
SELECTED FCC DOCKET SUMMARIES* AND KEY COMMUNICATIONS EVENTS OF 1999 AND 2000

MASS MEDIA

In re Establishment of a Class A Television Service, MM Dkt. No. 99-292, Notice of Proposed Rulemaking, FCC 99-257 (Sept. 29, 1999).

The Commission sought comment on matters affecting the Low Power Television Service ("LPTV") as the industry approaches the transition to Digital Television ("DTV"). Specifically, the Commission sought comment on whether a lower-power Class A primary television service should be created, and how it should be implemented. Comments were solicited on what level of interference protection LPTV should be granted, including protection from existing and future DTV, analog, and LPTV television stations. The Commission proposed that Class A stations should protect previously authorized LPTV and translator stations but sought comment on the whether Class A stations should protect previously filed LPTV and translator applications. The Commission also sought comments on the application of the current protections for Land Mobile Radio and other services authorized in the reallocated television spectrum to the proposed Class A stations, and asked for comment on the definition of the protected service area for Class A stations. It also elicited comment on Class A eligibility criteria, including the window for LPTV station application for Class A status and establishment of broader service eligibility criteria, including requirements for locally produced programming.

The Commission also solicited comments on its proposed several technical requirements for the new Class A service, including proposals to process Class A applications as minor changes, to treat mutually exclusive displacement relief applications under the auction rules, and whether special consideration should be given to stations seeking to vacate a channel above channel 59. It

also sought comments on the establishment of coverage area requirements, and whether the Commission should apply the Part 73 ownership restrictions to Class A stations. The Commission proposed to allow analog Class A station to upgrade to digital transmission on their existing licensed channel, but to not allow Class A stations to apply for a second channel for digital operations.

In re Digital Audio Broadcasting Systems and their Impact on the Terrestrial Radio Broadcast Service, MM Docket No. 99-325, Notice of Proposed Rulemaking, FCC 99-327 (Nov. 1, 1999).

The Commission reaffirmed its commitment to the implementation of the Digital Audio Broadcasting ("DAB") technology, identified its policy objectives for the DAB service, and proposed evaluation criteria for the various DAB models and systems. The Commission also evaluated the proposals for an In-Band On-Channel ("IBOC") system and a new-spectrum DAB system. It sought comment on the need for a mandatory DAB transmission standard and considered DAB system testing, evaluation, and standard selection criteria.

The Commission reaffirmed its goal of assuring a free, over-the-air terrestrial radio service that would allow broadcasters and the public to take advantage of the superior characteristics of DAB. It stated that for DAB to be viable, it must use the least spectrum possible, and that the Commission's objective is to begin a "rapid and non-disruptive" transition to all-digital audio service.

The Commission set forth ten criteria to be used evaluating all potential DAB systems: 1) enhanced fidelity; 2) interference robustness; 3) analog service compatibility; 4) spectrum efficiency; 5) flexibility; 6) auxiliary service capacity; 7) ex-

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tensibility; 8) accommodation for existing broadcasters; 9) coverage; and 10) implementation costs/affordability of equipment.

In using these criteria to evaluate the proposed IBOC and new-spectrum DAB systems, the Commission concluded that it believed that a "workable IBOC system would be superior" to a new -spectrum DAB. It noted, however, that IBOC raises concerns about spectrum efficiency and that it seeks comment on whether the sidebands needed during the "hybrid" analog/digital IBOC implementation will be needed after the transition to all-digital broadcasts, and whether the sideband spectrum can be returned, after the transition occurs, for use by new all-digital entrants.

The Commission also sought comment on whether a portion of the television channel 6 band should be reallocated for new-spectrum DAB after the transition to DTV is complete after the year 2007. It envisioned that a new spectrum DAB service in that band would complement the IBOC systems. It sought comment on the appropriate bandwidth of the channels if the system were implemented, whether a service-area station-class licensing approach would be appropriate, and asked whether a common FM/DAB receiver design would facilitate the analog/digital transition.

In regards to whether it should adopt a DAB transmission standard, the Commission concluded that the public interest requires that it take a role in developing the standards "with the advice and involvement of all sectors of the industry," but that it lacked enough information to conclude that a Commission-mandated DAB standard is needed.

The Commission declined to mandate specific DAB system testing standards. Recalling its reliance on the NRSC and CEMA tests in digital radio proceedings, *In re* Amendment of the Commission's Rules with regard to Establishment and Regulation of New Digital Audio Radio Services, Gen. Dkt. 90-357, 5 FCC Rcd. 7593 (1990), which demonstrated that IBOC technology was not viable at that time, the Commission stated that it would continue to rely on the NRSC and CEMA to facilitate and evaluate the development of the IBOC systems. It concluded, however, that it would be premature to commit to an particular testing model, and resolved to monitor the testing

process for "fairness, thoroughness, and timeliness."

***In re* Implementation of Video Description of Video Programming, MM Dkt. No. 99-339, Notice of Proposed Rulemaking, FCC 99-353 (Nov. 18, 1999).**

The Commission sought comment on its proposal to require commercial broadcasters in the top 25 television markets, and the largest national video program distributors to transmit audio descriptions for the visually impaired through the secondary audio programming ("SAP") channel.

The proposed rules would require ABC, CBS, NBC and Fox affiliates in the largest 25 Nielsen markets to provide a minimum of 50 hours per quarter of described primetime and/or children's programming. The largest multi-channel video program distributors ("MVPDs") would be required to "pass through" the described programming on the top four broadcast networks and of any non-broadcast networks that reach fifty percent or more of MVPD households.

The Commission notes that it will initially limit the applicability of its rules to analog television broadcasters, but would wait until the transition to DTV is complete before adopting video description requirements for DTV. It sought comment as to whether the rules should apply to all video programming distributors, including DBS, open video, SMATV and wireless cable.

The Commission also sought comment on the costs of video description and the costs of upgrading equipment, as well as the nature of scope of its authority over video description.

***In re* Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, MM Dkt. Nos. 98-204 & 96-16, Report and Order, FCC 00-20 (Feb. 2, 2000)**

By this Order, the Commission adopted new equal employment opportunity ("EEO") rules in response to the D.C. Circuit Court of Appeals 1998 decision in *Lutheran Church Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998). In that case, the Court of Appeals held that certain aspects of the Commission's previous broadcast EEO requirements mandating outreach recruitment

were unconstitutional. Specifically, the court found that the Commission's regulatory scheme put pressure on stations to maintain a work group that mirrored the racial breakdown of their metropolitan area statistically.

Stating that it did not believe "that a licensee who discriminates against minorities or women would be able or inclined to fulfill its responsibility as a public trustee," the Commission reaffirmed its authority to promulgate a nondiscrimination rule. It also reinstated its annual reporting requirements for broadcasters and cable entities, but emphasized that it will use this information only for monitoring employment trends, and reporting these trends to Congress.

The new rules require licensees and cable entities to widely disseminate information about job openings to all areas of the community to guarantee that all qualified applicants, including minorities and women, have equal chances to compete for full-time job openings. The rules also give licensees and cable entities a choice of whether to undertake two supplemental recruitment measures of the notification of job opening to recruiting organizations that request notification, and a "certain number of outreach efforts beyond traditional recruitment," or electing to maintain records of an outreach program and conduct an internal evaluation of the recruiting program. The Commission discontinued the prior practice of not requiring the filing of EEO recruitment information concerning minorities in markets where the minority labor force is less than five percent.

Directly addressing *Lutheran Church*, religious broadcasters who have established religious affiliation as a job qualification are not be required to comply with the specific recruitment requirements for that position, but are expected to make reasonable good faith efforts to recruit widely among their co-religionists. The Commission will make an individual determination based upon an overall evaluation of the religious entity's characteristics, including whether the entity operates on a nonprofit basis, whether it has a distinct religious history, and whether the entity's articles of incorporation set forth a religious purpose in determining whether the licensee has made a good faith self-designation as a religious broadcaster.

The Commission emphasized that the "religious qualification is for licensees that are religious broadcasters, not for licensees that air religious programming. Indeed, any licensee may air religious programming for any reason."

In re Creation of Low Power Radio Service, MM Dkt. No. 99-25 Report and Order, FCC 00-19 (Jan. 27, 2000).

By this Order, the Commission established a new community-based low power radio service in the FM band. The 100-watt effective radiated power ("ERP") LP-100 service and the 10-watt ERP LP-10 service will be licensed as exclusively non-commercial stations, and must protect the existing licensed stations. The Commission declined to establish a 1000-watt LP-1000 class of stations.

The Commission established eligibility and ownership rules, technical rules, programming and service rules, and the rules governing the filing and application process.

In re Applications of WQED Pittsburgh, Order on Reconsideration, FCC 00-25 (Jan. 28, 2000)

In this *Order*, the Commission reconsidered and vacated a portion of its *Memorandum and Order in In re Applications of WQED Pittsburgh*, in which it granted the transfer of a non-commercial television license from WQED, Inc. to Cornerstone Television, Inc. While Commission emphasized that the request to transfer the licenses was still granted, it vacates the "guidance" offered to religious entities seeking non-commercial educational broadcast licenses in *In re Applications of WQED Pittsburgh, Memorandum Opinion and Order, FCC 99-393 (Dec. 29, 1999)*. It noted that "[r]egrettably, it has become clear that our actions have created less certainty than more, contrary to our intent." The Commission stated that it would defer to the licensee judgement of "educational, instructional or cultural" programming, unless the licensee's judgement is arbitrary or unreasonable.

Commissioner Furtchgott-Roth issued a separate statement concurring; Commissioner Tristani issued a separate statement in dissent.

CABLE SERVICES BUREAU

FCC Role in Cable Rate Regulation Ends, CS Dkt. No. 96-85, Report No. CS 99-5 (Mar. __, 1999)

As required by the section 623 of the Telecommunication Act of 1996, the Federal Communications Commission's authority to accept or process consumer complaints regarding cable television service rates terminated on March 31, 1999. Since 1993, the FCC's Cable Services Bureau was responsible for receiving and acting upon complaints regarding rates from cable television consumers. The Bureau processed over 18,000 complaints from more than 5700 cable communities and ordered more than \$100 million in refunds to the consumers. With the sunset of cable rate regulation, the FCC will no longer address rate increase complaints for cable services. The Commission announced that it will continue to work on matters related to increasing competition in the video programming marketplace in order to influence rates.

In re Implementation of the Cable Television Consumer Protection and Competition Act of 1992, CS Dkt. Nos. 98-82 & 96-85, Report and Order, FCC 99-288 (Oct. 20, 1999); In re Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992, MM Dkt. No. 92-264, Third Report and Order, FCC 99-289 (Oct. 20, 1999)

The FCC revised its horizontal ownership and attribution rules, which prescribe the number of cable subscribers an entity may reach and the method for calculating attributable ownership interests in cable systems. The rules were announced in two separate, but jointly issued Report and Orders.

The revisions were prompted by two very significant changes from when the original horizontal ownership rules were adopted in 1992. First, DBS emerged as a significant competitor to cable MVPDs. Second, the cable system operators have begun providing telephony and high-speed internet service. The Commission stated that the revised rules will best serve consumers by reflecting the changes in the marketplace due to conver-

gence, and that they will simultaneously promote competition in a number of markets, such as local telephone, cable and high-speed internet. The new rules were said to balance the efficiencies of common ownership with the concern for diversity and competition in video programming.

The new horizontal ownership rule maintains the 30 percent nationwide limit but modifies the method in which the limit is calculated. It determines a cable operator's nationwide horizontal ownership percentage by taking the operator's multi-channel video programming subscriber total and dividing that sum by the total number of nationwide subscribers of cable, direct broadcast satellite ("DBS") and other multi-channel video programming distributors ("MVPDs").

The new attribution rules closely track the changes made in broadcast attribution rules. The rules define "affiliate" as it has been applied in the effective competition test and in the cable-telco buyout prohibition rules. The single majority shareholder exemption was eliminated.

The Commission announced that the equity/debt rule will operate as an exception to nonvoting stock and limited partner exemptions, and issued a new definition for the "insulated limited partner exemption."

It noted that the horizontal ownership rules will be voluntarily stayed, pending the resolution of *Daniels v. United States*, and *Time-Warner v. FCC* in the Federal Circuit Court for the District of Columbia.

Commissioner Furchtgott-Roth issued a separate statement, concurring in part and dissenting in part. Commissioner Tristani issued a separate statement, approving in part, and dissenting in part.

In re Implementation of Section 304 of the Telecommunications Act of 1996, CS Dkt. No. 97-80, Order on Reconsideration, FCC 99-95 (May 14, 1999).

In response to petitions from the Consumer Electronics Manufacturers Association, the National Cable Television Association, the Telecommunication Industry Association, Time Warner Entertainment and the Wireless Communications Association, the Commission reaffirmed and refined its rules regarding the commercial availability of cable navigation devices ("set-top boxes").

The Telecommunications Act of 1996 directed the FCC to create rules that would allow consumers to obtain "navigation devices" such as set top boxes, remote control units, and other equipment, from commercial sources other than the multi-channel video programming distributors ("MVPDs"). Implementing section 304 of the Act in FCC 98-116, the FCC adopted rule requiring MVPDs separate security functions from non-security functions by July 1, 2000 and make modular security components available.

By this Order, the FCC deferred the security function/non-security function separation requirements in regard to analog-only set-top boxes devices, so long as the devices do not provide access to any form of digital service. The Commission reaffirmed the January 1, 2005 ban on integrated boxes, but stated that it would reassess whether integrated boxes are impeding commercial availability of navigation devices.

The Commission further stated that the standards developed through the Open Cable process will be specific enough to allow non-MVPD affiliate manufacturers to create nationally compatible devices. It declined to reconsider the rules' exemptions for direct broadcast satellite ("DBS") and open video system operators.

In re Implementation of the Satellite Home Viewer Improvement Act of 1999, Order, FCC 00-22 (Jan. 28, 2000); In re Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations, ET Dkt No. 00-11, Notice of Proposed Rulemaking, FCC 00-17 (Jan. 20, 2000); In re Implementation of the Satellite Home Viewer Improvement Act of 1999, CS Dkt. No. 99-363, Notice of Proposed Rulemaking, FCC 99-406 (Dec. 22, 1999); In re Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Nonduplication Syndicated Exclusivity, and Sports Blackout Rules To Satellite Retransmissions, CS Dkt. No. 00-2, Notice of Proposed Rulemaking, FCC 00-4 (Jan. 7, 2000)

Following passage and enactment of the Satellite Home Viewer Improvement Act of 1999

("SHVIA"), the Commission began three Notices of Proposed Rulemaking and issued one Order to begin implementation of the law, which amends the Satellite Home Viewer Act of 1988, the Communications Act of 1934 and the U.S. Copyright Act and permits satellite companies to provide local broadcast television signals to all subscribers.

In FCC 99-406, the Commission sought comment on the implementation of regulations on retransmission consent negotiations between broadcast stations and multi-channel video program distributors ("MVPDs"), including satellite providers. Specifically, the Commission sought comment on criteria for determining whether a party is negotiating in good faith and the criteria for determining whether an exclusive retransmission contract prohibited by the Act exists. It also sought comment as to whether the good faith negotiation requirements should apply to both the broadcast stations and MVPDs and also whether the rules should sunset in 2006, when the Act causes the exclusive contract prohibition to expire.

By Order FCC 00-2, the Commission established enforcement procedures for retransmission consent complaints. The procedures outline an expedited resolution process and require a final decision by the Commission within 45 days of the of filing a complaint.

In Notice of Proposed Rulemaking FCC 00-4, the Commission sought comment on how to best apply the existing cable network non-duplication, syndicated exclusivity and sports blackout rules that are based on geographic boundaries of the local cable system, to satellite MVPDs, which are essentially borderless.

As part of the Act's mandate allowing the satellite transmission of distant broadcast programming into "unserved" viewers in local markets, the Commission sought comment in the *Notice of Proposed Rulemaking* FCC 00-17 as to the revision of the computer model used to determine whether a particular household is "unserved." The Individual Location Longely-Rice model, promulgated under the original Satellite Home Viewer Act, predicts the signal strength of broadcast stations at a particular location. The Commission sought comment and alternate proposals on how to account for vegetation, buildings and terrain as factors in the model.

INTERNATIONAL

In re Direct Access to the INTELSAT System, IB Dkt. No. 98-192, Report and Order, FCC 99-236 (Sept. 15, 1999).

By this Order the Commission changed the long-standing restrictions on direct use of International Telecommunications Satellite Organization (INTELSAT) satellite services by United States satellite users. Previously, access to those services was only available through the Comsat Corporation, the U.S. signatory. After this Order, end users, such as broadcast networks, inter-exchange carriers and earth station operators will be able to access INTELSAT services at the same rate as signatories to INTELSAT, joining 94 of the 143 INTELSAT member nations in this practice. The Commission found that U.S. companies should be better able to compete with foreign companies because of cost savings between 10% and 71%.

However, United States direct access users will be required to pay a 5.58% surcharge to COMSAT, in order to cover its continuing expenses, such as satellite insurance.

In addition, the Commission restricted direct access to the INTELSAT system in the U.S. to those INTELSAT signatories with less than 50% of the INTELSAT capacity used in the signatory's home country. Even those signatories that are considered dominant in the respective home market will be allowed direct access from the U.S. to a third location.

The Commission refused to allow "a fresh look" for carriers that had signed long-term contracts with Comsat for INTELSAT services.

The Commission noted that Congress is also considering the issue of direct access to INTELSAT, and that any regulation promulgated by the Commission could be superseded by congressional action. The FCC decision is being challenged in court and the Commission has delayed implementation of the new rules until after the case has been decided.

In re The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, IB Dkt. No. 99-81, Notice of Proposed Rulemaking, FCC 99-50 (Mar. 25, 1999)

The Commission, through the International

Bureau, proposed policies and rules for 2GHz Mobile Satellite Service ("MSS"). In its *Notice of Proposed Rulemaking*, the Commission proposed and asked for comment on other issues designed to bring MSS to the public more rapidly and resolve the status of the nine existing applications to use the spectrum allocated to MSS.

The Notice announced that the Commission planned to amend existing Big LEO (low earth orbit) MSS rules instead of creating new rules just for the 2 GHz MSS, to avoid duplication and confusion. The Notice also stated that the Commission did not plan to make any financial qualification criteria for entry, since the available spectrum space is sufficient enough to allow all of the applicants space for their proposed systems.

The Notice put forth four different models on which the spectrum could be assigned. Under the first proposal, each applicant would receive 2.5 MHz for uplink and downlink use. More spectrum could be available for expansion if needed. Another plan anticipated licensing the entire band to each applicant, and allowing the companies to coordinate use among themselves, though with the Commission able to reconcile disagreements. The Notice also recognized that a traditional approach, allotting an equal and specific spectrum to each applicant might work best. Finally, the Notice announced that if none of the three previous approaches was workable, the spectrum could be auctioned.

The Notice sought comment on several other issues, notably, how long a license term should be; whether service to unserved and under-served areas should influence band license decisions; how to handle orbital debris from 2GHz systems; how best to re-locate or share the spectrum with current users, many of whom are broadcasters using the spectrum for electronic news-gathering; and the way in which the U.S. arrangement can be made compatible with European 2GHz MSS.

WIRELESS

In re Amendment of the Commission's Rules Regarding Multiple Address Systems, WT Dkt. No. 97-81, Report and Order, FCC 99-415 (Dec. 30, 1999)

This Order dealt with a portion of the Fixed Microwave Services, the multipoint, multipoint-to-

point Multiple Address Systems (MAS) in the 900 MHz Band, licensed under Parts 22 and 101 of the Commission's Rules. The principal thrust of the amendment was to encourage the use of technologies new to MAS and to bring those new uses to the public faster.

The MAS spectrum has traditionally been used mostly for control and status reporting requirements by oil, power, security and paging industries. The Commission Order grandfathers current licensees, but envisions new uses of the spectrum in the future.

The Commission's Order separates the available spectrum into two major categories, private services and public safety/Federal Government uses. The 928/952/956 MHz bands are designated exclusively for private internal services, to be licensed on a site basis; and the 932/941 MHz bands are available for either type of use, but five channels in those bands are reserved exclusively for public safety/ Federal Government services. The 932/941 MHz bands will be licensed according to a geographic scheme. Only twenty of the forty paired channels in the 932/941 MHz bands will be licensed as a result of this Order.

The *Order* allows licensees to offer both mobile and fixed operations, for either point-to-point or point-to-multipoint communications, but does not make specific recommendations.

The Commission plans to auction the available MAS spectrum under its competitive bidding rules, but did not offer proposals for the new uses of the spectrum, so it did not draw any conclusions about the use of the spectrum for particular services, though it did anticipate that the MAS spectrum would be put to new uses. The available spectrum is allocated for use by common carrier and private radio licensees on a co-primary basis.

This Order removed the suspension on processing of applications and applications for new MAS licenses that had been in place since the Commission issuance of the Notice of Proposed Rule Making in February 1997.

Once entities obtain new licenses, they will be subject to certain construction or coverage milestones, as established by the Commission. The Commission will set those build-out requirements based on Economic Areas, as defined by the Commerce Department.

***In re* Petition for Reconsideration by People for the American Way and Media Access Project of Declaratory Ruling Regarding Section 312(a)(7) of the Communications Act, Memorandum Opinion and Order, FCC 99-231 (Sept. 7, 1999)**

Reversing its 1994 Declaratory Ruling regarding Section 312(a)(7) of the Communications Act in *In re* Request For declaratory Ruling of National Association of Broadcasters, *Memorandum Opinion and Order*, 9 FCC Rcd. 5778 (1994), that broadcasters did not have to sell candidates advertising time in any other increments than those which the station sold, the Commission, by this Order, held that candidates can purchase advertising time in lengths best suited for their purposes and are not limited by the 60 and 30 second time increments. However, the Commission stated that a broadcaster will not be required to sell a candidate non-standard lengths of program time in every particular instance, and that it is defer to licensee's discretion, and only overturn a decision to not sell program time to a candidate if the licensee has "acted unreasonably pursuant to the established guidelines."

Following the Order, broadcasters must evaluate candidate requests for time on a case-by-case basis using a four-factor test. The licensee must consider 1) how much time was previously sold to the candidate; 2) the potentially disruptive impact on the station's regular programming; 3) the likelihood of subsequent equal opportunities requests from opposing candidates; and 4) the timing of the requests.

***In re* Qwest Communications International, Inc., File No. ENF-99-11, Notice of Apparent Liability, FCC 99-299 (Oct. 15, 1999).**

The Federal Communications Commission (FCC or Commission) issued a *Notice of Apparent Liability* against Qwest Communications International, Inc. (Qwest) for apparent violations of the Commission's rules against switching a consumers' preferred telephone carrier without their consent ("slamming") and a proposed forfeiture

of over \$2 million. The forfeiture was based on thirty consumer complaints claiming that Qwest switched their preferred long distance service provider without consent, including one case in which Qwest alleged to have obtained permission from "Boris the dog."

Twenty-two of the thirty complaints, involve forged or otherwise falsified letters of authorization to switch service. The Commission proposed forfeiture of \$80,000 for each of the twenty-two complaints due to their egregious nature. The remaining eight complaints, the Commission proposed forfeitures of \$40,000 each after finding that Qwest failed to provide any evidence to demonstrate that it had verified the consumers' authorizations before ordering a carrier switch as required by the Commission's rules.

Common Carrier Bureau Seeks Comment on Requests to Redefine Voice Grade Access for Purposes of Federal Universal Service Support, CC Dkt. No. 96-45, Public Notice, DA 99-2985 (Dec. 22, 1999).

By public notice, the Common Carrier Bureau sought comment on requests by state commissions and the Rural Utility Service (RUS) seeking to redefine "voice grade access" under section 54.101. Previously the Commission had defined the minimum frequency range of 300 Hz to 3,000 Hz as the appropriate standard for receiving universal service support. RUS and certain state commissions had asked for a revised requirement specifying a wider bandwidth.

The Commission requested input on whether the definition should be changed. The Commission further called for detailed and technical information as to how any change would affect universal service support eligibility. Further, the Commission inquired as to how an expanded definition would affect the high-cost universal service mechanism and whether a "hold harmless" provision was necessary. Finally, the Commission asked for assessments of financial impact and what technical impact under any modified definition.

In re Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Dkt 98-147, Third Report and Order, CC Dkt 96-98, Fourth Report and Order,

In this Order the Commission ordered mandatory unbundling of high-frequency portion of the local loop, and declared the high-frequency portion of the local loop a new network element. Additionally, the Commission adopted spectrum management policies and rules. According to the Order, allowing this new network element will allow line sharing among LEC voiceband service and competitive offerings of xDSL-based service. The Commission grounded its reasoning on the need to promote competition in the advanced services market.

The Commission reviewed the statutory definition of network element and found that the high-frequency portion of the loop meets the definition. Next, the Commission laid out rules for line sharing. The rules included requirements regarding loop conditioning, sub-loops using digital loop carrier facilities, a six month timetable to resolve operational issues, the timing of the requirement, and the allowance for further state requirements so long as they are consistent with the Commission's policy, as set forth in the order.

Also, the charter of the Network Reliability and Interoperability Council ("NRIC") was to be amended to allow it to advise the Commission on the spectrum management items in the Order and to authorize it coordinate with industry standards bodies. While waiting for input from industry standards bodies, the Commission declined to adopt specific methods of spectrum compatibility. Also, the Commission did not adopt specific criteria for signal degradation. Regarding interference disputes, the Commission declared an exception to the interference dispute resolution rules by concluding that analog T1 service to be a "known disturber."

In re Local Competition and Broadband Reporting, CC Dkt. No. 99-301, Notice of Proposed Rulemaking, FCC 99-283 (Oct. 22, 1999)

The Commission proposed rules to collect basic information about the status of local service competition and the deployment of "advanced telecommunications capability." The Commission stated it must collect such data to meet its obligations under the Telecommunications Act of 1996 to evaluate the effectiveness of its actions regarding local service competition and to assess the availability of advanced services. The Commission also stated its opportunities to grant forbearance from enforcement requires timely and reliable in-

formation such as that called for in this notice. Similarly, the Commission stated its regular review of its rules requires such deployment data to assess the effectiveness of the rules.

The Commission grounded its authority to implement such rules on sections 251, 271 and 706 of the Telecommunications Act. Despite its claimed authority, the Commission also took steps to assure that the data collection duties imposed were not overly burdensome. To that end the Commission asked for comments regarding how to target the amount and type of data collected. Further, the Commission offered that the creation of one data collection program rather than two would be less burdensome.

