"302.52 Incentive payments to States and political subdivisions."

b. The table of contents to 45 CFR Part 303 is amended by adding after the phrase "303.20 Minimum organizational and staffing requirements.", the phrase "303.52 Incentive payments to States and political subdivisions."

3. 45 CFR 302.51 and 304.26 are amended as follows:

§ 302.51 [Amended]

a. 45 CFR 302.51 is amended by removing the citation "302.52" where it appears in paragraph (a) and inserting in its place the citation "303.52".

b. 45 CFR 302.51 is amended by removing the phrase "the IV–D agency shall deduct and pay the incentive payment, if any, prescribed in § 302.52." where it appears in paragraphs (b)(2), (b)(4), and (f)(2) and inserting in its place the phrase "the State IV–D agency or political subdivision of the State pursuant to the title IV–D State plan shall deduct and pay the incentive payment, if any, prescribed in § 303.52."

§ 304.26 [Amended]

45 CFR 304.26 is amended by removing the citation "302.52" where it appears in paragraph (b) and inserting in its place the citation "303.52".

4. 45 CFR Part 305 is amended as follows:

The table of contents to 45 CFR Part 305 is amended by removing the phrase "305.30 Incentive payments."

§ 305.20 [Amended]

45 CFR 305.20 is amended by removing the phrase "Incentive Payments. (45 CFR 302.52)" where it appears in paragraph (a).

§ 305.30 [Removed and Reserved]

45 CFR 305.30 is removed and reserved.

Note.—The Secretary has determined that this document is not a major rule as described by Executive Order 12291, because it does not meet any of the criteria set forth in Section 1 of the Executive Order. The Secretary certifies that because these regulations apply to States and will not have significant economic impact on a substantial number of small entities, they do not require a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act of 1980.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated June 1, 1982.

John A. Svahn,

Director, Office of Child Support Enforcement.

Approved: July 30, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-23532 Filed 8-26-82; 8:45 am]

BILLING CODE 4190-11-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 79-252; FCC 82-350]

Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor

AGENCY: Federal Communications Commission.

ACTION: Policy Statement (Second Report and Order).

SUMMARY: The Federal Communications Commission finds that it need not impose traditional Title II (the Communications Act of 1934) regulation upon nondominant common carriers where the costs of such regulation outweigh public interest benefits and frustrate fundamental statutory goals. As a first step, the Commission relieves resellers of basic, terrestrial common carrier services, *i.e.*, those carriers who do not own transmission facilities but rather obtain basic communication services from underlying carriers for resale purposes, of the duty to file tariffs under Section 203 of the Act and the entry and exit regulations under Section 214 of the Act. The Commission finds that imposing the traditional tariffing and certification requirements upon such carriers unduly discourages market entry and inhibits price competition, service innovation, and the ability of these firms to respond quickly to market trends. This action brings regulation of common carriers into closer harmony with statutory purposes and the public interest and fosters greater diversity of service offerings at lower prices.

DATES: Effective August 27, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Randall S. Coleman, Tariff Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554 (202–632–6917).

SUPPLEMENTARY INFORMATION:

Second Report and Order

Adopted: July 29, 1982.

Released: August 20, 1982.

I. Introduction

1. This proceeding was initiated to update our regulatory scheme in view of the significant changes in the telecommunications industry since the enactment of the Communications Act in 1934, particularly the emergence of a more competitive marketplace. *Notice of Inquiry and Proposed Rulemaking*, 77 FCC 2d 308 (1979). Thus, in our *First Report and Order*, 85 FCC 2d 1 (1980), *(First Report)*, we classified carriers as either dominant or non-dominant depending on their power to control price in the marketplace and adjusted our rules accordingly.[1] Carriers found to possess market power were classified as dominant. We have continued to regulate them under the existing regulatory scheme in order to ensure that they do not exploit their market power to the detriment of the public. In contrast, those carriers found to lack market power were deemed non-dominant, and the regulatory requirements imposed upon them were streamlined or even eliminated.[2] Under the streamlined rules, their tariff filings are presumed lawful and a petitioner seeking suspension must demonstrate generally that the injury to competition from allowing the tariff proposal to become effective is greater than the harm to the public from depriving it of the service proposed. In addition, these carriers are permitted to file tariffs on 14 days notice (rather than ninety), and are no longer required by our rules to submit extensive economic support data. They also have been granted blanket authority under Section 214 of the Act to extend lines anywhere in the contiguous 48 states, limited only by the requirement that they inform the Commission every six months of these additions. Finally, these non-dominant carriers may discontinue service 30 days after notice to the customer and a showing to the Commission that reasonable substitute service is available.

2. Although the *First Report* took a significant first step toward reducing or removing unnecessary regulatory burdens on non-dominant carriers, we recognized that an even more dynamic

[1] See §§ 61.15(a), 61.38(f), 61.39 and 61.58(f) of the Commission's rules, 47 CFR 61.15(a), 61.38(f), 61.39, 61.58(f).

[2] In the *First Report*, the American Telephone and Telegraph Company (AT&T) and the independent telephone companies together with the domestic satellite carriers (domsats), domsat resellers, the miscellaneous common carriers (MCCs) and the Western Union Telegraph Company (Western Union) were found to come within the definition of dominant carrier. We found the specialized common carriers (SCCs) and resellers of terrestrial services to be non-dominant.

and far-reaching approach was necessary to foster innovation and the efficient development of the telecommunications industry. Thus, we initiated a *Further Notice of Proposed Rulemaking (Further Notice)*, 84 FCC 2d 445 (1981), undertaking a more fundamental inquiry into the congressional purpose underlying the Act and our authority under Title II. Our review of the statutory language and the legislative history, coupled with our analysis of the costs and benefits of detailed rate regulation in light of the statutory intent, led us to tentatively conclude that the Commission was not required to apply traditional Title II regulation to all companies offering basic communication services.[3] Rather, we determined that the comprehensive Title II regulatory scheme was intended to constrain the exercise of substantial market power. When imposed on carriers without such market power, we found its effects counterproductive to the advancement of the Act's express objectives as set forth in Section 1.[4] Thus, we proposed to remove regulatory requirements where their application did not serve the public interest, seeking comment on two alternative approaches for doing so.

3. Under the first approach, we tentatively concluded that, for those communications suppliers with limited market power, or none at all, common carrier status was inappropriate and its attendant Title II obligations should no longer be applicable.[5] Under this "definitional" approach we would impose, or refrain from imposing, common carrier status on communications providers in furtherance of the statutory purposes. The second approach upon which we sought comment was our assertion of discretion to "forbear" applying to entities now regulated as non-dominant common carriers the full panoply of rate, entry/exit and service regulation in instances where we determined that the costs of such regulation outweighed any perceivable benefits. The presence of market power is the primary factor in both the "definitional" and "forbearance" approaches. In the first instance, it is the basis for determining common carrier status of certain communications suppliers. In the latter approach it is the standard used to set apart those common carriers which should be subject to full Title II regulation. We invited commenting parties to identify other relevant criteria which they believed should be applied in making these determinations.

4. The *Further Notice* singled out resellers for special consideration. They appeared to be very strong candidates for deregulation, not only under the definitional and forbearance approaches, but also because of two specific aspects of their activities. We thought that because they did not hold themselves out to serve the public indifferently they might be categorized as private carriers as discussed in the *NARUC I* decision. Alternatively, we thought that the argument for forbearance in the case of resellers was strengthened because of the fact that we regulated the underlying carriers from whom the resellers took service. This made regulation of resellers appear especially duplicative and superfluous.[6]

5. In this order, we affirm our tentative conclusion in the *Further Notice* that this Commission has discretionary authority to forbear applying particular Title II regulations in instances where such forbearance furthers statutory purposes and the public interest. (See discussion *infra* at paragraphs 11–29.)[7] We focus here exclusively on the need for regulation of resellers of basic services,[8] *i.e.*, those carriers who do not own any transmission facilities but rather obtain basic communication services from underlying carriers for resale purposes.[9] We have chosen initially to confine our exercise of forbearance discretion to resellers for several reasons.[10] Since 1976, when we first required carriers to eliminate tariff restrictions on the resale of private line services,[11] this Commission has had few, if any, occasions to reject, suspend, or even investigate tariff filings for resale services. Similarly, we rarely, if ever, have had occasion to deny or condition reseller applications for facilities certification pursuant to Section 214. Thus, there has not appeared to be much public need for regulating resellers. This makes the burdens imposed by our regulation appear especially onerous in the case of resellers. As discussed in greater detail in the *Further Notice* at 453–56, application of Title II regulation to non-dominant firms inhibits entry and innovation in that it takes away their ability to make rapid, efficient responses to changes in demand, costs and other market conditions, causing investors to choose other areas of the economy.

6. A second important basis for our decision to treat resellers separately grows out of our recent decision prescribing unlimited resale of MTS/WATS. *Resale and Shared Use*, 83 FCC 2d 167 (1980) (*MTS/WATS Resale Decision*). We have already received over two hundred applications from entities seeking authority to reoffer these services. We expect many more applications in the future, particularly from the thousands of hotels and motels desiring to resell long-distance telephone services to their guests. In light of our policies in favor of unlimited resale of basic services and the

[3] By "traditional Title II regulation," we meant control over price, publication of terms and conditions of service, control over investments and the obligation to serve all. *See, generally*, Sections 201–203 and 214 of the Act, 47 U.S.C. 201–203 and 214.

[4] 47 U.S.C. 151 provides in pertinent part that this Commission was created "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all people of the United States a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges * * *"

[5] The use of market power as a criterion for defining "common carrier" would replace the traditional test for communications common carriage. That test inquires into whether the nature of a particular communication service entails an indiscriminate "holding out" to the public to provide service. NARUG v. FCC, 525 F. 2d 630 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976) (*NARUC I*).

[6] In the *First Report*, we found domestic satellite carriers (domsats) and resellers of domsat services to be dominant. Upon further analysis, however, we proposed to find these carriers to be non-dominant. *See Further Notice* at 510–11. Action on that proposal is still pending. In the event we conclude that domsat resellers are non-dominant, we will consider applying the forbearance approach to them. For present purposes, however, we shall not forbear as to domsat resellers.

[7] This order deals only with forbearance. We will leave any discussion about other deregulatory proposals discussed in the *Further Notice* to future orders.

[8] We have already found that enhanced services built on the transmission services obtained from underlying carriers are not common carrier offerings subject to our Title II jurisdiction; thus these activities are not at issue here. See Second Computer Inquiry, 77 FCC 2d 384 (1980) *reconsideration*, 84 FCC 2d 50 (1980) (*Computer II*). We also point out that our order does not affect the regulation of intrastate services by state authorities.

[9] This order does not apply to international services or the provision of MTS and WATS service to Alaska which are currently being considered in separate proceedings. *See* Regulatory Policies Concerning Resale and Shared Use of Common Carrier International Services, 77 FCC 2d 831 (1980); MTS and WATS Market Structure, 73 FCC 2d 222 (1979), *reconsideration in part* 75 FCC 2d 644 (1980). We also point out that this order does not affect Part 68 of our rules which permits direct connection of equipment, conforming to our technical requirements, to the nation-wide telephone network by consumers or interstate tariffs of facilities-owning carriers. All other carriers considered in this proceeding continue to be subject to Title II requirements in accordance with their classification as dominant or non-dominant.

[10] We are still analyzing the appropriateness of forbearance from Title II regulation with respect to other carriers and expect to address those issues in future orders.

[11] Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261 (1976), *reconsideration*, 62 FCC 2d 588 (1977), *aff'd sub nom.*, AT&T v. FCC, 572 F. 2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978) (*Resale Decision*).

apparent growth of the market for such services, we have chosen to consider first the deregulation of resellers. While our effort in this proceeding to eliminate unnecessary Title II regulation is ongoing, we see no need to delay our examination of resellers.

7. Finally, we consider it significant that our tentative proposal to forbear regulating resellers has evoked the least controversy among parties commenting in this proceeding. Indeed, although the comments offer divergent views on the wisdom and propriety of our deregulatory proposals in general, even those ardently opposed to other deregulatrory measures agree that the application of Title II obligations to resale carriers is unnecessary and should be minimized or eliminated.

II. Overview of the Comments

8. Of the almost 50 direct and 30 reply comments filed in response to the *Further Notice,*[12] few commenting parties object to some measure of deregulation of resellers.[13] Rather, what debate there is centers on what degree of deregulation is in the public interest; whether the Commission has the authority under the Act and judicial precedent to implement its deregulatory proposals; and which deregulatory proposal would best achieve the Act's underlying objectives. Several parties address implementation issues, such as procedures for determining when reregulation would be appropriate and whether this Commission is empowered to preclude state regulation of non-dominate carriers.

9. The comments of AT&T are representative of those parties opposed to the tentative conclusions in the *Further Notice.* AT&T agrees in principle with reducing unnecessary regulatory burdens for all carriers. However, it maintains that the deregulatory proposals contained in the *Further Notice* exceed the Commission's discretion under the Act. According to AT&T, Congress intended to regulate all carriers, not only those with market power.[14] Many commenters, however, support our tentative conclusion that, with respect to non-dominant carriers, the Commission may forbear using certain Title II requirements when their use thwarts rather than advances the purposes of the Act.[15] In light of these negative effects, commenters urge that the Commission has not only the latitude, but the responsibility, to apply alternative mechanisms that will, in fact, promote congressional objectives.

10. Of those parties concurring in the Commission's assertion of authority to implement its deregulatory proposals, the majority favored the forbearance appoach.[16] Some maintain that resellers are more accurately classified as private carriers and therefore not subject to any obligations imposed by Title II of the Act.[17] Still others seek only limited Commission relaxation of Title II obligations as to resellers.[18]

III. Discussion

11. In weighing the comments and reaching a final decision with respect to the appropriate regulatory scheme for resellers, we are guided by the mandate and fundamental statutory purpose set out in Section 1 of the Act "* * * to make available * * * to all people of the United States a rapid, efficient Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges * * *." We have analyzed our authority in light of this mandate in the context of the significant technological and regulatory developments in the telecommunications marketplace. Having reviewed the comments on this issue, we conclude that this Commission need not use all Title II regulatory tools for all common carriers. Where their costs outweigh public interest benefits and their indiscriminate application frustrates the fundamental goals of the Act, we find we have authority to forbear applying Title II requirements in the manner described below.

12. In the *Further Native,* we specifically proposed to forbear requiring non-dominant carriers to file tariffs. We observed that traditional tariff regulation of non-dominant carriers is at odds with the purposes of the Act because it inhibits price competition, service innovation and the ability of firms to respond quickly to market trends. We also proposed to forbear from the entry and exit requirements of Section 214. In a competitive environment, we perceived that these entry and exit requirements do little to serve the purposes of the Act and we also found that they actually deterred the introduction of innovative and useful services as well as new market entrants. We find these steps are appropriate and we will implement them here. We also indicated in the *Further Notice,* however, that through forbearance we would relieve non-dominant carriers of their Section 201(a) duty to provide service upon reasonable request. We have reevaluated that tentative determination and believe that application of the forbearance theory to the Section 201(a) duty is unnecessary at this time. We are primarily interested in removing affirmative requirements which require prior Commission approval, namely the filing of tariffs and Section 214 applications. As explained,

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[12] The commenters are listed in Appendix A. In addition, we have motions by AT&T, Hughes Communications, Inc., Timothy J. Flynn, the Hon Foundation and Joseph A. Corrazzi that we accept their late filed comments. Those motions are granted.

[13] Parties specifically favoring the deregulation of resellers under a variety of theories include Aeronautical Radio, Inc. (ARINC), National Telecommunications and Information Administration (NTIA), International Business Machines Corporation (IBM), Computer and Business Equipment Manufacturers Association (CBEMA), United States Telephone and Telegraph Corporation (UST&T), New York State Hotel and Motel Association and the Hotel Association of New York City, Sheraton, Corp., Dow Jones, Inc., Council on Wage and Price Stability, ISA, Communications, Utilities Telecommunications Council (UTC), United Video, Inc. and Gordon and Healy. Other carriers, such as United States Telephone Communications, Inc. (U.S. Tel.), Tel Systems Management Corporation (Tel Systems), and Association of Data Processing Service Organizations, Inc. (ADAPSO), agree in principle with our deregulatory initiatives but favor the retention of limited forms of Title II regulation. AT&T does not specifically address the proposal to deregulate resellers. However, it states in its reply comments that should the Commission decide to deregulate this group of carriers, it would agree with NTIA that AT&T should be allowed to resell basic services on an unregulated basis through a separate subsidiary. Telecator Network of America (Telecator), for its part, is opposed to the notion that resellers would operate as private carriers. The Association of Long Distance Telephone Companies (ALTEL) opposes deregulating resellers separate and apart from other competitive carriers claiming that such a bifurcated plan would create competitive inequities between regulated and non-regulated non-dominate carriers.

[14] Other commenters agree with AT&T's analysis. *See, e.g.,* comments of Alascom Inc. (Alascom) at 9–10, United States Independent Telephone Association (USITA) at 3–4, MCI Telecommunications Corporation (MCI) at 4, 14–16, Southern Pacific Communications Corporation (SPCC) at 13, UTC at 30–38, 56, and Teleprompter Corporation at 39.

[15] *See, e.g.,* comments of Satellite Business Systems (SBS) at 36, CBEMA at 2, American Microwave and Communications Inc. (AMCI) at 2–4, and IBM at 8.

[16] Several carriers favor either deregulatory approach. *See, e.g.,* American Satellite Corporation (AMSAT), Western Union Telegraph Company, RCA American Communications, Inc. (RCA Americom), Garden State Microwave, GTE Satellite Corporation (GSAT), IBM and CBEMA. A few, such as ARINC favor the definitional approach.

[17] *See, e.g.,* comments of IBM, ARINC, CBEMA, ISA Communications and UTC.

[18] *See, e.g.,* comments of ADAPSO (all carriers should provide service at reasonable request); U.S. Tel (extend tariff notice requirements from 14 to 30 days and retain certain entry requirements to weed out those operations which are poorly conceived and financed); Tel Systems (retain tariffing and entry supervision but remove duty to serve); ALTEL, (retain legal rights for interconnection, nondiscrimination, and the complaint process); UST&T (decertification process for new resale market entrants to determine if they have market power); MCI (minimum tariff requirements to ensure nondiscriminatory pricing and equal access, further streamline Section 214, retain Section 201 obligations); and SPCC (streamlined regulations of *First Report* sufficient).

these requirements, in the case of resellers, have proven to be counterproductive and burdensome. In contrast, the duty to serve usually imposes no affirmative filing requirements before the Commission and is generally monitored through the complaint process.[19] Under these circumstances, we will not here forbear applying this statutory obligation.

13. It is our view that the result we reach brings our regulation of common carriers into closer harmony with the statutory purposes. It is now well recognized that "Congress could neither foresee nor easily comprehend the fast-moving developments in the field."[20] Therefore, this agency has been granted "substantial discretion in determining both what and how it can properly regulate", so long as it is exercised in a manner that effectuates rather than frustrates the overriding statutory goals.[21] Equally clear, the breadth of our discretion to regulate is to be measured in terms of the fundamental purposes of the Act.[22] Where, as here, we determine that the mechanical application of particular Title II regulatory tools is clearly at cross-purposes with the Act's express objectives in Section 1 to assure widely available, efficiently produced and reasonably priced service, and imposes costs upon carriers without any offsetting public protection or other benefit, we have the "affirmative duty to ascertain whether [our] regulations still serve[] some aspect of the public interest." *Geller* v. *FCC*, 610 F. 2d 973, 978 n. 39, 980 (D.C. Cir. 1979).[23]

14. As discussed in the *Further Notice*, we have, in the past, declined as a matter of discretion to regulate certain interstate communications facilities and services in some respects where we have determined that such regulation would be unnecessary. For example, prior to our finding in *Computer II*, 77 FCC 2d at 447, that the provision of terminal equipment, even by a common carrier, was not the offering of "communication service" and thus not within the scope of Title II, we had long deferred the exercise of tariff authority over such equipment to the states unless it was necessary to protect the conduct or development of interstate communications.[24] Similarly, we have previously declined to assert Title II tariff filing requirements and active rate regulation over local exchange service when used in connection with foreign exchange (FX) and Common Control Switching Arrangement (CCSA) services,[25] even though the service is jurisdictionally interstate.[26] As a further example of the exercise of our forbearance discretion, we have exempted from Title II rate regulation radio common carriers licensed to provide domestic public land mobile radio service whose service areas extend across state lines, provided they are subject to state or local regulation.[27] Yet, as we observed in the *Further Notice*, such an exemption was not expressly authorized by the Act.

15. Thus, our forbearance from unnecessary and counterproductive regulation is consistent with our previous actions in other common carrier contexts. And implicit in this authority is our ability to adopt a non-traditional regulatory scheme when the imposition of traditional regulation upon these carriers is contrary to the overriding statutory purpose. In this respect, we disagree with commenters who maintain that our streamlined rules are sufficient and further deregulatory measures premature.[28] While the streamlined rules already adopted have advanced the efficient use of telecommunications facilities, the continued imposition of tariff and entry and exit requirements upon carriers without facilities of their own undeniably has the effect of delaying new services and dampening innovation and marketing strategies. In short, the efficient functioning of the marketplace is distorted when competitive carriers are needlessly subjected to rate and entry/exit regulation.

16. Our removal of many tariff restrictions on the resale of communication services, coupled with the low captial requirements necessary to enter into such activity, has resulted in the proliferation of resale operations. In such an environment, where a multitude of substitutable services are actually or potentially available, and many of the resale carriers are simply

[19] In the past, we have had few such complaints filed against resellers. Indeed, it is unlikely that any resellers will unreasonably refuse to provide service. Economic considerations will normally require that these carriers accept reasonable requests for service.

[20] *NARUC I*, 525 F. 2d at 638, n. 37; FCC v. Pottsville Broadcasting, 390 U.S. 134 (1940); NBC v. United States, 314 U.S. 190 (1943) (Congress "gave the Commission not niggardly but expansive powers"); Philadelphia Television Broadcasting Co. v. FCC, 359 F. 2d 282, 284 (D.C. Cir. 1966) (*Philadephia Television*) ("expert agency entrusted with administration of a dynamic industry is entitled to latitude in coping with new developments in that industry"); *Permian Basin Area Rate Case*, 390 U.S. 747, 748 (1968) ("administrative authority must be permitted * * * to adapt their rules and policies to the demands of changing circumstances"). In a more recent case upholding our decision to detariff terminal equipment provided by the international record carriers, the Second Circuit has reiterated this Commission's "broad discretion to choose which regulatory tools to employ." Western Union Telegraph Co. v. FCC, No. 81-4122, slip op. at 6141 (2d Cir. March 12, 1982).

[21] Shapiro v. U.S., 335 U.S. 1, 31 (1948). *Accord*, Lawson v. Suwannee Fruit and Steamship Co., 336 U.S. 198, 201 (1943).

[22] ACLU v. FCC, 523 F. 2d 344 (9th Cir. 1975); United States v. Midwest Video Corp., 406 U.S. 649 (1972); General Telephone Co. of the Southwest v. United States, 449 F. 2d 846 (5th Cir. 1971); *Philadelphia Television*. Several parties reiterate that certain of these cases do not support our assertion of general authority to forbear regulating common carriers under Title II on a theory that they address the narrower issue of our discretion to determine whether or how to regulate cable television, a service not subject to the Commission's Title II jurisdiction. See, *e.g.*, comments of Telocator at 5. However, in the *Further Notice* at 473-74, we considered and rejected so narrow an interpretation. The fact that the Commission's forbearance discretion was considered in the context of the cable industry does not, in our judgment, alter the courts' clear recognition of our general flexibility under the Act to adapt our policies tonew and changing circumstances. Indeed, our broad interpretation is, if anything, supported by judicial approval of our refusal to apply common carrier regulation to cable systems even though the technology clearly had some attributes suggesting that Title II regulation could apply. *Id.* See also *Philadelphia TV; ACLU*. In addition, as we pointed out, the Court's decision in *ACLU* has been construed as "holding that the Commission [has] discretion to refuse to exercise its common carrier regulatory power." *NARUC* v. *FCC*, 533 F. 2d 601, 620 (*NARUC II*). A similar characterization has been made of *Philadelphia TV*, to hold that "a part of the broad discretion allowed the Commission under the Act involves the power not to exercise particular authority which it has been granted." *NARUC II*, 533 F. 2d at 620, n. 113.

[23] In its comments at 29-36, AT&T asserts that a cost-benefit analysis is not a proper legal standard for the Commission to use in deciding whether to regulate certain common carriers. However, the use of such an approach was sanctioned by the Supreme Court in FCC v. WNCN Listeners Guild, 450 U.S. 582 (1981). There, the Court upheld a Commission decision, based on our analysis of costs and benefits, to rely on the marketplace instead of regulatory oversight to promote diversity in entertainment formats. The Court concluded that, in making this judgment the Commission had "not forsaken its obligation to pursue the public interest. On the contrary, [the Commission had] assessed the benefits and the harm likely to flow from government review of entertainment programming, and on balance had concluded that its statutory duties are best fulfilled by not attempting to oversee format changes." *Id.* at 595.

[24] North Carolina Utilities Commission v. FCC, 552 F. 2d 2036, 2050, (4th Cir.), *cert. denied*, 434 U.S. 874 (1977) (*NCUC II*); Diamond International Corp. v. FCC, 627 F. 2d 489 (D.C. Cir. 1980); Department of Defense v. AT&T, 80 FCC 2d 287, 290-91 (1980). *See also*, Pacific Telephone and Telegraph Co., 88 FCC 2d 934, 941 (1981).

[25] American Telephone and Telegraph Co., 56 FCC 2d 14, 21 (1975), *aff'd sub. nom.* California v. FCC, 567 F. 2d 84 (D.C. Cir. 1977).

[26] New York Telephone Co., 76 FCC 2d 349 (1980), *aff'd sub nom.* New York Telephone Co. v. FCC, 631 F. 2d 1059 (2d Cir. 1980). *See also* American Telephone and Telegraph Co. Interconnection With Private Interstate Communications Systems, 71 FCC 2d 1 (1979), where we ordered interconnection of the local network with private line microwave systems but allowed for the application of state rates to the local portions of the services.

[27] FCC Public Notice, FCC 65-805 (September 16, 1965), reissued May 15, 1975.

[28] *See* the Comments of AT&T, MCI, SPCC, and ADAPSO.

arbitrageurs, resellers lack the ability to raise their prices to unreasonable levels or engage in practices proscribed by the Act except at substantial risk of losing customers and profits. The evolution of this competitive activity is convincing evidence that the public interest would be better served by the elimination of traditional forms of rate and entry regulation of resale carriers.

17. In proposing to forbear from fundamental forms of rate and entry regulation, we expressed our intention in the *Further Notice* to rely on competitive market forces to better promote congressional objectives in situations where providers of communication services lacked the ability to exercise market power. Opposing parties maintain that while the Commission has some discretion in implementing the statutory requirements of the Act, we may not substitute the marketplace for specific tariff, service and certification requirements. For example, some commenters maintain that the tariff filing requirements of Section 203 are absolute, and hence, must be applied to all carriers regardless of their market position. However, other than reiterating the same arguments, they present no new persuasive evidence which convinces us that our tentative conclusions in the *Further Notice* were erroneous and should be abandoned.

18. Nor do we agree with ALTEL that a decision to forbear from unnecessary Title II requirements on resale carriers first would create competitive inequities between regulated and non-regulated non-dominant entities. The theory here is that deregulated resellers would have the advantage of "customer" rather than "carrier" status for the purposes of obtaining the tariffed services of regulated carriers. As explained, the forbearance approach that we adopt here would do nothing to alter a reseller's status as a common carrier. *See* note 7, *supra*.

19. ALTEL also predicts that deregulated resellers will face a competitive disadvantage, since there is a marketplace perception that FCC regulation or certification is, in effect, a stamp of approval. In other words, it presumes that non-regulated entities will be considered less worthy or somehow lacking in legitimacy. However, Section 214 certification was never intended as the equivalent of a stamp of approval but rather, as explained in our earlier orders, was a means to ascertain whether the ratepayer should be required to absorb the cost of extending service lines or new investment based on a finding of public convenience and necessity. Notwithstanding ALTEL's protestations, we fully expect our actions to further competition, since deregulated resellers will have greater freedom to satisfy customer needs, for example, through creative contract arrangements.

20. Many of these opposing comments also reflect, to a large extent, a fundamental misunderstanding of the nature and effect of our exercise of forbearance authority.[29] As we have explained, forbearance from the tariff filing requirements with respect to nondominant carriers would not have the effect of abrogating the commands of Sections 201(b) and 202(a) that rates and practices be just and reasonable and not unjustly discriminatory.[30] Rather, our proposal is intended to recognize the competitive evolution of the industry and establish a more efficient, less costly mechanism for ensuring that these statutory requirements are met. We believe that an adjustment to our regulatory processes is necessary to more accurately reflect current marketplace conditions and the circumscribing effect of competitive forces on the rates and practices of non-dominant carriers.

21. We demonstrated in the *Further Notice* that, based on accepted economic principles and our experience in the tariff review process, carriers with little or no market power in a competitive marketplace could not rationally charge rates or engage in practices which contravene the requirements of the Act. We tentatively concluded that the rates of these carriers would fall within a just and reasonable range since they were effectively circumscribed by the costs and rates of dominant carriers which remain subject to close Commission scrutiny. *Further Notice* at 495–96. Moreover, in the case of resellers, it is self-evident that the underlying carrier, from whom the reseller obtains transmission capacity, serves as a necessarily constant competitor in the marketplace. Were a reseller to set its price above the rates of the underlying carrier or competing carriers, its customers would be expected to migrate to these other services. In turn, the underlying carrier's rates are constrained by our full exercise of regulation under Sections 201–205 of the Act. In this way, the regulated carriers' rates act as a "just and reasonable" ceiling on resellers' rates.[31] Thus, we concluded that the competitive forces in the marketplace would serve to ensure, in the first instance, carrier compliance with the obligations imposed by Sections 201(b) and 202(a). *Further Notice* at 495.

22. At the same time, however, we recognized the potential for marketplace failures. To remedy any irrational carrier conduct or aberrations that might occur, we proposed to enforce Sections 201(b) and 202(a) through the complaint process set forth in Section 208.[32] In this way, compliance with congressional policies is secured. In the unlikely event that our forbearance has adverse consequences, the Commission can take such remedial action as may be necessary to protect the public, including the reimposition of the tariff filing requirement.[33] Thus, while we intend to rely on competitive market forces in the first instance to secure carrier compliance with the Act, this use of the complaint process allows for the continued monitoring of the justness and reasonableness of the charges and practices of resale carriers. In this

[29] *See, e.g.*, Teleprompter's comments at 13 ("the agency cannot delegate its duty [to ensure just and reasonable rates] to the marketplace by allowing the market prices to be the *sole* determinant of fairness and reasonableness") (emphasis added) and comments of AT&T at 9 ("[u]nder the *Further Notice's* forbearance deregulation approach, the Commission would *totally* refrain from exercising Title II authority over entities which it determines lack market power"). (Emphasis added.)

[30] Section 201(b) provides in pertinent part that "[a]ll charges, practices, classifications, and regulations for or in connection with . . . communication service, shall be just and reasonable * * *" Section 202(a) makes unlawful any "unjust or unreasonable discrimination in charges, practices, classifications, facilities, or services for or in connection with like communication service * * *."

[31] This sort of indirect regulation has been a regulatory tool upheld by courts for use in other industries. *See*, FPC v. Texaco Inc., 417 U.S. 380, 388-9 (1974); Pan American Airlines v. CAB, 392 F.2d 483, 496 (1968) ("[t]hough there is no express statutory authority for [the CAB's declining to regulate indirect foreign air carriers], we will not upset the agency's interpretation of the statute it administers, particularly where, as here, the relevant United States interests are adequately secured through regulation of the direct foreign air carriers.)"

[32] Section 208, 47 U.S.C. 208, provides that "[a]ny person, any body politic or municipal organization, or state commission" may file with the Commission a petition complaining of any act or ommission in contravention of the Act by any common carrier subject to the Act. Upon such filing, a statement of the complaint is to be forwarded to the carrier who is to satisfy or answer the complaint within a reasonable time. Should the carrier fail to satisfy the complaint or where there "appears to be any reasonable ground" for investigation, the Commission investigates the matter as it deems proper. Complaints may not be dismissed because of a lack of direct damage to the complainant.

[33] *See, New York Telephone Co., supra.* Moreover, under Section 218 of the Act, 47 U.S.C. 218, the Commission may obtain from carriers and from "persons directly or indirectly controlled by, or under direct or indirect common control with, such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created."

manner the burden of unnecessary regulatory oversight is minimized while consumers remain protected from unreasonable practices, however remote, that could occur.

23. We conclude that reliance on carrier and customer complaints to reveal marketplace distortions is an adequate mechanism to alert us to instances where a more traditional exercise of our Title II authority may be warranted and we retain the power to reimpose certification and tariffing requirements should the need arise. But, we are mindful of the potential for the frivolous or strategic use of the complaint process. If our analysis of the market is correct, valid complaints should be infrequent.[34]

24. The tariff filing requirements of Section 203 are a means for this Commission to ensure the Act's objective of reasonable and not unjustly discriminatory rates and practices. However, Congress did not intend this requirement as the only means of achieving this goal. In the *Further Notice* at 484, we concluded that the statute does not prohibit carrier-to-customer contracts as to rates. We also reasoned that applying the tariff requirements to competitive entities is superfluous, since competition circumscribes the prices and practices of such companies. In addition, these requirements stifle price competition and service and marketing innovation. *Id.* at 479. By not requiring tariffs of resellers, we are not abdicating our duty to ensure rates that are reasonable and not unjustly discriminatory. Competitive market forces, together with our power to intervene in appropriate cases, are sufficient checks on the pricing of resale services. Thus we find that Section 203 need not be applied to resale carriers.

25. As with our belief that the publication of tariffs by resale carriers is unnecessary to ensure the goals of Sections 201(b) and 202(a), we reasoned in the *Further Notice* that forbearance from the certification and discontinuance provisions of Section 214 was consistent with the legislative purpose underlying that section. *Further Notice* at 488–91. Our review of the legislative history revealed that Section 214 was enacted to ensure the provision of nationwide service and to stem inflated rate bases resulting from inprudent or wasteful duplication of facilities. However, we observed that the application of certification and discontinuance procedures to firms without dominance in the marketplace was unnecessary to achieve these purposes. Basic service was ensured by the nation-wide interconnected telecommunications network and only monoply service providers were in a position to pass through the costs of improvident investment decisions to captive ratepayers. As a practical matter, we tentatively concluded that the availability of universal service would be unaffected by the entry and exit of non-dominant carriers and such carriers' incurrence of unnecessary costs could not result in higher rates without an unprofitable loss of customers to alternative, more efficient suppliers. Section 214 entry and exit requirements appeared particularly unwarranted in the case of resellers because they owned no transmission capacity, and underlying basic facilities would be available to the public regardless of the introduction or discontinuance of reseller operations. *Further Notice* at 495.

26. As well as being unnecessary, we concluded that a rigid adherence to Section 214's certification and discontinuance procedures produced results contrary to the Act's underlying policies. We observed that the introduction of useful and innovative services is deterred by the imposition of authorization requirements. Moreover, new entry is discouraged by the presence of discontinuance procedures that may potentially impose increased losses on a carrier after competitive circumstances make a particular service offering uneconomic. On the other hand, we found no concomitant benefit results from such exit requirements since reasonable alternatives are available to protect the public from untoward service disruptions and customers are free to negotiate termination clauses in their service contracts. *Further Notice* at 490. Even though we streamlined Section 214 requirements in the *First Report*, we found that their costs still exceed any public benefits to be derived. Thus, we tentatively concluded that our power to respond to current marketplace conditions consistent with the public interest gave us sufficient discretion to forbear imposing Section 214 requirements upon non-dominant carriers, including resellers.

27. With the exception of those commenting parties who maintain as a general matter that a literal interpretation of the Act binds this Commission to apply Section 214 in all cases, few commenters disagree with our analysis of the purposes, costs and benefits of Section 214 as outlined above. One of the few justifications parties raise for the continued imposition of certification requirements is the Commission's ability to exclude operations which are poorly conceived or financed.[35] In addition, we are urged to continue our role as "gatekeeper" in order to "attach some credibility to new carriers and maintain consumer confidence in the industry." [36]

28. In view of the present competitive industry structure, we believe this Commission need not exercise its certification authority in such a manner as to ensure the financial soundness or credibility of new resale carriers. Rather, we believe that competitive market forces will serve effectively to weed out inferior operations. To repeat, successful market inroads can and should depend, to a large extent, on carrier conduct and performance, not upon the Commission's unintended "stamp of approval." If free from artificial entry constraints, new market entrants will be able to compete through pricing and marketing strategies, service quality, innovation and carrier willingness to respond adequately to individual consumer demands. In turn, the unencumbered introduction of new and varied resale services is likely to result in a broad array of service alternatives significantly benefiting the telecommunications user. In sum, we find that economic regulation in the form of entry and exit controls serves no public policy that will not be better served by competitive market forces.

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[34] Contrary to several parties' assertions, this approach does not suffer the infirmities of the Federal Power Commission's attempt to deregulate small gas producers. FPC v. Texaco, Inc., 417 U.S. 380 (1974). There the Court held that the FPC was without the power to exempt any producer from the just and reasonable standard similar to that of Section 201 of the Communications Act. *Id.* at 394. By effectively permitting rates to be determined in the market, the Court found that the agency had failed to ensure that the just and reasonable standard was met. The Court stated that "the prevailing price in the marketplace [could not] be the *final* measure of 'just and reasonable' rates mandated by the Act." *Id.* at 395–97. (Emphasis added.)

We emphasize that the new approach we adopt here today does not abandon the overriding principles of the Act or exempt resellers from the just and reasonable standard. We intend to ensure that rates are reasonable and practices not unjustly discriminatory through a framework that strikes an appropriate balance between our regulatory oversight and the competitive workings of the marketplace. We do not read the *Texaco* decision as restricting our flexibility to adopt this method of ensuring reasonable rates and practices. As the Court itself explained in FERC v. Pennzoil Producing Co., 439 U.S. 508 (1979): *Texaco* did not purport to circumscribe so severely the Commission's discretion to decide what formulas and methods it will employ to ensure just and reasonable rates. Indeed, the decision underscored the discretion vested in the Commission.

439 U.S. at 516.

[35] *See, e.g.*, Direct Comments of U.S. Telephone Communications at 5; Comments of Tel Systems at 7.

[36] Comments of Tel Systems at 7.

We therefore affirm our conclusion in the *Further Notice* that the removal of entry and exit requirements on resale carriers is in the public interest, and moreover, warranted by current circumstances.

IV. Conclusion

29. In sum, we believe we have sufficient discretion and flexibility under the Act to apply our Title II powers in a manner that continues to further statutory objectives. We affirm our tentative conclusion in the *Further Notice* that the uncritical application of our traditional regulatory tools inhibits the competitive development of resale operations and results in unnecessary burdens inevitably borne by the consuming public. Based on our informed judgment and the extensive record developed in this proceeding, we believe that the elimination of unnecessary regulation of resellers will serve to benefit the telecommunications user substantially. Services will not only be offered in greater diversity but will be made available more rapidly at lower prices. At the same time, communications facilities will be more effectively utilized, providing consumers with efficient and customized alternatives.

V. Implementation

30. In accordance with these conclusions, resale carriers as defined in this order no longer need adhere to the entry and exit requirements of Section 214 or the tariff filing requirements of Section 203.[37] These carriers shall be given blanket special permission to cancel their tariff pages. Pursuant to § 1.8 of our Rules, 47 CFR 1.8, certificates of authority pursuant to Section 214 which have been granted to resale carriers shall remain in the Commission's records. Resale carrier applications for such authority which are currently pending shall be retained but not processed unless the Commission is notified by the applicant of its intent to become a facilities based carrier. In such cases, the reactivated application need only be supplemented to the extent information has changed. Of course, should a resale carrier which currently owns no transmission facilities (*i.e.*, a pure reseller) subsequently seek to become a facilities based carrier, it will be subject to the streamlined rules applicable to non-dominant carriers as set out in the *First Report*.

VI. Ordering Clauses

31. Accordingly, it is ordered, pursuant to Sections 4 (i) and (j), 201–205, and 403, of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 201–205 and 403 and Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, That the policies set forth herein are adopted.

32. It is further ordered, That resale carriers as defined in this order are given permission to cancel their tariffs on file with this Commission. Cancellation shall be by supplement effective upon five day's notice and the supplement shall reference this order as authority for cancellation. For this purpose, §§ 61.58, 61.59 and 61.116 of the Rules, 47 CFR 61.58, 61.59 and 61.116, are waived.

33. It is further ordered, That the motions to accept late comments filed by American Telephone and Telegraph Company Hughes Communications, Inc., Timothy J. Flynn, the Hon Foundation and Joseph A. Corrazzi are granted.

34. It is further ordered, That the Secretary shall cause this Second Report and Order to be published in the **Federal Register.**

35. It is further ordered, That the policies adopted herein shall become effective upon publication in the **Federal Register.**[38]

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Parties Filing Comments on Further Notice in Docket No. 79–252

1. ABC, CBS, and NBC (the Networks)
2. Aeronautical Radio, Inc. (ARINC)
3. Alarm Industry Telecommunications Committee of the National Burglar & Fire Alarm Association (reserved the right to file reply comments)
4. Alascom, Inc. (Alascom)
5. American Microwave and Communications, Inc. (AMCI)
6. American Satellite Company (Amsat)
7. American Telephone and Telegraph Company (AT&T)
8. Association of American Railroads (Railroad Association)
9. Association of Data Processing Service Organizations, Inc. (ADAPSO)
10. Association of Long Distance Telephone Companies (ALTEL) (reply only)
11. Black Entertainment Network (BET)
12. Central Committee on Telecommunications of the American Petroleum Institute (API)
13. Central Telephone and Utilities Corporation (Centel)
14. Computer and Business Equipment Manufacturers Association (CBEMA)
15. Concerned Broadcasters Using Intercity Video Transmission Facilities (CONVID)
16. Council on Wage and Price Stability (COWPS)
17. Dow Jones and Company, Inc. (Dow Jones)
18. Eastern Microwave, Inc. (EMI)
19. Flynn, J. Timothy, The Hon Foundation and Joseph A. Corrazzi (Flynn)
20. Garden State Micro Relay, Inc. (Garden State)
21. Garryowen Corporation (Garrryowen)
22. Gordon & Healy
23. GTE Satellite Corporation (GSAT) (reply only)
24. Home Box Office, Inc. (HBO) (reply only)
25. Hughes Communications, Inc. (Hughes) (reply only)
26. Hughes Television Network (HTN)
27. Independent Data Communications Manufacturer's Association, Inc. (IDCMA) (reply only)
28. International Business Machines Corporation (IBM)
29. ISA Communications Services, Inc. (ISACOMM)
30. MCI Telecommunications Corporation (MCI)
31. Mobile Marine Radio, Inc. (MMR)
32. National Association of Business and Educational Radio, Inc. (NABER)
33. National Association of Regulatory Utility Commissioners (NARUC)
34. National Cable Television Association, Inc. (NCTA)
35. National Telecommunications and Information Administration (NTIA)
36. New York State Hotel & Motel Association, Inc. and Hotel Association of New York City, Inc. (Hotel Associations)
37. The People of the State of California and the Public Utilities Commission of the State of California (California)
38. Post-Newsweek Stations, Inc. (Post-Newsweek)
39. Public Broadcasting Service (PBS)
40. RCA Americom Communications, Inc. (RCA Americom)
41. RCA Global Communications, Inc. (RCA Globcom)
42. Satellite Business Systems (SBS)
43. The Sheraton Corporation (Sheraton)
44. Southern Pacific Communications Company (SPCC)
45. Southern Satellite Systems, Inc. (Southern Satellite)
46. Tel Systems Management Corporation (TSM)
47. Teleprompter Corporation (Teleprompter)
48. Telocator Network of America (Telocator)
49. UA-Columbia Cablevision, Inc. (UA-Columbia)
50. U.S. Telephone and Telegraph Corporation (UST&T)

[37] However, we will not at this time forbear imposing these obligations on any entity established by dominant carriers to resell basic services. Because these carriers have been found to have market power in the provision of interstate telecommunications services, their reselling of such services through a separate subsidiary raises unique and complex issues which we have not yet resolved.

[38] The Commission finds that because these policies relieve restrictions on competition and public benefits will be derived from putting them into effect without delay, an immediate effective date is in the public interest. See 5 U.S.C. 553(d).

51. U.S. Telephone Communications, Inc. (U.S. Tel)
52. United States Independent Telephone Association (USITA)
53. United Video, Inc. (United Video)
54. Utilities Telecommunications Council (UTC)
55. Viacom International, Inc. and Showtime Entertainment (Viacom)
56. Warner Amex Satellite Entertainment Company (Warner Amex)
57. Western Communiations Research Institute, Inc. and the National Citizens Committee for Broadcasting (WCRI) (reply only)
58. Western Telecommunications, Inc. (WTCI) (reply only)
59. Western Union International, Inc. (WUI)
60. Western Union Telegraph Company (Western Union)
61. WJG Telephone Company (WJG)
62. Robert Wold, Inc. (Wold)

Concurring Statement of Commissioner Joseph R. Fogarty

In Re: Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor ["Competitive Carrier Rulemaking"], CC Docket No. 79-252, Second Report and Order—Deregulation of Resale Carriers.

I concur in this decision to forbear from full Title II regulation of resale carriers on the ground that resellers do not own any transmission facilities but rather obtain basic communications services for resale purposes from underlying carriers whose rates remain subject to Commission regulatory scrutiny under Title II. Under these circumstances, the rates charged by resellers are effectively constrained by the costs and rates of the underlying carriers and thus may be rationally recognized as *prima facie* "just and reasonable." The "reasonableness" of other reseller practices, including questions of the availability of their services on demand and customer discrimination, remains subject to Commission review pursuant to the section 208 complaint process. With these safeguards, I believe the Commission can fully and fairly warrant that its fundamental Section 1 mandate to ensure "adequate facilities at reasonable charges * * * available, so far as possible, to all* * *" will be served by forbearance from full Title II regulation of resale carriers.*

*I am particularly pleased that the Commission's decision adopts and applies the forbearance analysis, rather than the so-called "definitional" theory, as the legal basis for this action. This chosen legal framework ensures that the Commission will retain the full flexibility and discretion to impose full Title II regulation in the resale market if unanticipated effects inimical to the public interest should occur. *See* Competitive Carrier Rulemaking—Further Notice, Separate Statement of Commissioner Joseph R. Fogarty, Concurring in Part; Dissenting in Part, 84 FCC 2d 537–40 (1981). I strongly believe that this choice enhances the integrity and credibility of this "deregulatory" decision.

It bears emphasizing that this decision, and my concurrence therein, does not address or resolve the larger issues remaining in this proceeding concerning the Title II status and regulation of underlying carriers in general or of domestic satellite carriers and the resellers of their facilities and services in particular. These issues remain for another day.

[FR Doc. 82-23557 Filed 8-26-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 68

[CC Docket No. 19528]

Proposals for New or Revised Classes of Interstate and Foreign Message Toll Service (MTS) and Wide Area Telephone Service (WATS); Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The FCC is correcting a rule that was published on April 19, 1978 (43 FR 16480) pertaining to proposals for new or revised classes of interstate and foreign Message Toll Service (MTS) and Wide Area Telephone Service (WATS). This action is necessary for grammatical clarification.

FOR FURTHER INFORMATION CONTACT: William H. von Alven, Common Carrier Bureau, (202) 634-1833.

SUPPLEMENTARY INFORMATION:

Erratum

Released: August 16, 1982.

In the matter of proposals for new or revised classes of interstate and foreign message toll telephone service (MTS) and wide area telephone service (WATS), CC Docket No. 19528.

1. The following correction is made concerning the Third Report and Order, CC Docket No. 19528, released April 13, 1978, FCC 78-248, 43 FR 16480 (published 4-19-78).

2. In § 68.215(g)(3) introductory text, the last sentence is corrected to read, "To minimize disruption of the premises communications system, the right of inspecting is limited as follows:"

3. The purpose of this correction is for grammatical clarification.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-23572 Filed 8-26-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-241; RM-4082]

FM Broadcast Station in Breckenridge, Minnesota; Changes made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes Class C FM Channel 286 for Channel 285A at Breckenridge, Minnesota, and modifies the Class A license accordingly, in response to a petition filed by Ingstad Broadcasting Inc.

DATE: Effective October 19, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Breckenridge, Minnesota); BC Docket No. 82-241, RM-4082, Report and Order (Proceeding Terminated).

Adopted: August 11, 1982.

Released: August 18, 1982.

By the Chief, Policy and Rules Division:

1. In response to a petition filed by Ingstad Broadcasting, Inc. ("petitioner"),[1] the Commission adopted a Notice of Proposed Rule Making, 47 FR 20160, published May 11, 1982, proposing to substitute Class C Channel 286 for Channel 285A at Breckenridge, Minnesota.[2] The Notice also proposed to modify the Class A license for Station KKWB(FM) to specify operation on Channel 286. Comments supporting the proposal were filed by Tri State Broadcasting Company (KDIO), Ortonville, Minnesota, and by the petitioner. The petitioner also submitted reply comments.[3]

[1] Petitioner is the licensee of Station KKWB(FM), Breckenridge, Minnesota.

[2] The Notice stated that action on this proposal would be contingent on the outcome of BC Docket 81-737, which proposed the assignment of Channel 287 to Ortonville, Minnesota. In a Report and Order, released May 26, 1982, FCC Mimeo No. 31475, the Commission assigned Channel 268 to that community.

[3] Petitioner's response merely points out to the Commission that the only comments filed in this proceeding were those by KDIO, which addressed the impact of this proceeding on another rule making.

2. In comments, the petitioner restated the information in the Notice which demonstrated the need to upgrade its Class A facility to a Class C operation. KDIO in comments refers to BC Docket 81-737 which proposed to assign Channel 268 to Ortonville, Minnesota. Accordingly to KDIO the white area to be served by that proposal will also be served by the Breckenridge proposal.

3. After consideration of the proposal and comments, we believe that the public interest would be served by the proposed substitution of channels. We have authorized in paragraph 6 a modification of petitioner's license for Station KKWB(FM) to specify operation on Channel 286, since there has been no other expression of interest in the Class C channel.

4. Canadian concurrence has been obtained in the substitution of Channel 286 for Channel 285A at Breckenridge, Minnesota.

5. In view of the foregoing and pursuant to the authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's rules, it is ordered, That effective October 19, 1982, § 73.202(b) of the Commission's Rules is amended with respect to the following community:

City	Channel No.
Breckenridge, Minnesota	286

6. It is further ordered, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the outstanding license held by Ingstad Broadcasting, Inc. for Station KKWB(FM), Breckenridge, Minnesota, is modified, effective October 19, 1982, to specify operation of Channel 286 instead of Channel 285A. Station KKWB(FM) may continue to operate on Channel 285A for one year from the effective date of this action or until it is ready to operate on Channel 286, whichever is earlier, unless the Commission sooner directs, subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

7. It is further ordered, That this proceeding is terminated.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-23515 Filed 8-26-82; 8:45 am]

BILLING CODE 6712-01

47 CFR Part 73

[BC Docket No. 21513; RM-2882]

FM Broadcast Station in Freeport, San Marcos, and Sinton, Texas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action makes the following substitutions: FM Channel 277 for Channel 273 at Freeport, Texas; Channel 278 for Channel 279 at San Marcos, Texas; and Channel 279 for Channel 277 at Sinton, Texas. Additionally, the licenses of Stations KEYI, San Marcos, and KOUL, Sinton, are modified to specify operation on the newly assigned channels. These actions were taken in response to a petition filed by Amaturo Group, Inc., licensee of Station KMJQ, Channel 271, Houston, Texas. The actions will permit Station KMJQ to relocate its transmitter.

DATE: Effective October 19, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael A. McGregor Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcast.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Freeport, San Marcos,[1] and Sinton, [1] Texas); Docket No. 21513, RM-2882; Second Report and Order (Proceeding Terminated).

Adopted: August 11, 1982.

Released: August 19, 1982.

By the Chief, Policy and Rules Division:

1. Before the Commission is the Further Notice of Proposed Rule Making and Orders to Show Cause, 46 FR 56833, published November 19, 1981, which proposes FM channel substitutions at Freeport, San Marcos, and Sinton, Texas. These substitutions also require a modification of license for the San Marcos and Sinton stations operating on the affected channels.

2. This proceeding arose in the following way. By Report and Order, 45 FR 21638 (1980), the Commission assigned Channel 273 to Freeport, Texas, as that community's first FM assignment. Although the assignment presently meets all Commission spacing requirements, the channel is short-spaced to the location at which Amaturo Group, Inc. ("AGI") plans to move the transmitter for Station KMJQ (Channel 271), Houston, Texas. AGI states that because of high-rise construction immediately adjacent to its existing antenna in downtown Houston, KMJQ and other co-located FM stations in the Houston area have been forced to seek alternative transmitter sites. AGI states that one suitable location has been found approximately 15 miles southwest of Houston, where a tower of sufficient height can be constructed which will enable all affected FM stations to serve the Houston listening area. AGI contends that due to FAA height restrictions, other possible locations would not permit provision of adequate service to Houston. In the Report and Order, the Commission stated that its policy favors a first assignment to a community (Freeport) over a site preference for the relocation of an existing station (Houston Station KMJQ). AGI filed a petition for reconsideration of the Report and Order alleging that its proposed relocation site was not a "preference" but a necessity. In response to AGI's petition for reconsideration, the Commission issued a Request for Supplemental Information.[2] AGI was therein given the burden of establishing that its existing transmitter was unusable for purposes of serving its city of license, and that alternative sites, which would not cause short-spacing to the Freeport assignment, were unavailable.

3. Before the Commission had taken any final action on AGI's petition for reconsideration, AGI filed an alternative proposal to substitute Channel 277 for Channel 273 at Freeport, which would remove the short-spacing with Station KMJQ. The channel substitution at Freeport also required channel changes at San Marcos and Sinton. AGI cited several benefits to justify its channel substitution scheme. First, Station KMJQ

[1] These communities have been added to the caption.

[2] 46 FR 27169, published April 21, 1981.