COMMON CARRIER


In this proceeding, the Federal Communications Commission (the “FCC” or “Commission”) sought comments on the Recommended Decision of the Federal-State Joint Board on Universal Service regarding a plan for reforming the rural universal service support mechanism. The Recommended Decision included a recommendation for the use of a modified version of the current high-cost loop support mechanism based on carriers’ embedded costs and recommended that per-line support levels within a study area become fixed once a competitive eligible telecommunications carrier begins providing service in the study area. The Recommended Decision also proposed various upward adjustments to current limits on high-cost loop support for rural carriers, the use of a new annual index to adjust the limits on high-cost loop support and an adjustment in per-line support levels in competitive study areas on a going-forward basis. In addition, the Recommended Decision suggested other reforms, such as a “safety valve” mechanism to provide additional support for meaningful post-transaction investment in high-cost telephone exchanges acquired by rural carriers, the provision of “safety net additive” support in years in which the cap is triggered for rural carriers with more than 14% growth in telecommunications plant in service, and a flexible system for disaggregating and targeting per-line support.

The Commission sought comment on whether the Recommended Decision is a good foundation for implementing a rural universal service plan for the next several years, the aforementioned recommendations and proposals, and any other issues related to implementation of the Rural Task Force plan.


Section 254(d) of the Telecommunications Act of 1996 (“1996 Act”) requires that “every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis” to the Universal Service Fund. The Commission requires contributors to semi-annually submit a Telecommunications Reporting Worksheet that lists contributions based on billed end-user telecommunications revenues from the prior year.

In light of significant recent developments in the interstate telecommunications marketplace, on Oct. 12, 2000, the Commission released a Contributions Further Notice seeking comment on proposals to modify the Universal Service Fund contribution methodology to ensure that it remains specific, predictable, sufficient and competitively neutral as markets develop. After reviewing comments on the proposals, the Commission decided to make only one modification to the existing contribution methodology. Under the contribution methodology prior to the release of this Report and Order and Order on Reconsideration, the interval between the accrual of revenues by carriers and the assessment of universal service contributions was twelve months. This ruling shortened that interval to an average of six months.

The Commission will continue to set contribution factors on a quarterly basis. Carriers must continue to file Form 499-A in April to report their annual revenues from the prior year, but under the revised methodology, carriers must also file on a quarterly basis the new Form 499-Q to report their revenues from the prior quarter. The Commission reasoned that the shortened interval between accrual of revenues and assessment of contributions would more accurately reflect trends in telecommunications conditions, such as
new carriers entering the interexchange market or declining revenue bases for carriers that are losing market share. The Commission directed the Universal Service Administrative Company to begin implementation of the revised contribution methodology immediately so it could be effective for the second quarter of 2001 (April through June of 2001).


In the proceeding In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification, in CC Dkt No. 96-98, FCC 00-183 (June 2, 2000), the Commission stated that, as part of its inquiry, it would question whether the exchange access and local exchange markets are so interrelated, from an economic and technological perspective, that a finding that a network element meets the "impair" standard under Section 251(d)(2) of the 1996 Act for the local exchange market would itself entitle competitors to use that network element solely or primarily in the exchange access market. The Commission also concluded in the Supplemental Order Clarification that it must take into account the market effects of the unbundling rules issued in In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Dkt No. 96-98, FCC 99-238 (Nov. 5, 1999), in order to evaluate whether or not carriers are impaired for special access service without access to combinations of unbundled network elements. The Commission sought comments so it could perform an evaluation and gather evidence for a ruling.

In the Public Notice, the Commission sought comment on whether special access service should qualify as an unbundled network element and any other relevant issues that would assist the Commission in determining whether combinations of unbundled network elements should be made available for the sole or primary purpose of providing exchange access service.


Title IV of the Americans with Disabilities Act ("ADA") mandates that the Commission ensure that interstate and intrastate telecommunications relay services ("TRS") be made available, when possible, to individuals with hearing and speech disabilities. This includes coin sent-paid calls, which are calls made using coins in a payphone. However, the technical difficulties associated with handling these calls through TRS centers resulted in multiple suspensions of the mandate for TRS providers to handle these types of calls.

The FCC sought comment on its proposal to eliminate the requirement that TRS providers be able to handle coin sent-paid calls. The FCC, after several reports and rules, concluded "it is unlikely that the industry will develop an economically feasible technical solution in the foreseeable future." Although Section 225 of the Communications Act of 1934 ("Communications Act") mandates that carriers provide relay services which are "functionally equivalent" to voice telephone service, no satisfactory solution to the technological problem has been developed. Instead, the FCC proposed that carriers provide a payphone service for TRS users that is functionally equivalent to that provided to callers not using a relay service. The FCC felt this will eliminate the uncertainty that temporary suspensions have created. The FCC encouraged carriers and manufacturers to develop improvements in coin sent-paid technology that could support coin sent-paid services through TRS centers.

CABLE

Pursuant to Section 614(b)(4)(b) of the Communications Act, the FCC considered several issues involving the carriage of digital television broadcast signals by cable television operators. The FCC had resolved matters relating to retransmission consent, content-to-be-carried, channel capacity and channel placement. For example, the Commission asserted that new television stations that transmit only digital signals and current television stations that return their analog spectrum allocation and convert to digital operations must be carried. Further, digital-only television stations may assert their right to carriage. In addition, the Communications Act did not mandate nor preclude the mandatory simultaneous carriage of both a television station’s digital and analog signals.

The Commission had also tentatively concluded that a dual carriage requirement burdens a cable operator’s First Amendment interests substantially more than is necessary to further the government’s substantial interests of: preserving the benefits of free over-the-air local broadcast television, promoting widespread dissemination of information for multiple sources, as well as ensuring fair competition in the television programming market.

The Commission sought comment on a number of matters, including, but not limited to: (1) the need for dual carriage for a successful transition to digital television and return of the analog spectrum, (2) cable system channel capacity, and (3) digital retransmission consent.


Under Section 614 of the Communications Act and various other legislation and regulations, a commercial television broadcast station is entitled to request carriage on local cable systems. This applies to analog stations converting to digital stations. However, WHDT is a digital-only station, seeking carriage only for its high definition digital signal. Local Cable operators challenged WHDT’s petition by asserting that the petition is not ripe for review by the Commission and, under Section 614(b)(4)(B) of the Communications Act, carriage of WHDT’s signal is not required.

The Commission held that the petition was ripe for review, regardless of the fact that the station has yet to begin programming or requested cable operators for carriage. The Commission further concluded that WHDT meets the statutory definition of a “local commercial television station” as defined under Section 614 of the Communications Act, despite being a DTV-only service provider and not an analog station or an analog station switching to a digital format.

The Commission clarified that any full power commercial television station, other than a qualified noncommercial education television station licensed by the Commission, receives mandatory carriage rights. Broadcasters initiating DTV-only service are entitled to mandatory carriage for their digital signals consistent with applicable statutory and regulatory provisions.

INTERNATIONAL

In re 2000 Biennial Regulatory Review, Policy and Rules Concerning the Inter-
Due to dramatic changes in the international interexchange marketplace, the Commission initiated a Notice of Proposed Rulemaking on Oct. 18, 2000, to examine current regulations. Specifically, the Commission sought to examine the continuing necessity of tariffs on non-dominant carriers. The Commission determined that while the intention of tariffs is to prevent discrimination against U.S. domestic consumers, in actuality they "impede carrier's flexibility to react to competition and may actually harm consumers." In conjunction with detariffing, the Commission proposed: (1) limited exceptions for permissive detariffing; (2) a public disclosure requirement; (3) maintenance of price and service information; (4) complete detariffing of services provided by U.S. carriers affiliated with foreign carriers possessing market power; (4) complete detariffing of international commercial mobile radio services ("CMRS"); and (5) the filing of carrier-to-carrier contracts.

Additionally, the Commission has provided for a nine-month transition period to assist non-dominant carriers providing international interexchange services in complying with these new requirements. The filing of new or revised contracts for tariffs on international interexchange services will not be allowed.

MASS MEDIA

In re Elimination of Experimental Broadcast Ownership Restrictions, Report and Order, in MM Dkt. No. 00-105, FCC 01-99 (Mar. 28, 2001).

The FCC eliminated a rule requiring that no entity could control more than one experimental license absent the showing of need. Experimental licenses are distributed in order for stations to carry on research for development of new broadcast technology, equipment, services, and the like. Originally, this rule was promulgated in order to prevent licensees from aggregating enough stations to operate a commercial service. The FCC no longer believes that this rule is necessary because the current requirements and limitations on broadcast are sufficient to ensure that experimental licenses will be used for experimental purposes and not another purpose.


The FCC reconsidered previously adopted rules that required broadcasters and other video programming distributors to provide video description and make emergency information more accessible to visually impaired viewers. The rules require affiliates of ABC, CBS, FOX and NBC in the top twenty-five Designated Market Areas, to provide fifty hours per calendar quarter of prime time or children's programming with video description. Also, Multichannel Video Programming Distributors ("MVPD") with 50,000 or more subscribers must also adhere to the rule in each of the top five national nonbroadcast networks they carry.

The FCC first amended language specifying to whom the 50-hour video-programming rule applies. In the original rule, MVPDs had to adhere to the rule in each of the top five national nonbroadcast networks they carried. This inadvertently encompassed networks such as HBO that were not originally in the scope of those rules. In order to exclude these networks from the scope of the rule without providing exemptions, the FCC amended "Section 79.3(b) (3) [of Title 47 of the Code of Federal Regulations] to clarify that the 50-hour requirement only applies to the top five national nonbroadcast networks based on the Nielsen national prime time audience share that reach 50% or more of MVPD households."

Another amendment to the rule was made in the area of "pass-through" requirements. The rule originally stated that stations with the technical capability must pass-through any second audio program containing video description. The National Association of Broadcasters ("NAB") argued that the requirement of pass-through interfered with the station providing other Second Audio Program ("SAP") services to that program. The FCC amended Sections 79.3(b) (2) and (4) to require that MVPDs pass-through programs if
they are technically capable, and unless it would cause conflict with a program-related use of the SAP channel.

The FCC clarified whether MVPDs could count programming that was previously aired with video description but was re-aired toward the 50-hour requirement. The FCC will allow broadcast stations and MVPDs to count repeats, since there may not be enough new programming each quarter that is appropriate for video description. The FCC clarified the definition of prime time to be the period from eight to eleven p.m. on Monday through Saturday, and seven to eleven p.m. on Sunday, local time.


On Apr. 4, 2000, the Commission adopted a new system to select applicants competing to construct noncommercial educational ("NCE") broadcast stations. The new approach uses a point system to make selections. The system for awarding points is based on such factors as diversity, localism, signal coverage and service to schools, with a permit awarded to the applicant with the highest score.

This Memorandum Opinion and Order affirms the use of the point system but makes the following clarifications: (1) attribution standards applicable to NCE stations are clarified; (2) the stated policy that government entities are considered local throughout their areas of jurisdiction is incorporated into the rules; (3) first and second NCE aural signals received, rather than those licensed to the community, will be considered for the threshold fair distribution analysis; (4) the manner in which applicants will claim points; and (5) the manner of counting translator stations.


Through this Report and Order, the Commission sought to resolve several issues, that it considered crucial to the rapid conversion of the nation’s broadcast television system from analog to digital. The Commission first imposed a channel election requirement by requiring commercial television stations with two in-core channels to elect their post-transition digital channel by Dec. 31, 2003. The Commission next determined that, after Dec. 31, 2004, whatever portion of a commercial broadcaster’s National Television System Committee ("NTSC") Grade B contour that had not been replicated with its digital television signal would simply cease to be protected in the Table of Allotments. The Order also adopted digital television ("DTV") application cut-off procedures and addressed a host of technical issues, determining that at the time there was no persuasive information to indicate that there was any deficiency in the 8-level vestigial sideband ("8-VSB") modulation system of the DTV transmission standard.

The Commission also explored issues and concerns raised by parties regarding DTV reception capability, and proposed to require that certain types of new television sets have the capability to demodulate and decode over-the-air DTV signals. Further, the FCC sought comment on how best to implement such a requirement, including alternatives for phasing-in DTV reception capability in a manner that would minimize costs for both manufacturers and consumers.

WIRELESS


The Commission sought comment, as well as any available data, to determine whether the current Commercial Mobile Radio Service ("CMRS") spectrum cap and the cellular cross-interest rule remained necessary.

In September of 1999, the Commission revisited the rules and determined that they remained viable except in Rural Service Areas ("RSA"). It was decided that modification of the rules was necessary in RSAs because “facilities-based entries were likely to be limited by the economics of offering service to lower-density populations.” In such areas, increasing the MHz spectrum cap
would make competition more efficient without repercussion. In urban and sub-urban areas, however, such an increase would result in less overall competition and thus, a loss of consumer benefits. In fact, the existence of such policies was found to have aided the development of CMRS competition.

The cellular cross-interest rule is a limitation on the ability of a single carrier to have interests on different channel blocks in a geographic area. Such an interest requires at least 20% ownership and a controlling interest. The Commission concluded that, "reliance on the CMRS spectrum cap without a cellular cross-interest rule would allow cellular carriers to acquire too much of an ownership interest in the other cellular licensee in urban markets, and would permit one entity to acquire complete control of both cellular licensees in rural markets."