

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
1998 Biennial Regulatory Review --)
Petition for Section 11 Biennial Review)
filed by SBC Communications, Inc.,) CC Docket No. 98-177
Southwestern Bell Telephone Company,)
Pacific Bell, and Nevada Bell)

NOTICE OF PROPOSED RULEMAKING

Adopted: September 23, 1998

Released: November 24, 1998

Comment Date: [30 Days After Federal Register Publication]

Reply Date: [45 Days After Federal Register Publication]

By the Commission: Commissioner Furchtgott-Roth issuing a statement.

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on several proposals submitted by SBC Communications, Inc. (SBC) in its recently filed Petition for Section 11 Biennial Review.¹ In its Petition, SBC includes a list of approximately two dozen regulations or categories of regulations applicable to providers of telecommunications services that SBC asserts are no longer necessary in the public interest. Several of SBC's proposals track proceedings that the staff had previously proposed the Commission initiate,² and several such proceedings have already been initiated. Other SBC proposals identify additional rules or categories of rules that SBC believes could be the subject of deregulation or streamlining as part of the 1998 biennial review and we seek comment on several such SBC proposals.

II. BACKGROUND

1. Section 11 of the Communications Act of 1934, as amended (the Act), instructs the Commission, in every even-numbered year beginning in 1998, to "review all regulations issued under this Act in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service" and to "determine whether any such regulation is no longer necessary in the

¹ See Petition for Section 11 Biennial Review, filed May 8, 1998, by SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell (SBC Petition).

² See News Release, "FCC Staff Proposes 31 Proceedings as Part of 1998 Biennial Regulatory Review," Rep. No. GN 98-1 (Feb. 5, 1998) (February 5 News Release).

public interest as the result of meaningful economic competition between providers of such service."³ Section 11 further instructs the Commission to "repeal or modify any regulation it determines to be no longer necessary in the public interest."⁴ In addition, section 202(h) of the Telecommunications Act of 1996 (the 1996 Act) requires the Commission to review its broadcast ownership rules biennially as part of the review conducted pursuant to section 11.⁵ Specifically, section 202(h) of the Act provides that the Commission "shall review. . . all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest."⁶

2. On November 18, 1997, the Chairman announced that the Commission was commencing the 1998 biennial regulatory review of telecommunications regulations and broadcast ownership regulations, earlier than required. In addition, the announcement indicated that the scope of the first biennial regulatory review would be broader than statutorily required. Specifically, the announcement indicated that the first biennial review presented a key opportunity for serious "top-to-bottom" examination of the Commission's rules and procedures to determine which of them need to be revised or eliminated.⁷ Commission staff then undertook a broad review of Commission regulations. A two-fold approach was followed: (1) each of the operating Bureaus and the Office of Engineering and Technology (OET) conducted a review of rules under its jurisdiction; and (2) a team made up of representatives of the Office of Plans and Policy (OPP), the Chief Economist and his staff and the Competition Division of the Office of General Counsel (OGC) conducted a parallel review of Commission rules on a cross-cutting basis. In order to maximize the universe of rules that might be candidates for modification or elimination, the staff did not focus simply on the statutory standard of whether "meaningful economic competition" justified changes in the rules. Thus, for example, despite the lack of the development of such competition in the local exchange market, the staff nevertheless included rules relating to local exchange carriers as within the scope of the review.

3. In connection with this review, the OPP/Chief Economist/Competition Division of OGC team developed the following analytical framework, which it used in connection with its review and made available to the other Bureaus and OET for their use:

- (i) Is the original or present purpose of the regulation still valid? If not, then why shouldn't the regulation be eliminated?
- (ii) If a valid purpose for the regulation exists, how well does the regulation achieve the purpose? If it does not achieve its purpose well, then why shouldn't the regulation be eliminated?
- (iii) Even if a regulation achieves its purpose, do the burdens it creates outweigh its

³ 47 U.S.C. § 161(a).

⁴ 47 U.S.C. § 161(b).

⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶ Section 202(h) of the Telecommunications Act of 1996.

⁷ See FCC News Release, "1998 Biennial Review of FCC Regulations Begun Early" (Nov. 18, 1997).

advantages? What are the "Pros" of the regulation? If the regulation is designed to protect against the exercise of market power, is there meaningful economic competition? If there is, then why doesn't that eliminate the need for the regulation? What are the "Cons" of the regulation? Cons can include the direct costs and burdens on companies, regulators, customers, and taxpayers and the indirect costs of (a) preventing or slowing a firm from introducing and pricing new services or changing rates; (b) discouraging innovation; (c) forcing competitors to give each other advance notice of their plans; or (d) slowing the ability to respond quickly and flexibly to competition. Do the Pros clearly outweigh the Cons?

- (iv) Even if the Pros outweigh the Cons, is there a less burdensome alternative that will produce similar benefits? and
- (v) Does the regulation overlap, interfere, or conflict with other regulations such that modification is warranted?⁸

4. As part of this process, the staff sought and received substantial public input. Specifically, beginning on December 17, 1997 and continuing through January 30, 1998, each of the five operating bureaus, together with OGC, hosted a series of public forums to receive ideas from the public regarding Commission regulations that are potential candidates for repeal or modification during the first biennial regulatory review conducted pursuant to section 11 of the Act.⁹ In addition, staff from the Bureaus and OGC attended a series of five meetings held by practice groups of the Federal Communications Bar Association (FCBA), also to receive ideas about biennial review candidates. The staff also sought input from the Commissioners.

5. Following this broad review of Commission regulations, on February 5, 1998, the Commission staff released a list of 31 proceedings it proposed the Commission initiate as part of the 1998 biennial regulatory review.¹⁰ The list of proposed rulemaking and notice of inquiry proceedings proposed examining a wide variety of subsets of Commission's rules. Nearly two-thirds of the proposed proceedings involved

⁸ We note that the analysis employed by Commission staff is similar to the analytical framework advocated by Commissioner Furchtgott-Roth in his Separate Statement accompanying the *Biennial Review Broadcast Ownership Notice of Inquiry*. See *1998 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MM Docket No. 98-35, Notice of Inquiry, FCC 98-37 (rel. March 13, 1998), *Separate Statement of Comm. Harold W. Furchtgott-Roth*. SBC believes that "[a] hard and fast rule is not appropriate; different circumstances will need differing analyses." SBC Petition at 5.

⁹ See generally Public Notice, "Office of General Counsel and Common Carrier Bureau To Hold Public Forum To Discuss Biennial Review of Common Carrier Rules," DA 97-2546 (rel. Dec. 4, 1997); Public Notice, "Office of General Counsel and Mass Media Bureau To Hold Public Forum To Discuss Biennial Review of Mass Media Bureau Rules," No. 81077 (rel. Dec. 23, 1997); Public Notice, "Office of General Counsel and Wireless Telecommunications Bureau To Hold Public Forum To Discuss Biennial Review of Wireless Telecommunications Bureau Rules," DA 98-39 (rel. Jan. 9, 1998); Public Notice, "Office of General Counsel and Cable Services Bureau To Hold Public Forum To Discuss Biennial Review of Cable Services Bureau Rules," DA 98-31 (rel. Jan. 9, 1998); Public Notice, "Office of General Counsel and International Bureau To Hold Public Forum To Discuss Biennial Review of International Bureau Rules," Rep. No. IN 98-2 (rel. Jan. 13, 1998).

¹⁰ See February 5 News Release.

common carriers, and the proceedings covered hundreds of individual rules. The staff also noted that the Commission had many ongoing proceedings consistent with the deregulatory and streamlining goals of section 11. As the News Release specifically noted, the list of proposed biennial review proceedings was a working document that reflected the Commission staff's plans. The staff established an electronic mailbox <biennial@fcc.gov> specifically for the purpose of soliciting ongoing deregulatory input from the public. In this regard, the process of determining which rules are likely candidates for modification or streamlining has been ongoing, and consequently the list of 31 proceedings proposed by the Commission staff was neither exhaustive nor static. We disagree with SBC that this process, including the proceedings that we have initiated and will initiate, does not comply with the statutory requirements.¹¹ It appears that SBC may be suggesting that the Commission should instead have initiated a single mega-rulemaking proceeding to review every rule relating to common carriers (including wireline, wireless and international). We believe such a mega-proceeding is not required by statute, would be unworkable, and would result in less meaningful deregulation and streamlining than the approach the Commission is taking. The statute does not require a rulemaking determination by the Commission with respect to every rule that continues to serve the public interest and such an approach would inevitably fall under its own weight, thereby undermining the goal of section 11 -- to identify rules that no longer serve the public interest and modify or eliminate them.

III. DISCUSSION

We ask for comment on the following SBC proposals:

6. *Rate-of-Return Prescription (47 C.F.R. § 65.101)*. SBC argues that section 65.101 *et seq.* of our regulations, which trigger an inquiry into whether a revised rate-of-return prescription is needed once certain financial triggers are met, are a "vestige of rate of return regulation which is no longer needed under price cap regulation."¹² We seek comment on SBC's statement and whether these rules continue to serve any purpose for carriers subject to price cap regulation.

¹¹ See SBC Petition at 4-5.

¹² *Id.* at 10. The prescribed interstate rate of return is used to ensure that the rates filed by the approximately 1400 incumbent local exchange carriers subject to rate-of-return regulation continue to be just and reasonable. See generally *Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes*, CC Docket No. 92-133, Report and Order, 10 FCC Rcd 6788 (1995) (streamlining the rate-of-return represcription and enforcement processes). Several proceedings propose to use the interstate rate of return. For example, the Commission has proposed to use the interstate rate of return as the rate of return carrying charge component for the Commission's pole attachment formulas. See *Amendment of Rules and Policies Governing Pole Attachments*, CS Docket 97-98, Notice of Proposed Rulemaking, 12 FCC Rcd 7449, para. 37 (1998). In addition, in the *Universal Service Order*, the Commission adopted eight criteria for analyzing state cost studies. One of the criteria is that the rate of return used in any state cost study must be the authorized rate of return, currently 11.25 %, or the state's prescribed rate of return. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, para. 250 (1997) (*Universal Service Order*). Finally, we note that the Commission recently initiated a proceeding to represcribe the authorized rate of return for interstate access services provided by incumbent LECs. See *Prescribing the Authorized Unitary Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, *Notice of Initiating a Prescription Proceeding and Notice of Proposed Rulemaking*, FCC 98-222 (rel. Oct. 5, 1998).

7. *Cash Working Capital Studies (47 C.F.R. § 65.820(d))*. SBC asserts that the lead-lag study method required for Class A carriers to calculate the working capital element of the interstate rate base is an overly burdensome endeavor for calculating what "traditionally makes up far less than 1% of the total rate base."¹³ As detailed in Exhibit A of the SBC Petition, SBC recommends that carriers be given the option of including a cash working capital allowance in the rate base or else foregoing recovery. SBC further proposes that to the extent carriers elect an allowance for cash working capital, carriers should be allowed to freeze the amount of cash working capital or else choose from three methods of calculating the cash working capital allowance: the lead-lag study method currently required by Commission regulations; the balance sheet method; or the 45-day formula method detailed in Exhibit A to the SBC petition. We seek comment on SBC proposals to reduce the burdens currently imposed on Class A carriers by the lead-lag studies.

8. *Detariffing of Services Subject to Competition*. SBC states that certain local exchange carrier (LEC) services are competitive and that the Commission should detariff these services.¹⁴ Specifically, SBC indicates its belief that special access services, direct trunked transport, operator services, directory assistance and interexchange services are competitive and should be detariffed for all carriers. We seek comment on SBC's conclusions about competition for these services and whether detariffing would be appropriate as an exercise of our section 10 forbearance authority.¹⁵ Commenters supporting detariffing should indicate whether they favor permissive detariffing or complete detariffing.

9. *Part 64 Cost Allocation Manual (CAM) Simplification*. SBC asserts that the Part 64 CAM requirements are too complex. SBC further argues that price cap regulation adequately guards against ratepayer subsidization of nonregulated activities, which the CAM requirements originally were designed to protect against.¹⁶ Exhibit D to the SBC Petition contains detailed suggestions for how many of the current CAM requirements could be simplified. We seek comment on these recommendations to simplify the CAM process in a manner consistent with its underlying purposes of discouraging, and facilitating detection of, improper cost allocations and cross-subsidization.¹⁷

10. We note that some of SBC's CAM simplification proposals are already the subject of pending biennial review proceedings or other Commission proceedings. In the *Accounting Reductions NPRM*, we proposed streamlining certain CAM filing and CAM audit requirements, particularly with respect to mid-size incumbent local exchange carriers.¹⁸ In the *Accounting Reductions NPRM*, we proposed to establish less burdensome CAM procedures for the mid-sized incumbent LECs and to reduce the frequency with

¹³ *Id.* at 10-11 (citing 47 C.F.R. §65.820(d)).

¹⁴ *Id.* at 21-22.

¹⁵ 47 U.S.C. § 160.

¹⁶ *Id.* at 35-36.

¹⁷ *Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 12 FCC Rcd 2993, paras. 13, 24, 50 (1996) (*Accounting Safeguards Order*), *recon. pending*.

¹⁸ *See 1998 Biennial Regulatory Review -- Review of Accounting and Cost Allocation Requirements*, Notice of Proposed Rulemaking, FCC 98-108, paras. 9-12 (rel. June 18, 1998) (*Accounting Reductions NPRM*).

which independent audits of the cost allocations based upon CAMs are required. In addition, we note that the Accounting Safeguards Division of the Common Carrier Bureau recently streamlined certain CAM filing procedures with respect to an incumbent local exchange carrier's affiliate transactions.¹⁹ Finally, we note that SBC's proposal regarding cost allocation procedures for incidental interLATA services is an issue raised by SBC in its Petition for Reconsideration of the *Accounting Safeguards Order*.²⁰ Because we plan to address the resolution of these proposals in existing proceedings, commenters should avoid submitting redundant comments in this docket.

11. *Affiliate Transaction Rules*. SBC suggests that, like the Part 64 CAM process, the Commission should be able to simplify its affiliate transactions rules.²¹ We note that the two issues raised by SBC are issues raised by either SBC or other parties in Petitions for Reconsideration of the *Accounting Safeguards Order*. Without seeking comment on the two issues raised by SBC, we seek general comments on other ways the affiliate transactions rules might be simplified in a manner consistent with the underlying purposes of discouraging, and facilitating detection of, improper cost allocations and cross-subsidization.²²

12. *Wireless Radio Rules*. SBC states that process and procedure rules for wireless radio services are located in various rule parts. It suggests that "[t]o ensure consistent application and understanding of the rules related to the provision of wireless services, the rules must be streamlined and/or eliminated as appropriate to remove duplication."²³ The Commission has already initiated a proceeding to substantially streamline and consolidate these regulations to facilitate conversion to the universal licensing system.²⁴ The goals of that proceeding are "to establish a simplified set of rules that (1) minimizes filing requirements as much as possible; (2) eliminates redundant, inconsistent, or unnecessary submission requirements; and (3) assures ongoing collection of reliable licensing and ownership data."²⁵ We believe that the universal licensing system proceeding addresses many of the issues that SBC raises in its petition. We also note that the Commission has recently requested comments on whether there are any regulations of wireless

¹⁹ See *Responsible Accounting Officer Letter 26: Guidelines for Affiliate Transaction Section of Cost Allocation Manual*, Letter, DA 98-855 (rel. May 6, 1998). We are reviewing these streamlined procedures in response to SBC's application for review. See Public Notice, *BellSouth and SBC File Applications For Review of RAO Letter 26*, DA 98-1117 (rel. June 11, 1998).

²⁰ See SBC Petition at 34; see also SBC Petition for Reconsideration of Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, at 6-9; *Accounting Safeguards Order* at para. 76.

²¹ *Id.* at 36-37.

²² See *Accounting Safeguards* at paras. 13, 24, 109.

²³ *Id.* at 35-36.

²⁴ See *1998 Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, WT Docket No. 98-20, Notice of Proposed Rulemaking, FCC 98-25 (rel. Mar. 19, 1998).

²⁵ *Id.* at para. 8.

telecommunications carriers from which we should forbear under section 10 of the 1996 Act.²⁶ Because we want to ensure that we receive as full a record as possible, and as many suggestions as possible, we therefore seek comment on SBC's general proposals that may go beyond the proposed changes set out in these proceedings, including specific suggestions for rule changes.

13. Many additional SBC proposals mirror the staff's list of proposed biennial review proceedings.²⁷ The Commission has already initiated proceedings on these matters, or will do so in the near future. Accordingly, we do not seek comment on those matters here.²⁸ The proposals contained in the SBC Petition that track the staff's proposals have been incorporated by reference into each of the recently released notices. Other biennial review proposals advocated by SBC involve regulations only recently adopted as part of the Commission's implementation of the Telecommunications Act of 1996.²⁹ With implementation just recently underway, and in some instances appellate review still pending, we believe it premature to modify or eliminate these rules as part of the 1998 biennial review. Yet another subset of biennial review proposals included in the SBC Petition involves issues that are already the subject of ongoing proceedings, either before the Commission or the courts.³⁰ We think it more appropriate to handle

²⁶ *Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services; Biennial Regulatory Review -- Elimination or Streamlining of Unnecessary and Obsolete CMRS Regulations*, WT Docket No. 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 98-134, paras. 112-18 (rel. July 2, 1998).

²⁷ *See, e.g., id.* at 11-12, 15 (Part 32 accounting rules), at 9-10 (depreciation rules), at 13-14 and Exhibit C (reporting requirements for incumbent local exchange carriers), at 17 (Part 41 frank rules), at 19-20 (Comparably Efficient Interconnection (CEI) plans), at 25-36 (section 214 application process), at 26-27 (testing new services).

²⁸ *See Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, 1998 *Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, CC Docket No. 98-10, Further Notice of Proposed Rulemaking, FCC 98-8 (rel. Jan 30, 1998); 1998 *Biennial Regulatory Review -- Review of Accounting and Cost Allocation Requirements*, CC Docket No. 98-81, Notice of Proposed Rulemaking, FCC 98-108 (rel. June 18, 1998); 1998 *Biennial Regulatory Review -- Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, CC Docket No. 98-137, Notice of Proposed Rulemaking, FCC 98-170 (rel. Oct. 14, 1998); 1998 *Biennial Regulatory Review -- Part 41 Telephone and Telegraph Franks*, CC Docket No. 98-119, Notice of Proposed Rulemaking, FCC 98-152 (rel. July 24, 1998); 1998 *Biennial Regulatory Review -- Review of ARMIS Reporting Requirements*, CC Docket No. 98-117, Notice of Proposed Rulemaking, FCC 98-147 (rel. July 17, 1998); 1998 *Biennial Regulatory Review -- Review of International Common Carrier Regulations*, IB Docket No. 98-118, Notice of Proposed Rulemaking, FCC 98-149 (rel. July 17, 1998); 1998 *Biennial Regulatory Review -- Testing New Technology*, CC Docket No. 98-94, Notice of Inquiry, FCC 98-118 (rel. June 11, 1998).

²⁹ *See, e.g., SBC Petition* at 23-24 (unbundled access obligations) 29 (universal service schools and libraries program pricing issue), at 32 (reciprocal compensation for one-way paging), at 32-33 (affiliate marketing rules), 36-37 (affiliate transactions rules).

³⁰ *See, e.g., SBC Petition* at 20 (number portability for commercial mobile radio service (CMRS) entities), at 21-24 (pricing flexibility), at 28-29 (switched access structure), at 30-31 (jurisdictional separations); at 35 (LEC/CMRS interconnection). As suggested by SBC, in the context of the development of cost proxy models for universal service, we will make every effort to "ensure that costly rules are not enacted which seriously undermine the policies inherent in the Act." *Id.* at 30.

these proposals in the context of such existing proceedings.³¹ These various proposals may be further considered at an appropriate time in the future. Finally, we do not request comment on SBC's suggestion that we reduce our enforcement efforts with respect to those rules that do remain on the books³² and on its request that we use the biennial review to increase regulation of others.³³ We believe neither of these proposals is consistent with the thrust of section 11. Specifically, we do not believe it is appropriate that section 11 be used as a shield for carriers to avoid the consequences of violations of the Communications Act or Commission rules, or as a sword to impose new regulatory burdens on others.

IV. CONCLUSION

14. By this NPRM, we solicit comment on those proposals submitted by SBC so identified above. Commenters should frame their discussion and analysis in a manner consistent with the analytical framework set forth by Congress in section 11 of the Act. In addition to our more specific requests for comment above, we invite commenters to submit information on the costs and benefits of the rules at issue in this proceeding and of our proposed modifications. We also ask commenters to provide data and evidence to support their positions so as to facilitate objective analysis of the issues raised.

V. ADMINISTRATIVE MATTERS

A. Ex Parte Presentations

15. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's revised *ex parte* rules, which became effective June 2, 1997. *See Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, GC Docket No. 95-21, Report and Order, 12 FCC Rcd 7348, 7356-57, ¶ 27 (citing 47 C.F.R. § 1.1204(b)(1)). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.

B. Initial Paperwork Reduction Act Analysis

16. This Notice of Proposed Rulemaking contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No.

³¹ *Cf.* 1998 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rates and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, FCC 98-37 (rel. March 13, 1998) at 5(¶10) (on-going review of certain broadcast ownership rules in outstanding proceedings satisfies requirements of section 202(h) of the Telecommunications Act of 1996).

³² SBC Petition at 15-16 (suggesting reduction of audits).

³³ *Id.* at 17-19 (proposing to impose access charges on enhanced service providers).

114-13. Public and agency comments are due at the same times as other comments on this NPRM; OMB comments are due 60 days from the date of publication of this *NPRM* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Initial Regulatory Flexibility Certification

1. In general

17. The Regulatory Flexibility Act (RFA)³⁴ requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."³⁵ The RFA defines the term "small entity" as having the same meaning as "small business concern" under the Small Business Act (SBA), which defines "small business concern" as "one which is independently owned and operated and which is not dominant in its field of operation."³⁶ Section 121.201 of the SBA regulations defines small telecommunications entities in SIC Code 4813 (Telephone Communications, Except Radiotelephone) as any entity with fewer than 1,500 employees at the holding company level.³⁷ Some entities employing fewer than 1,500 employees at the holding company level may be affected by SBC's proposals. We, however, do not consider such entities to be "small entities" under the RFA because they are either affiliates of large corporations or dominant in their field of operations. Therefore, we do not believe that the proposed rules will affect a substantial number of small entities that are incumbent local exchange carriers.

2. Wireless Telecommunications Entities

18. The rule changes proposed in the NPRM, if adopted, will affect all small businesses filing new wireless license applications or modifying or renewing an existing wireless license. To assist the Commission in analyzing the total number of affected small entities, commenters are requested to provide estimates of the number of small entities who will be affected by the rules proposed in this *NPRM*. The Commission estimates the following number of small entities that provide wireless telecommunications service may be affected by the proposed rule changes:

a) Cellular Radiotelephone Service

³⁴ The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

³⁵ 5 U.S.C. § 605(b).

³⁶ 15 U.S.C. § 632(a)(1).

³⁷ 13 C.F.R. § 121.201.

The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.³⁸ The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 1000 or more employees.³⁹ The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.⁴⁰ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. The Commission assumes, for purposes this IRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. In addition, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to the data released in November, 1997, there are 804 companies reporting that they engage in cellular or PCS service.⁴¹ It seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees; however, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers qualifying as small business concerns under the SBA's definition. For purposes of this IRFA, the Commission estimates that there are fewer than 804 small cellular service carriers.

b) Broadband and narrowband PCS

Broadband PCS. The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than \$40 million in the three previous calendar years.⁴² This definition of "small entity" in the context of broadband PCS auctions has been approved by the SBA.⁴³ The

³⁸ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

³⁹ U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, (radiotelephone communications industry data adopted by the SBA Office of Advocacy) (SIC Code 4812).

⁴⁰ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

⁴¹ FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997).

⁴² See 47 C.F.R. § 24.720(b)(1).

⁴³ See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-84 (1994).

Commission has auctioned broadband PCS licenses in blocks A through F. Of the qualified bidders in the C and F block auctions, all were entrepreneurs. Entrepreneurs was defined for these auctions as entities, together with affiliates, having gross revenues of less than \$125 million and total assets of less than \$500 million at the time the FCC Form 175 application was filed. Ninety bidders, including C block reaction winners, won 493 C block licenses and 88 bidders won 491 F block licenses. For purposes of this IRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees, are small entities.

Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Given that nearly all radiotelephone companies have no more than 1,500 employees, and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

c) 220 MHz radio services

Since the Commission has not yet defined a small business with respect to 220 MHz radio services, it will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) for Economic Area (EA) licensees, a firm with average annual gross revenues of not more than \$6 million for the preceding three years; and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than \$15 million for the preceding three years. Given that nearly all radiotelephone companies employ no more than 1,500 employees, for purposes of this IRFA the Commission will consider the approximately 3,800 incumbent licensees as small businesses under the SBA definition.

d) Paging

The Commission has proposed a two-tier definition of small businesses in the context of auctioning geographic area paging licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Since the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to *Telecommunications Industry Revenue* data, there were 172 "paging and other mobile" carriers reporting

that they engage in these services.⁴⁴ Consequently, the Commission estimates that there are fewer than 172 small paging carriers. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

e) Air-Ground radiotelephone service

The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service.⁴⁵ Accordingly, the Commission will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground radiotelephone service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

f) Specialized Mobile Radio (SMR)

The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than \$15 million in each of the three previous calendar years. This regulation defining "small entity" in the context of 900 MHz SMR has been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes for purposes of this IRFA that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. In the recently concluded 800 MHz SMR auction there were 524 licenses won by winning bidders, of which 38 licenses were won by small or very small entities.

g) Private Land Mobile Radio Services (PLMR)

PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. The Commission has not developed a definition of small entities specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Any entity engaged in a commercial activity is eligible to hold a PLMR license, therefore these proposed rules could potentially impact every small business in the United States.

⁴⁴ FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997).

⁴⁵ Air-Ground radiotelephone service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

h) Aviation and Marine radio service

Small entities in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules. Most applicants for individual recreational licenses are individuals.⁴⁶ Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of the evaluations and conclusions in this IRFA, the Commission estimates that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA.

i) Offshore radiotelephone service

This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this IRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

j) General Wireless Communication Service

This service was created by the Commission on July 31, 1995⁴⁷ by transferring 25 MHz of spectrum in the 4660-4685 MHz band from the federal government to private sector use. The Commission has scheduled the GWCS auction for May 27, 1998.⁴⁸ The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications.

k) Fixed Microwave services

Microwave services includes common carrier fixed,⁴⁹ private operational fixed,⁵⁰ and broadcast

⁴⁶ The Commission no longer requires individual licenses.

⁴⁷ See Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, *Second Report and Order*, 11 FCC Rcd 624 (1995).

⁴⁸ See "FCC Announces Auction Schedule for the General Wireless Communications Service," *Public Notice*, DA 97-2634 (rel. Dec. 17, 1997).

⁴⁹ 47 C.F.R. § 101 *et seq.* (formerly Part 21 of the Commission's rules).

⁵⁰ Persons eligible under Parts 80 and 90 of the Commission's rules can use private Operational Fixed Microwave services. See, 47 C.F.R. § 80.1 *et seq.*, 47 C.F.R. § 90.1 *et seq.* Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use an

auxiliary radio services.⁵¹ At present, there are 22,015 common carrier fixed licensees and approximately 61,670 private operational fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity with less than 1,500 persons. The Commission estimates that for purposes of this IRFA all of the Fixed Microwave licensees (excluding broadcast auxiliary radio licensees) would qualify as small entities under the SBA definition for radiotelephone communications.

l) Commercial Radio Operators (restricted and commercial)

There are several types of commercial radio operator licenses. Individual licensees are tested by Commercial Operator License Examination managers (COLEMs).⁵² COLEMs file the applications on behalf of the licensee. The Commission has not developed a definition for a small business or small organization that is applicable for COLEMs. The RFA defines the term "small organization" as meaning "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field..."⁵³ The Commission's rules do not specify the nature of the entity that may act as a COLEM.⁵⁴ However, all of the COLEM organizations would appear to meet the RFA definition for small organizations.

m) Amateur Radio services

Amateur Radio service licensees are coordinated by Volunteer Examiner Coordinators (VECs).⁵⁵

operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

⁵¹ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's rules. *See* 47 C.F.R. § 74.1 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as a main studio and an auxiliary studio. The broadcast auxiliary microwave services also include mobile TV pickups which relay signals from a remote location back to the studio. This service is not included within the scope of this *NPRM*.

⁵² Currently there are seven COLEMs. Each COLEM is required to offer testing nationwide. To accomplish this each COLEM subcontracts with testing centers and schools across the country to administer tests.

⁵³ 5 U.S.C. § 601(4).

⁵⁴ A COLEM is an organization that has entered into a written agreement with the FCC to coordinate the examinations for commercial operators. The COLEM organization must agree to coordinate the examinations for one or more types of commercial radio operator licenses and/or endorsements, agree to assure that every examinee is registered without regard to race, sex, religion, national origin, or membership (or lack thereof) in any organization, and cooperate in maintaining examination records available to the FCC and agree not to administer an examination to an employee, relative, or relative of an employee. *See* 47 C.F.R. § 13.213 which outline the qualifications for COLEMs.

⁵⁵ ARRL/VEC and the W5YI-VEC are components of organizations that publish materials marketed to persons for the purpose of preparing for passing the examinations required for the grant of an amateur operator

The Commission has not developed a definition for a small business or small organization that is applicable for VECs. The RFA defines the term "small organization" as meaning "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field..."⁵⁶ The Commission's rules do not specify the nature of the entity that may act as a VEC. All of the sixteen VEC organizations would appear to meet the RFA definition for small organizations.

n) Personal Radio services

Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. These services include citizen band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).⁵⁷ Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition.

o) Public Safety radio services and governmental entities

Public Safety radio services include police, fire, local governments, forestry conservation, highway maintenance, and emergency medical services.⁵⁸ There are a total of approximately 127,540 licensees

license. This publishing activity is separate from their VEC activity. A VEC is an organization that has entered into a written agreement with the FCC to coordinate the examinations for amateur operator licenses. The examinations are prepared and administered by tens of thousands of amateur operators who serve as Volunteer Examiners. The VEC organization must exist for the purpose of furthering the amateur service, be capable of service as a VEC in at least one of the thirteen VEC regions, agree to coordinate the examinations, agree to assure that every examinee is registered without regard to race, sex, religion, national origin or membership in any amateur service organization, and cooperate in maintaining the question pools for VECs. *See* 47 C.F.R. §§ 97.521 and 97.523, which outline the qualifications for VECs and question pools.

⁵⁶ 5 U.S.C. § 601(4).

⁵⁷ In the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service, and Family Radio Service (FRS) are governed by subpart D, subpart A, subpart C, and subpart B, respectively, of Part 95 of the Commission's rules. 47 C.F.R. §§ 95.401 through 95.428; 47 C.F.R. §§ 95.1 through 95.181; 47 C.F.R. §§ 95.201 through 95.225; 47 C.F.R. §§ 95.191 through 95.194.

⁵⁸ With the exception of the special emergency service, these services are governed by subpart B of part 90 of the Commission's rules. 47 C.F.R. §§ 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the actual

within these services. Governmental entities as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small business.⁵⁹ There are approximately 37,566 governmental entities with populations of less than 50,000.⁶⁰ The RFA also includes small governmental entities as a part of the regulatory flexibility analysis.⁶¹ The definition of a small governmental entity is one with a population of less than 50,000.⁶² There are 85,006 governmental entities in the nation.⁶³ This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000; however, this number includes 38,978 counties, cities, and towns and of those, 37,566 or 96 percent, have populations of fewer than 50,000.⁶⁴ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 96 percent or 81,600 are small entities that may be affected by our rules.

p) Rural Radiotelephone Service

The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.⁶⁵ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).⁶⁶ The Commission will use the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

q) Marine Coast Service

The Commission has not adopted a definition of small business specific to the Marine Coast

delivery of emergency medical treatment. 47 C.F.R. §§ 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities and emergency repair of public communication facilities. 47 C.F.R. §§ 90.33 through 90.55.

⁵⁹ 5 U.S.C. § 601(5).

⁶⁰ U.S. Department of Commerce, Bureau of Census, 1992 Census of Governments.

⁶¹ *See* 5 U.S.C. § 601(5) (including cities, counties, towns, townships, villages, school districts, or special districts).

⁶² *Id.*

⁶³ 1992 Census of Governments, Bureau of the Census, U.S. Department of Commerce.

⁶⁴ *Id.*

⁶⁵ Rural Radiotelephone Service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

⁶⁶ BETRS is defined in sections 22.757 and 22.729 of the Commission's rules, 47 C.F.R. §§ 22.757, 22.729.

Service. The Commission will use the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 10,500 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

r) Wireless Communications Services (WCS)

WCS is a wireless service, which can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the WCS auction as an entity with average gross revenues of \$40 million for each of the three preceding years.⁶⁷ The Commission auctioned geographic area licenses in the WCS service. There were seven winning bidders who qualified as very small business entities and one small business entity in the WCS auction. Based on this information, the Commission concludes that the number of geographic area WCS licensees affected include these eight entities.

In addition to the above estimates, new applicants in the wireless radio services will be affected by these rules, if adopted. To assist the Commission in analyzing the total number of affected small entities, commenters are requested to provide information regarding how many small business entities will be affected by the proposed rules. Comments relating to the number of small business entities affected are due by the deadlines contained in the NPRM.

3. IRFA Conclusion

19. In this NPRM, we seek comment on proposals to revise the Commission's rate-of-return prescription regulations, the methodologies used for calculating cash working capital, the detariffing of certain telecommunications services, streamlining cost allocation manual filing procedures, and consolidating the Commission's wireless radio rules. These proposals are specifically designed to streamline regulations that apply to incumbent local exchange carriers (LECs), including the Bell operating companies (BOCs) and GTE, and to wireless telecommunications providers. We therefore expect that the potential impact of the proposals, if adopted, is beneficial and does not amount to a possible significant economic impact on affected entities. If commenters believe that the proposals discussed in the Notice require additional RFA analysis, they should include a discussion of these issues in their comments.

20. We therefore certify, pursuant to section 605(b) of the RFA, that the rules proposed in this NPRM will not have a significant economic impact on a substantial number of small entities. The Commission will publish this certification in the Federal Register and will provide a copy of the certification to the Chief Counsel for Advocacy of the SBA. The Commission will also include this certification in the report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act.⁶⁸

D. Comment Filing Procedures

⁶⁷ See Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), GN Docket 96-228, *Report and Order*, 12 FCC Rcd 10785 (1997).

⁶⁸ 5 U.S.C. § 801(a)(1)(A).

21. Pursuant to applicable procedures set forth in section 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **[30 days from release date]** and reply comments on or before **[45 days from release date]**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Anthony Dale, Legal Branch, Accounting Safeguards Division, FCC, Suite 201, Room 200D, 2000 L Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

22. Written comments by the public on the proposed and/or modified information collections are due **[30 days from release date]** and reply comments on or before **[45 days from release date]**. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

23. Parties are also asked to submit comments and reply comments on diskette. Such diskette submission would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Anthony Dale, Legal Branch, Accounting Safeguards Division, FCC, Suite 201, Room 200D, 2000 L Street, N.W., Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS Dos 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

24. Parties also may file comments electronically via the Internet at: <http://www.fcc.gov/e-file/ecfs.html>. See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, Report and Order, FCC 98-56 (rel. April 6, 1998). Only one copy of an electronic submission must be submitted. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the lead docket number for this proceeding, which is CC Docket No. 98-177. Parties may also file informal comments or an exact copy of your formal comments electronically via the Internet at <http://www.fcc.gov/e-file/> or via e-mail at biennial@fcc.gov. Only one copy of electronically-filed comments must be submitted. You must put the docket number of this proceeding in the subject line if you are using e-mail (CC Docket No. 98-177), or in the body of the text if by Internet. Parties must note whether an electronic submission is an exact copy of formal comments on the subject line. Parties also must include their full name and Postal Service mailing address in their submission.

VI. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 4(i), 4(j), 11, 201(b), 220, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 161, 201(b), 220, 303(r), 403, this *Notice of Proposed Rulemaking* IS ADOPTED.

26. IT IS FURTHER ORDERED that, the Petition for Section 11 Biennial Review filed by SBC Communications IS GRANTED to the extent set forth herein.

27. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, *see* 5 U.S.C. § 605(b).

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Separate Statement of Commissioner Harold W. Furchtgott-Roth**In re: Notice of Proposed Rulemaking****1998 Biennial Regulatory Review -- Petition for Section 11 Biennial Review filed by SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell**

I support adoption of this NPRM. In my view, any reduction of unnecessary regulatory burdens is beneficial. To that extent, this item is good and I am all for it. This item should not, however, be mistaken for complete compliance with Section 11 of the Communications Act.

As I have explained previously, the FCC is not planning to "review all regulations issued under this Act . . . that apply to the operations or activities of any provider of telecommunications service," as required under Subsection 11(a) in 1998 (emphasis added). *See generally 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, 13 FCC Rcd 6040 (released Jan. 30, 1998). Nor has the Commission issued general principles to guide our "public interest" analysis and decision-making process across the wide range of FCC regulations.

In one important respect, however, the FCC's current efforts are more ambitious and difficult than I believe are required by the Communications Act. Subsection 11(a) -- "Biennial Review" -- requires only that the Commission "determine whether any such regulation is no longer necessary in the public interest" (emphasis added). It is pursuant to Subsection 11(b) -- "Effect of Determination" -- that regulations determined to be no longer in the public interest must be repealed or modified. Thus, the repeal or modification of our rules, which requires notice and comment rule making proceedings, need not be accomplished during the year of the biennial review. Yet the Commission plans to complete roughly thirty such proceedings this year.

I encourage parties to participate in these thirty rule making proceedings. I also suggest that parties submit to the Commission -- either informally or as a formal filing -- specific suggestions of rules we might determine this year to be no longer necessary in the public interest as well as ideas for a thorough review of all our rules pursuant to Subsection 11(a).

* * * * *