grant authorizations only upon written application (FCC Form 600) received by it. * * *

TABLE B–1.—STANDARD FORMS FOR THE PUBLIC MOBILE SERVICES

Purpose of filing	Form No.	Title of form
Application for renewal of authorization.	405	Application for Renewal of Station License.
Application for airborne mobile authorization.	409	Application for Airborne Mobile Radiotelephone Authorization.
Application for assignment of authorization.	430	Licensee Qualification Report.
Transmittal for Phase I cellular application.	464	Transmittal Sheet for Cellular Applications for Unserved Areas.
Transmittal for Phase II cellular application.	464–A	Transmittal Sheet for Phase 2 Cellular Applications for Unserved Areas.
Notification of completion of construction. Notification of minor modification of station.	489	Notification of Commencement of Service or of Additional or Modified Facilities.
Application for assignment of authorization. Application for consent to transfer of control.	490	Application for Assignment of Authorization or Consent to Transfer of Control of Licensee.
Application for new or modified station. Major amendment to pending application. Application for partial assignment of authorization.	600	Application for Mobile Radio Service Authorization.

* * * * *

§ 22.317 [Amended]

4. In § 22.317, remove the words ''Mobile Services Division, Common Carrier Bureau'', and add, in their place, the words ''Commercial Wireless Division, Wireless Telecommunications Bureau''.

5. § 22.355 is revised to read as follows:

§ 22.355 Frequency tolerance.

Except as otherwise provided in this part, the carrier frequency of each transmitter in the Public Mobile Services must be maintained within the tolerances given in Table C–1 of this section.

TABLE C–1.—FREQUENCY TOLERANCE FOR TRANSMITTERS IN THE PUBLIC MOBILE SERVICES

Frequency range (MHz)	Base, fixed (ppm)	Mobile >3 watts (ppm)	Mobile <=3 watts (ppm)
25 to 50	20.0	20.0	50.0
50 to 450	5.0	5.0	50.0
450 to 512	2.5	5.0	5.0
821 to 896	1.5	2.5	2.5
928 to 929	5.0	n/a	n/a
929 to 960	1.5	n/a	n/a
2110 to 2220	10.0	n/a	n/a

6. Section 22.357 is revised to read as follows:

§ 22.357 Emission types.

Any authorized station in the Public Mobile Services may transmit any emission type provided that the resulting emission complies with the appropriate emission mask. See §§ 22.359, 22.861 and 22.917.

§ 22.369 [Amended]

7. In § 22.369, paragraph (c)(2), remove the symbol ''†'' and add, in its place, the Greek letter ''π''.

§ 22.409 [Amended]

8. In § 22.409, paragraph (h)(2), remove the words ''paragraph (e)'' and add, in their place, the words ''paragraph (f)''.

§ 22.507 [Amended]

9. Section 22.507 is amended by removing the Note.

§ 22.621 [Amended]

10. In § 22.621, the introductory paragraph is amended by removing, under the heading ''(12.5 kHz bandwidth)'', in the second row of the second column, the entry for ''959.85625'' and adding, in its place, the entry ''959.86875''.

§ 22.509 [Amended]

11. In § 22.509, paragraph (c), remove the words ''See § 22.13(c)(4)(ii)'' and add, in their place, the words ''See § 22.131(c)(4)(ii).''

Federal Communications Commission
Michele C. Farquhar,
Chief, Wireless Telecommunications Bureau.

[FR Doc. 96–26431 Filed 10–16–96; 8:45 am]
BILLING CODE 6712–01–P

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47 CFR Part 51

[CC Docket Nos. 96–98 and 95–185; FCC 96–378]

Implementation of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule; Denial of petitions for stay of rules.

SUMMARY: The Federal Communications Commission here denies two petitions seeking a stay of the rules contained in

the Commission's *First Report and Order* implementing the Telecommunications Act of 1996. The Commission concluded that petitioners failed to meet the legal criteria required to obtain a stay of the rules. Denial of the petitions seeking a stay of the rules allows the implementation of the Telecommunications Act of 1996 to proceed without delay.

EFFECTIVE DATE: September 16, 1996.

FOR FURTHER INFORMATION CONTACT: David A. Konuch, 202–418–0199.

SUPPLEMENTARY INFORMATION:

Adopted: September 16, 1996
Released: September 17, 1996

I. Introduction

1. On August 1, 1996, the Commission adopted rules implementing the local competition provisions of the Telecommunications Act of 1996 (1996 Act). Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96–98, First Report and Order, FCC 96–325 (released August 8, 1996), 61 FR 45476 (August 29, 1996) (First Report and Order). On August 28, 1996, GTE Corporation (GTE) and the Southern New England Telephone Company (SNET) filed a joint motion for stay of the Commission's rules pending judicial review. Oppositions to the joint motion for stay were filed by the United States Department of Justice and 16 private parties. On September 6, 1996, after we received these oppositions, U S West, Inc. (''U S West'') filed a stay petition similar to that filed by GTE and SNET. The Competitive Telecommunications Association and ALTS filed oppositions to U S West's petition.

2. For the reasons set forth below, we deny the motions for stay.

II. Summary of the Motions and Oppositions

3. GTE and SNET assert that a petition for review of the Commission's *First Report and Order* is likely to succeed on the merits because the Commission has exceeded its statutory authority and has acted arbitrarily and capriciously in implementing provisions of the 1996 Act. In particular, GTE and SNET contend that the Commission lacks authority to establish national pricing standards for interconnection and unbundled network elements. GTE and SNET argue that, even if the Commission has such authority, the pricing standards in the *First Report and Order* would force incumbent LECs to offer interconnection, unbundled network elements, and resold services at below-cost rates, allegedly effecting an uncompensated taking in violation of the Fifth Amendment to the United States Constitution. GTE and SNET also maintain that the Commission has established default pricing proxies that are inconsistent with the 1996 Act and the cost study methodology the Commission adopted for use by state commissions. In addition, GTE and SNET assert that the ability of competitors to ''reassemble'' unbundled network elements nullifies the resale and exchange access provisions of the 1996 Act. Finally, GTE and SNET argue that the *First Report and Order* establishes a number of specific requirements with regard to resale and exchange access charges that conflict with express terms of the 1996 Act.

4. GTE and SNET contend that they will suffer irreparable harm in the absence of a stay because the Commission's rules will stifle the negotiation process and will require incumbent LECs to offer unbundled elements or services to competitors at below-cost prices. GTE and SNET argue that a stay will cause no harm to others because private negotiations and state-supervised arbitrations can proceed in the absence of Commission rules. GTE and SNET also assert that the public interest favors a stay because of the disruption to business plans that would result if the Court of Appeals reverses the *First Report and Order* and the Commission subsequently modifies its rules.

5. U S West agrees with SNET and GTE's arguments, but additionally claims that our default proxy prices, along with our misinterpretation of 47 U.S.C. 252(i), the 1996 Act's ''most favored nation'' provision, will impermissibly ''dictate'' the result of negotiations, as a practical matter. Section 252(i) of the 1996 Act provides that a ''local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under [section 252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.'' 47 U.S.C. 252(i). Section 252(i) is known as the 1996 Act's ''most favored nation'' provision, because it enables carriers to obtain any interconnection, service, or network element on terms as favorable as those contained in any state-commission-approved interconnection agreement.

6. In general, parties opposing grant of the stay motion contend that GTE's and SNET's motion does not satisfy the four factors that we must consider in deciding whether to stay one of our orders. These parties contend movants are unlikely to prevail on the merits of their claims; that movants will suffer no irreparable harm if a stay is not granted; that grant of a stay will harm third parties; and that the public interest does not favor the grant of a stay.

III. Discussion

7. Petitioners' motions do not justify relief under the four-part test for evaluating requests for interim relief. That test requires proponents of a stay to demonstrate: (1) That they are likely to prevail on the merits; (2) that they will suffer irreparable harm if a stay is not granted; (3) that other interested parties will not be harmed if the stay is granted; and (4) that the public interest favors the grant of a stay. See *Wisconsin Gas Co.* v. *FERC,* 758 F.2d 669, 673–74 (D.C. Cir. 1985); *Washington Metropolitan Area Transit Authority* v. *Holiday Tours, Inc.,* 559 F.2d 841, 843–43 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass'n* v. *FPC,* 259 F.2d 921, 925 (D.C. Cir. 1958). As discussed below, we do not believe that petitioners have satisfied any, much less all, of these requirements.

A. Irreparable Harm

8. A concrete showing of irreparable harm is an essential factor in any request for a stay. '' 'The key word' '' in an analysis of irreparable harm is '' '*irreparable.*' '' ''[E]conomic loss does not, in and of itself, constitute irreparable harm.'' Also, because competitive harm is merely a type of economic loss, ''revenues and customers lost to competition which can be regained through competition are not irreparable.'' Moreover, even if the alleged harm is not fully remediable, the irreparable harm factor is not satisfied absent a demonstration that the harm is ''both certain and great; * * * actual and not theoretical.'' ''Bare allegations of what is likely to occur are of no value'' under this factor, because we ''must decide whether the harm will *in fact* occur.'' Petitioners' three different claims of harm absent a stay do not satisfy these exacting standards.

9. *First,* GTE and SNET argue specifically that they are harmed by our interpretation of the ''just and reasonable'' standard of 47 U.S.C. 251(c)(2) and (3) for the pricing of interconnection and unbundled network elements. They complain, in particular, that the pricing methodology adopted in the *First Report and Order* unconstitutionally prevents them from recovering the joint and common costs (hereinafter collectively referred to as ''common costs''), and the historical ''embedded'' costs of such offerings to competing carriers. *The First Report and*

Order generally uses the term ''common costs'' to refer to both joint and common costs. Such ''below-cost'' pricing of section 251 offerings, they claim, will result in unrecoverable lost revenues, customers, and goodwill, particularly if state regulators do not allow them to ''rebalance'' (raise) rates for certain retail services that allegedly have been subsidized in the past by the pricing regime that the section 251 offerings will erode.

10. These claims mischaracterize the *First Report and Order.* Contrary to GTE's and SNET's assertions, our pricing methodology does not require ''below-cost'' pricing. On the contrary, it affirmatively provides for the recovery of all the economic costs of providing interconnection and unbundled network elements, and includes a reasonable profit. We refer to the general pricing methodology we adopted as Total Element Long Run Incremental Cost or ''TELRIC''. As we explained, economic costs are forward-looking costs or, in other words, the costs that an efficient provider would incur to provide the service or facility. We also specifically provided that unbundled element prices shall include a ''normal profit.'' In mischaracterizing our pricing methodology as ''below-cost,'' GTE and SNET must be claiming that historical embedded costs are always greater than economic costs, and that sections 251 and 252 must be read to entitle them to recover historical costs even where those costs exceed economic costs. Both assertions are unfounded. Nothing in section 251 or 252 creates an entitlement for GTE, SNET and other incumbent LECs to assess rates for interconnection and unbundled network elements that are designed to recover historical costs that exceed economic costs. Economists generally agree that historical embedded costs are not the relevant costs in competitive markets, and would, in fact, interfere with the development of efficient competition. Moreover, GTE and SNET are simply wrong in claiming that the Commission's pricing methodology denies them an opportunity to recover common costs. We stated clearly in the *First Report and Order* that ''for the aggregate of all unbundled elements, incumbent LECs must be given a reasonable opportunity to recover their forward-looking common costs attributable to operating the wholesale network.''

11. Even accepting GTE's and SNET's reliance on historical costs, their contention that the *First Report and Order* requires below-cost pricing is speculative. In any given instance, forward-looking costs ''may be higher or lower than historical embedded costs.'' Thus, the claimed loss of revenues—which does not present a question of constitutional deprivation in any event—is premature because the actual revenues that GTE and SNET will receive will not be known until completion of the voluntary negotiations and state arbitration proceedings that will actually set interconnection and unbundled element prices. We expressly stated in the *First Report and Order* that ''[i]ncumbent LECs may seek relief from the Commission's pricing methodology if they provide specific information to show that the pricing methodology, as applied to them, will result in confiscatory rates.'' Moreover, as DOJ correctly notes in its Opposition at page 3, the Commission possesses discretion in ratemaking matters, so long as the rates that result are just. See, *e.g., Duquesne Light Co.* v. *Barasch,* 488 U.S. 299 (1989) (in which the Court rejected a takings claim where a utility was denied recovery of a $34 million capital investment, prudent and reasonable when made, because the financial integrity of the company was not jeopardized). Speculation about anticipated lost revenues in the future does not approach, at this stage, a showing of irreparable harm.

12. *Second*, petitioners contend that they will be harmed by the application of the interim default proxy rates that the Commission adopted. This argument is fatally flawed in that there is no certainty that those proxies will ever be applied to petitioners. These proxies were established for use by the states if a state was not able to set prices based on economic cost studies consistent with our methodology within the statutory arbitration periods. If, as these carriers assert, the proxy rates are unreasonably below costs, they have every incentive, and possess the information necessary, to present credible economic cost studies to the relevant state commissions to allow the state commissions to set prices for interconnection and unbundled network elements that are based on actual cost studies, rather than by proxies. Their claims of harm thus lack the requisite certainty and concreteness for a stay. Further, as discussed below, the carriers' challenges to those proxies mischaracterize the Commission's action and are unfounded on the merits.

13. *Third*, petitioners argue that the Commission's rules unreasonably constrain both their ability to negotiate the terms of voluntary agreements with other telecommunications carriers that request interconnection or unbundled network elements, and the states' ability to arbitrate the terms of such agreements if voluntary negotiations fail. Quite apart from the fact that the statute directs the Commission to adopt implementing rules in 47 U.S.C. 251(d)(1), these allegations of harm also are too speculative to justify injunctive relief. Section 251(d)(1) provides that, ''[w]ithin 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.'' We also note that section 253(a) provides that ''[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.'' Further, section 253(d) provides that ''[i]f, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) [relating to the states' ability to take certain actions], the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.'' Our rules clearly do not prohibit voluntary negotiations between incumbent LECs and their potential competitors, as contemplated in 47 U.S.C. 252(a). Indeed, they facilitate them. Petitioners are free to negotiate agreements with other carriers upon any terms they choose so long as they are not discriminatory and are consistent with the public interest. Although we fully expect the existence of our rules to provide a context in which free negotiations can proceed consistent with the pro-competitive purposes of the 1996 Act, petitioners cannot plausibly suggest in view of the explicit mandate of 47 U.S.C. 251(d)(1) that they have a cognizable right to negotiate without any rules adopted by the FCC.

14. We also conclude that petitioners have not demonstrated that the FCC's decision to interpret the just and reasonable rate standard would necessarily harm them, as compared with a decision to allow states independently to interpret that standard in arbitration proceedings. To the extent that states might adopt different standards absent any FCC guidance, such standards could conceivably be either more or less favorable to incumbent local exchange carriers.

15. Finally, it is a meaningful response to all of the harms that petitioners allege that nothing in the

First Report and Order prevents incumbent local exchange carriers from taking steps substantially to protect themselves by seeking to insert into their voluntary agreements provisos that permit reformation of the terms of those agreements in the event that the order is overturned or modified pursuant to judicial review. Similarly, nothing in the order prevents states, in arbitrating such agreements, from imposing such provisos.

B. Harm to Others

16. Petitioners also have not proved that a grant of their motions would not harm others. As discussed more fully below (paras. 28–31), the ''stay'' they seek would not simply maintain the *status quo*, but rather would have a significant impact on whether potential new competitors currently involved in negotiations and state arbitration proceedings choose to enter local exchange and exchange access markets at this crucial time, and, if so, whether their entry would be pursuant to statutory standards as interpreted by the Commission, or some other standards. To the extent that petitioners claim that the Commission's interpretations burden them with lost revenues and competitive harm, other interpretations allowing them to charge new entrants higher rates or to impose upon them more restrictive terms likely would burden new entrants and, consequently, retard or even eliminate competitive entry. As between incumbent LECs and new entrants, the former are more likely to be able to repair the adverse consequences of any erroneous decision on whether to grant a stay.

17. Moreover, to the extent that petitioners argue not only that the Commission adopted an erroneous pricing standard, but also that the Commission erred by failing to leave the standard to individual states, the carriers are advocating a system that clearly would cause new entrants particular harm and might even discourage them from entering these markets. As we noted in the *First Report and Order*, efficient entry strategies in many cases require entry on a regional, rather than state-by-state, basis. The removal of national standards could severely impede, or at least increase the cost of, such strategies.

C. Public Interest

18. GTE and SNET assert that a stay would serve the public interest because it would leave interconnection negotiations to private parties, and arbitrations in the hands of state regulators, where Congress intended them to be. They also contend that ''progress toward competition will be gravely impaired'' in the absence of a stay because the Commission's rules will give potential competitors false signals that may ''encourage entry by companies that would not normally enter if they had known the true costs involved.'' GTE and SNET claim that this means that a stay is necessary to protect the public from such ''uneconomic entry'' and from the disruptions that would attend corrective actions if the Commission's rules were overturned. U S West additionally claims that the public interest will be harmed because the Commission's rules and ''inflexible prices'' will ''prevent carriers from negotiating interconnection agreements with each other on terms that are more advantageous than the defaults.''

19. Contrary to GTE's and SNET's argument that a stay is needed to avoid ''entry by companies that would not normally enter,'' a stay might discourage entry by some who have every reasonable qualification to compete and would do so under our rules. A stay in this crucial initial period for the development of local exchange and local access competition would not serve the public interest unless our rules were virtually certain to be set aside on review and the actions taken on interconnection requests in the meantime were irreversible. We believe that our rules correctly carry out the objectives of Congress in adopting section 251. Congress expressly mandated rulemaking by the Commission to implement effectively the new statutory requirements. Congress also made clear that time was of the essence, directing us to ''complete all actions necessary to establish [such] regulations'' by August 8, 1996. As explained more fully below (paras. 30–31), a stay of our rules would subvert Congress' plan to have such rules in place during arbitration proceedings. Moreover, as we emphasized in the First Report and Order, the rules we adopted under section 251 will have a significant impact on the implementation of other provisions of the 1996 Act. We noted, for example, that our 251 rules ''will help the states, the DOJ, and the FCC carry out their responsibilities under section 271, and assist BOCs in determining what steps must be taken to meet the requirements of section 271(c)(2)(B), the competitive checklist.'' Section 271 establishes the requirements that a BOC must satisfy in order to receive authorization to provide in-region interLATA telecommunications services. Section 271(c)(2)(B) sets forth a specific ''checklist'' of requirements that a BOC must meet as part of the authorization process.

20. As to any necessary corrections after the fact, we believe that agreements and arbitrations can take account of this possibility. As noted above (paragraph 15), agreements and arbitrations could include provisos calling for revisions if the Commission's rules should be struck down. The joint motion acknowledges that the agreements can be revised after the fact if the Commission's rules are upheld after a stay is granted; its assertion that such revisions would not work if a stay is denied and the rules later are struck down is implausible and unexplained.

21. We further reject U S West's argument that our rules will harm the public interest by providing carriers with insufficient flexibility to negotiate agreements. For the reasons set out in this Order and in the *First Report and Order*, we believe that our rules provide all carriers with a full and fair opportunity, pursuant to the requirements of the 1996 Act, voluntarily to negotiate interconnection agreements.

22. In summary on this point, the primary beneficiary of the competitive policies our rules were designed to implement is the public. We conclude that a stay would disserve the public interest profoundly by eliminating our rules from the process of negotiation and arbitration at the very most crucial time.

D. Likelihood of Success on the Merits

23. Because of the clear failure of petitioners to meet the irreparable harm, harm to others, and public interest requirements for obtaining a stay, we do not address specifically in this order all their claims that we exceeded our statutory authority or that we acted arbitrarily or capriciously. All the significant arguments raised by the petitioners were squarely addressed in the *First Report and Order.* We addressed issues concerning the Commission's authority under the 1996 Act to establish national pricing rules in section II.C. and II.D. of the order. We discussed the legal and economic bases for the establishment of the Commission's pricing methodology, including the Fifth Amendment takings issue and the justification for the default proxy ceilings and ranges, in section VII of the order. We addressed arguments about whether we should permit competitors to reassemble unbundled network elements, including possible effects on the resale provisions of the 1996 Act and our access charge rules, in sections V.H. and VII.B., respectively. In

section V.J., we set forth our rationale for including vertical features within the definition of unbundled local switching; and in sections IV.H., V.J., and VII.B., we discussed the compensation to incumbent LECs for modifications made to their networks to accommodate interconnection and unbundling. Finally, in section XIV.B of the *First Report and Order,* we addressed arguments regarding the rights of third parties to obtain ''any individual interconnection, service, or network element arrangement'' under section 252(i). We need not repeat those discussions in this order.

24. We will note, however that where the GTE and SNET address the merits of the *First Report and Order,* they often mischaracterize and distort the import of our analysis and conclusions. For instance, our default proxy pricing measures are only interim approaches, setting bounds for unbundled element pricing in the absence of state-approved forward-looking cost studies. Our proxies will assist states in the very near term when, because of time or staff resource constraints, they may be unable to set prices by conducting or approving forward-looking economic cost studies within the statutory time period set for arbitrations. Indeed, the first set of state arbitrations must be completed in early November under the deadlines established in the Act.

25. An example of GTE and SNET's misguided arguments on the merits is their criticism of the Commission's unbundled loop proxy calculation. In asserting that the Commission ''might just as well have picked the default prices out of a hat,'' petitioners omit any mention of the several pages of the order describing how we calculated our loop proxy figures. As detailed in section VII.C. of the *First Report and Order,* our proxy ceilings are based on prices set by six state commissions as their best estimates of forward-looking costs after analysis of economic cost studies. We then derived price ceilings for individual states throughout the nation by adjusting the average of the prices in these six states by the relative loop costs in those states, as estimated by the two forward-looking economic cost-based models that received significant comment by parties during this proceeding. To allow a reasonable margin to enable the proxy ceiling to capture the variation among states' forward-looking economic costing prices, we then adjusted the resulting prices upward by five percent.

26. Contrary to GTE and SNET's arguments, it is no surprise, and certainly not error, that the price ceiling for Florida—or for Connecticut, Colorado, Michigan, Illinois, or Oregon, for that matter—does not equal the results of the cost studies in those individual states. We concluded that an average of the six states' prices represented the best estimate of forward-looking loop costs available to us at that time, and that relying on an average of the nationwide relative costs from the *Hatfield* and *BCM* models was the best method for deriving proxy price ceilings in individual states. We believe our methodology is reasonable, even though our proxy ceiling in Florida is $13.68 while the Florida Commission set a $20 per loop price for GTE Florida. We note that the price set by the Florida Commission for GTE–Florida was itself significantly higher than those the commission set for BellSouth and United/Centel—the other local telephone companies for which the state commission has set unbundled loop prices in Florida. We concluded that the reliability of our foundation estimate was enhanced by using an average of the prices established in all six states for which information was available, rather than using just one state or the six states individually. We did not, and could not in the time frame permitted under the statute, independently verify the accuracy of the six states' unbundled loop prices, many of which also were interim in nature. Instead, we emphasized that each state, in our judgment, used a standard that appeared to be reasonably close to the forward-looking economic cost methodology specified in the *First Report and Order,* although perhaps not consistent in every detail with our prescribed methodology. Finally, we also are unpersuaded by GTE and SNET's assertion that it was a fatal error to rely on the Florida cost studies because the Florida Commission failed to include any ''significant'' contribution to GTE Florida's common costs. It is not clear on its face that the ''insignificant'' contribution to common costs is inconsistent with our requirement that there be a reasonable allocation of common costs. In addition, the Florida Commission affirmatively found that their rates were not below GTE Florida's costs, and explicitly provided for recovery of a reasonable profit. GTE and SNET have not demonstrated that use of the Florida Commission prices as part of setting a proxy ceiling for unbundled loop prices was so unreasonable as to result in a flawed loop proxy methodology. In sum, we set default proxy price ceilings and ranges for use by state commissions, in the absence of fully approved forward-looking cost studies, based on the best evidence available to us within the statutory time period for our decision.

27. Finally, petitioners' discussion of our proxy prices simply ignores two key characteristics of our proxy rules. First, our order makes clear that these proxies are interim in nature, and that states utilizing the proxies must replace them with prices based on the results of forward-looking cost studies as they become available. Second, our rules permit incumbent LECs to obtain a price higher than the Commission's proxy ceiling by submitting to a state commission during an arbitration an economic cost study that demonstrates that the incumbent LEC's costs do in fact exceed the proxy price. If the forward-looking costs for petitioners are in fact higher than our proxy price ceiling, as applied in an individual state, they need only demonstrate that to the state commission.

E. Special Circumstances of This Case

28. In addition to movants' failure to satisfy the four-part test for evaluating requests for stay, the circumstances of this specific case particularly militate against the grant of their motions. Ordinarily when we are asked to stay the effectiveness of one of our orders or rules, the moving party seeks to maintain the *status quo* until a reviewing authority can sort out the issues and render its decision on the merits. That is not the case here, as the Joint Motion itself recognizes. Under the terms of the 1996 Act, many voluntary negotiations for private interconnection agreements and state-supervised arbitrations that are now under way will be completed before the end of the year, because Congress established strict timetables to govern the negotiation and arbitration process. The question is whether those proceedings will reflect the principles established by the Commission to implement section 251.

29. Petitioners do not seek to preserve the *status quo,* but to overturn Congress's requirement that state arbitrators ensure that approved interconnection agreements reflect the Commission's regulations implementing section 251. It is doubtful, in these circumstances, that the ordinary standards for evaluating stay motions should apply because, where the objective of the motion is not to maintain the *status quo,* the courts have applied a more demanding standard.

30. In our view, it is important that the regulations established in the *First Report and Order* not be stayed while negotiation and arbitration proceedings are taking place. As we stated in the *First Report and Order,* the negotiations between incumbent LECs and new

entrants are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires. Under section 251, monopoly providers are required to make available their facilities and services to requesting carriers that intend to compete directly with the incumbent LECs for their customers and, consequently, incumbents have strong incentives to resist such obligations. Our national rules serve the critical role of equalizing bargaining power by establishing certain baseline principles that will ''reduce delay and lower transaction costs''—burdens that we have found ''impose particular hardships for small entities that are likely to have less of a financial cushion than larger entities.'' A stay would undermine that critical role at a most important time, disproportionately harming the competition that the statute contemplates from new entrants.

31. Moreover, Congress made clear that *it* wants our rules to be in place at this critical time. Congress specifically ordered the Commission to ''complete all actions necessary to establish regulations to implement the requirements'' of section 251 by August 8, 1996. It explained that it is ''important that the Commission rules to implement new section 251 be promulgated within six months after the date of enactment, so that potential competitors will have the benefit of being informed of the Commission's rules in requesting access and interconnection before the statutory window in new section 271(c)(1)(B) shuts.'' Section 271(c)(1)(B) authorizes a Bell Operating Company (BOC) to apply for approval to offer in-region interLATA telecommunications services if it does not receive a request for access and interconnection from a facilities-based competitor within seven months after enactment. In section 252(c)(1), Congress further ordered state arbitrators resolving interconnection disputes and imposing conditions on telecommunications companies to ''ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission.'' Under the statute, those state arbitrators must ''conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the [interconnection] request.'' Because many LECs requested interconnection shortly after the enactment of the 1996 Act on February 8, 1996 (with the consequence that arbitration of such requests must be completed soon), a stay of our rules would frustrate implementation of the procedure established by Congress. As a matter of mathematical certainty, the arbitrations cannot be completed on the timetable established by Congress—with the arbitrators ensuring that the agreements reflect the regulations prescribed by the Commission, as Congress directed in section 252(c)(1)—if the regulations are stayed.

IV. Ordering Clauses

32. Accordingly, *it is ordered* that the joint motion for stay filed by GTE Corporation and the Southern New England Telephone Company is denied.

33. *It is further ordered* that the motion for stay filed by U S West, Inc., is denied.

List of Subjects in 47 CFR Part 51

Communications common carriers, Telephone.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

[FR Doc. 96–26517 Filed 10–16–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–44; RM–8745]

Television Broadcasting Services; Woodward, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Channel 35 Broadcasters, allots UHF TV Channel 35+ to Woodward, OK, as the community's second local and first commercial television service. *See* 61 FR 10978, March 18, 1996. Channel 35+ can be allotted to Woodward in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–26–12 NL; 99–23–26 WL. This allotment is not affected by the Commission's temporary freeze on new television allotments in certain metropolitan areas. *See Order*, 52 FR 28346, July 29, 1987. With this action, this proceeding is terminated.

DATES: Effective November 12, 1996. The period for filing applications will open on November 12, 1996. If no acceptable applications are filed by December 13, 1996, there will be no additional opportunity to file applications for this channel allotment.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 96–44, adopted September 20, 1996, and released September 27, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Oklahoma, is amended by adding Channel 35+ at Woodward.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–26519 Filed 10–16–96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1070 and 1071

[STB Ex Parte No. 557]

Removal of Obsolete Regulations Concerning Water Carriers

AGENCY: Surface Transportation Board, Transportation.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is removing from the Code of Federal Regulations obsolete regulations exempting certain water carrier operations.

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]