



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

In the Matter of:

In the Matter of Review of the Section 251 Unbundling  
Obligations of Incumbent Local Exchange Carriers  
Implementation of the Local Competition Provisions  
of the Telecommunications Act of 1996

**CC Docket No. 01-338**

**Teletruth Files Complaint that the FCC's "Triennial Review" is Violating Small  
Business Rights Provided in the Telecom Act, the Regulatory Flexibility Act, and  
President Bush's Executive Order 13272.**

**Request to Redo Triennial Review Proceedings**

**Ex parte Filing on Behalf of Teletruth**

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## **Request to Redo Triennial Review Proceedings**

The FCC is about to propose new laws that according to many sources will harm small telecom businesses, including Internet Service Providers (ISPs) and Competitive Local Exchange Companies (CLECs).

Teletruth files this ex parte as a Complaint against the FCC. We request that with FCC redo its Triennial review, which looks at the prices of service to competitors, (known as "UNE") because it has violated numerous laws, from the Telecommunications Act of 1996, to the Regulatory Flexibility Act, as well as President Bush's Executive Order 13272.

Teletruth has previously filled comments in 6 broadband proceedings that explain that the FCC's entire process of data collection and conducting its proceedings are in violation of the Regulatory Flexibility Act, which is designed to make sure that small business interests are fully incorporated into any new law.

## **Violations of the Telecom Act**

The FCC is currently working on a rulemaking to re-examine the Commission's policies on unbundled network elements (UNEs), known as the Triennial Review.

According to the New York Times (2/3/03) the FCC is about to make a series of rulings in favor of the Regional Bell local phone monopolies, and hurt small start-up local carrier.

"If, as most expect, the commission adopts a version of the latest draft of the revisions at its Feb. 13 meeting, the new rules will favor the regional Bell operating companies and will hurt the small start-up local carriers and the ailing long-distance giants like AT&T and Worldcom "

And the FCC is also planning on allowing the biggest media conglomerates to expand.

"By spring, Mr. Powell also intends to repeal or relax the ownership rules that have kept the biggest media conglomerates from growing larger."

These will of course be devastating to the small businesses in both telecommunications and broadband as well as all small media concerns.

However, this violates the law and the entire Triennial Review process.



## Section 257 of the Telecommunications Act

The Triennial Review is mandated in Section 257c of the Telecommunications Act: Here's the actual text:

(c) Periodic Review. Every 3 years following the completion of the proceeding required by subsection (a), the Commission shall review and report to Congress on:

(1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified under subsection (a) and that can be prescribed consistent with the public interest, convenience, and necessity; and

(2) the statutory barriers identified under subsection (a) that the Commission recommends be eliminated, consistent with the public interest, convenience, and necessity.

However, the real important part of this section is the opening which was designed to identify and eliminate "market entry barriers for entrepreneurs and other small businesses".

"SEC. 257. [47 U.S.C. 257] MARKET ENTRY BARRIERS PROCEEDING. (a) Elimination of Barriers.--Within 15 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services."

The FCC has perversely misshapen this entire process by making the Act now work to harm the small competitors it was supposed to be opening the markets to allow.

Section 257 also states that the FCC is to favor "diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity."



"(b) National Policy.--In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity."

Based on what has already been stated in the press, and in Commissioner Powell's own words to Congress, the intent is to limit small business's access to networks and choices. In other proceedings, the FCC is also considering the consolidation and removal of regulations on media companies.

### **Numerous Violations of the Regulatory Flexibility Act**

The violations do not stop there. Teletruth believes that the FCC has numerous violations of the Regulatory Flexibility Act. The FCC, under this act, is required to do an impact study on how its laws will harm small businesses. However, the FCC has not done anything of the sort for this proceeding and in its analysis it is using bad data, has ignored numerous groups of small business competitors, including Internet providers, has failed to properly notify those who would be impacted for comments, and has failed to come up with any alternatives. In short, Teletruth believes that there are multiple violation of the law.

And it gets embarrassing. For example, the FCC's market analysis starts with the 1992 telecommunications market. This quote shows that the FCC has not bothered to accurately assess the markets properly.

*"96. Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. firms that may be affected by the new rules."

The FCC also describes the "CAPs", Competitive Access Providers" market. This term has not been in use for over 5 years. And according to this, the FCC nor the Small Business Administration have even a definition of the companies they are proposing to put out of business.



"100. *Competitive Access Providers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, CAP/CLEC carriers and 60 other LECs reported that they were engaged in the provision of competitive local exchange services. We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 349 or fewer small-entity CAPs and 60 or fewer other LECs that may be affected by rules adopted pursuant to this *NPRM*."

The FCC in the Triennial Review has also totally left out the entire class of competitive companies -- the Internet Providers, At last count there were still 5000+ companies, almost all small businesses.

**The FCC Regulatory Flexibility Act's violations includes a lack of proper notification of parties, including the companies directly impacted by the outcome.**

By law, the FCC is required, under the Regulatory Flexibility Act to get small business involved that will be effected by the law into the process and have a separate track to discuss the impacts these laws will have on small businesses. The FCC has failed to do anything of the sort in any of its current proceedings, including this Triennial Review.

To read a more detailed analysis of how the FCC's data collection and process is in violation of the Regulatory Flexibility Act, see our other Comments filed in the 6 broadband proceedings: <http://www.newnetworks.com/teletruthrfacomments.html>

We would also like to point out that the Small Business Administration's Office of Advocacy has presented an Ex Parte letter to the FCC outlining their concerns with the FCC's proposed broadband rulings on the small business Internet providers.

The Office of Advocacy wrote:

"After reviewing the Commission's proposed rule, the IRFA (initial Regulatory Flexibility Analysis) and comments, Advocacy is concerned the Commission has understated the impact on small



ISPs of its tentative conclusion classifying broadband access service as an information service. Classifying broadband access service as an information service would remove the requirements set forth in the Commission's Computer II and Computer III rulemakings that provide carriage to ISPs. Such an action will severely hamper the ability of small ISPs to provide broadband service, stifling competition and slowing down deployment. Although Advocacy shares the Commission's commitment to deregulation to bolster competition and spur economic growth, in this instance, complete deregulation will create impenetrable barriers to entry, eliminating competition from small businesses and removing consumer choice."

To read their Comments

[http://www.sba.gov/advo/laws/comments/fcc02\\_0827.html](http://www.sba.gov/advo/laws/comments/fcc02_0827.html)

New Networks Institute also provided a Small Telecom Business Impact Study that outlines the current Internet Provider markets, the current problems with the FCC's lack of enforcement of the current laws, as well as the potential harm to the industry and US Internet and broadband customers who use competitive services.

See: <http://www.newnetworks.com/smallbusinessimpactstudy.html>

### **Executive Order 13272**

According to the Small Business Administration's Office of Advocacy, the FCC requires that the federal agencies including the FCC, implement policies protecting small businesses. If the previous quote from the New York Times is true, and the FCC is favoring the monopolies over small businesses, then they will be in violation of Executive Order 13272.

"On August 14, 2002, President George W. Bush signed Executive Order 13272 that requires federal agencies to implement policies protecting small businesses when writing new rules and regulations. This Executive Order authorizes Advocacy to provide comment on draft rules to the agency that has proposed or intends to propose the rules and to the Office of Information and Regulatory Affairs of the Office of Management and Budget. It also requires agencies to give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. The agency shall include, in any explanation or discussion accompanying publication in the *Federal Register* of a final rule, the agency's response to any written comments



submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.”

## **Conclusion**

We file this complaint, requesting that the FCC immediately halt its proceedings until these violations have been eliminated from the FCC's process. The consequences of the FCC's actions will help to stifle if not eliminate all small competitors, thus hurting, not only the competitors, but every customer of these companies. This will in turn cause an economic downturn, and not revitalize the economy.

Bruce Kushnick, Chairman, Teletruth

SEC. 257. MARKET ENTRY BARRIERS PROCEEDING.  
(a) ELIMINATION OF BARRIERS- Within 15 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.  
(b) NATIONAL POLICY- In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.  
(c) PERIODIC REVIEW- Every 3 years following the completion of the proceeding required by subsection (a), the Commission shall review and report to Congress on--  
(1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified under subsection (a) and



that can be prescribed consistent with the public interest, convenience, and necessity; and  
(2) the statutory barriers identified under subsection (a) that the Commission recommends be eliminated, consistent with the public interest, convenience, and necessity.