

**The Federal Communications Commission**

11-199



# Final Plan for Retrospective Analysis of Existing Rules

May 18, 2012

## *Executive Summary*

On July 11, 2011, President Obama issued Executive Order 13579, Regulation and Independent Regulatory Agencies. The Executive Order recognizes that independent agencies should promote the goals of protecting public health, safety, welfare and the environment while promoting economic growth, innovation, competitiveness and job creation. The Executive Order asks independent agencies to develop a plan, consistent with law and reflecting the agency's particular resources, regulatory priorities and processes, to periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded or repealed.

Consistent with Executive Order 13579, the Federal Communications Commission (FCC or Commission) developed a Preliminary Plan for Retrospective Analysis of Existing Rules (the "Preliminary Plan") and released it on November 7, 2011. In the Preliminary Plan, the FCC recognized the importance of retrospective analysis: Because it is impossible to anticipate the effect of every rule or every result of innovation, it is prudent to reevaluate rules and data collections in light of new information and circumstances. The Preliminary Plan identified numerous Commission proceedings that predated the Executive Order, as the FCC historically has incorporated retrospective review into its rulemaking process. The Preliminary Plan also described the ongoing agency-wide process of identifying outmoded or counterproductive rules.

After a period of public comment and internal review, the Commission has developed this Final Plan for Retrospective Analysis of Existing Rules (the "Final Plan"). The Final Plan represents the Commission's strategy for incorporating retrospective analysis into its processes for reviewing its rules.

## I. Background

The FCC regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and United States territories. It was established by the Communications Act of 1934 and operates as an independent government agency overseen by Congress.

As specified in Section 1 of the Communications Act of 1934, as amended, the FCC's mission is to "make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."<sup>1</sup> In addition, Section 1 provides that the Commission was created "for the purpose of the national defense" and "for the purpose of promoting safety of life and property through the use of wire and radio communications."<sup>2</sup>

The Commission is committed to being a responsive, efficient and effective agency capable of facing the technological and economic opportunities of the new millennium. As part of the Commission's goal to be a model of excellence in government, the agency has, since 2009, undertaken far-reaching initiatives designed to achieve statutory objectives while removing burdens on industry and promoting innovation and job growth. Since 2009, the Commission has eliminated 219 regulations in furtherance of these goals.<sup>3</sup>

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<sup>1</sup> 47 U.S.C. § 151.

<sup>2</sup> *Id.*

<sup>3</sup> A list of the regulations the Commission has eliminated is attached hereto as an Appendix.

***National Broadband Plan.*** As part of the National Broadband Plan, the Commission staff reviewed a number of FCC rules and policies and suggested revisions or updates. In the first two years of the National Broadband Plan, the FCC has made substantial progress, implementing more than 85% of the items on its ambitious action agenda. This action agenda contained more than 60 key FCC proceedings and initiatives, including proceedings creating the Connect America Fund and the Mobility Fund and reforming intercarrier compensation; clarifying and streamlining the rules that govern broadband network operators' ability to obtain just, reasonable and nondiscriminatory access to utility poles for the build out of their networks; and updating the rules regarding use and deployment of CableCARDs to reduce the burden on multichannel video programming distributors (MVPDs) and consumers.

***Data Innovation Initiative.*** In June 2010, the FCC launched the Data Innovation Initiative to modernize and streamline how it collects, uses, and disseminates data. A new cross-bureau data team was established and the agency's first-ever Chief Data Officer was appointed. As part of the Data Innovation Initiative, the Commission has identified 25 data collections that may be eliminated.

As discussed further below, the Commission regularly examines its existing regulations and identifies means for minimizing regulatory burdens on industry while continuing to advance the public interest.

## II. Scope of Plan

Each Bureau and the majority of Offices in the Commission is involved in retrospective analysis of the rules that it implements. As part of our Data Innovation Initiative, each of the Bureaus is tasked with identifying obsolete or overly burdensome data collections for potential elimination. Each Bureau and Office also has been asked to undertake a thorough review of regulations to identify duplicative, obsolete or repealed rules that should be taken off the books. Every part of the Commission is involved in efforts to eliminate outdated regulations and to promote private investment and innovation that creates jobs and spurs economic growth.

The FCC's regulatory reform efforts extend beyond retrospective review. Under the Administrative Procedure Act, it is common practice for FCC rulemaking decisions to analyze the costs and benefits of proposed regulations as reflected in the agency record. A particular focus has been brought to this process by directing the early involvement of the Commission's Chief Economist in the analytical process of rulemakings and by having FCC staff consult with the staff of the Office of Information and Regulatory Affairs (OIRA) on best practices in conducting cost-benefit analyses. A focus on market-based policies also has helped develop and advance important policy innovations, such as the concept of using incentive auctions for reallocating spectrum, increasing the flexible use of spectrum and considering market-based techniques to more efficiently distribute Universal Service Fund support.

The Commission is committed to thoughtfully and diligently conducting reviews of existing rules, and taking other important steps to meet our statutory obligations and mission in a way that grows our economy, creates jobs and benefits all Americans.

This plan covers the following documents produced by the FCC:

- Existing significant regulations;
- Existing information collections; and
- Future significant regulations.

### III. Efforts Underway Consistent With Executive Order 13579

The Commission's well-established retrospective reviews build upon statutory provisions that require the agency to review existing regulations for continuing relevance and efficacy. As a general matter, to identify additional regulations ripe for retrospective analysis, the Commission considers whether a regulation:

- (1) has been affected by changes in technology or new scientific research or changes in market structure;
- (2) has a disproportionate or undue burden on particular entities, has caused unintended negative effects, or could result in greater net benefits to the public if modified; and
- (3) has been subject to frequent requests for waivers by affected stakeholders or been identified by the public as needing revision.

#### A. Statutory Retrospective Reviews

##### **i) Section 11 of the Communications Act**

The FCC is required by Section 11 of the Communications Act to (1) review biennially its regulations that apply to the operations or activities of telecommunications service providers, and (2) determine whether those regulations are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."<sup>4</sup> Following a biennial review, the Commission is required to modify or repeal any such regulations that are no longer necessary in the public interest.

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<sup>4</sup> 47 U.S.C. § 161.

The FCC's most recent application of Section 11 was its comprehensive 2010 biennial review of telecommunications regulations.<sup>5</sup> Consistent with the Commission's interest in reducing regulatory burdens, a focus of the 2010 biennial review was on rules that relate to data gathering, with the goals of improving data quality and processes, identifying areas where additional data collection is needed and eliminating unnecessary data collections.

## ii) Regulatory Flexibility Act

Section 610 of the Regulatory Flexibility Act requires the FCC to publish annually in the Federal Register a plan for the periodic review of rules that have a significant economic impact on a substantial number of entrepreneurs and other small businesses.<sup>6</sup>

Consistent with the requirements of Section 610, the FCC considers the following factors in reviewing each rule: (a) the continued need for the rule; (b) the nature of complaints or comments received from the public concerning the rule; (c) the complexity of the rule; (d) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules and, to the extent feasible, with State and local rules; and (e) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.<sup>7</sup>

Pursuant to Section 610, the FCC reviews annually its rules that have been in effect for ten years. The FCC releases a Public Notice that is published in the Federal Register and parties are asked to comment on whether the rule should be continued.<sup>8</sup> The Commission then seeks further comment on the rules found to warrant elimination or modification to ensure the development of a complete record on the specific provisions.

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<sup>5</sup> *Commission 2010 Biennial Review of Telecommunications Regulations*, 26 FCC Rcd 16943 (2011).

<sup>6</sup> 5 U.S.C. § 610.

<sup>7</sup> *Id.* § 610(b).

<sup>8</sup> *See, e.g., FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under the Regulatory Flexibility Act, 5 U.S.C. 610*, Public Notice, 26 FCC Rcd 11024 (2011).

### **iii) Section 202(h) – Broadcast Ownership Review**

Section 202(h) of the Telecommunications Act of 1996, as amended, requires the Commission to review its broadcast ownership rules every four years and determine whether they are in the public interest as the result of competition.<sup>9</sup> Under Section 202(h), the Commission must repeal or modify any regulation it determines is no longer in the public interest.

Pursuant to this requirement, the Commission undertakes a rigorous analysis of its broadcast ownership rules every four years. Such review includes conducting field hearings, seeking extensive comment on the current rules and commissioning studies on the current marketplace and the state of the media industry. The 2010 quadrennial review of the FCC's broadcast ownership rules is ongoing.<sup>10</sup>

### **iv) Paperwork Reduction Act**

The FCC reviews its significant information collections at least once every three years pursuant to the requirements of the Paperwork Reduction Act (PRA).<sup>11</sup> The PRA establishes a process for the review and approval of government information collections in order to minimize the paperwork burden for the public, maximize the utility of the information collected and improve the quality and use of the information. To obtain Office of Management and Budget (OMB) approval of an information collection, the FCC is required to demonstrate that the information request is the least burdensome

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<sup>9</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996); Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004) (amending Sections 202(c) and 202(h) of the Telecommunications Act of 1996).

<sup>10</sup> *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 26 FCC Rcd 17489 (2011).

<sup>11</sup> 44 U.S.C. § 3501 *et seq.*

necessary for the proper performance of the agency's functions, is not duplicative and has practical utility.<sup>12</sup>

The FCC is required to request an extension of an OMB approved information collection approximately every three years. Prior to seeking such approval, the FCC conducts a thorough review of its information collection to ensure that the agency does not request an extension of an information collection unless it continues to be necessary. Since 2009, the FCC voluntarily allowed 24 OMB approved information collections to lapse without seeking renewal authorization, reducing burdens on both industry and consumers.

#### **v) Forbearance Requests**

The Commission considers requests for forbearance from statutory or regulatory requirements applicable to telecommunications carriers or services pursuant to Sections 10 and 332 of the Communications Act.<sup>13</sup> The Commission will grant such requests if the requirement is no longer necessary to ensure that service is provided in a just and reasonable manner and consumers will be protected.

### B. Other Retrospective Reviews

The FCC's discretionary retrospective review efforts predate Executive Order 13579. In addition to statutory requirements to routinely review regulations, the Commission conducts retrospective reviews of regulations to address changes in technology or market structure, when it appears that existing rules are disproportionately or overly burdensome or otherwise not operating as intended at the time of adoption and in response to suggestions from outside parties.

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<sup>12</sup> 5 C.F.R. § 1320.5.

<sup>13</sup> 47 U.S.C. §§ 160, 332.

## i) Technological Advances, New Scientific Research or Changes in Market Structure

The Commission regularly reviews its regulations to ensure their continued applicability as a result of changes in technology and industry structure. Some examples include:

- **Universal Service Fund Reform.** The Commission is undertaking a once-in-a-generation overhaul of the multi-billion dollar universal service fund and related rules, and has released several items in connection with this reform effort.
  - **USF/ICC Transformation Order.** On October 27, 2011, the Commission adopted an Order and Further Notice of Proposed Rulemaking (FNPRM) modernizing the universal service fund and intercarrier compensation regime to make affordable broadband available to all Americans and accelerate the transition from circuit-switched to IP networks.<sup>14</sup> The Commission created the Connect America Fund (CAF) to deliver targeted support to areas where broadband funding will have the biggest impact. The CAF includes a Mobility Fund to provide support to accelerate the nation's ongoing efforts to close gaps in mobile wireless service, with the first-ever reverse auction scheduled for September 27, 2012 to award \$300 million in Mobility Fund Phase I support to carriers that commit to provide 3G or better mobile voice and broadband services in areas where such services are unavailable.<sup>15</sup> The Commission also established bill-and-keep as the ultimate end point for intercarrier compensation and took immediate action to end wasteful and costly gaming of the intercarrier compensation system, including schemes such as access stimulation and phantom traffic. The Commission also

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<sup>14</sup> *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011).

<sup>15</sup> *Mobility Fund Phase I Auction Scheduled For September 27, 2012*, Public Notice, 27 FCC Rcd 530 (2012).

established prospective intercarrier compensation rules for Voice over Internet Protocol (VoIP) traffic.

- ***Lifeline/Link Up Reform.*** On January 31, 2012, the Commission adopted a Report and Order and FNPRM that substantially revises the Lifeline program, a program that ensures that eligible low-income consumers who do not have the means to pay for telephone service can receive that service.<sup>16</sup> These reforms substantially strengthen protections against waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; initiate modernization of the program for broadband; and constrain the growth of the program in order to reduce the burden on all who contribute to the Universal Service Fund. The Commission simplified the administration of the Lifeline program and revised the rules to reflect the current marketplace. The Commission also revised the Lifeline program to provide funding on a pilot basis for broadband services in addition to voice service with the goal of making broadband more affordable for low-income Americans. In the FNPRM, the Commission sought comment on multiple issues directed at further improving the efficiency and effectiveness of the Lifeline program.
- ***USF Contribution Reform.*** On April 27, 2012, the Commission adopted a FNPRM seeking to reform the contribution side of universal service, which has not been fundamentally changed since the Commission first developed it in 1997.<sup>17</sup> It requires all telecommunications carriers and

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<sup>16</sup> *Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 11-42, 03-109, 12-23; CC Docket No. 96-45 (rel. Feb. 6, 2012).

<sup>17</sup> *Universal Service Contribution Methodology*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122; GN Docket No. 09-51 (rel. Apr. 30, 2012).

certain other providers of telecommunications to contribute on the basis of their end-user revenues. Providers of interconnected VoIP services must contribute, but providers of broadband Internet access services do not (unless they choose to offer the transmission component of the service on a common-carrier basis). The FNPRM seeks comment with an eye toward comprehensive reform such as that achieved in the High-Cost and Low-Income programs.

- ***Upgrading E-Rate Program.*** In September 2010, the Commission issued an Order upgrading and modernizing the E-rate program (also known as the schools and libraries universal service support mechanism) to improve broadband connectivity to schools and libraries.<sup>18</sup> Building on the Commission's past experience and the experiences of stakeholders with the E-rate program, the Order enables schools and libraries to better serve their communities by providing more flexibility to select and make available the most cost-effective broadband services, simplifies and streamlines the E-rate application process and improves safeguards against waste, fraud and abuse.
  
- ***Innovation in the Broadcast Television Spectrum Band.*** In a November 2010 NPRM, the Commission initiated a process to further address the country's growing demand for wireless broadband services, spur innovation and investment in mobile and ensure that America keeps pace with the global wireless revolution, by proposing to make a significant amount of new spectrum available for broadband.<sup>19</sup> The NPRM focused on the preliminary steps necessary to enable the repurposing of a portion of the frequency bands currently used by

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<sup>18</sup> *Schools and Libraries Universal Service Support Mechanism*, Sixth Report and Order, 25 FCC Rcd 18762 (2010).

<sup>19</sup> *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rulemaking, 25 FCC Rcd 16498 (2010).

broadcast television such that it may later be made available for flexible use by fixed and mobile wireless communications services, including mobile broadband. Reallocation of this spectrum as proposed will provide the necessary flexibility for meeting the requirements of these new applications. New legislation gives the Commission authority to conduct incentive auctions as a means by which broadcasters may voluntarily contribute spectrum for repurposing.<sup>20</sup>

- ***Emergency Alert System Modernization.*** In this Order, the Commission responded to developments in alerting technology by revising its rules to modernize the Emergency Alert System (EAS).<sup>21</sup> Specifically, the item incorporates the latest technologies and capabilities into the existing EAS and provides a foundation for transitioning to next generation alert messaging. The new Common Alert Protocol-based EAS will be more flexible and robust than the current system, will integrate with the Federal Emergency Management Agency's (FEMA) Integrated Public Alert and Warning System (IPAWS), and will be compatible with many state alerting systems. The item also modernizes and streamlines the Commission's EAS rules by eliminating outdated technical and procedural requirements to improve the overall effectiveness of EAS.
- ***Digital Encryption.*** The Commission has proposed modifying its rules to allow cable operators to encrypt the basic service tier in all-digital cable systems.<sup>22</sup> Digital technology enables cable operators to activate cable services remotely, and this proposed rule modification will eliminate the need for many service appointments to subscribers' homes.

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<sup>20</sup> Middle Class Tax Relief Act and Job Creation Act of 2012, Pub. L. No. 112-96 (2012).

<sup>21</sup> *Review of the Emergency Alert System*, Fifth Report and Order, 27 FCC Rcd 642 (2012).

<sup>22</sup> *Basic Service Tier Encryption; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Proposed Rulemaking, 26 FCC Rcd 14870 (2011).

- **Modification of Outage Reporting Requirements.** The Commission adopted an Order in February 2012 amending its outage reporting requirements to account for new technologies.<sup>23</sup> The item makes the interconnected IP-based services upon which consumers are increasingly dependent more reliable by facilitating the analysis of outages, thereby enabling industry to restore services and mitigate outages more efficiently in the future. The Commission deferred the question of outage reporting requirements for broadband Internet service providers pending further study on the issue.
- **Part 43 Rulemaking.** In May 2011, the Commission adopted a Report and Order and FNPRM to modernize and streamline the Commission’s international reporting requirements to reflect changes in technology, regulation and international telecommunications markets.<sup>24</sup> The Commission uses the data collected by these reporting requirements to carry out its statutory duties to protect the interests of U.S. consumers – particularly those who use international services – and U.S. international service providers, and to monitor and facilitate healthy competition in international markets. In the Order, the Commission eliminated a number of outdated reporting requirements. In the FNPRM, the Commission proposed several changes to the reporting requirements that should greatly reduce the burden on smaller carriers and the complexity and detail of the information required from the largest carriers while ensuring that the Commission has the information it needs to carry out its statutory duties and make information available to the public. These reforms are part of the Commission’s Data Innovation Initiative.

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<sup>23</sup> *Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting to Interconnected Voice over Internet Protocol Service Providers and Broadband Internet Service Providers*, Report and Order, 27 FCC Rcd 2650 (2012).

<sup>24</sup> *Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission’s Rules*, First Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 7274 (2011); *see also* Comments of Verizon and Verizon Wireless, GC Docket No. 11-199, at 9 (Feb. 8, 2012).

- ***Enhanced Vehicle Radar Technologies.*** In response to comments received in connection with a review of regulations pursuant to Section 610 of the Regulatory Flexibility Act, the Commission issued an NPRM to modify its rules regarding vehicle radar technologies to improve collision avoidance and driver safety.<sup>25</sup> The proposed rule modifications provide for more efficient use of spectrum while enabling the automotive and fixed radar application industries to develop enhanced safety measures for drivers and the general public.
- ***Elimination of Publicly Available Fixed Service Between the United States and Foreign Points.*** To keep pace with industry trends and technology, the Commission eliminated Part 23 of its rules governing international point-to-point microwave service to reflect the reality that no U.S. operators were using the service or intended to use the service.<sup>26</sup> The Commission also revised its Table of Frequency Allocations to allow other fixed service commercial operators to use the spectrum that was being reserved for this outmoded service.
- ***Wireless E911 Location Accuracy.*** The Commission has taken several steps in the last several years to revise and update its location accuracy requirements for wireless E911 services to account for new wireless services and improved technology. In July 2011, the Commission adopted an item that strengthens the existing E911 location accuracy regime, proposes measures to improve 911 availability and location determination for users of interconnected VoIP services

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<sup>25</sup> *Amendment of Sections 15.35 and 15.253 of the Commission's Rules Regarding Operation of Radar Systems in the 76-77 GHz Band*, Notice of Proposed Rulemaking, 26 FCC Rcd 8107 (2011).

<sup>26</sup> *Elimination of Part 23 of the Commission's Rules*, Report and Order, 25 FCC Rcd 541 (2010).

and seeks additional public input on issues associated with extending 911 calling and location accuracy requirements to other broadband-based voice services.<sup>27</sup>

- ***Next Generation 911 Services.*** In September 2011, the Commission adopted an NPRM to examine the next generation of 911 emergency services.<sup>28</sup> This NPRM seeks ways to accelerate the development and deployment of next generation 911 technology that will enable the public to send emergency communications via text, photos, videos and data and enhance the information available to first responders for assessing and responding to emergencies.
- ***Broadcast Disclosure Requirements.*** In April 2012, the Commission adopted an Order to update the disclosure requirements of broadcast licensees to reflect the fact that the public receives increasing amounts of information from online sources.<sup>29</sup> The goals of the new requirements are to make information concerning broadcast service more accessible to the public, to improve dialogue between broadcast stations and the communities they serve and to reduce compliance burdens on broadcasters.
- ***Interoperability in the Lower 700 MHz Band.*** In March 2012, the Commission adopted an NPRM to promote device interoperability and more efficient use of spectrum resources.<sup>30</sup> The NPRM seeks to examine whether

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<sup>27</sup> *Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules*, Notice of Proposed Rulemaking, Third Report and Order and Second Further Notice of Proposed Rulemaking, 26 FCC Rcd 10074 (2011).

<sup>28</sup> *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, Notice of Proposed Rulemaking, 26 FCC Rcd 13615 (2011).

<sup>29</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, MM Docket Nos. 00-168, 00-44 (rel. Apr. 27, 2012).

<sup>30</sup> *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 12-69 (rel. Mar. 21, 2012).

modifications to the Commission's technical rules or other measures could address interference concerns in this band, thereby facilitating the deployment of advanced telecommunications services.

- ***Advanced Medical Technologies.*** In November 2011, the Commission adopted an Order modifying the Medical Device Radiocommunication Service under Part 95 of the Commission's rules to permit the use of new wideband medical implant devices that employ neuromuscular microstimulation techniques to restore sensation, mobility, and other functions to paralyzed limbs and organs.<sup>31</sup> This Order is part of a larger Commission effort to recognize and facilitate the significant advances in wireless medical technologies that are revolutionizing treatment for a wide variety of medical conditions and creating new health care models to benefit all Americans.
- ***Level Probing Radar.*** In March 2012, the Commission adopted a FNPRM that seeks to modify technical rules for the unlicensed operation of level probing radars (LPRs).<sup>32</sup> The proposals would allow the expanded development of a variety of radar level-measuring products that will benefit the public and industry and improve the accuracy and reliability of these measuring tools beyond that which is permitted under the Commission's current Part 15 rules. To the extent practicable, these proposals also would harmonize the technical rules for LPR devices with similar European standards in an effort to improve the competitiveness of U.S. manufacturers in the global economy.

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<sup>31</sup> *Amendment of Parts 2 and 95 of the Commission's Rules to Provide Additional Spectrum for the Medical Device Radiocommunication Service in the 413-457 MHz band*, Report and Order, 26 FCC Rcd 16605 (2011).

<sup>32</sup> *Amendment of Part 15 of the Commission's Rules To Establish Regulations for Tank Level Probing Radars in the Frequency Band 77-81 GHz*, Further Notice of Proposed Rulemaking, ET Docket No. 10-23 (rel. Mar. 27, 2012).

## ii) Disproportionate or Undue Impact on Particular Entities, Unintended Negative Effects or Greater Net Benefits if Modified

The Commission regularly undertakes review of regulations to evaluate their impact on certain entities, such as small businesses, and whether the rules are achieving their original intent. Other proceedings underway that include a retrospective review of regulations that may have a disproportionate or undue impact on particular segments of the population or may no longer be operating as intended include:

- **Foreign Ownership Review Streamlining.** In an NPRM issued in August 2011, the Commission initiated a review of the policies and procedures applicable to foreign ownership of common carrier radio station licensees and of aeronautical en route and aeronautical fixed radio station licensees.<sup>33</sup> The NPRM seeks to reduce regulatory costs and burdens imposed on wireless common carrier and aeronautical applicants, licensees and spectrum lessees; provide greater transparency and more predictability with respect to the Commission's filing requirements and review process; and facilitate investment from new sources of capital, while continuing to protect important interests related to national security, law enforcement, foreign policy and trade policy.
- **Pole Attachments Order.** As recommended in the National Broadband Plan, in April 2011 the Commission issued an Order updating existing rules for pole attachments to promote reliable, timely and affordable access to physical infrastructure necessary to deploy broadband services.<sup>34</sup> The Order made several specific revisions to existing rules, including revising the telecommunications rate formula to minimize differences among competitors,

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<sup>33</sup> *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Notice of Proposed Rulemaking, 26 FCC Rcd 11703 (2011).

<sup>34</sup> *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011).

adjusting the procedures for filing complaints with the Commission and removing caps on penalties.

- ***Antenna Structures.*** In response to comments received in connection with a review of the Commission's regulations under Section 11 of the Communications Act, the Commission issued this NPRM to revise its rules governing the construction, marking and lighting of antenna structures.<sup>35</sup> The proposed revisions are intended to improve compliance with the requirements and allow the Commission to enforce them more effectively, thereby more effectively ensuring the safety of pilots and aircraft passengers. The proposed revisions also would remove outdated and burdensome requirements without compromising the Commission's statutory responsibility to prevent antenna structures from being hazards to air navigation.
- ***Experimental Licensing Policies.*** After a comprehensive review of the Commission's experimental radio licensing policies, the Commission launched a proceeding in November 2010 designed to streamline and consolidate the experimental approval process.<sup>36</sup> The Commission also proposed elimination of the developmental license rules that are largely unused.
- ***Commercial Availability of Navigation Devices.*** In October 2010, the Commission issued an Order designed to improve consumers' experiences with set-top boxes and encourage the development of a competitive retail market for

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<sup>35</sup> *2004 and 2006 Biennial Regulatory Reviews -- Streamlining and Other Revisions of Parts 1 and 17 of the Commission's Rules Governing Construction, Marking and Lighting of Antenna Structures*, Notice of Proposed Rulemaking, 25 FCC Rcd 3982 (2010).

<sup>36</sup> *Promoting Expanded Opportunities for Radio Experimentation and Market Trials Under Part 5 of the Commission's Rules and Streamlining Other Related Rules*, Notice of Proposed Rulemaking, 25 FCC Rcd 16544 (2010).

such devices.<sup>37</sup> This Order included a retrospective examination of the existing rules on navigation devices and rule changes to address areas in which the existing rules were not achieving their intended result.

- ***Wireless Services Licensing.*** In May 2010, the Commission adopted an item designed to streamline, simplify and clarify various licensing rules for wireless services.<sup>38</sup> Specifically, the item seeks to create consistent requirements for renewal of licenses and consistent consequences for discontinuance of service and to clarify construction obligations for spectrum licenses, all with the goal of simplifying the regulatory process for licensees.

### iii) Responses to Requests from Industry and Stakeholders

The FCC regularly responds to requests from industry and the public to engage in retrospective review of regulations. Some examples of ongoing proceedings to review rules that were initiated at the behest of outside parties include:

- ***International Settlements Policy Reform.*** The Commission's International Settlements Policy (ISP) is designed to ensure that U.S. telecommunications carriers pay non-discriminatory rates for termination of international traffic in foreign countries that are not benchmark compliant. As a result of increased competition in the international telecommunications market and in response to requests seeking elimination of the ISP, the Commission determined that in its current form the ISP may no longer be necessary in the public interest. The

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<sup>37</sup> *Implementation of Section 304 of the Telecommunications Act of 1996*, Third Report and Order and Order on Reconsideration, 25 FCC Rcd 14657 (2010).

<sup>38</sup> *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Notice of Proposed Rulemaking and Order, 25 FCC Rcd 6996 (2010).

Commission issued an NPRM in May 2011 to consider whether to modify the policy and the rules.<sup>39</sup>

- ***Equal Access Scripting/Structural Separation.*** In response to a request from an industry trade association, in March 2012 the Commission sought comment on the possibility of forbearance from certain regulations applicable to telecommunications providers that the industry claims may no longer reflect the current marketplace.<sup>40</sup> This includes regulations governing equal access scripting, which require incumbent local exchange carriers (LECs) to inform new customers seeking local exchange service that they may obtain stand-alone long distance service from other carriers, and to read the customers a list of carriers offering long distance service in their area upon request, and rules governing structural separation, which require independent incumbent LECs to provide long distance service through a separate affiliate.
- ***Signal Boosters.*** In April 2011, in response to industry requests, the Commission released an NPRM seeking to promote the availability of economical consumer signal boosters that will not harm wireless networks.<sup>41</sup>
- ***Selectable Output Control Waiver.*** In May 2010, the Media Bureau issued a rule waiver in order to permit MVPDs to disable certain audiovisual outputs on cable set-top boxes, ensuring that copy protection is available for certain high-

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<sup>39</sup> *International Settlements Policy Reform*, Notice of Proposed Rulemaking, 26 FCC Rcd 7233 (2011).

<sup>40</sup> *Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance from Certain Telecommunications Regulations*, Public Notice, 27 FCC Rcd 2326 (2012).

<sup>41</sup> *Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission's Rules to Improve Wireless Coverage Through the Use of Signal Boosters*, Notice of Proposed Rulemaking, 26 FCC Rcd 5490 (2011).

value content.<sup>42</sup> This action responded to a request from the Motion Picture Association of America, and may spur the development of new subscriber services and early release of films for home viewing.

- **Aviation Safety.** In response to petitions for rulemaking, the Commission initiated a proceeding to amend its rules to permit uses of new technology to promote aviation safety, including airport surface detection equipment for ground vehicles and audio visual warning systems for antenna structures and other aviation obstacles.<sup>43</sup>
- **Retransmission Consent.** In March 2010, a coalition of cable operators and other parties filed a petition for rulemaking requesting that the Commission amend and supplement its retransmission consent rules. After examining the petition, the Commission concluded that due to changes in the video programming distribution market, an examination of the retransmission consent rules was appropriate. An NPRM seeking comment on proposals to streamline and clarify rules for retransmission consent negotiations was released in March 2011.<sup>44</sup>
- **WCS-SDARS.** In an order released in May 2010, the Commission responded to licensee requests to modify technical rules for Wireless Communications Service (WCS) in the 2.3 GHz band and Satellite Digital Audio Radio Service (SDARS) to make available additional spectrum for mobile broadband service while

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<sup>42</sup> *Motion Picture Association of America Petition for Expedited Special Relief; Petition for Waiver of the Commission's Prohibition on the Use of Selectable Output Control (47 C.F.R. § 76.1903)*, Memorandum Opinion and Order, 25 FCC Rcd 4799 (MB 2010).

<sup>43</sup> *Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service*, Third Report and Order, 25 FCC Rcd 7610 (2010).

<sup>44</sup> *Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718 (2011).

protecting adjacent satellite radio, aeronautical mobile telemetry and deep space network operations.<sup>45</sup>

- ***Tower Siting Shot Clock.*** In 2009, the Commission granted in part a request from CTIA – The Wireless Association for a Declaratory Ruling to define timeframes for State and local action on wireless facilities siting requests, while also preserving the authority of States and localities to make the ultimate determination on local zoning and land use policies.<sup>46</sup> The decision promotes the deployment of broadband and other wireless services by reducing delays in the construction and improvement of wireless networks.
- ***Wireless Backhaul.*** Among other actions taken in its *Wireless Backhaul* proceeding, in response to a request from the Fixed Wireless Communications Coalition, the Commission modified its rules governing fixed microwave services to permit the use of adaptive modulation.<sup>47</sup> Adaptive modulation provides operators with additional flexibility to keep fixed microwave links in operation during anomalous fading conditions. In addition, in response to requests filed by various parties, the Commission has sought comment on allowing smaller antennas in three critical microwave bands. Smaller antennas can promote broadband deployment by reducing costs in several ways, including by reducing

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<sup>45</sup> *Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band*, Report and Order and Second Report and Order, 25 FCC Rcd 11710 (2010).

<sup>46</sup> *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994 (2009), *recon. denied*, 25 FCC Rcd 11157 (2010), *affirmed sub nom., City of Arlington, Texas v. FCC*, 668 F.3d 229 (5th Cir. 2012).

<sup>47</sup> *Amendment of Part 101 of the Commission's Rules to Facilitate the Use of Microwave for Wireless Backhaul and Other Uses and to Provide Additional Flexibility to Broadcast Auxiliary Service and Operational Fixed Microwave Licensees*, Report and Order, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order, 26 FCC Rcd 11614 (2011).

costs to manufacture, install and maintain. Smaller antennas also allow existing towers to accommodate more antennas and allow installations at sites that would not otherwise be able to accommodate larger antennas.

- ***AWS-4 Proceeding.*** The Commission responded to requests for waivers by issuing this Notice of Inquiry (NOI) and NPRM that proposes to increase the Nation's supply of spectrum for mobile broadband by removing unnecessary barriers to flexible use of spectrum currently assigned to the Mobile Satellite Service (MSS) in the 2 GHz band.<sup>48</sup> This proposal would carry out a recommendation in the National Broadband Plan that the Commission enable the provision of stand-alone terrestrial services in this spectrum. The proposed rules are designed to provide for flexible use of the spectrum, to encourage innovation and investment in mobile broadband, and to provide a stable regulatory environment in which broadband could develop. Additionally, in the NOI, the Commission sought comment on potential ways to free up additional valuable spectrum to address the Nation's growing demand for mobile broadband spectrum.
- ***Detection Radar at Airports.*** In response to a petition for rulemaking, the Commission initiated a proceeding to amend its rules to permit use of the 78-81 GHz band for foreign object debris detection radar at airports, and granted a waiver to permit such operations pending the outcome of the rulemaking proceeding.<sup>49</sup>

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<sup>48</sup> *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket Nos. 12-70, 04-356; ET Docket No. 10-142 (rel. Mar. 21, 2012).

<sup>49</sup> *Amendment of the Commission's Rules to Permit Radiolocation Operations in the 78-81 GHz Band*, Notice of Proposed Rulemaking and Order, 26 FCC Rcd 17476 (2011).