the balance due (including accrued and unpaid interest) based upon the installment payment terms for which they qualify under the rules. The financing documents must be returned to the U.S. Treasury within thirty (30) days of the Public Notice conditionally granting the partial assignment application. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(e)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for their portion of the partitioned market or disaggregated spectrum.

(iii) A default on an obligation will only affect that portion of the market area held by the defaulting party.

(iv) Partitionees and disaggregatees that qualify for installment payment plans may elect to pay some of their pro rata portion of the balance due in a lump sum payment to the U.S. Treasury and to pay the remaining portion of the balance due pursuant to an installment payment plan.

(e) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 24.15.

(f) *Construction requirements*—(1) *Requirements for partitioning.* Parties seeking authority to partition must meet one of the following construction requirements:

(i) The partitionee may certify that it will satisfy the applicable construction requirements set forth in § 24.203 for the partitioned license area; or

(ii) The original licensee may certify that it has or will meet its five-year construction requirement and will meet the ten-year construction requirement, as set forth in § 24.203, for the entire license area. In that case, the partitionee must only satisfy the requirements for ''substantial service,'' as set forth in § 24.16(a), for the partitioned license area by the end of the original ten-year license term of the licensee.

(iii) Applications requesting partial assignments of license for partitioning must include a certification by each party as to which of the above construction options they select.

(iv) Partitionees must submit supporting documents showing compliance with the respective construction requirements within the appropriate five- and ten-year construction benchmarks set forth in § 24.203.

(v) Failure by any partitionee to meet its respective construction requirements will result in the automatic cancellation of the partitioned or disaggregated license without further Commission action.

(2) *Requirements for disaggregation.* Parties seeking authority to disaggregate must submit with their partial assignment application a certification signed by both parties stating which of the parties will be responsible for meeting the five- and ten-year construction requirements for the PCS market as set forth in § 24.203. Parties may agree to share responsibility for meeting the construction requirements. Parties that accept responsibility for meeting the construction requirements and later fail to do so will be subject to license forfeiture without further Commission action.

[FR Doc. 97–98 Filed 1–3–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 51

[CC Docket No. 96–98; FCC 96–483]

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule; motion for stay and notification of court stay.

SUMMARY: The Order released December 18, 1996 dismisses the motion for stay of three rules adopted in the *First Report and Order,* (August 29, 1996), filed by the Rural Telephone Coalition (RTC) to the extent that RTC seeks a stay of 47 CFR 51.809, and otherwise denies the motion for stay. Denial of the motion for stay allows the rules relating to local competition which have not been stayed by the United States Court of Appeals for the Eighth Circuit (*Iowa Utilities Board* v. *Federal Communications Commission,* No. 96–3321 *et al.,* 1996 WL 589284 (8th Cir. 1996 Oct. 15, 1996)) to go into effect without delay.

EFFECTIVE DATE: Sections 51.501–51.515 (inclusive), 51.601–51.611 (inclusive), 51.705–51.715 (inclusive), and 51.809 are stayed effective October 15, 1996 pursuant to court order. Motion for stay by the Rural Telephone Coalition is dismissed effective January 6, 1997.

FOR FURTHER INFORMATION CONTACT: Lisa Gelb, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted December 18, 1996, and released December 18, 1996. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc96483.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Regulatory Flexibility Analysis

There are no new rules or modifications to existing rules adopted in this Order.

Paperwork Reduction Act

There are no new or modified collections of information required by this Order.

Synopsis of Order

I. Introduction

1. On August 1, 1996, the Commission adopted rules implementing the local competition provisions of the Telecommunications Act of 1996 (1996 Act). On October 2, 1996, the Rural Telephone Coalition (RTC) filed a motion for stay of three rules adopted in the *First Report and Order,* 61 FR 45476 (August 29, 1996), pending judicial review. Oppositions to the motion for stay were filed by MCI, the Association for Local Telecommunications Service (ALTS), and the National Cable Television Association (NCTA). For the reasons set forth below, we dismiss the motion in part, and otherwise deny the motion for stay.

II. Background

2. Section 251(c) of the Communications Act of 1934, as amended, (the Act) imposes on incumbent local exchange carriers (LECs) obligations regarding interconnection, resale of services, and unbundled network elements. Section 251(f)(1) of the Act provides that a rural telephone company is exempt from the requirements of section 251(c) unless the state commission finds that the rural carrier has received a bona fide request for interconnection, services, or network elements, and the state commission determines that the request ''is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).'' Section 251(f)(2) of the Act permits LECs ''with fewer than 2 percent of the Nation's subscriber lines installed nationwide'' to petition a state commission for suspension or modification of application of one or more requirements of sections 251(b) or 251(c). The petition

shall be granted to the extent that, and for such duration as, the state commission determines that the suspension or modification:

(A) is necessary—

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

3. In the *First Report and Order*, and in § 51.405 of the Commission's rules, the Commission held that, once a requesting carrier has made a bona fide request for interconnection, services, or network elements, incumbent rural LECs bear the burden of proving that they should continue to be exempt from the requirements of section 251(c). The Commission also offered guidance on what would constitute an ''unduly'' economically burdensome requirement for purposes of sections 251(f)(1) and 251(f)(2), holding that the incumbent rural carrier must offer evidence that the application of the requirements of section 251(c) of the Act would be likely to cause economic burden ''beyond the economic burden that is typically associated with efficient competitive entry.''

4. Section 252(a) of the Act, entitled ''Agreements Arrived at Through Negotiation,'' provides, in part, that, ''[t]he agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.'' In the *First Report and Order*, and as set forth in Section 51.303 of its rules, the Commission concluded that interconnection agreements that were reached before the 1996 Act was enacted must be submitted to the state commission for review under section 252, including agreements between adjacent incumbent local service providers. In addition, section 252(i) of the Act requires an LEC to make available ''any interconnection, service, or network element provided under an agreement approved under'' section 252 to which the LEC is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. In the *First Report and Order* and § 51.809 of its rules, the Commission interpreted that provision to require an incumbent LEC to make available to a requesting telecommunications carrier, upon the same rates, terms, and conditions, any individual interconnection, service, or network element arrangement contained in any agreement approved by the state under section 252 to which the incumbent LEC is a party.

III. Summary of the Motion and Oppositions

5. RTC requests a stay of the Commission rules described above. RTC contends that the Commission unlawfully modified the standard to be used by states in considering whether to terminate the rural exemption. RTC contends that placing the burden of proof on the incumbent LEC, and the Commission's definition of ''unduly economically burdensome,'' will cause rural LECs to suffer irreparable harm. RTC claims that certain rural LECs will lose exemptions that they would not have lost if the requesting carrier bore the burden of proof. RTC also asserts that the Commission's rules will cause rural LECs to incur costs and expend resources to retain exemptions from section 251(c) obligations. RTC further argues that the Commission's rules ignore two of the three statutory factors that must be considered in deciding whether to terminate a rural LEC's exemption. RTC also contends that the Commission failed to give adequate public notice of its intent to establish a test concerning the burden of proof and its intent to establish a rule interpreting the phrase ''unduly economically burdensome.''

6. In addition, RTC maintains that the Commission exceeded its authority by requiring incumbent LECs to file with state commissions interconnection agreements with neighboring LECs that predate the 1996 Act, and by requiring incumbent LECs to make the individual provisions of such agreements available to competing carriers. RTC asserts that requiring incumbent LECs to file interconnection agreements negotiated prior to the 1996 Act ultimately will force rural LECs to pay higher interconnection rates that in turn will result in higher rates for rural LEC's customers.

7. In general, parties opposing the stay motion contend that RTC's motion does not meet the four-part test for granting a stay of an agency order. These parties contend that RTC is unlikely to prevail on the merits of its claims; that it 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 weighs in favor of denying a stay.

IV. Discussion

8. As a threshold matter, the United States Court of Appeals for the Eighth Circuit granted a stay of certain rules the Commission adopted in the *First Report and Order* (*i.e.*, 47 CFR 51.501–51.515, 51.601–51.611, 51.705–51.715, and 51.809). Therefore, we need not address RTC's motion for administrative stay of § 51.809.

9. We examine the remaining portions of RTC's motion for stay pursuant to well-established legal principles. A party seeking a stay is required to demonstrate: (1) That it is likely to prevail on the merits; (2) that it 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.

10. With respect to RTC's motion for stay of §§ 51.303, concerning filing of interconnection agreements negotiated before the 1996 Act became law, and 51.405, concerning rural carriers' burden of proof under section 251(f)(1) of the Act, we conclude that RTC has not shown that it will suffer irreparable harm absent a stay. A concrete showing of irreparable harm is an essential factor in any request for a stay. As the U.S. Court of Appeals for the District of Columbia Circuit has observed, ''economic loss does not, in and of itself, constitute irreparable harm.'' Moreover, competitive harm is merely a type of economic loss, and ''revenues and customers lost to competition which can be regained through competition are not irreparable.'' 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.'' We find that RTC's claims of harm do not satisfy these exacting standards.

11. RTC argues that certain rural LECs will be irreparably harmed by our finding that the LECs seeking to avoid application of section 251(c) bear the burden of proof under section 251(f), and by our interpretation that, in order for a requirement to be ''unduly economically burdensome'' within the meaning of section 251(f), it must cause economic burden beyond the economic burden typically associated with efficient competitive entry. RTC complains that the Commission's ''burden of proof and standards requirements substantially increase the probability that the exemption will be terminated.''

12. We find that RTC has not demonstrated that application of these rules has caused or will cause harm to rural incumbent LECs that is certain, irreparable, or great. As NCTA and MCI assert, RTC has not shown that rural LECs would otherwise be exempt from the obligations of section 251(c), absent

the Commission's rules. Moreover, even if RTC could establish with certainty that rural carriers would lose exemptions as a result of the Commission's rules, its contention that LECs would be irreparably harmed is speculative. First, economic harm that results from loss of customers to competitors does not constitute irreparable harm. Second, the Commission stated in the *First Report and Order* that requesting carriers must compensate the incumbent LEC for the costs of services, interconnection, or unbundled elements that the incumbent provides upon request, and RTC has not shown why, in light of such compensation, it would suffer irreparable harm from complying with the requirements of section 251(c). Nor has RTC demonstrated that any harm a rural LEC arguably might suffer would be substantial.

13. RTC also asserts that, because the Commission has placed the burden of proof on rural carriers that seek to retain exemptions from section 251(c), they will incur costs that they would not otherwise bear. For example, RTC contends that rural LECs will need to bear costs of hiring attorneys, cost consultants, and economists. If the Commission's rule is overturned by the court, RTC argues, rural LECs will have suffered irreparable harm by incurring these costs. NCTA and MCI contend that RTC has provided no evidence that, absent our rules, it would not bear similar or identical costs to respond to *bona fide* requests for interconnection, services or network elements. We find no basis for concluding that rural carriers will bear costs as a result of our rules that they would not otherwise bear. Moreover, courts have held that ''[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury.''

14. RTC further argues that the rule requiring the filing of interconnection agreements that predate the 1996 Act will irreparably harm rural LECs and their customers by ''threaten[ing] higher rates, more toll calls, or both, for the affected rural customers.'' This argument is speculative, because it assumes without substantiation that existing agreements will have to be renegotiated, and that the resulting terms will be significantly less favorable to affected rural LECs. As the District of Columbia Circuit has noted, in evaluating a petitioner's allegations of irreparable harm, ''[b]are allegations of what is likely to occur are of no value'' because the critical issue is ''whether the harm will *in fact* occur.'' RTC provides no evidence to support its allegation that higher rates for customers will in fact occur if § 51.303 of the Commission's rules is not stayed.

15. Because, as discussed above, RTC has failed to demonstrate that any rural telephone company would suffer irreparable harm due to the application of § 51.303 or 51.405 of our rules, we need not address RTC's remaining arguments concerning the other three parts of the test governing a motion for stay. Nevertheless, we take this opportunity to clarify certain aspects of § 51.405(c) of our rules that RTC challenges in its petition for stay. Section 51.405(c) states:

> In order to justify continued exemption under section 251(f)(1) of the Act once a bona fide request has been made, an incumbent LEC must offer evidence that the application of the requirements of section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

RTC erroneously contends that the Commission's rules implementing § 251(f)(1) improperly ignore two of the three statutory criteria that a state commission must consider in determining whether to remove a rural incumbent LEC's exemption from the requirements of § 251(c) of the Act. RTC's argument is not based on any affirmative statement in our rules that state commissions may disregard evidence of technical infeasibility or harm to universal service in deciding whether to remove an exemption. Rather, RTC incorrectly infers from the fact that our rules address only one of the statutory criteria for evaluating such issues that we intended for state commissions to ignore the other two criteria. In § 51.405(c) of our rules, we interpreted the meaning of the statutory term ''unduly'' as it modifies ''economically burdensome,'' because we found that this phrase is susceptible to differing interpretations. We did not find it necessary to adopt rules that addressed the meaning of ''technical feasibility'' or ''universal service.'' That decision, however, does not in any way affect a state's responsibility to consider all three of the factors set forth in § 251(f)(1)(A). We similarly interpreted the phrase ''unduly economically burdensome'' in adopting 47 CFR 51.405(d), and did not thereby intend to limit LECs' rights to seek suspensions or modifications by other means provided in § 251(f)(2).

V. Ordering Clause

16. Accordingly, It is ordered that the motion for stay filed by the Rural Telephone Coalition is dismissed to the extent that it seeks a stay of 47 CFR 51.809, and otherwise is Denied.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–50 Filed 1–3–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 93–28, RM–8172, RM–8299]

FM Broadcasting Services; Whitley City, KY, Colonial Heights, Morristown and Tazewell, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Chief, Policy and Rules Division granted the petition for reconsideration, filed by Murray Communications, of the *Report and Order in* this proceeding, 59 FR 60077, published November 22, 1994, by rejecting the rule making proposal (RM–8172) granted by the *Report and Order,* and, instead, granting the counterpropopsal (RM–8299), substituting Channel 240C2 for 290A at Colonial Heights, Tennessee, Channel 290A for Channel 231A at Tazewell, Tennessee, Channel 231A for Channel 240A at Morristown, Tennessee, and Channel 252A for Channel 290A at Whitley City, Kentucky. The *Report and Order* denied Murray's counterproposal, RM–8299, to upgrade Channel 290A at Colonial Heights, Tennessee by substituting Channel 240C2, but granted its initial proposal, RM–8172, to effect an upgrade to Channel 240C3. With this action, the proceeding is terminated.

EFFECTIVE DATE: February 3, 1997.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: The following channels can be allotted in compliance with the Commission's minimum distance separation requirements:

Channel 240C2 to Colonial Heights at Station WLJQ(FM)'s existing transmitter site, restricted to 16.7 kilometers (10.4 miles) northwest of the community at coordinates 36–35–35 North Latitude and West Longitude 82–37–16, and, to accommodate that allotment, Station WAEY(FM), Channel 240A, Princeton, West Virginia, can be relocated to a new transmitter site at coordinates North Latitude 37–25–00 and West Longitude 81–02–00 in compliance with the minimum distance separation requirements; Channel 290A to Tazewell at Station WCTU(FM)'s existing site at coordinates 36–27–32 and West Longitude 83–35–07; Channel