satellite Act of 1962, which ceased to be effective with the enactment of the ORBIT Act. We accept the staff's recommendation that we eliminate the provision contained in section 25.144 identifying the specific Digital Audio Radio Service (DARS) applicants eligible for the auction.[104] This subsection is no longer necessary because DARS licenses have already been issued. We also agree that we should consider eliminating several duplicative rules in Part 63 and modifying a number of rules that are unclear, ambiguous, or contain errors.[105]

3. Wireless Telecommunications Bureau

67. We accept staff's recommendation to initiate a rulemaking to review the Part 22 Cellular rules[106] to consider which of these rules are obsolete because of

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[99] MCI WorldCom, Inc. v. FCC, 209 F.3d 760 (D.C. Cir. 2000).

[100] *2000 Biennial Regulatory Review; Policy and Rules Concerning the International Interexchange Marketplace*, IB Docket No. 00-202, Notice of Propose Rule Making, 15 FCC Rcd 20008 (2000) (*International Detariffing NPRM*).

[101] *See, e.g.*, Alloy Comments at 3, Sprint Comments at 5, GSA Reply Comments at 12-13.

[102] *Id.*

[103] 47 C.F.R. § 25.140.

[104] 47 C.F.R. § 25.144.

[105] *2000 Biennial Regulatory Review, Amendment of Parts 43 and 63 of the Commission's Rules*, IB Docket No. 00-231, Notice of Propose Rule Making, FCC 00-407 (rel. Nov. 30, 2000).

[106] 47 C.F.R. Section 22 *et seq.*

competitive or technological developments.[107] We also accept staff's recommendation to review rules regulating other Part 22 services, such as paging and air-to-ground service, on the same basis.[108]

68. In the 1999 *Spectrum Cap Report and Order,*[109] we stated that we would review our limitations on the aggregate amount of broadband Personal Communications Services (PCS), cellular, and Specialized Mobile Radio (SMR) spectrum that an entity can hold in any market as part of the 2000 Biennial Regulatory Review. Staff recommends and commenters concur that we should consider this issue further. We accept this recommendation and will consider a Notice of Proposed Rulemaking in the near future that will initiate this review, taking into consideration existing competitive conditions and technological developments that could affect the continued need for a cap.[110]

69. As a result of the comments, staff now recommends that we initiate a proceeding to bring cellular, PCS, and the General Wireless Communications Service technical and operational rules under parts 22, 24, and 27 into conformity with each other.[111] In particular, staff recommends, in response to comments filed by the Telecommunications Industry Association (TIA), that we consider using the Effective Isotropic Radiated Power (EIRP) units of measurement in Parts 22 and 24 of our rules (now EIRP units are used in Part 24 and Effective Radiated Power (ERP) units are used in Part 22).[112] We accept these staff recommendations and ask the Wireless Telecommunications Bureau to submit its rulemaking proposals to us expeditiously.

70. In addition, in response to comments from TIA, staff recommends that we consider amending sections 90.207 (types of emissions) and 90.210 (emission masks) to harmonize them with the International Telecommunications Union (ITU) Radio Regulations.[113] Also in response to comments from Alloy, staff recommends that we review the application procedures for Quiet Zones[114] to determine whether they can be

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[107] *See* Staff Report at para. 104.

[108] *Id.*

[109] 1998 Biennial Regulatory Review – Spectrum Aggregation Limits for Wireless Telecommunications Carriers, Cellular Telecommunications Industry Association's Petition for Forbearance From the 45 MHz CMRS Spectrum Cap, *Report and Order*, 15 FCC Rcd 9219 (1999). *See also* WT Docket No. 98-205, Memorandum Opinion and Order on Reconsideration (rel. November 8, 2000).

[110] *See* Staff Report at para. 107.

[111] *See* Appendix IV at p. 69.

[112] *Id.*

[113] *See* Appendix IV at p. 183.

[114] See 47 C.F.R. § 1.924. Quiet zones are those areas where it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to interference.

made more efficient.[115] We accept these recommendations.

4. Mass Media Bureau

71. Part 21 of the rules specifies the manner in which portions of the 2150 to 2162 MHZ and 2500 to 2690 MHZ spectrum are used for fixed analog, digital and two-way broadband communications services. In addition, Part 21 provides for continuing oversight of the facilities and practices of licensees. Recent rulemakings have afforded Part 21 licensees increased flexibility to provide a variety of new, enhanced services. Accordingly, we accept the staff's recommendation to review Part 21 to determine whether rule changes are warranted in light of recent decisions and to remove unnecessary requirements.

5. Cable Services Bureau

72. We accept staff's recommendation that we conduct a general review of our rules to eliminate sections that are no longer relevant or are no longer accurate in light of judicial decisions or the elimination of certain statutory requirements. Specifically, we accept staff's recommendation that we consider the following: (1) the elimination of those portions of the rate rules pertaining to cable programming services tier (non-basic) rates which, pursuant to section 623 (c) (4), sunset on April 1, 1999; (2) the elimination of the rules based on section 505 of the 1996 Act, including section 76.27, relating to incompletely scrambled sexually-oriented programming that were found to be unconstitutional by the recent Supreme Court decision in *United States v. Playboy Entertainment Group, Inc.*, No. 96-1682 (decided May 22, 2000); and (3) the deletion of section 76.209, applying the fairness doctrine to cablecast programming.

6. Office of Engineering and Technology

73. We accept staff's recommendation to initiate steps as necessary to clarify ambiguities in the Commission's equipment authorization rules and eliminate ambiguities in equipment test procedures.[116] We also accept staff's recommendations to initiate proceedings to modify certain technical rules that may inhibit the development of new unlicensed products.[117]

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[115] *See* Appendix IV at p. 9.

[116] Specifically, the staff recommended clarifying equipment authorization procedures for transmitters that operate in both U.S. and overseas modes; incorporating the ANSI C63.17 standard for testing unlicensed PCS systems into our rules; and facilitating development of standardized SAR test procedures. *See* September Staff Report at paras. 191-93 and 47 C.F.R. Part 15. In addition, staff concurred with commenters recommendations to modify test temperatures for the Family Radio Service, 47 C.F.R. §2.1055, and modify FCC labels under Declaration of Conformity to allow the label to say the device can be used for other than home or office use, 47 C.F.R §15.19. *See also* Appendix IV. We further concur in the staff's recommendation to not initiate action on several additional proposed technical rules changes.

[117] Specifically, staff recommended modifying 47 C.F.R. §15.231. For further discussion, *see* Staff Report at para. 195 and rule analysis of Part 15 at pp. 25-26.

C. Recommendations to Make Commission Processes More Streamlined, Flexible, and Deregulatory

1. International Bureau

74. We accept staff's recommendation that we initiate a proceeding on Part 25 of our rules to streamline further the earth station and space station licensing processes.[118] Hughes Network Systems and WorldCom expressed support for the staff's recommendation.[119] We also accept staff's recommendation that we seek comment on requiring electronic filing of earth station applications, which could save substantial time in processing the applications. In addition, we accept staff's recommendation that we initiate a proceeding to expand the availability of *pro forma* transfers of control and assignments of international section 214 authorizations, which would reduce processing burdens and provide greater regulatory certainty.[120]

75. We also accept staff's recommendation that we undertake a proceeding to review the reporting requirements in Part 43 of our rules for international telecommunications carriers. The staff recommends that we consider modifying the reporting requirements to reflect recent changes that have occurred in the telecommunications industry. These reports aid the Commission, industry, and international agencies in planning and understanding international telecommunications markets. The staff believes, however, that we should consider whether we could reduce the reporting burdens without eliminating the benefits these reports provide.

2. Wireless Telecommunications Bureau

76. To address concerns that the license renewal process places significant burdens on licensees, particularly public safety licensees that provide essential emergency services to their communities, we accept staff's recommendation that we initiate a proceeding that would consider possible changes to license renewal procedures for wireless licensees. Among the options that staff recommended for consideration are: (1) extending license terms beyond 10 years, and (2) implementing automatic or default renewal procedures to avoid late filing problems.[121]

77. We also accept staff's recommendation that we initiate a proceeding that would consider the possibility of partially privatizing the licensing process for the private and common carrier microwave services, to the extent they are licensed on a site-by-site,

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[118] *See 2000 Biennial Regulatory Review– Streamlining and other Revisions of Part 25 Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, IB Docket No. 00-248, Notice of Proposed Rule Making, FCC 00-435 (rel. Dec. 14, 2000).

[119] Hughes Network System Comments, WorldCom Comments at 3.

[120] *See 2000 Biennial Regulatory Review– Amendment of Parts 43 and 63 of the Commission's Rules*, IB Docket No. 00-231, Notice of Proposed Rule Making, FCC 00-407 (rel. Nov. 30, 2000).

[121] *See* Staff Report at para. 105.

frequency-by-frequency basis. This could potentially allow private frequency coordinators to perform certain licensing functions for designated spectrum bands, including, for example, maintaining the licensee database.[122]

3. Consumer Information Bureau

78. We accept staff's recommendation that we review the informal complaint rules found at sections 1.716 – 1.718 of the Commission's rules.[123] Staff concluded that these rules do not specify the documentation consumers must file with the Commission to complete their complaints and that they do not prescribe a specific timeframe for carriers to respond to an informal complaint. Staff noted that, as currently written, these rules lead to repetitive filings from consumers, unnecessary costs to consumers, carriers and the Commission, as well as a lack of predictability for consumers and the industry.

79. Commenters agree that the rules should specify the type of documentation that a consumer must file with the complaint.[124] WorldCom also states that the Commission should retain its flexibility in determining a timeframe within which a carrier must respond to a complaint rather than set a specific time period.[125] We agree with staff that a review of the informal complaint rules will best address these issues.

80. We also accept staff's recommendation that we review these rules to determine whether we should expand their scope to cover all informal complaints. These rules have traditionally been applied only to wireline complaints, while other complaints have been handled in a less structured manner.

4. Office of Engineering and Technology

81. Staff recommends review of emission limits on devices above 2 GHz to determine if the current limits are appropriate.[126] We agree that analysis of the significant amount of information gained in the past decade on emissions from devices above 2 GHz might impact the limits currently established by our rules. We agree that staff should consider undertaking such analysis. We also agree with the staff recommendation to continue to work with the National Telecommunications and Information Administration (NTIA) to ascertain whether certain restrictions on non-government systems remain necessary in light of significant changes in government legacy systems or demographics since such restrictions were imposed.[127] We also encourage all Offices and Bureaus to

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[122] *See* Staff Report at para. 106.

[123] 47 C.F.R. §§ 1.716 – 1.718. Staff Report at para. 165.

[124] WorldCom Comments at 2; Alloy Comments at 10.

[125] WorldCom Comments at 2 - 3. WorldCom also asks that the Commission work to increase the speed at which it notifies carriers that an informal complaint has been filed. *Id.*

[126] Staff Report at para. 194.

[127] Staff Report at para. 199.

work with technical staff in the Office of Engineering and Technology (OET) to ensure the technical rules within their areas do not inadvertently thwart innovation.[128]

5. Office of General Counsel

82. The Office of General Counsel oversees compliance with many of the Commission's procedural rules. Staff does not recommend any specific changes to these rules at this time, and we agree with staff's recommendations. We believe that we should not request comment on WorldCom's proposal that we accept a cover form that carriers would need to use when filing requests for reconsideration, waiver, or review of actions taken pursuant to delegated authority. For reasons set forth in the rule analysis of the Staff Report,[129] we believe that it is not appropriate to consider this proposal as part of the Biennial Regulatory Review process. This does not preclude us in another context from seeking to develop ways to improve the method by which the Commission prioritizes and resolves requests for Commission action. We also agree that we should not at this time accept the time limitation advocated by USTA and ITTA. Although we recognize the benefits of swift resolution of requests for action, the Commission needs the flexibility to set its agenda in a manner that reflects the relative urgency of competing requests for agency action and allocates limited Commission resources in the most appropriate manner.

V. CONCLUSION

83. We commend the Bureaus and Offices for working together to prepare the numerous recommendations that we have accepted today. The achievements of our 2000 Biennial Regulatory Review process have been significant and would not have been possible without the coordinated and dedicated efforts of staff in each of the Bureaus and Offices. We direct the Bureaus and Offices to prepare notices of proposed rulemakings to carry out the recommendations we accept herein so that we may institute these proceedings expeditiously.

84. We will continue to take a proactive approach to reviewing, modifying, and repealing our rules, and believe that the 2002 regulatory review will benefit from and build upon prior biennial reviews. As competition increases, technology evolves, and laws change, it will be critical for us to modify and eliminate our rules, and improve our processes, to reflect these changes. Accordingly, we direct staff to continue its ongoing efforts to review Commission rules and suggest appropriate modifications and improvements. We also believe that the biennial review process can be improved over time, and we urge staff and interested parties to reflect upon and make suggestions for procedural changes that we might incorporate in our future regulatory reviews.

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[128] Staff Report at para. 200.

[129] *See* Appendix IV at p. 4.

We remain committed to eliminating unnecessary rules and streamlining our procedures to minimize the burden of our regulations on the carriers in the increasingly competitive environment, while safeguarding the public interest.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas

Secretary

SEPARATE STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re 2000 Biennial Regulatory Review (rel. January 17, 2001)

The biennial review process has taken another significant step forward with today's item. By providing a subpart-by-subpart analysis of the Commission's rules, the 2000 review provides a meaningful opportunity for debate about each section of our rules. I also wish to applaud those parties that filed comments on the staff report. Their input is an invaluable resource in this process. Overall I am heartened that the 2000 review comes much closer to achieving the goals of Section 11 than the 1998 version.[1]

However there is still much work to be done on all sides to make the Biennial Review process more productive, complete, and compliant with the intent of Section 11.

The Act provides that the Commission "shall review all regulations . . . that apply to . . . any provider of telecommunications service; and shall determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition . . . ." In order to fulfill the requirements of the statute, I believe the FCC must review its regulations on a rule-by-rule basis. Thus future biennial reviews should provide the public with a rule-by-rule rationale for the continued utility of each individual regulation.

While biennial review imposes an obligation on the Commission to perform this analysis, it also provides an important opportunity for private parties to advocate the abolition or modification of burdensome regulations. In this case, eighteen parties filed initial comments and four filed replies. While I appreciate these significant contributions, I also encourage other regulated companies to take an active role in this process. Private parties are in the best position to judge the impact of meaningful economic competition. The Commission needs their help to generate a meaningful biennial review.[2]

As I have stated before, the biennial review is not a burden to be endured or a hoop through which we must dutifully jump every other year. It is, instead, an intellectual prism through which we should evaluate each of our regulatory choices. It is also an opportunity to keep our regulations consistent with marketplace and technological change. This process requires constant vigilance and a commitment to the core philosophy of the statute. As the Commission moves forward, it is my sincere hope that we will devote full-time year-round staff to this endeavor. Such a commitment will

[1] The 2000 effort is a vast improvement over the 1998 edition. Separate Statement of Commissioner Harold Furchtgott-Roth, 1998 Biennial Review, Notice of Inquiry, 13 FCC Rcd. 11276 (1998).

[2] In this regard, it is my hope that future biennial reviews will provide for a longer notice and comment period.

ensure that the biennial review process attains the prominence and resources it requires and deserves.

A few elements of the report merit particular attention. First, we propose to incorporate a biennial review analysis into each new rulemaking proceeding. Such an initial analysis would set forth the original purpose of the rule, the means by which the rule was intended to advance that purpose, and the state of competition in the relevant market at the time the rule was promulgated.[3] This analysis would be included in each new rulemaking. Then subsequent biennial reviews, rather than recreating the rationale for a given rule and the concurrent state of competition from archives, will be able simply to assess whether the original basis is still valid. Such an open and transparent process also serves to facilitate a rule-by-rule Section 11 review.

I am also encouraged by the proposal to create an intelligent, integrated, information management system known as an "Intelligent Gateway."[4] Such a gateway should include a tracking system that will allow the public to monitor the procedural status of items as they move through the Commission. I have long voiced concern over the apparent need of outside parties to retain "inside the beltway" lobbyists to pierce the veil of Commission proceedings. The creation of a public tracking system would be an important step towards elimination of some of the unnecessary opaqueness that has been a part of our decision-making.

Finally I wish to acknowledge the fine work of the FCC's staff on this project. They have done an impressive job of improving the biennial review paradigm. Their hard work and dedication have made today's voluminous report possible. In particular I once again wish to express my personal appreciation to the leaders of the Biennial Review team: Mania Baghdadi, David Furth, Lisa Gelb, Anna Gomez, Jake Jennings, Linda Kinney, Cheryl Kornegay, Jeff Lanning, Elizabeth Lyle, Michael Marcus, Pam Megna, Claudia Pabo, Yog Varma, Richard Welch, and Jack Zinman. Yog and Elizabeth merit special praise for their willingness to pick up the biennial review baton for this final stretch run.

In the months ahead, I look forward to working with the staff, my fellow commissioners, and private parties to implement the important initiatives in today's report.

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[3] Staff Report at ¶ 11. The Staff Report indicates such an analysis will be performed "where relevant." *Id.* In my view, the state of competition when any rule is adopted creates an important benchmark from which to assess the changes in competition at the time of the next biennial review. Because all regulations are subject to the review, I believe the state of competition is always relevant. However, in the subsequent biennial review the Commission is always free to decide that changes in the state of competition do not alter the need for the regulation.

[4] See Report at ¶ 60.