Dated: October 14, 1997.

Nancy-Ann Min DeParle,

Deputy Administrator, Health Care Financing Administration.

Dated: October 23, 1997.

Olivia A. Golden,

Principal Deputy Assistant Secretary, Administration for Children and Families.

Dated: January 28, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–21146 Filed 8–4–98; 1:23 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chap. I

[CC Docket No. 97–134; FCC 98–163]

Treatment of the Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order released July 20, 1998 adopts a rule treating Guam Telephone Authority (GTA) as an incumbent local exchange carrier. Adoption of this rule will ensure that the Territory of Guam has the same opportunity as the rest of our Nation to benefit from pro-competitive, market-opening effects. In the Order, we decline to adopt the same rule with respect to a class or category of LECs situated similarly to GTA, because the record does not identify any members of such class or category.

EFFECTIVE DATE: September 8, 1998.

FOR FURTHER INFORMATION CONTACT: Alex Starr, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Order contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted July 15, 1998 and released July 20, 1998. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., Room 239, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc98163.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW., Washington, DC 20036.

Regulatory Flexibility Certification

In conformance with the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, we certify that the rule adopted herein will not have a significant economic impact on a substantial number of small entities. Our rule treating GTA as an incumbent LEC pursuant to section 251(h)(2) will affect only GTA and the limited number of entities that seek to interconnect with GTA's network or resell GTA's services. Even if all of these entities can be classified as small entities, we do not believe that they constitute a ''substantial number of small entities'' for purposes of the Regulatory Flexibility Act.

Synopsis of Report and Order

I. Introduction

Pursuant to our express rulemaking authority in section 251(h)(2) of the Communications Act of 1934, as amended (Act or Communications Act), we adopt in this Report and Order the rule proposed by the Commission in *Guam Public Utilities Commission Petition for Declaratory Ruling concerning Sections 3(37) and 251(h) of the Communications Act, Treatment of the Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act,* 62 FR 29320, May 30, 1997 (*Guam Ruling/Notice*). In particular, we adopt a rule treating Guam Telephone Authority (GTA) as an incumbent local exchange carrier (LEC) for purposes of section 251. Adoption of this rule will ensure that the Territory of Guam (Guam) has the same opportunity as the rest of our Nation to benefit from the pro-competitive, market-opening effects of the Telecommunications Act of 1996. We decline at this time, however, to adopt the same rule with respect to a class or category of LECs situated similarly to GTA, because the record does not identify any members of such class or category.

II. Background

2. In the *Guam Ruling/Notice,* the Commission resolved a Petition for Declaratory Ruling filed by the Public Utilities Commission of the Territory of Guam (Guam Commission) regarding sections 251(h)(1) and 3(37) of the Communications Act. The Commission held that (i) GTA—the only LEC throughout Guam—is not an ''incumbent local exchange carrier'' within the meaning of section 251(h)(1), and (ii) GTA is a ''rural telephone company'' within the meaning of section 3(37).

3. One effect of the Commission's holdings in the *Guam Ruling/Notice* was that GTA could permanently avoid the interconnection, unbundling, resale, and other obligations imposed on incumbent LECs by section 251(c) of the Communications Act. Imposing these obligations on incumbent LECs, including rural telephone companies in appropriate circumstances, is one of the 1996 Act's primary methods of fostering the development of competition in the local exchange market. As a result, in the *Guam Ruling/Notice,* the Commission also issued a Notice of Proposed Rulemaking proposing that the Commission adopt, pursuant to section 251(h)(2) of the Communications Act, a rule providing for the treatment of GTA as an incumbent LEC for purposes of section 251. Under section 251(h)(2), the Commission ''may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of (section 251)'' if:

> (A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1); (B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and (C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section. 47 U.S.C. 251 (h)(2).

4. In the *Guam Ruling/Notice,* the Commission sought comment on the proposal therein to adopt a rule pursuant to section 251(h)(2) treating GTA as an incumbent LEC for purposes of section 251. The Commission also sought comment regarding whether LECs situated similarly to GTA exist and, if so, whether the Commission should adopt the same rule with respect to such class or category of LECs.

III. Discussion

5. hereby adopt in this Report and Order the rule proposed by the Commission in the *Guam Ruling/Notice.* In particular, pursuant to our express rulemaking authority in section 251(h)(2) of the Act, we adopt a rule treating GTA as an incumbent LEC for purposes of section 251.

6. We decline at this time, however, to adopt a general rule under section 251(h)(2) treating as incumbent LECs all members of a class or category of LECs situated similarly to GTA. We so decline because the record does not indicate

that any LEC situated similarly to GTA exists. We may revisit this issue if and when we become aware of the existence of a LEC or class or category of LECs similarly situated to GTA.

IV. Final Regulatory Flexibility Analysis

7. Pursuant to the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the Commission certified in the *Guam Ruling/Notice* that the proposed rule would not have a significant economic impact on a substantial number of small entities. We received no comments regarding this certification.

8. In conformance with the RFA, as amended by the SBREFA, we certify that the rule adopted herein will not have a significant economic impact on a substantial number of small entities. Our rule treating GTA as an incumbent LEC pursuant to section 251(h)(2) will affect only GTA and the limited number of entities that seek to interconnect with GTA's network or resell GTA's services. Even if all of these entities can be classified as small entities, we do not believe that they constitute a ''substantial number of small entities'' for purposes of the Regulatory Flexibility Act.

9. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the foregoing certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration. It shall also include a copy of this Report and Order, including the foregoing certification and statement, in the report to Congress.

V. Ordering Clauses

10. Accordingly, it is ordered, pursuant to sections 1, 2, 4, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 251, and 303(r), that the report and order is adopted, and the requirements contained herein shall become effective September 8, 1998.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–21087 Filed 8–6–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15 and 97

[ET Docket No. 94–124; FCC 98–150]

Use of Radio Frequencies Above 40 GHz for New Radio Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Third Report and Order* (R&O) the Commission amends the rules to: provide amateur and amateur-satellite operators co-primary status in the 77.5–78 GHz frequency band to ensure that future amateur station access to spectrum near 77 GHz is maintained without the threat of preemption by higher priority services; restrict amateur and amateur-satellite operations in the 76–77 GHz frequency band to ensure against potential interference to vehicle radar systems that we expect will operate in this band; adopt a spectrum etiquette for unlicensed devices operating in the 59–64 GHz frequency band to provide a spectrum etiquette that maximizes the number of users and minimizes the potential for interference in the 59–64 GHz band; and adopt spurious emission limits for unlicensed equipment operating in the 76–77 GHz frequency band to provide protection to radio astronomy operations in the 217–231 GHz band.

EFFECTIVE DATE: This rule is effective September 8, 1998, except the addition of § 2.1033(b)(12) which is effective October 5, 1998.

FOR FURTHER INFORMATION CONTACT: Rodney P. Conway (202) 418–2904 or via electronic mail: rconway@fcc.gov. For additional information concerning the information collections, or copies of the information collections contained in this *Third Report and Order* contact Judy Boley at (202) 418–0217, or via electronic mail at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order,* ET Docket 94–124, FCC 98–150, adopted July 6, 1998 and released July 15, 1998.

A 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, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, phone (202) 857–3800, facsimile (202) 857–3805, 1231 20th Street, N.W. Washington, DC 20036.

Summary of the Third Report and Order

1. This *Third Report and Order* amends the rules to restrict amateur and amateur-satellite operations in the 76–77 GHz frequency band. The Commission is adopting its proposal to suspend access to the 76–77 GHz band by amateur stations in order to ensure against potential interference to vehicle radar systems that we expect will operate in this band. Thus, this action will not have an immediate impact on amateur operators because there is little or no use of this band. Further, we are unable to ascertain what future amateur station transmissions might take place in this band and therefore cannot evaluate the potential for interference to vehicle radar systems. Because harmful interference to vehicle radar systems could affect public safety, we will proceed with the utmost amount of caution.

2. The *Third Report and Order* also amends the rules to establish a co-primary frequency allotment for use by amateur and amateur-satellite operators in the 77.5–78 GHz frequency band. The Commission believes that upgrading the status of the Amateur Radio Services, including amateur and amateur-satellite operations, to co-primary in the 77.5–78 GHz band is needed to ensure that future amateur station access to spectrum near 77 GHz is maintained without the threat of preemption by higher priority services. The Commission believes that this allocation is needed if we are to continue to foster amateur operator experimentation using millimeter wave technology.

3. The *Third Report and Order* also amends the rules to establish a spectrum etiquette for unlicensed devices operating in the 59–64 GHz frequency band. The Commission believes that the adopted spectrum etiquette provides the best plan to maximize the number of users and minimize the potential for interference in the 59–64 GHz band. The coordination channel from 59.0–59.05 GHz provides access to spectrum that will be used to determine methods of limiting potential interference and establishing techniques for spectrum sharing between diverse systems. In addition, the transmitter output power and peak emission limits will minimize the potential for interference and provide for greater spectrum reuse. Moreover, the transmitter identification requirement for transmitters operating with more than 0.1 mW of output power is essential to provide for successful sharing and coordination between users. We note that, no comments were filed expressing opposition to the proposed