

FCC DOCKET SUMMARIES

The following is a list of significant Federal Communications Commission ("FCC" or "Commission") actions that were initiated from January through October 1997. The docket summaries are organized numerically according to the FCC bureau responsible for the matter. The docket summaries provide brief synopses and citations to the full text of the FCC action, but are not intended to serve for the text contained in the original sources.

COMMON CARRIER

FCC DOCKET No. 97-219, CC DOCKET No. 97-146: Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, June 19, 1997.

The Commission tentatively concluded that complete detariffing for providers of interstate exchange access services, other than non-incumbent local exchange carriers ("non-ILECs"), would offer public interest benefits beyond those of permissive detariffing. The Commission is seeking comment on a proposal that would establish complete detariffing for all non-ILEC providers of interstate exchange access services. The proposal comes after the Commission granted petitions filed by Hyperion Telecommunications, Inc. and Time Warner Communications to permit non-ILECs the option to cease filing tariffs. The Commission, citing one of Congress' goals in enacting the Telecommunications Act of 1996, said that the action will help establish "a pro-competitive, de-regulatory national policy framework" that will "promote competition and reduce regulation . . . to secure lower prices and higher quality of service for American telecommunication consumers and encourage the rapid development of new telecommunication technologies." FCC 97-219 at ¶ 1 (citing Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 1 (1996). (*In re Hyperion Telecommunications, Inc. Petition Requesting Forbearance*, CCB/CPD 96-3; *In re Time Warner Communications Petition for Forbearance*, CCB/CPD No. 96-7).

FCC DOCKET 97-295, CC DOCKET No. 96-98: In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *Third Order on Reconsideration and Further Notice of Proposed Rulemaking*, August 18, 1997.

The Commission concluded that its Local Competition Order required incumbent local exchange carriers ("LECs") to provide other carriers with access to the same transport facilities that the incumbent LECs use to carry their own traffic between the end office switch and the tandem switch. Second, the Commission also reconsidered the requirement that incumbent LECs provide "shared transport" only between the end office and tandem. Upon reconsideration, the Commission decided to require incumbent LECs to provide access to shared transport to other carriers for all transmission facilities connecting the switches of the incumbent LECs. Third, the Commission required incumbent LECs to permit requesting carriers, upon purchasing unbundled shared transport and unbundled switching, to use the same routing table and transport links that the incumbent LEC uses to route and carry its own traffic. Finally, incumbent LECs are required to allow other carriers to use shared transport as an unbundled element to carry originating access traffic from, and terminating access traffic to, customers to whom the requesting carrier is also providing local exchange service.

In addition to these orders, the Commission is seeking comment on "whether requesting carriers may use shared transport facilities in conjunction with unbundled switching, to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service." (FCC Docket 97-295 at ¶ 3). Also, the Commission is seeking comment on "whether requesting carriers may use dedicated transport facilities to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service." *Id.*

FCC DOCKET No. 97-364; CC DOCKET No. 92-237: In re Administration of the North Ameri-

can Numbering Plan Carrier Identification Codes (CICs), *Further Notice of Proposed Rulemaking*, October 9, 1997.

The Commission issued a Further Notice of Proposed Rulemaking seeking comments related to carrier identification code ("CIC") assignment and use. A CIC is numeric code that, among other things, allows a caller to reach any carrier from any telephone by dialing a seven-digit carrier access code (e.g., 101XXXX) for which the last four digits are the carrier's unique four-digit CIC. The Commission seeks comments on the use and application of Feature Group D CICs, the CICs that are used to provide equal access. In addition, the Commission seeks comments on the definition of "entity" to determine to whom a CIC may be issued. Finally, the Commission seeks comments issues arising out of the conservation of CIC codes, including: (1) limiting CIC assignments per entity, (2) limiting the assignability of four-digit CICs, (3) CIC reclamation, and (4) CIC usage reporting requirements to help the Commission and the industry to conserve CICs. The Commission does not intend to modify existing guidelines but to propose new rules governing CIC assignment and use.

FCC DOCKET No. 97-372, CC DOCKET No. 92-237: In re Administration of the North American Numbering Plan, *Third Report and Order*, October 9, 1997.

The Commission affirmed the North American Numbering Council's ("NANC") selection of Lockheed Martin IMS to serve as the North American Numbering Plan Administrator and the NANC's designation of the National Exchange Carriers Association ("NECA") as the Plan's Billing and Collection Agent.

Lockheed provided several advantages. The Lockheed proposal was less expensive than other plans, the company had experience with numbering issues important to local number portability, and Lockheed had the potential to achieve synergy from future consolidation of numbering administration systems and processes including number pooling.

The Billing and Collection Agent will calculate, assess, bill, and collect payments for numbering administration functions and distribute the funds to the Administrator. The choice of the NECA as Billing and Collection Agent offers three main ad-

vantages. First, the NECA has cost recovery expertise and is currently the administrator of the Telecommunications Relay Services fund. Second, the NECA has a long relationship with U.S. telecommunications carriers and experience in telephone industry billing. Finally, the NECA's price was less than that other proposals.

CC DOCKET No. 96-45, CC REPORT No. 97-24: In re Federal-State Joint Board on Universal Service, *Report and Order*, May 7, 1997; FCC Docket No. 97-253, CC Docket No. 96-45, *Second Order on Reconsideration*, July 18, 1997; FCC Docket No. 97-380, CC Docket No. 96-45, *Third Report and Order*, October 14, 1997.

The Telecommunications Act of 1996 requires the Federal Communications Commission and the states to ensure that affordable, quality telecommunications services are available to all Americans. On May 7, 1997, the Commission announced universal service policies to provide all Americans, including low-income consumers and those living in rural, insular, or high cost areas, with affordable service. In addition, the Commission's policies will help to connect eligible schools, libraries, and rural health care providers to the global telecommunications network.

The Commission found that support for high cost areas should be based on a model that incorporates forward-looking economic costs; states may choose to use their own forward-looking cost studies. The Commission continues to explore the use of competitive bidding in providing universal service.

To assist low-income consumers, the Commission recommended that the Lifeline and Link Up programs be expanded. The recommendation includes increased federal funding for Lifeline, which helps reduce qualified consumers' monthly telephone charges. In addition, the Commission recommended that Lifeline be expanded to make it available in every U.S. state, territory, and commonwealth. Lifeline is currently available in 44 states, the District of Columbia, and the U.S. Virgin Islands. The Commission also recommended that Link Up, the program that provides federal support for qualified, low-income consumers' initial connection charges, require all providers of interstate telecommunications services to contribute to the program. Currently, contributions from interexchange carriers fund Link Up.

Under the new funding system, all eligible telecommunications carriers, for example, wireless carriers, would receive support for offering Life-line and Link Up services.

The Commission adopted the Joint Board's recommendation for providing schools and libraries with discounts of up to 90% off of the purchase of all commercially available telecommunications services, Internet access, and internal connections. The total expenditures for universal service support for schools and libraries is capped at \$2.25 billion per year. In addition, public and not-for-profit health care providers in rural areas will receive up to \$400 million annually in universal service support.

According to the Commission's plan, all providers of interstate telecommunications services will contribute to universal service with contributions based on interstate, end-user revenues. Contributions for support of school, library, and rural health care programs will be assessed against interstate and intrastate telecommunications revenues.

On July 18, 1997, the Commission ordered the National Exchange Carrier Association to establish the Schools and Libraries Corporation and the Rural Health Care Corporation to administer the universal service support mechanisms. In its *Third Report and Order* released on October 14, 1997, the Commission outlined specifics for the applying for funding. A "window" filing period will begin on the date that the corporations begin to receive applications for support and the corporations will determine the date on which the window period will end. The corporations will consider all applications filed during the window period equally and not on a first-come, first-served basis. The Commission also concluded that the corporations should resolve any other administrative matters that arise in order to implement the window filing period plan.

CC DOCKET No. 96-149: *In re* Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, *Second Order on Reconsideration*, June 24, 1997.

The Federal Communications Commission reaffirmed its interpretation of the Telecommunications Act of 1996's provision concerning safeguards for entry into competitive markets. The

1996 Act's separate affiliate, non-discrimination, and cost-allocation requirements prescribe the manner in which the Bell Operating Companies ("BOCs") may enter certain new markets, including the in-region, interLATA service market.

The Commission reaffirmed that Section 272 [of the 1996 Act] does not grant BOCs the authority to provide wholesale in-region interLATA services directly, i.e. out of the operating company rather than through a separate affiliate, upon receiving approval under Section 271 to provide in-region interLATA services.

The Commission rejected an interpretation proposed by the BOCs and reaffirmed its prior reading to implement Congress's policy of imposing a separate affiliate requirement for in-region interLATA services. This separate affiliate requirement was designed to prohibit anticompetitive discrimination and improper cost allocation, in the absence of full competition in the local exchange marketplace, while giving consumers the benefit of competition.

CC DOCKET No. 96-149: *In re* Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order*, and CC Docket No. 96-61, *Third Report and Order*, April 18, 1997.

The Commission revised its treatment of domestic, interstate, long-distance, and international service provided by Bell Operating Companies ("BOCs") and independent local exchange carriers ("LECs"). The action is in furtherance of the Telecommunications Act of 1996's pro-competitive, deregulatory objectives and will eliminate unnecessary regulations.

The Commission revised its approach to defining product and geographic markets to follow the 1992 Horizontal Merger Guidelines used by the Department of Justice and the Federal Trade Commission. The revised approach will be used to determine whether a carrier possesses market power in the provision of a particular service.

Independent LECs will be classified as "non-dominant" in the provision of in-region, interstate, domestic, long-distance service. The long-distance affiliates of BOCs will be classified as "non-dominant" in the provision of interstate, domestic, and long-distance services. The LECs'

control of local telephone facilities could allow them to engage in anti-competitive conduct against rival long-distance providers. Therefore, the Commission required the independent LECs to provide their in-region, interstate, domestic, interexchange services through separate affiliates that comply with certain separation requirements.

Finally, the long-distance affiliates of BOCs will be classified as "non-dominant" in the provision of interstate, domestic, long-distance services that originate in the areas in which the BOC provides local service. The Commission decided that the regulation of BOC long-distance affiliates as dominant carriers would not aid in the prevention of anti-competitive conduct by the BOCs or their affiliates against long-distance competitors. The Commission concluded that other statutory safeguards and regulations that apply to BOCs and their long-distance affiliates address anti-competitive conduct in a less burdensome manner.

CC DOCKET Nos. 97-21; 96-45: In re Changes to the Board of Directors of the National Exchange Carrier Association, Inc., *Report and Order and Second Order On Reconsideration*, July 18, 1997.

The Commission has directed the National Exchange Carrier Association ("NECA") to change its governance so that it may serve as the temporary administrator of universal service support mechanisms. NECA is to create an independent, not-for-profit subsidiary, the Universal Service Administrative Company, will include representatives of industry and non-industry interests on its Board of Directors. Representatives will come from service providers, schools, libraries, and state regulatory commissions.

REPORT No. CC 97-42: *FCC Approves Bell Atlantic/NYNEX Merger Subject To Market-Opening Conditions; Move Will Facilitate Competition From Maine To West Virginia*, August 14, 1997.

The Commission approved the merger of Bell Atlantic and NYNEX, subject to enforceable conditions designed to open the combined Bell Atlantic and NYNEX regions to new competitors and encourage local telecommunications competition. The Commission weighed the potential

harms and benefits to the public interest, including whether the merger would enhance competition. The Commission concluded that the merger would be in the public interest.

The Commission determined that several conditions were necessary, following the merger, to facilitate the entrance of competitors into the marketplace.

First, Bell Atlantic and NYNEX will provide detailed performance monitoring reports to competitive carriers, states, and the Commission, regarding the performance of their networks and operational support systems ("OSS"), the systems necessary for new competitors to provide local telecommunications service.

Second, the companies must negotiate performance standards and enforcement mechanisms covering all five aspects of OSS.

Third, the companies will, within fifteen months, develop and implement uniform OSS interfaces covering the entire combined Bell Atlantic and NYNEX regions.

Fourth, they must engage in carrier to carrier testing of OSS systems with any carrier that requests such testing.

Fifth, the companies will offer interconnection, unbundled network elements and transport and termination rates based on forward looking economic costs.

Fifth, the companies will offer shared transport priced on a minute of use basis, routed in the same manner as Bell Atlantic and NYNEX's own traffic, without imposition of an access charge.

Sixth, they must offer an optional plan that would permit entrants to pay recurring charges for certain otherwise non-recurring charges and a separate optional small competing carrier installment payment plan, for collection and certain other large non-recurring charges.

Finally, the companies must offer payment mechanisms for common construction costs and interconnector-specific construction and equipment

The Commission concluded that these conditions will assist other market participants in entering, expanding, or becoming more significant market participants in the combined Bell Atlantic and NYNEX regions.

INTERNATIONAL

FCC DOCKET No. 97-1952: In re AT&T Corp. and MCI Telecommunications Corp., Petitions for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Various Countries, September 5, 1997.

The Commission considered waiving the International Settlements Policy ("ISP"), which requires nondiscriminatory treatment of U.S. carriers by foreign carriers, to accommodate the growth-based accounting rate arrangements proposed by both AT&T and MCI. The accounting rates which were proposed would allow for a carrier's average settlement per minute to decline as its service grew beyond a specified threshold. The growth-based structure favors large carriers because the demand for services of small carriers and foreign carriers is normally not sufficient to qualify for settling at the lower rate. The different levels of service provided by U.S. carriers would result in discrimination to small carriers because they would have to settle at the higher accounting rate, and the subsequent result would be the loss of technological advances and effective service options to the consumers. However, the growth-based accounting rate structures are beneficial because they reduce rates and provide for further reductions, provide the basis for lowering international calling prices, and promote economic efficiency.

The Commission ultimately accepted AT&T's petitions for waiver of the ISP with foreign carriers in the Philippines, Malaysia, Uruguay, Dominican Republic, and Caribbean locations. The Commission did, however, caution that the thresholds were arbitrary since they varied widely and did not reflect output levels. The Commission denied MCI's proposed arrangements with carriers in Uruguay and Caribbean locations on the basis that the arrangements were discriminatory against MCI. All U.S. carriers were directed to negotiate their own nondiscriminatory accounting rate arrangements with the foreign carriers selected by AT&T, and to use AT&T's settlement rate during the interim because it was the lowest rate overall. Among the options available to the carriers is a single rate for all minutes rather than a growth-based structure.

IB DOCKET No. 95-91: In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310 - 2360 MHz Frequency Band, *Order*, April 30, 1997.

Seeking to fulfill the mandate of Section 151 of the Communications Act of 1934, the Commission planned to make available a rapid, efficient, nation-wide communications service. On April 2, 1997, the Commission auctioned two nationwide licenses in the S-band to provide satellite-delivered digital audio radio ("DARS") service.

Satellite DARS promises to provide continuous nationwide radio programming with compact disc ("CD") quality sound. Motorists on the highways of America may soon be able to tune in to one of many satellite DARS channels offering a particular format without interruption or fading as they travel across the United States. This new service also has the potential to increase the variety of programming available to the listening public. Providers may, for example, offer niche channels that would serve listeners with special interests such as educational, rural, ethnic, religious, and specialized music programming. Furthermore, satellite DARS has the technological potential to serve listeners in areas of the country that have been underserved.

After reviewing comments solicited by its June 1995 NPRM, the Commission determined that the potential adverse impact on local radio service did not outweigh the potential benefits of DARS. The Commission determined that the effect on terrestrial radio would be smaller than the effect of additional terrestrial radio stations because DARS is a national service requiring new and relatively costly equipment, which may be offered via subscription. The Commission supported its position by analogizing the introduction of DARS with the effect that the diffusion of CD players had on terrestrial radio. The Commission determined that it was reasonable to project that by about 2005 the over-all penetration rate of satellite DARS receivers in radio listening environments may not be significantly greater than 4%. While acknowledging that, to some extent, DARS will compete with local radio, the Commission anticipates that it will also complement terrestrial radio.

Of the six applicants who filed for licenses before the December 15, 1992 cut-off date, four

competed in the April 1992 closed auction. Satellite CD Radio, Inc. and American Mobile Radio Corporation were awarded the licenses EBN001 and EBN002 for \$ 83,346,000 and \$ 89,888,888, respectively. The eight-year license terms will commence when each satellite is launched and put into operation. Each licensee will bear the responsibility to negotiate with adjacent countries to insure that its Power Flux-Density (pfd) limit is high enough to provide sufficient service availability and yet low enough to coordinate with the terrestrial services of those adjacent countries.

On June 26, 1997, the Commission granted Satellite CD Radio, Inc. an exemption from Section 25.116(c) of the Commission rules to allow CD Radio to make a public offering of up to 15 million shares of common stock in the applicant's parent company, CD Radio Inc. Section 25.116(c) requires the Commission to consider any major amendment that is filed after the applicable cut-off date to be considered a newly filed application, unless an exemption would serve the public interest. Because CD Radio's proposal would not effect the company's day-to-day management, operational team and because the current principals would remain in actual control, the exemption was granted.

IB DOCKET No. 97-142: *In re* Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Order and Notice of Proposed Rulemaking*, June 4, 1997.

Since November 1995, the FCC ("Commission") has utilized the Effective Competitive Opportunities ("ECO") test to determine whether a foreign broadcaster or carrier would be granted access to U.S. markets. Basically, the ECO test assesses whether the potential entrant's home market allows "effective competitive opportunities" for access by U.S. entities.

With the signing of the Agreement on Basic Telecom ("WTO Agreement") on February 15, 1997, sixty-nine member nations of the World Trade Organization ("WTO") "reached a market-opening accord that will fundamentally change the structure of the global telecommunications market." Therefore, roughly 95 percent of the global market for basic telecom services have agreed to enforce fair rules of competition for telecom services which cover interconnection of competing telecom service suppliers, safeguards

for competition, and transparent and independent regulation of telecom services.

Citing the increased competition in WTO member nation markets resulting from the WTO Agreement, the FCC has proposed to suspend application of the ECO test for nations that have submitted competitive market access commitments. This action will yield substantial benefits for U.S. consumers by reducing prices, providing greater service options, and spurring technological innovation. U.S. companies will be able to enter previously closed foreign markets and develop competing networks for local, long-distance, and international services.

However, where there exists potential for anticompetitive harm, the Commission reserved the right to attach additional conditions to an authorization or to deny it outright if such authorization would pose a high risk to competition. Furthermore, carriers from non-WTO member nations will still be subject to the ECO test.

The WTO Agreement also addressed the satellite service market. The U.S. and 49 other nations agreed to open their satellite markets to competition under the WTO Agreement.

MASS MEDIA

FCC DOCKET No. 97-266: *Amendment to Part 1 Removal of the Rules Implementing Section 7 of the Radio Broadcasting to Cuba Act*, August 4, 1997.

The Commission removed the provisions listed in Subpart M of Part 1 of the Commission's Rules, which implemented Section 7 of the Radio Broadcasting to Cuba Act, Pub. L. 98-111, 97 Stat. 749 (1983).

The Radio Broadcasting to Cuba Act established a domestic radio broadcast service to Cuba. Congress expected Cuba to retaliate by interfering with or jamming U.S. broadcast stations. As a result of this expectation, Section 7 authorized the Commission to determine levels of jamming and interference to U.S. broadcast stations, and establish interference measurement criteria to assist in settling compensation claims brought by U.S. radio broadcasting station licensees for costs incurred in mitigating the effects of the jamming by the Cuban Government.

Since 1985, Congress has not appropriated funds for this program. Consequently, the Com-

mission decided to remove the implementation of Section 7 from its rules.

FCC DOCKET NO. 97-290; MM DOCKET NO. 96-58; REPORT NO. MM DOCKET NO. 97-13: *In re* Commission Reduces Filing Requirements For Certain AM, FM, and TV Minor Changes, *Mass Media Action*, August 22, 1997.

The Commission has streamlined its processes to eliminate the construction permit presently required for certain minor changes to facilities for AM, FM, and TV stations. Presently, a minor change requires the filing and grant of a construction permit prior to implementation, followed by the filing and grant of a license application after implementation. The new process will eliminate the present two step process for the circumstances covered in new modifications, reducing the filing requirements to a single step. This Report and Order also changes and modifies other rules to codify existing policies. Two such examples of activity now allowed by the "ONE-STEP" Modification of License Application are first, allowing most commercial FM stations to increase effective radiated power ("ERP") to the maximum permitted for the station class provided they comply with spacing rules to all other stations, pursuant to Section 73.207, and are not operating with the maximum permitted facilities and second, FM directional stations may commence program test operations at half power while awaiting staff review of the license application. These rules will become effective 60 days after publication in the Federal Register.

FCC 97-150; FILE NOS. BR-960329B7, BRH-960404ZA, BRH-960401B4: *In Re* Applications of Pathfinder Communications Corp. and JAM Communications, Inc., *Memorandum Opinion and Order and Notice of Apparent Liability*, June 10, 1997.

In challenging an application for renewal of licenses, pursuant to Section 309(d) of the Communications Act of 1934, petitioners allege that the stations violated the Commission's Equal Employment Opportunity Rule ("EEO"), 47 C.F.R. § 73.2080. The stations allegedly engaged in employment discrimination by failing to recruit qualified minorities. Petitioner asserts that the stations failed to hire any minorities in the reporting year, March 1, 1995 through February 29, 1996,

and that this deficiency constitutes discrimination.

The Commission found no evidence of employment discrimination by failing to hire minorities in one reporting period. However, the Commission did find that the stations' efforts to maintain documentation regarding minority referrals was lacking; the stations did not maintain applicant and interviewee records for each vacancy. The Commission concluded that maintenance of this information is necessary to conduct meaningful self-assessment of its EEO efforts, as required by Section 73.2080(c)(5) of its rules. As a result of this deficiency, the Commission found that a notice of apparent liability for forfeiture of \$8,000 was mandated. The Commission also mandated reporting conditions to guarantee that the station improves its self-assessment concerning EEO requirements.

FCC FILE NO. BAPH-970317GG: *In Re* Application of Omni Broadcasting Company, and Flinn Broadcasting Corporation, *Memorandum Opinion and Order*, July 8, 1997.

The above-referenced companies requested a permanent waiver of the Commission's one-to-one market rule which restricts common radio and television ownership in the same market. *See* Section 73.3555(c) of the Commission's Rules. The assignment application in this case proposed a new radio/television combination in violation of Section 73.3555(c).

The Commission favors waiver requests involving station combinations serving the top 25 markets where there are still at least 30 separately owned broadcast licenses after the requested combination of radio and television ownership. The Commission also favors requests from stations that have not been operating for a period of time, or are in bankruptcy proceedings. Other waiver requests are assessed on a case-by-case basis, in light of several criteria. The criteria used by the Commission include: 1) the public service benefits of joint operation; 2) the types of facilities involved; 3) the number of media outlets owned by the applicant in the relevant market; 4) financial difficulties of the station involved; and 5) the nature of the market in light of the level of competition and diversity after the joint operation is implemented.

The Commission concluded that Flinn Broad-

casting Corporation had met the above-stated case-by-case criteria. Namely, the Commission considered the potential public service benefits of joint ownership in this case, and concluded that common ownership and joint operation would create operating efficiencies resulting in significant cost savings. The cost savings would permit programming improvements, an enhanced local presence, and community based programming and outreach. Hence, the Commission granted the permanent waiver request and the assignment application.

WIRELESS

FCC DOCKET No. 97-342; WT DOCKET No. 97-82: *In re* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services ("PCS") Licensees, *Second Report and Order and Further Notice of Proposed Rule Making*, October 6, 1997.

In the *Second Report and Order*, the Commission ordered the resumption of installment payments for broadband PCS services in the C and F blocks. The payment deadline was reinstated as of March 31, 1998. The Commission adopted four option plans designed to enable C block licensees in financial duress to build systems that promote competition, or surrender spectrum for reauction. First, a licensee may elect to continue making payments under the original installment payment plan. Second, disaggregation requires a C block licensee to disaggregate one-half of its spectrum for all of the Basic Trading Area ("BTA") licenses it owns with in any Major Trading Area ("MTA"). In return, fifty percent of the down payment will be applied to the debt for any retained spectrum. However, a licensee and its affiliates will be prohibited from rebidding for this spectrum or acquiring it in the secondary market for two years after the date of reauction. Third, a licensee may opt for amnesty where it will return all of its licenses, and have its outstanding C block debt forgiven. The licensee may bid on any license at reauction and is not prohibited from reacquiring any license in the secondary market. This option only applies to those licensees that have met or exceeded the five year build-out requirements by September 27, 1997. Fourth, a C block licensee may repurchase any of its licenses at the face value it bid during the prior auction. A licensee shall

purchase all BTA licenses it currently owns within any specific MTA. 70 percent of the down payment and any supplemental finances may be applied to buy as many of these licenses as possible. Any non-prepaid license under this plan will be surrendered for reauction, which may not participate in, nor purchase the licenses on the secondary market for two-year after the date of the reauction.

Chairman Hundt dissented in part, mainly to assert: (1) the Commission's path departs from Congress' bipartisan consensus; (2) the adopted plan is at odds with basic commercial reasonableness; and, (3) the plan's parameters lack defined parameters. Commissioners Hundt, Ness, and Chong each issued separate statements.

FCC DOCKET No. 97-352; WT DOCKET No. 96-162: *In re* Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Implementation of Section 601(d) of the Telecommunications Act of 1996, *Report and Order*, October 3, 1997.

This *Report and Order* establishes a regulatory framework for the provision of broadband commercial mobile radio services ("CMRS") by incumbent local exchange companies ("LECs") and their affiliates. This *Report and Order* is the Commission's direct response to the Sixth Circuit's *Cincinnati Bell Telephone Co. v. FCC* decision. The court remanded its previous decision to maintain structural safeguards for Bell Operating Company (BOCs) to provide cellular services, but permitted BOCs to furnish broadband PCS services through a system of nonstructural safeguards. The Commission believes that incumbent LECs and broadband CMRS operators are increasingly likely to be future, direct competitors and the Commission emphasized the need for fair rules to prevent any anticompetitive pricing practices between them.

The Commission presented two options for LEC provision of broadband PCS. The first option would retain the structural safeguards set out in Section 22.903 for BOC provision of in-region cellular service, but sunset the restrictions for a BOC when it is authorized to provide InterLATA service that originates in any in-region state. The second alternative would eliminate the structural safeguards of Section 22.903 instantly in favor of

consistent safeguards for all Tier 1 LECs offering broadband CMRS to the public. After reviewing comments, the Commission adopted the second approach. In addition, the BOCs and independent LECS will be required to furnish in-region broadband CMRS through a separate, CMRS affiliate, which will be subject to accounting and affiliate transactions in the Commission's rules. Rural telephone companies will not be subject to these regulations.

Additionally, the *Report and Order* will modify the Commission's rules and procedures to further the provision of broadband CMRS services by LECs. The separate affiliate offering in-region broadband CMRS operations must maintain separate books of account, separately own transmission or switching facilities from its affiliated LEC, and obtain any services from affiliate LEC on a separate and compensatory basis. A LEC is not required to have a separate LEC affiliate outside its wireline service territory. LECs engaging in joint marketing must follow the Commission's affiliate transactions rules and make these arrangements available to the public. Finally, if the Commission determines that it is in the public interest, it will set a January 1, 2002 date in which this separate affiliate requirement will sunset.

the Commission's Rules Regarding the Partial Assignment of the Houston MTA Frequency Block A; In re Motorola SMR, Inc., *Order*, May 30, 1997.

Motorola requested disaggregation of its MTA license into two spectrum blocks. The Commission concluded that Section 90.153, 47 C.F.R. § 90.153, 47 C.F.R. § 90.153 of its rules do not permit disaggregation or partitioning of MTA licenses. However, the Commission has sought comment on a similar petition to allow disaggregation of MTA licenses.

Although disaggregation is not allowed when examining the express language of the Commission's rules, the Commission determined that a waiver of this rule is appropriate, in this case. The Commission stated that in order to grant a waiver of a rule, the petitioner must display "unique circumstances," and show that no solution exists within the rules. Motorola argued that it presented unique circumstances, because the disaggregation is necessary to meet obligations it incurred in connection with the Motorola-Nextel merger, pursuant to the Stipulation and Final Judgment entered between the U.S. Department of Justice, Nextel and Motorola. The Commission accepted this argument and ruled that a waiver of Section 90.153 is warranted.

FCC FILE Nos. D050195, D050196; DA 97-1144: Request for Waiver of Section 90.153 of

