CABLE SERVICES


These rules update the formula for calculating pole attachment fees paid by cable systems and telecommunications carriers who lease space from utility companies. The Federal Communications Commission (the “Commission”) issued the Order stressing the importance of private negotiations and marketplace solutions to resolve conflicts between utility companies and leasing entities. This decision does provide the Commission with guidance for procedures if such solutions fail. The Commission decided against changing to a methodology using forward-looking costs and instead decided to continue the use of historical costs in the formula. The formula is used to calculate the maximum just and reasonable rate utilities may charge for attachments made to a pole, duct, conduit or right-of-way.


This Order promulgated rules for good faith negotiations and exclusive agreements for retransmission consent involving TV stations and cable or satellite companies. The Commission established a two-part test for good faith negotiations and prohibited exclusive retransmission agreements before January 1, 2006. The first part of the test consists of a list of good faith negotiating standards for broadcasters and multichannel video program distributors (“MVPDs”). The second part of the test permits an MVPD to present facts to the Commission that a broadcaster, given the totality of the circumstances, has failed to negotiate in good faith. The Order directs the Commission staff to expedite resolution of good faith and exclusivity complaints, and notes that the burden of proof is on the MVPD complainant.

In re Internet Ventures, Inc., Internet On-Ramp, Inc., Petition for Declaratory Ruling that Internet Service Providers are Entitled to Leased Access to Cable Facilities Under Section 612 of the Communications Act, Memorandum Opinion and Order, FCC 00-37, (Feb. 18, 2000).

Internet Ventures, Inc. petitioned the Commission for a Declaratory Ruling that Internet Service Providers (“ISPs”) are entitled to commercial leased access of cable channels under Section 612 of the Communications Act of 1934. Internet Ventures requested the ruling after TCI in Spokane, Washington denied leased access and the City of Spokane declined to take action.

The Commission narrowly decided that ISP internet access service does not constitute video programming under Section 612. The Commission reasoned that internet access service provides many services, such as website access, e-mail, video messaging and conferencing, in addition to streamed-video content access. However, the leased access provision only requires cable system operators to lease channel capacity for video programming. The Commission stated that Congress did not require that cable system operators lease channel capacity to provide services that are not video programming, such as internet access service. The Commission also noted that it previously determined that Congress intended “video programming” to derive meaning from services offered when the legislation was passed (1984). The Commission declined to consider broader issues, such as mandatory ISP access to cable operators’ broadband facilities; or whether internet access provided via cable system constitutes “cable service,” “telecommunications,” or “information service.”
In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor To AT&T Corp., Transferee, CS Dkt. No. 98-178, Memorandum Opinion and Order, FCC 99-24 (Feb. 18, 1999).

The Commission approved the transfer of licenses from TCI to AT&T with the condition that TCI transfer its Sprint PCS tracking stock to a Commission-approved trust and that any economic benefit from that stock be directed to shareholders in Liberty Media Group, a TCI entity. The Commission found that use of cable lines for the provision of local telephony service would benefit the public by creating competition. Therefore, there should be no conditions related to this use.

The Commission considered, but did not impose, any conditions requiring indiscriminate access to the company's cable broadband facilities (cable open access) for unaffiliated Internet Service Providers ("ISPs"). Commissioner Tristani partially dissented, citing the lack of a reporting requirement to monitor the upgrade of TCI's cable facilities to provide local telephony. Commissioner Furchtgott-Roth concurred, but issued a separate statement disputing the Commission's authority to review mergers.

Mass Media


The rules adopted in this proceeding require broadcasters, cable operators and other multi-channel video programming distributors to make local emergency information that they provide to viewers accessible to the hearing disabled as well. The Order states that emergency information not available through closed captioning must be provided through some other method of visual presentation. In determining whether particular details need to be made accessible, the Commission will permit programming distributors to rely on their own good faith judgment.

In re Applications of Shareholders of CBS Corporation (Transferor) and Viacom, Inc. (Transferee) for the Transfer of Control and Certain Subsidiaries, Licensees of KCBS-TV, Los Angeles, et. al, Memorandum Opinion and Order, FCC 00-155 (May 3, 2000).

The Commission approved the transfer of control of the CBS Corporation to Viacom, Inc. in this decision. This transaction consisted of 38 television stations, 162 radio stations, and several satellite translator and satellite stations. The Commission also granted the companies additional time to come into compliance with the FCC ownership rules. The companies have twelve months to ensure that they meet the requirements of the Dual-Network Rule and the National Television Ownership cap. Further, the companies have six months to conform to the local Radio-Television Cross-Ownership rules in the Los Angeles, Chicago, Dallas/Fort Worth and Baltimore markets, all areas where the combined company exceeds the rules limitations.


The Commission adopted new procedures for selecting among competing applicants for non-commercial educational ("NCE") broadcast channels. The previous procedures were based on a subjective hearing process. The Commission emphasized that the new comparative system would be faster and less expensive than the hearing system. The new procedure will use a point system to compare objective characteristics for competing applicants for full-service NCE radio or television stations on channels reserved for NCE use. The Commission will use a more limited point system for competing NCE-FM translators. Additionally, an auction system will be used for nonreserved channels even if NCE applicants are among the competitors. Noncommercial and educational entities will have an opportunity to demonstrate that
Prior to using the point system for NCE radio station applications on reserved bands, the Commission will determine whether awarding the station to one locality over another would best achieve a fair distribution of frequencies. The Commission will proceed to employ the point system if this determination is not dispositive. For mutually exclusive NCE television station applications, the Commission will employ the point system directly. Points will be awarded based on local diversity, technical superiority, localism and statewide networks. Interests of related organizations and officers will be attributable to the applicant for points. In the event of a tie, the Commission will award the station to the applicant with the fewest existing authorizations or fewest outstanding applications. The Commission will seek legislative authority to delegate the responsibility of administering the procedure to the staff.

In re Establishment of a Class A Television Service, MM Dkt. No. 00-10, Report and Order, FCC 00-115 (Apr. 4, 2000).

The Commission adopted a Class A television service to implement the Community Broadcasters Protection Act of 1999. Since 1982, low power television ("LPTV") has had secondary spectrum priority, which must yield to full-service stations where interference occurs.

The Community Broadcasters Protection Act of 1999 sought to protect LPTV service by requiring the Commission to develop Class A television licenses for qualifying LPTV stations. Class A licensees would be subject to the same license terms and renewal standards as full-service stations, and accorded primary status. The Order set forth certification and application requirements, qualification standards, interference protection rights and responsibilities, and addressed various digital television issues. The Commission said the Class A status will provide stability and a brighter future to LPTV stations, while protecting the transition to digital television.

**COMMON CARRIER**


The Commission ruled that in the Telecommunications Act of 1996, the "nondiscriminatory access" provision of Section 251 requires incumbent local exchange carriers ("ILECs") to use "best efforts" to obtain intellectual property rights from equipment manufacturers and software providers for competitive local exchange carriers ("CLECs") that lease unbundled network elements ("UNEs") from the ILECs. Some network elements, such as switches, require software to function properly, and a license from the manufacturer or software provider is necessary. In addition, the Commission found the provision requires costs incurred in obtaining CLEC intellectual property rights must be distributed among all requesting carriers, including the ILECs. This action ensures competitors nondiscriminatory access to incumbent systems under Section 251 of the Telecommunications Act of 1996.

The Commission also issued a related Order modifying an earlier requirement in Section 259. The Order states that ILECs must exercise "good faith" in assisting noncompeting carriers to obtain intellectual property rights from third parties when there is shared access to an ILEC’s "network infrastructure, technology information, and telecommunications facilities and functions."


The Commission issued this decision in response to petitions for reconsideration filed after
the adoption of the Commission’s Second Report and Order and Further Notice of Proposed Rulemaking ("Section 258 Order"). The purpose of Section 258 is to eliminate the practice of "slamming," the unauthorized change of a subscriber's preferred carrier. In the Order, the Commission requires that consumers bring slamming disputes before an appropriate state commission or the Commission when the state has not opted to administer the federal rules. Several long-distance carriers petitioned for slamming disputes to be brought before an industry-sponsored slamming liability administrator, but the petitions were denied.

The Commission modified its liability rules to require slamming carriers to pay out 150% of the collected charges from a slammed customer's bill to the authorized carrier, who will then pay the consumer 50% of his or her original payment. Lastly, the Order sets forth notification requirements for a carrier who is informed of a slam by the subscriber. The carrier must immediately notify both the authorized and alleged unauthorized carriers of the slam, including the identity of each carrier involved.

In re Local Competition and Broadband Reporting, CC Dkt. No. 99-301, Report and Order, FCC 00-114 (Mar. 30, 2000).

This decision adopts rules and a standard form, FCC Form 477, to collect information from providers regarding the development of local telephone service competition and broadband services. By collecting timely and reliable information about the pace and extent of competition for local telephone service in different geographic areas, including rural areas, the Commission hopes to improve its ability to evaluate the effectiveness of its actions and reduce regulation where possible.

FCC Form 477 focuses on easily quantifiable statistics that will reflect the level of service that is actually provided by incumbents and new entrants. The Commission exempted the smallest service providers from reporting. The form requires providers, on a semiannual basis, to compile a list of the zip codes in the states in which they offer local telephony and broadband services. Any facilities-based broadband service providers with at least 250 full or one-way broadband customers in a given state, excluding resellers of broadband services, must report the status of their broadband deployment. Incumbent and competitive local exchange carriers ("CLECs") must report data about their provision of local exchange access services without regard to the type of technology utilized by the local exchange carrier ("LEC") in delivering these services and without regard to the carrier's use of entry strategy (i.e. facilities-based, pure resale or hybrid).

In re Qwest Communications International Inc. and U S WEST, Inc., Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, CC Dkt. No. 99-272, Memorandum Opinion and Order, FCC 00-91 (Mar. 10, 2000).

The Order approves the applications filed by Qwest Communications International, Inc. and U S WEST, Inc. to transfer control of licenses and lines. The Commission found the proposed transaction will serve the public interest, convenience and necessity under 47 U.S.C. §§ 214(a) and 310(d), provided that the applicants' proposed divestiture of Qwest's interLATA services results in a merger that complies with Section 271.

The Commission identified two merger-specific public interest benefits. First, the merger creates powerful new incentives for U S WEST to honor the obligations set forth in Section 251 of the Communications Act, including interconnection obligations with local competitors; and the additional obligations of ILECs to provide access to unbundled network elements ("UNEs"), resale of telecommunications services and collocation. By meeting these requirements, the company may comply with Section 271 and re-enter the intraregion long-distance market. Second, the merger will promote the goal of Section 706 of the Telecommunications Act of 1996 to encourage the deployment of advanced telecommunications services.
In re The Deployment of Wireline Services Offering Advanced Telecommunications Capability, Request by Bell Atlantic-West Virginia for Interim Relief Under Section 706, or, in the Alternative a LATA Boundary Modification, Services, CC Dkt. No. 98-147, Fourth Report and Order and Memorandum Opinion and Order, FCC 00-26 (Feb. 11, 2000).

The Commission adopted an Order establishing criteria by which Bell Operating Companies ("BOCs") may request modifications to Local Access Transport Areas ("LATAs") for the deployment of advanced services. Traditionally, a BOC must meet a fourteen-point checklist when modifying or changing its LATA. The Commission acknowledged, however, that in order to hasten the deployment of advanced services, it has developed a framework by which a BOC, under limited circumstances, may modify its LATA.

Under this framework, a BOC must satisfy a two-part test. First, it must demonstrate to the Commission that granting the LATA modification is necessary to deploy advanced services on a reasonable and timely basis. Next, the BOC must demonstrate that granting the modification would not affect the BOC's incentive to obtain long-distance services under Section 271. In addition, the Commission has specified a list of criteria that the BOC must include when making its request. The Commission decides each request on a case-by-case basis and will pay particular attention to the state's views when making its determination.

WIRELESS

Comment Sought on Request for Further Consideration of Call Back Number Issues Associated with Non-Service Initialized Wireless 911 Calls, WT Dkt. No. 00-80, CC Dkt. No. 94-102, Public Notice, DA 00-1098 (May 17, 2000).

The Commission released a Public Notice regarding the compliance with the Commission's rule, 47 C.F.R. § 20.18(c), requiring the transmission of text telephone ("TTY") 911 calls on digital wireless systems. This inquiry is a continuation of the Commission's E911 First Report and Order, which required wireless carriers to have the capability to transmit 911 calls from individuals with speech or hearing disabilities through TTY devices. To date, carriers have not been able to provide the technology necessary to meet this requirement in a digital system. In the interim, the Commission has granted several waivers of the rule.

By this Public Notice, the Commission sought comment on the tentative adoption of December 31, 2001 as the deadline for the implementation of a digital TTY solution. The Commission also sought comment on whether additional requirements should be added to better achieve this goal. Furthermore, the Commission sought comment on what enforcement methods should be in place and whether this requirement should impose additional burdens on consumers or international providers. Finally, the Commission invited comment on whether interim solutions were feasible, specifically focusing on both cost and convenience for TTY consumers.