

The Federal Communications Commission



Final Plan for Retrospective Analysis of Existing Rules

May 18, 2012

Executive Summary

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existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded or repealed.

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

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

I. Background

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

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

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

¹ 47 U.S.C. § 151.

² *Id.*

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

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

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

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

II. Scope of Plan

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

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

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

This plan covers the following documents produced by the FCC:

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

III. Efforts Underway Consistent With Executive Order 13579

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

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

A. Statutory Retrospective Reviews

i) Section 11 of the Communications Act

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

⁴ 47 U.S.C. § 161.

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

ii) Regulatory Flexibility Act

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

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

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

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

⁶ 5 U.S.C. § 610.

⁷ *Id.* § 610(b).

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

iii) Section 202(h) – Broadcast Ownership Review

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

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

iv) Paperwork Reduction Act

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

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

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

¹¹ 44 U.S.C. § 3501 *et seq.*

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

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

v) Forbearance Requests

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

B. Other Retrospective Reviews

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

¹² 5 C.F.R. § 1320.5.

¹³ 47 U.S.C. §§ 160, 332.

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

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

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

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

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

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

- **Lifeline/Link Up Reform.** On January 31, 2012, the Commission adopted a Report and Order and FNPRM that substantially revises the Lifeline program, a program that ensures that eligible low-income consumers who do not have the means to pay for telephone service can receive that service.¹⁶ These reforms substantially strengthen protections against waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; initiate modernization of the program for broadband; and constrain the growth of the program in order to reduce the burden on all who contribute to the Universal Service Fund. The Commission simplified the administration of the Lifeline program and revised the rules to reflect the current marketplace. The Commission also revised the Lifeline program to provide funding on a pilot basis for broadband services in addition to voice service with the goal of making broadband more affordable for low-income Americans. In the FNPRM, the Commission sought comment on multiple issues directed at further improving the efficiency and effectiveness of the Lifeline program.
- **USF Contribution Reform.** On April 27, 2012, the Commission adopted a FNPRM seeking to reform the contribution side of universal service, which has not been fundamentally changed since the Commission first developed it in 1997.¹⁷ It requires all telecommunications carriers and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

iii) Responses to Requests from Industry and Stakeholders

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

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

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

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

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

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

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

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

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

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

- **Aviation Safety.** In response to petitions for rulemaking, the Commission initiated a proceeding to amend its rules to permit uses of new technology to promote aviation safety, including airport surface detection equipment for ground vehicles and audio visual warning systems for antenna structures and other aviation obstacles.⁴³
- **Retransmission Consent.** In March 2010, a coalition of cable operators and other parties filed a petition for rulemaking requesting that the Commission amend and supplement its retransmission consent rules. After examining the petition, the Commission concluded that due to changes in the video programming distribution market, an examination of the retransmission consent rules was appropriate. An NPRM seeking comment on proposals to streamline and clarify rules for retransmission consent negotiations was released in March 2011.⁴⁴
- **WCS-SDARS.** In an order released in May 2010, the Commission responded to licensee requests to modify technical rules for Wireless Communications Service (WCS) in the 2.3 GHz band and Satellite Digital Audio Radio Service (SDARS) to make available additional spectrum for mobile broadband service while

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

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

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

protecting adjacent satellite radio, aeronautical mobile telemetry and deep space network operations.⁴⁵

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

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

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

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

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

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

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

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

- **Part 90 Flexibility.** The Commission issued an NPRM in March 2012 to review its rules in 47 C.F.R. Part 90 regarding channel spacing and bandwidth limitations affecting geographic-based 800 MHz Specialized Mobile Radio Service licensees.⁵⁰ The proposed rule changes would allow licensees the flexibility to deploy new technologies and to better utilize their licensed spectrum while also protecting public safety entities using nearby public safety frequencies.
- **Cellular Service Licensing.** In response to a petition for rulemaking, the Commission initiated a proceeding to transition its cellular service licensing model from a site-based system to a geographic area-based system through a two stage auction.⁵¹ The proposed rule changes would allow licensees in more substantially licensed markets increased flexibility to deploy advanced technologies and more efficiently utilize their licensed spectrum while preserving for a period the benefits of the current licensing scheme for licensees in less substantially licensed markets.

⁵⁰ *Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-based 800 MHz Specialized Mobile Radio Licensees*, Notice of Proposed Rulemaking, 27 FCC Rcd 2742 (2012).

⁵¹ *Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area*, Notice of Proposed Rulemaking and Order, 27 FCC Rcd 1745 (2012).

IV. Public Participation in Rulemakings

The Commission seeks public input in all rulemaking proceedings, providing the public with the opportunity to comment via the Internet and postal mail. The Commission also is testing new ways of engaging a broader audience, such as utilizing Twitter during workshops to respond to questions from the public and posting links to rulemakings on Facebook and Twitter to encourage comments from a broader range of parties. In October 2009 the Commission for the first time considered public comments on its blog and IdeaScale as part of the record in a rulemaking proceeding.

In 2011, the Commission adopted an Order designed in part to enhance public participation by broadening the use of docketed proceedings and enhancing online access.⁵² The Commission now offers a web form on each rulemaking's web page that allows users to comment without having to navigate to the Commission's electronic comment filing system. Furthermore, the Commission recently has upgraded the Internet-based tools available to the public for tracking rulemaking proceedings by offering features such as RSS feeds and full-text search so the public can stay informed about new dockets and filings in ongoing proceedings.

The Commission also relies on public workshops and field hearings to obtain public input into proceedings. The Commission holds such public forums throughout the country in order to seek a broad range of opinions and experiences to inform the record of its proceedings. Since 2009 the Commission has held more than 125 workshops and hearings on myriad FCC proceedings and processes ranging from the National Broadband Plan to media ownership, auction processes and database reform.

⁵² *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd 1594 (2011).

The Commission works closely with industry representatives and the public to resolve issues of importance to consumers without the imposition of unduly burdensome or unnecessary regulation. For example, in October 2010, the Commission released an NPRM proposing rules that would require wireless service providers to provide usage alerts and information to assist consumers in avoiding unexpected charges on their bills, commonly referred to as “bill shock.”⁵³ However, instead of moving to impose rules, the Commission facilitated the development of an industry code of conduct that will address consumer bill shock and worked with industry to develop a webpage that will update consumers on the protections available to them. Such efforts support the Commission’s goal of advancing the public interest while minimizing regulatory burdens.⁵⁴

Since 2009, the Commission has greatly increased its public-private partnership efforts in other areas. There are 11 active Advisory Committees, made up of representatives from industry, state, local and Tribal governments and consumers, which advise the Commission on a number of issues from public safety to accessibility for individuals with disabilities.⁵⁵

As the Commission continues to implement its plan for retrospective review of regulations, the agency will explore ways of expanding public participation in order to achieve the goals of more efficiently providing the public with information necessary to participate in the regulatory process and improving the actual results of regulatory requirements.

⁵³ *Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, Notice of Proposed Rulemaking, 25 FCC Rcd 14625 (2010).

⁵⁴ See Comments of Verizon and Verizon Wireless, GC Docket No. 11-199, at 5 (Feb. 8, 2012) (highlighting the Commission’s efforts in this regard).

⁵⁵ See Reply Comments of National Association of Telecommunications Officers and Advisors, GC Docket No. 11-199, at 2 (Feb. 22, 2012) (discussing the importance of obtaining input from state, local and tribal governments in FCC rulemaking proceedings).

V. Components of Retrospective Regulatory Analysis

A. Metrics for Retrospective Review

As discussed above, the Commission focuses on three primary metrics when evaluating regulations for retrospective review:

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

Other factors that the Commission may take into account in considering candidates for retrospective review include the need to eliminate overlapping or duplicative regulations, the need to eliminate conflicts or inconsistencies with other rules and the need to simplify or clarify regulatory language.

B. Data Availability

The FCC continues to collect data that may be useful in facilitating robust retrospective analysis. The FCC also consistently reevaluates its data collection efforts to ensure that they are necessary and that the regulatory burdens are minimized.

In June 2010, the FCC launched its Data Innovation Initiative to modernize and streamline how it collects, uses, and disseminates data. A new cross-bureau data team was established and the agency's first-ever Chief Data Officer was appointed. At the same time, three of the Commission's Bureaus issued public notices seeking input on

what current data collections should be eliminated, what new ones should be added, and how existing collections can be improved.⁵⁶

The Data Innovation Initiative was a direct consequence of the first Commission-wide survey of its data in 2009. This survey provided an initial analysis of how data sets mapped to direct statutory requirements, statutorily mandated reporting, Commission rules, and other uses that support the agency's mission. This work provided an initial framework to examine for ongoing retrospective analysis.

As part of the Data Innovation Initiative, the Commission has tentatively identified 25 data collections as candidates for complete or partial elimination. The Commission has issued two NPRMs that will advance the process of eliminating seven of the identified collections. The first NPRM, adopted February 8, 2011, proposed the removal of the narrowband comparably efficient interconnection and open network architecture reporting requirements that currently apply to the Bell Operating Companies due to a lack of continuing relevance and utility.⁵⁷ The second NPRM, adopted May 12, 2011, continues the process of eliminating or modifying the reports currently collected on international communications, which will exempt hundreds of small businesses from having to report.⁵⁸

⁵⁶ *Pleading Cycle Established for Comments on Review of Media Bureau Data Practices*, Public Notice, 25 FCC Rcd 8236 (MB 2010); *Pleading Cycle Established for Comments on Review of Wireline Competition Bureau Data Practices*, Public Notice, 25 FCC Rcd 8213 (WCB 2010); *Pleading Cycle Established for Comments on Review of Wireless Telecommunications Bureau Data Practices*, Public Notice, 25 FCC Rcd 8337 (WTB 2010).

⁵⁷ *Review of Wireline Competition Bureau Data Practices*, Notice of Proposed Rulemaking, 26 FCC Rcd 1579 (2011). Since adopting this NPRM, the Wireline Competition Bureau granted the Bell Operating Companies a temporary waiver of these requirements, which the Commission established over 20 years ago. *Review of Wireline Competition Bureau Data Practices*, Order, 26 FCC Rcd 11280 (WCB 2011). No entity supported retaining the requirements and the Commission is currently reviewing the record to determine whether it should permanently eliminate them.

⁵⁸ *Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules*, Notice of Proposed Rulemaking, 26 FCC Rcd 7274 (2011).

Also as part of the Data Innovation Initiative, in June 2011, the Commission revised its rules to require the filing of all tariffs electronically over the Internet using the Electronic Tariff Filing System (ETFS).⁵⁹ This change leverages new technology to reduce burdens on business by replacing the cumbersome and costly system of filing nondominant carriers' tariffs on diskette, CD-ROM and paper. It decreases the burden on carriers and the Commission, increases access to tariffs by the public and interested parties, and enhances transparency and efficiency of the tariff filing process. The rule revisions became effective November 17, 2011, and tariff filers were required to file their initial Base Document and/or Informational Tariff using the ETFS between November 17, 2011 and January 17, 2012.

The Commission has also initiated a proceeding to reevaluate its registration system, commonly known as CORES.⁶⁰ CORES was designed to serve as a central FCC repository for basic licensee information. CORES also was developed to help the Commission more effectively forecast, assess and collect regulatory and application fees, comply with the Debt Collection Improvement Act of 1996, track enforcement of fines and forfeiture actions, monitor and collect penalties, manage the grant of waivers and exemptions, and provide information to the public. The NPRM proposed various changes to make CORES more feature-friendly, eliminate some of the system's current limitations, and improve the Commission's ability to comply with various statutes that govern debt collection and the collection of personal information by the federal government. The CORES proceeding is an important part of the Commission's effort to use technology to reduce burdens on the public and make it easier to do business with the FCC.

⁵⁹ *Electronic Tariff Filing System (ETFS)*, Report and Order, 26 FCC Rcd 8884 (2011).

⁶⁰ *Amendment of Part 1 of the Commission's Rules Concerning Practice and Procedure, Amendment of CORES Registration System*, Notice of Proposed Rulemaking, 25 FCC Rcd 17407 (2010).

In addition, the Commission has worked to find new and innovative ways to collect the data it needs without increasing the regulatory burden on industry. For example, the Commission's broadband test project has provided the Commission with a way to gather information directly from the public on the state and availability of America's wireline and wireless broadband. The broadband test data has provided the Commission with new data points without burdening industry with additional reporting requirements.

Furthermore, when the Commission launched its new Accessibility Clearinghouse,⁶¹ it took a more modern approach to data acquisition and management for providing new information to consumers without increasing the burden on industry. The Clearinghouse's initial 2,000 listings, including 200 mobile phones available in North America and their accessibility features, did not involve any new collections or industry burdens. Instead of launching new data collections, the Commission worked with the Mobile Manufacturer Forum to incorporate their existing database of mobile phones into the Clearinghouse to meet the Commission's statutory requirements.

Finally, the Commission has worked to make the data it collects more readily accessible and usable by the general public and developers who may have an idea for a new application using this data. The Commission continues to expand its conversion of existing databases to an API-based web services model that not only allows the agency to update and modernize online filing systems more quickly, but also allows the public to quickly and automatically consume this information for their own uses and for repurposing to other stakeholders. The Commission also has expanded its use of mapping data in connection with USF reform, providing an innovative interactive map showing areas potentially eligible for Mobility Fund support and providing the same information in multiple GIS formats for public consumption. This shift allows regulated

⁶¹ The FCC's Accessibility Clearinghouse is available at <http://apps.fcc.gov/accessibilityclearinghouse/>.

entities to more efficiently interact with the agency regarding information that is important to them. It also liberates Commission data in such a way that the public can then integrate the data more readily into new services, such as third party tools and mobile apps, promoting the advancement of telecommunications-centric tools that consumers and businesses may find useful.

A recent example of the FCC's ongoing efforts to promote data availability and serve the public's information needs was the agency's launch of My.FCC.gov ("MyFCC") in December 2011. MyFCC is a tool designed to let the public create a customized FCC online experience for quick access to the information it needs. Personalization options built into MyFCC make it possible to easily create, save and manage a customized page, choosing from a menu of "widgets" featuring a wide variety of the FCC's most frequently used tools and services. Examples include the latest headlines and official documents, the FCC's Daily Digest of recent releases, and quick access to forms and online filings. The FCC also is helping other government agencies make their own online offerings more accessible and open to everyone. MyFCC is powered by an open-source module known as the Content API, an innovation other federal agencies can easily install and use. The Content API makes the contents of the website available to developers and other interested parties for projects on their own websites.

C. Coordination With Federal Agencies

The FCC coordinates with other federal agencies at all levels, relying on their expertise and experience in informing Commission proceedings while seeking to avoid duplicative and overly burdensome regulation. Some examples of agencies and topics for collaboration include:

- **Consumer Financial Protection Bureau.** The Commission has an ongoing relationship with the newly-created Consumer Financial Protection Bureau (CFPB) to collaborate on best practices in consumer complaint intake, processing and

service. The FCC and CFPB are working together to monitor issues of mutual concern in the area of consumer awareness and protection, such as the increased use of cellular telephones as credit cards.

- ***Department of Agriculture.*** The Commission works closely with staff at the Department of Agriculture in considering reforms to the Universal Service Fund high cost program and low income program. The Department's Rural Utilities Service has provided the Commission with project data relating to areas receiving funding under its Broadband Initiatives Program (BIP) for deployment of mobile wireless broadband.
- ***Department of Commerce/National Telecommunications and Information Administration.*** The Commission, as a liaison member of the Interdepartmental Radio Advisory Committee (IRAC), works extensively with NTIA to coordinate all efforts around spectrum management. This has included coordination with NTIA on the Spectrum Dashboard, which provides a public means of reviewing how spectrum bands are allocated and for what uses, and who holds licenses and in what areas.⁶² The FCC also worked in collaboration with NTIA to produce the National Broadband Map and continues to help NTIA update that map as more data becomes available.⁶³ The Commission also coordinated with NTIA on the *AWS-4 NPRM and NOI*, including on interference proposals between non-Federal and Federal spectrum bands. The Commission is an active participant in the Policy and Plans Steering Group (PPSG) working with NTIA and other federal agencies to identify spectrum for new broadband systems. NTIA also has provided the Commission with census tract and project data relating to proposed areas for Broadband Technology Opportunities

⁶² The Spectrum Dashboard is available at <http://fcc.gov/dashboard>.

⁶³ The National Broadband Map is available at <http://broadbandmap.gov/>. It offers consumers the ability to search for broadband service providers by address or zip code.

Program (BTOP) projects to receive grants for deployment of mobile wireless broadband.

- ***Department of Education.*** The Commission works with the staff at the Department of Education in connection with the FCC's E-rate program.
- ***Department of Health and Human Services.*** The Commission works closely with staff at the Department of Health and Human Services in considering reforms to the Universal Service Fund rural health care program.
- ***Department of Justice.*** The Commission coordinates with the Department of Justice in reviewing mergers, acquisitions and transfers of control involving FCC licensees. The FCC and the DOJ have cooperated in their review of proposed mergers, including Cumulus Media and Citadel Broadcasting, Comcast Corporation and NBC Universal, AT&T Inc. and Deutsche Telekom AG, and, currently, the SpectrumCo, LLC/Verizon Wireless transaction involving transfer of wireless licenses. FCC and DOJ staff also work together on implementation issues under the Truth in Caller ID Act of 2009 and to identify and prosecute fraud affecting the FCC's universal service and telecommunications relay services programs.
- ***Department of State.*** The Commission works closely with the Department of State to negotiate new spectrum sharing agreements with Canada and Mexico to allow and protect the development of new telecommunications services, as well as ensure efficient spectrum use along the U.S.-Canada and U.S.-Mexico borders. The Commission also routinely coordinates wireless and broadcast operations along the common border, as well as the resolution of cross-border interference cases, with the Department of State. The Commission also coordinates with the State Department on applications for communications service between the United States and Cuba. The Commission coordinates with the State Department pursuant to Executive Order 10530 on applications for submarine

carrier landing licenses filed with the Commission under the Cable Landing License Act of 1921.

- ***Federal Aviation Administration.*** The Commission coordinates with staff at the Federal Aviation Administration on matters affecting aircraft navigation safety, including the marking and lighting of antenna structures as well as uses of spectrum for in-flight and airport operations.
- ***Federal Emergency Management Agency.*** The Commission works closely with FEMA to coordinate operation of emergency networks as the nation migrates toward an Internet protocol-enabled emergency network and next generation E911 systems.
- ***Federal Railroad Administration.*** The Commission works closely with the staff at the Federal Railroad Administration in its role in implementing positive train control technologies by freight and passenger/commuter railroad to prevent collisions pursuant to the Rail Safety Improvement Act of 2008.
- ***Federal Trade Commission.*** The FCC coordinates its efforts with the FTC in several areas, including privacy issues, enforcement of the agencies' Do-Not-Call list, and protection of consumers from unauthorized charges on their telephone bills.
- ***Food and Drug Administration.*** The Commission executed a Memorandum of Understanding in July 2010 with the Food and Drug Administration (FDA) to promote collaboration and improve the efficiency of the regulatory processes applicable to broadband and wireless enabled medical devices. The Commission and the FDA meet regularly to promote initiatives related to the review and use of FDA-regulated medical devices that use radiofrequency emissions or otherwise fall within the jurisdiction of the FCC.

- ***Small Business Administration.*** The FCC coordinates with the Small Business Administration (SBA) when the Commission proposes or adopts rules that contain size criteria for defining a “small business.” The Commission consults with the SBA on a regular basis regarding its adoption of small business size standards for bidding credits offered in its spectrum auctions.
- ***Team Telecom.*** The Commission regularly coordinates with “Team Telecom,” an interagency group led by DOJ, the Federal Bureau of Investigation and the Department of Homeland Security that reviews communications matters for national security concerns.
- ***United States Coast Guard.*** The Commission coordinates with staff of the United States Coast Guard on matters that affect maritime safety, including communications equipment, radar, and emergency beacons.
- ***U.S. Fish and Wildlife Service.*** The Commission works with staff at the U.S. Fish and Wildlife Service to develop and administer policies regarding the effects of communications facilities on endangered species and migratory birds.

VI. Rules Currently Under Consideration for Retrospective Analysis

The Commission will continue its ongoing processes for assessing existing rules that are in need of retrospective review. In conducting such assessment, the Commission will focus on the metrics identified above:

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

Other factors that the Commission may take into account in considering candidates for retrospective review include the need to eliminate overlapping or duplicative regulations, the need to eliminate conflicts or inconsistencies with other rules and the need to simplify or clarify regulatory language.

Rules currently under consideration for retrospective review include:

- ***Special Access Reform.*** The Commission is evaluating the current state of competition for special access services, and is in the process of determining what data on special access facilities, pricing and related competition are necessary to evaluate whether the current special access rules remain appropriate in light of competition.
- ***Part 25 Rulemaking.*** The Commission has conducted meetings with stakeholders to assist in developing proposals to update and streamline the

requirements for earth and space stations. As a result of rapidly changing technology, the Commission has identified these rules as ripe for comprehensive revision.

- ***ECO Test.*** The Commission is examining whether to modify or eliminate the Effective Competitive Opportunities (ECO) test that applies to Commission review of international section 214 applications, cable landing license applications, and notifications of foreign carrier affiliates filed by U.S. international carriers and cable landing licensees.
- ***Part 76 Rulemaking.*** A comprehensive review of the Commission’s technical standards for cable television service is under development in response to changes in cable television systems technology.
- ***Delegated Authority Standardization.*** The Commission is contemplating undertaking a proceeding to review and revise its delegated authority rules, with the goals of ensuring consistency across the bureaus and offices and promoting more efficient decision-making processes within the Commission.
- ***Dynamic Spectrum Access.*** The Commission is examining rule changes that might remove impediments to the development of dynamic spectrum access technology, which will allow for more efficient spectrum use.⁶⁴
- ***Video Relay Service (VRS) Reform.*** The Commission anticipates continuing its close look at the structure of the current VRS program to ensure that it is

⁶⁴ *Promoting More Efficient Use of Spectrum Through Dynamic Spectrum Use Technologies*, Notice of Inquiry, 25 FCC Rcd 16632 (2010).

effective, efficient, and sustainable for the future, and to eliminate waste, fraud and abuse within the program.⁶⁵

- ***IP-based Telecommunications Relay Service (TRS) Technological Standards.*** Over the past decade, technological advances have resulted in the migration of the majority of TRS usage from public switched telephone network-based services to IP-based services. For several years, the Commission annually has waived certain longstanding TRS mandatory minimum service standards that are either technologically irrelevant to IP-based services or are technologically infeasible by IP-based relay providers.⁶⁶ The Commission is considering commencing a proceeding to review which of these rules should permanently be rendered inapplicable to IP-based TRS.
- ***Closed Captioning Standards.*** In response to requests from the deaf and hard of hearing community, and in light of advances in closed captioning technology, the Commission is considering proposing an Order to improve quality standards for closed captioning on television.
- ***Docket Management.*** To further the Commission's goals of increasing the efficiency of its decision-making and modernizing the agency's processes in the digital age, the Commission amended its organizational rules to facilitate the termination of dormant dockets.⁶⁷ As a result of its initial review, the Commission issued an Order in November 2011 terminating 999 dockets,⁶⁸ and is

⁶⁵ *Structure and Practices of the Video Relay Service Program*, Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367 (2011).

⁶⁶ *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Order, 26 FCC Rcd 9449 (CGB and WCB 2011).

⁶⁷ *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedures and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd 1594 (2011).

⁶⁸ *Termination of Certain Proceedings as Dormant*, Order, 26 FCC Rcd 15312 (CGB 2011).

currently considering the termination of an additional 300 dockets.⁶⁹ The Commission will continue to review periodically all open dockets with the objective of terminating those that are inactive. In addition, the Commission is engaged in a review of the process by which it serves parties to proceedings with the goal of increasing efficiency and reducing costs, as well as streamlining the filing of confidential documents by permitting initial electronic filing.

- ***Statutory Retrospective Reviews.*** The Commission will continue to review existing regulations as required by statute, including biennial review of telecommunications regulations pursuant to Section 11 of the Communications Act, review of rules that have a significant economic impact on a substantial number of entrepreneurs and other small businesses under Section 610 of the Regulatory Flexibility Act, quadrennial review of broadcast ownership rules under Section 202(h) of the Telecommunications Act of 1996 and review of significant information collections pursuant to the Paperwork Reduction Act.

⁶⁹ *Consumer and Governmental Affairs Bureau Seeks Comment on Termination of Certain Proceedings as Dormant*, Public Notice, 27 FCC Rcd 1613 (CGB 2012).

VII. Structure Within Institution

The Commission has taken steps to incorporate retrospective review of regulations into the culture of the agency. These steps include ensuring the transparency of retrospective reviews, assessing such review independently of the substantive changes to regulations and incorporating into existing review proceedings a continuing obligation to review and update this plan periodically.

As an initial matter, the Commission takes steps to ensure the transparency of any retrospective review of regulations. Notices of proposed rulemaking that include such retrospective review are published in advance of the review so that the public is informed of the agency's plan to conduct a retrospective review. Studies and other research relied upon in evaluating regulations are published as part of the record, and outside researchers and other members of the public are encouraged to participate in the notice and comment process.

Retrospective review of regulations will be assessed independently of review of the substantive changes to any regulations. Primary responsibility for monitoring the Commission's progress on retrospective review of regulations lies in the Commission's Office of General Counsel (OGC). OGC's responsibility for overseeing the regulatory retrospective review process ensures its independence from other Commission offices and bureaus responsible for writing and implementing regulations. In addition, oversight and discussions of the Commission's retrospective review plans, including agency priorities, are discussed among agency leadership at weekly Bureau and Office Chiefs meetings.

The Commission is committed to continuing routine regulatory review as part of its mission, and plans to revisit and revise this plan on an ongoing basis. As part of its biennial review of telecommunications regulations under Section 11 of the Communications Act, the Commission will review the progress made on the proceedings discussed in this plan and identify additional proceedings contemplated or underway that should include retrospective review. The Commission's strategy for revisiting and revising this plan includes consideration of comments provided by the public on this plan, as well as suggestions from the public on specific regulations to be considered for retrospective review.

VIII. Publishing the Retrospective Review Plan

The Preliminary Plan was published on the Commission’s website and the location was announced through Twitter and Facebook. In addition, Chairman Genachowski announced the release of the Preliminary Plan at a public event at the Center for Business and Public Policy at Georgetown University’s McDonough School of Business.⁷⁰

The Commission accepted comments on the Preliminary Plan via innovation@fcc.gov. The Commission also issued a Public Notice formally soliciting comments on the Preliminary Plan on December 8, 2011.⁷¹ The Public Notice was published in the Federal Register on December 28, 2011.⁷²

⁷⁰ Chairman Genachowski’s remarks on the Preliminary Plan and the FCC’s regulatory reform efforts are available at <http://www.fcc.gov/events/chairman-genachowskis-remarks-georgetown-university>.

⁷¹ *Commission Seeks Comment on Preliminary Plan for Retrospective Analysis of Existing Rules*, Public Notice, 26 FCC Rcd 16503 (2011).

⁷² *Commission Seeks Comment on Preliminary Plan for Retrospective Analysis of Existing Rules*, 76 Fed. Reg. 81462 (2011).

Appendix

Regulations removed (219 as of 5/1/12)	CFR Section	Effective date in FR
Eliminated rules for International Fixed Public Radio Communication Services.	Part 23	3/25/10
Eliminated restrictions on mobile repeater stations for the business radio frequency users.	90.247(b) 90.247(c) 90.267(e)(3)	5/14/10
Eliminated restrictions on WCS service	27.53(a)(6) 27.53(a)(9)	9/1/10
Removed rules to simplify and streamline the E-rate program.	54.506 54.517 54.522	1/3/11
Revised the Amateur Radio Service rules to clarify the rules with respect to amateur service vanity call signs, eliminating licensee confusion.	0.191(o) 0.392(g)	2/14/11
Eliminated restrictions on Amateur Radio Service: eliminated the automatic power control provision which has proven to be virtually impossible to implement, and to encourage amateur stations to experiment with spread spectrum communications technologies.	97.311(d) 97.5(b)(4)	4/29/11
Eliminated outdated and unnecessary reporting requirements related to international telecommunications traffic.	43.53 43.61 (b) 43.61 (c) 63.23 (e)	7/19/11
Rule revisions enabling all tariff filers to file tariffs electronically over the Internet.	61.21 61.22 61.23 61.32 61.33 61.151 61.152 61.153 61.52(a)	7/20/11
Fairness Doctrine, Personal Attack & Political Editorial Rules.	73.1910 76.209 76.1612 76.1613	9/9/11

Regulations removed (219 as of 5/1/12)	CFR Section	Effective date in FR
Broadcast Flag.	73.8000 73.9000-9009	9/9/11
Cable Programming Service Tier Complaints.	76.950-951 76.953-957 76.960-961 76.1402 76.1605-1606	9/9/11
Part 1, Subpart D Broadcast Applications & Proceedings (duplicative of rules in Part 73).	1.502-615	9/9/11
Required Commission to review the Interstate Cost Recovery Plan (the TRS Fund) and the TRS Fund administrator's performance after two years (i.e. in 1995). Removed note that certain provisions of the rule are not effective until OMB approval. OMB approval received August 2000.	64.604(c)(5)(iii)(J) 64.2401, removed [Note]	10/13/11
Eliminated rule describing the Commission's former "protest" process, which by its express terms does not apply to applications filed on or after December 12, 1960.	1.120	11/16/11
Eliminated rule sections pertaining to comparative hearings for broadcast license renewal applications. The enactment of section 309(k) of the Communications Act of 1934 eliminated comparative broadcast hearings for license renewal applicants.	1.227(b)(6) 1.229(b)(2)	11/16/11
Eliminated rule sections pertaining to comparative hearings involving applicants for new commercial broadcast facilities and calling for the production of a Standardized Integration Statement and other information pertaining to the Commission's former integration standard and other broadcast comparative hearing criteria. Under §309(j), the Commission no longer has authority to conduct comparative hearings for new commercial broadcast facilities and instead awards licenses for new broadcast service using competitive bidding.	1.325(c)	11/16/11

Regulations removed (219 as of 5/1/12)	CFR Section	Effective date in FR
Eliminated rule requiring common carriers to file reports regarding pensions and benefits and requiring compliance with a regulation in Part 43 of the rules that the Commission has eliminated.	1.788	11/16/11
Eliminated requirement that common carriers engaged in public radio service operations file reports in conformance with Part 23, which the Commission has eliminated.	1.805	11/16/11
Eliminated requirements that carriers engaged in domestic public radio services report and file documents in accordance with Part 21, which has been eliminated.	1.811	11/16/11
Eliminated rules regarding random selection procedures for Multichannel Multipoint Distribution Service (MMDS). The Commission no longer has authority to use random selection for MMDS or its successor service, Broadband Radio Service.	1.821 1.822 1.824	11/16/11
Eliminated rule that is duplicative of 1.2002 (Anti Drug Abuse Certification).	1.2003	11/16/11
Eliminated rules implementing PUHCA 1935, which was repealed and replaced with Public Utility Holding Company Act of 2005.	1.5000 1.5001 1.5002 1.5003 1.5004 1.5005 1.5006 1.5007	11/16/11
Eliminated rule regarding complaints filed by television stations alleging that a satellite carrier has retransmitted their signals in violation of Section 325(b)(1) of the Communications Act. No complaints may be filed under this subpart after December 31, 2001 and no complaints filed on or before that date are pending.	1.6000 1.6001 1.6002 1.6003 1.6004 1.6005 1.6006 1.6007 1.6008 1.6009 1.6010 1.6011 1.6012	11/16/11

Regulations removed (219 as of 5/1/12)	CFR Section	Effective date in FR
Eliminated rule establishing backup power requirements for communications providers. This rule never took effect.	12.2	Adopted 11/1/11 pending FR Publication
Eliminated rule providing that UHF television translators on Channels 70 to 83 must operate on a secondary basis to land mobile operations in the 800 MHz band and will not be protected from such operations. There are no UHF television translators operating on Channels 70 to 83, and the Commission has eliminated the TV allocation from these channels.	90.621(d)	Adopted 11/1/11 pending FR Publication
Eliminated rule allocating specified channels for Basic Exchange Telecommunication Radio Service (BETRS). FCC removed the allocation in 2005.	90.621(h)	Adopted 11/1/11 pending FR Publication
Eliminated rules that provided a framework for the relocation of incumbent site-based licensees in the upper 200 channels of the 800 MHz Band by incoming geographically-based (EA) licensees. These provisions were a component of the 1995 reconfiguration of the 800 MHz band from site-based to geographic-based service that has since been completed.	90.699(a) 90.699(b) 90.699(c) 90.699(e) 90.699(f)	Adopted 11/1/11 pending FR Publication
Removed rules to reform and modernize the universal service and intercarrier compensation systems.	36.602 51.707 51.717 54.303 54.311 54.316	12/29/11
Eliminated Part 2, Subpart N, FCC procedure for testing Class A, B and S Emergency Position Indicating Radiobeacons (EPIRBs).	2.1501-2.1517	2/1/12
Eliminated rules listing the dates by which intentional radiators, unintentional radiators, radio receivers and equipment operating in the 902-905 MHz band had to comply with the rules adopted in the 1989 revision to Part 15.	15.37(a) 15.37(b) 15.37(c) 15.37(d) 15.249(f)	2/1/12

Regulations removed (219 as of 5/1/12)	CFR Section	Effective date in FR
Eliminated rule specifying dates by which cordless telephones must comply with the requirements of § 15.214(d). Manufacture of cordless telephones that did not comply with these requirements had to cease on or before September 11, 1991.	15.37(e)	2/1/12
Required scanning receivers manufactured or imported after April 26, 1994 to comply with the provisions of § 15.121(a)(1). Effectively superseded by § 15.37(h), which requires scanning receivers manufactured or imported after October 25, 1999 to comply with a revised § 15.121.	15.37(f)	2/1/12
Announces the date that authorization under either the DoC or certification procedure became mandatory for CPU computer boards and related equipment.	15.37(g)	2/1/12
Prohibited the marketing of TV bands devices before the planned February 18, 2009 digital television transition date.	15.37(n)	2/1/12
Required television receivers and related devices manufactured between April 1, 2009 and June 30, 2009 to include consumer information about the DTV transition.	15.124	2/1/12
Lists the dates by which specific types of Industrial, Scientific and Medical (ISM) equipment must comply with limits on radio frequency emissions conducted from a device onto the AC power lines.	18.123	2/1/12
Removed rules to reform and begin to modernize the Universal Service Fund's Lifeline program.	54.209 54.411 54.415	4/2/12