

**DATES:** FDA is extending the comment period on the document delaying the effective date and seeking comment on the final rule published March 20, 2017 (82 FR 14319). Submit either electronic or written comments by July 18, 2017. For additional information on the comment date, see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** You may submit comments as follows: Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 18, 2017. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of July 18, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

#### *Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments,

except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2015-N-2002 for "Clarification of When Products Made or Derived From Tobacco Are Regulated as Drugs, Devices, or Combination Products; Amendments to Regulations Regarding 'Intended Uses'; Further Delayed Effective Date; Request for Comments; Extension of Comment Period." Received comments, those filed in a timely manner (see **DATES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets

Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Robert Berlin, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4238, Silver Spring, MD 20993, 301-796-8828.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 20, 2017, FDA published a document delaying the effective date of the January 9, 2017 (82 FR 2193), final rule entitled "Clarification of When Products Made or Derived From Tobacco Are Regulated as Drugs, Devices, or Combination Products; Amendments to Regulations Regarding 'Intended Uses'" until March 19, 2018, with a 60-day comment period. FDA requested comments on particular issues raised in a petition for reconsideration and stay of action of the Final Rule, as well as regarding any aspect of the Final Rule, or with respect to issues relating to "intended uses" generally. FDA also requested comments on whether the delay in the effective date of the Final Rule should be modified or revoked. Comments on these issues will inform FDA's thinking and next steps on these issues.

The Agency has received a request for a 30-day extension and another request for a 90-day extension of the comment period for the Final Rule Extension. The requests conveyed concern that the current 60-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to issues FDA raised in the Final Rule Extension.

FDA has considered the requests and is extending the comment period for 60 days, until July 18, 2017. The Agency believes that a 60-day extension allows additional time for interested persons to submit comments on these important issues.

Dated: May 12, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Parts 1 and 20**

[GN Docket No. 13-111; FCC 17-25]

### **Promoting Technological Solutions To Combat Contraband Wireless Device Use in Correctional Facilities**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission adopts rules to streamline the process of deploying contraband wireless device interdiction systems in correctional facilities. This action will reduce the costs of deploying solutions and ensure that they can be deployed more quickly and efficiently. In particular, the Commission eliminates certain filing requirements and provides for immediate approval of the lease applications needed to operate these systems.

**DATES:** Effective June 19, 2017, with the exception of: (1) §§ 1.9020(d)(8), 1.9030(d)(8), 1.9035(d)(4), and 20.18(a), which contain information collection requirements that require approval by the Office of Management and Budget (OMB), and which the Commission will announce by publishing a document in the **Federal Register**; and (2) §§ 1.9020(n), 1.9030(m), 1.9035(o), 20.18(r), and 20.23(a), which require approval by OMB under the Paperwork Reduction Act (PRA), and which the Commission will announce by publishing a document in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Melissa Conway, *Melissa.Conway@fcc.gov*, of the Wireless Telecommunications Bureau, Mobility Division, (202) 418-2887. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams at (202) 418-2918 or send an email to *PRA@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (*Order*) in GN Docket No. 13-111, FCC 17-25, released on March 24, 2017. The complete text of the public notice is available for viewing via the Commission's ECFS Web site by entering the docket number, GN Docket No. 13-111. The complete text of the public notice is also available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 202-488-5563.

The Commission will send a copy of the *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

## I. Report and Order

1. The use of contraband wireless devices in correctional facilities to engage in criminal activity poses a significant and growing security challenge to correctional facility administrators, law enforcement authorities, and the general public.

2. As a general matter, there are primarily two categories of technological solutions currently deployed today in the U.S. to address the issue of contraband wireless device use in correctional facilities: Managed access and detection. A managed access system (MAS) is a micro-cellular, private network that typically operates on spectrum already licensed to wireless providers offering commercial subscriber services in geographic areas that include a correctional facility. These systems analyze transmissions to and from wireless devices to determine whether the device is authorized or unauthorized by the correctional facility for purposes of accessing wireless carrier networks. A MAS utilizes base stations that are optimized to capture all voice, text, and data communications within the system coverage area. When a wireless device attempts to connect to the network from within the coverage area of the MAS, the system cross-checks the identifying information of the device against a database that lists wireless devices authorized to operate in the coverage area. Authorized devices are allowed to communicate normally (*i.e.*, transmit and receive voice, text, and data) with the commercial wireless network, while transmissions to or from unauthorized devices are terminated. A MAS is capable of being programmed not to interfere with 911 calls. The systems may also provide an alert to the user notifying the user that the device is unauthorized. A correctional facility or third party at a correctional facility may operate a MAS if authorized by the Commission, and this authorization has, to date, involved agreements with the wireless providers serving the geographic area within which the correctional facility is located, as well as spectrum leasing applications approved by the Commission.

3. Detection systems are used to detect devices within a correctional facility by locating, tracking, and identifying radio signals originating from a device. Traditionally, detection systems use passive, receive-only technologies that do not transmit radio signals and do not require separate Commission authorization. However, detection systems have evolved with the capability of transmitting radio signals to not only locate a wireless devices, but

also to obtain device identifying information. These types of advanced transmitting detection systems also operate on frequencies licensed to wireless providers and require separate Commission authorization, also typically through the filing of spectrum leasing applications reflecting wireless provider agreement.

4. The Commission has taken a variety of steps to facilitate the deployment of technologies by those seeking to combat the use of contraband wireless devices in correctional facilities, including authorizing spectrum leases between CMRS providers<sup>1</sup> and MAS providers and granting Experimental Special Temporary Authority (STA) for testing managed access technologies, and also through outreach and joint efforts with federal and state partners and industry to facilitate development of viable solutions. In addition, Commission staff has worked with stakeholder groups, including our federal agency partners, wireless providers, technology providers, and corrections agencies, to encourage the development of technological solutions to combat contraband wireless device use while avoiding interference with legitimate communications.

5. On May 1, 2013, the Commission issued the *NPRM* (78 FR 36469, June 18, 2013) in this proceeding in order to examine various technological solutions to the contraband problem and proposals to facilitate the deployment of these technologies. In the *NPRM*, the Commission proposed a series of modifications to its rules to facilitate spectrum leasing agreements between wireless providers and providers or operators of a MAS used to combat contraband wireless devices.

6. In the *NPRM*, the Commission's streamlining proposals were focused on spectrum leasing arrangements for MASs. Importantly, as technologies evolve, many advanced detection systems have also been designed to transmit radio signals typically already licensed to wireless providers in areas that include correctional facilities. Consequently, operators of these types of advanced detection systems require Commission authorization and may also choose to negotiate with wireless providers to obtain such authorization through the Commission's spectrum

<sup>1</sup> Unless otherwise specifically clarified herein, for purposes of this document, we use the terms CMRS provider, wireless provider, and wireless carrier interchangeably. These terms typically refer to entities that offer and provide subscriber-based services to customers through Commission licenses held on commercial spectrum in geographic areas that might include correctional facilities.

leasing procedures, similar to a MAS operator. Given the evolution of technologies to combat contraband device use and the variety of detection systems that could require the same type of authorizations that a MAS requires, the streamlined processes we are adopting in this document should not be limited to those seeking to deploy a MAS, but should also be available to stakeholders seeking to obtain operational authority to deploy advanced detection type technologies that transmit RF and are subject to Commission authorization to combat contraband wireless device use in a correctional facility.<sup>2</sup>

7. We will refer to any system that transmits radio communication signals comprised of one or more stations used only in a correctional facility exclusively to prevent transmissions to or from contraband wireless devices within the boundaries of the facility and/or to obtain identifying information from such contraband wireless devices as a Contraband Interdiction System (CIS). By definition, therefore, the streamlined rules we adopt in this document are limited to correctional facilities' use, given the important public safety implications in combatting contraband wireless device use.

8. In this document, we adopt rules to facilitate the deployment of CISs by streamlining the Commission's processes governing STA requests and spectrum leasing arrangements entered into exclusively to combat the use of unauthorized wireless devices in correctional facilities. Specifically, qualifying spectrum leasing applications or notifications for CISs will be subject to immediate processing and disposition; parties will not have to separately file amendments to become PMRS (or CMRS); and the process for obtaining STA for these systems will be streamlined. We believe the revised rules are in the public interest and strike the appropriate balance among the need to minimize regulatory barriers to CIS deployment, maintain an effective spectrum leasing review process, and avoid service disruption to wireless devices outside of correctional facilities.

<sup>2</sup> For purposes of the *FNPRM*, "contraband wireless device" refers to any wireless device, including the physical hardware or part of a device—such as a subscriber identification module (SIM)—that is used within a correctional facility in violation of federal, state, or local law, or a correctional facility rule, regulation, or policy. We use the phrase "correctional facility" to refer to any facility operated or overseen by federal, state, or local authorities that houses or holds criminally charged or convicted inmates for any period of time, including privately owned and operated correctional facilities that operate through contracts with federal, state, or local jurisdictions.

### *Streamlined Spectrum Leasing Application Approval and Notification Processing*

9. Pursuant to our current secondary market rules, licensee lessors and their lessees have three spectrum leasing options that each provide different rights and responsibilities for the licensee and lessee: Long-term (more than one year) *de facto* transfer spectrum leasing arrangements; short-term (less than one year) *de facto* transfer spectrum leasing arrangements; and spectrum manager spectrum leasing arrangements (both short-term and long-term). The Commission's rules require that the parties to a *de facto* transfer spectrum leasing arrangement file an application for approval of the lease with the Commission. Parties to a spectrum manager lease must file a notification of the spectrum leasing arrangement with the Commission and can commence operations without prior Commission approval after a short period. The Commission's rules provide for expedited processing (by the next business day) of all categories of spectrum leasing applications and notifications. To be accepted for processing, any application or notification must be sufficiently complete, including information and certifications relating to a lessee's eligibility and qualification to hold spectrum, and lessee compliance with the Commission's foreign ownership rules. *De facto* transfer spectrum leasing applications must also be accompanied by the requisite filing fee.

10. Long-term *de facto* transfer spectrum leasing applications and spectrum manager leasing notifications must meet three additional criteria for immediate approval or processing. First, the lease cannot involve spectrum that may be used to provide an interconnected mobile voice/and or data service and that would result in a geographic overlap with licensed spectrum in which the proposed spectrum lessee already holds a direct or indirect interest of 10 percent or more. Second, the licensee cannot be a designated entity or entrepreneur subject to unjust enrichment requirements and/or transfer restrictions under applicable Commission rules. Finally, the spectrum leasing arrangement cannot require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

11. Significantly, as CIS deployment at a given correctional facility will require the system operator to obtain multiple spectrum leasing arrangements for the same geographic area (to enable the system to prevent contraband

wireless devices from accessing any of the multiple telecommunications services whose footprint covers the facility), no spectrum lease after the first one can be given immediate processing under our current rules because each subsequent spectrum lease involves spectrum that would necessarily result in a geographic overlap (*i.e.*, the area where the correctional facility is located) with licensed spectrum in which the operator already holds a direct or indirect interest of 10 percent or more (*i.e.*, the interest represented by the spectrum lease or leases that the operator had already procured from one (or more) of the other carriers whose service area includes the correctional facility). Thus, the system operator will be unable to meet the first criterion for expedited processing. Without expedited processing, approval of most spectrum leasing applications takes at least several weeks to a few months from the date of filing, delaying deployment of the system.

12. The record reflects widespread support—across all stakeholders—for the proposed rule and procedural modifications to streamline the spectrum leasing process for MASs in correctional facilities. The carriers generally support the Commission's streamlining proposals. AT&T welcomes the proposed modifications to the existing spectrum leasing process between wireless carriers and MAS vendors and believes the proposed measures will reduce the amount of time and resources required to complete a lease. Similarly, Verizon supports the Commission's streamlining proposals, noting that the changes will benefit the public by speeding approval and deployment of managed access and detection systems. CTIA supports the proposals and believes that they are targeted, narrowly focused, and will enable a more efficient deployment of managed access systems.

13. Both MAS operators and proponents of detection and termination systems acknowledge the benefits that will flow from streamlining the spectrum leasing process for MASs. Tecore, for example, notes that the procedural rule changes will make a significant difference in reducing the time needed for the deployment of a MAS. CellAntenna supports the Commission's streamlining proposals as a way to promote the deployment of MASs and ease the burden on corrections officials. Likewise, a variety of other commenting parties support the Commission's streamlining proposals, even if some suggest that additional measures are required to make material

progress in combating contraband wireless devices.

14. By and large, the corrections community advocates for the use of any and all measures to combat contraband wireless devices in correctional facilities, including MASs. ACA states that it is important that the Commission streamline the application process for spectrum lease agreements as much as possible. The Maryland Department of Public Safety and Correctional Services supports the Commission's proposal to streamline lease authorizations for MASs as a way to reduce overall costs and expedite correctional system's ability to procure and install these systems. The Minnesota Department of Corrections also believes that any simplification of the licensing process will speed deployment of MASs and ultimately has a positive impact on public safety. The California Department of Corrections and Rehabilitation echoes this comment regarding increased safety in its comments, supporting the proposed streamlining changes in order to aid in more expedient deployment, thereby contributing to a safer correctional environment for staff, inmates, and the public. The Mississippi Department of Corrections also supports any measures to streamline the spectrum leasing process for use in correctional facilities.

15. Consistent with the broad support by commenters for the streamlining proposals set forth in the *NPRM*, we adopt those proposals, with certain exceptions. We amend Part 1 rules<sup>3</sup> as necessary to implement the CIS (consisting to date largely of both MAS and advanced detection systems) spectrum leasing streamlining proposals. Qualifying long-term *de facto* transfer spectrum leasing applications and spectrum manager leasing notifications for CISs will be subject to immediate processing and approval, even when the grant of multiple spectrum lease applications would result in the lessee holding geographically overlapping spectrum rights or where the license involves spectrum subject to designated entity unjust enrichment provisions or entrepreneur transfer restrictions. Because we determine that qualifying spectrum leases for CISs do not raise the potential public interest concerns that would necessitate prior public notice or more individualized review, we believe

that removing this unnecessary layer of notice and review is appropriate. At the same time, our modified process ensures that granted or accepted spectrum leases will be placed on public notice and subject to the Commission's reconsideration procedures under rule section 1.106 (47 CFR 1.106).

16. Competition. The crux of the Commission's streamlining proposals in the *NPRM* for the spectrum leasing process for systems in correctional facilities is its proposal to immediately process spectrum lease applications or notifications regardless of whether approval or acceptance will result in the lessee holding or having access to geographically overlapping licenses. The rationale for eliminating the lengthy notice and review process for overlapping spectrum here is that, in the CIS context, the typical competition concerns are not present because CISs are not providing service to the public and generally there is only one CIS provider in a particular correctional facility. With the widespread accord of commenters in this proceeding, we amend sections 1.9003, 1.9020, and 1.9030 of the Commission's rules (47 CFR 1.9003, 1.9020, and 1.9030) to enable the immediate processing of spectrum lease applications or notifications for CISs regardless of whether the approval or acceptance will result in the lessee holding or having access to geographically overlapping licenses.

17. Designated Entity/Entrepreneur Eligibility. In the *NPRM*, the Commission sought comment on its proposal to immediately process spectrum lease applications and notifications for MASs in correctional facilities regardless of whether they implicate designated entity rules, affiliation restrictions, unjust enrichment prohibitions, or transfer restrictions. The Commission suggested, essentially, that these type of leases do not implicate the public interest concerns regarding compliance with these rules that would require a more detailed and time-consuming review of the filings. The Commission's unjust enrichment rules and transfer restrictions are designed to prevent a designated entity or entrepreneur from gaining from the special benefits conferred with the designation by selling or transferring the license, and to ensure that small business participation in spectrum-based services is not thwarted by transfers of licenses to non-designated entities. Further, the Commission's affiliation and controlling interests rules for designated entities are meant to prevent a non-eligible affiliate

of a designated entity from gaining through the special benefits conferred with the designation. These rules were crafted pursuant to the Communications Act's requirement that the auction rules promulgated by the Commission ensure that certain designated entities have the opportunity to participate in the provision of wireless service, and that these rules contain such transfer disclosures and anti-trafficking restrictions as may be necessary to prevent unjust enrichment.

18. After consideration of the record, we find it in the public interest to adopt the Commission's proposal to immediately process CIS spectrum lease applications, regardless of whether they implicate designated entity rules, affiliation restrictions, unjust enrichment prohibitions, or transfer restrictions, given that CIS lease arrangements, by definition, involve transactions between wireless providers and solutions providers or potentially departments of corrections, specifically designed to enable correctional institutions to interdict wireless devices used illegally on the premises of the institution. As such, these spectrum leasing arrangements are not readily susceptible to abuse by designated entities who might otherwise lease spectrum to ineligible lessees in order to gain some measure of unjust enrichment. Moreover, nothing in our expedited processing of CIS lease applications will have an adverse impact on the ability of a small business to participate in Commission processes to acquire spectrum or to provide wireless services. And, in any event, in the unlikely case where unjust enrichment obligations are triggered by a CIS leasing arrangement, our action today does not insulate a designated entity from its obligations to comply with the unjust enrichment requirements of the rules; rather, this action only exempts the underlying CIS lease application from processing under general approval procedures.

19. Procedural Requirements. In order to effectuate the streamlining of the MAS spectrum leasing process, the Commission proposed in the *NPRM* modifications to FCC Form 608—the form used by licensees and lessees to notify or apply for authority to enter into spectrum leasing arrangements. The purpose of these proposed modifications is to enable the Commission to identify managed access spectrum leases and subject them to immediate processing and approval, where appropriate.

20. The record does not contain specific comments regarding the proposed modifications to FCC Form

<sup>3</sup> We amend sections 1.9003, 1.9020, and 1.9030 of our rules, 47 CFR 1.9003 (defining "Contraband Inerdiction System"), 1.9020 (spectrum manager leasing arrangements), and 1.9030 (long-term *de facto* transfer leasing arrangements), in order to implement immediate processing and approval for CIS leases in correctional facilities.

608 to effectuate immediate processing of MAS leases for correctional facilities. However, the record reflects significant support for any measures necessary to streamline the regulatory process for MASs. Consistent with current practice, we expect that spectrum leasing parties desiring to avail themselves of our streamlined process for CISs will include in their submissions a brief description of their system sufficient to enable Commission staff to determine that the lease is in fact for a CIS.<sup>4</sup> Because a change to Form 608 would require corresponding changes to ULS, including costly reprogramming and additional time to implement, we will instead establish internal procedures to ensure that qualified spectrum lease filings for CISs are identified and handled according to immediate processing procedures.

21. If the spectrum leasing parties submit their lease application or notification for a CIS via ULS, and the filing establishes that the proposed spectrum lease is for a CIS, is otherwise complete, and the payment of any requisite filing fees has been confirmed, then the Wireless Telecommunications Bureau (WTB) will process the application or notification and provide immediate grant or acceptance through ULS processing. Approval will be reflected in ULS on the next business day after filing the application or notification. Upon receipt of approval, spectrum lessees will have authority to commence operations under the terms of the spectrum lease, allowing for immediate commencement of operations provided that the parties have established the approval date as the date the lease commences. Consistent with current procedures, the Bureau will place the granted or accepted application or notification on public notice and the action will be subject to petitions for reconsideration.

22. **Completeness Requirement.** In the *NPRM*, the Commission proposed to maintain the completeness standards for spectrum lease notifications and applications as they currently exist in the spectrum leasing rules. Currently, licensees and lessees file FCC Form 608 and must complete all relevant fields and certifications on the form. If a spectrum lease application or notification is sufficiently complete, but there exist questions as to the lessee's eligibility or qualification to lease spectrum based on the responses or certifications, then the application or

notification is not eligible for immediate processing. We find that continuing to require a CIS spectrum lease application to be sufficiently complete, contain all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership), and include the requisite filing fee serves an important public interest purpose and, with no record opposition, we adopt the Commission's proposal.

#### *Regulatory Status*

23. **PMRS Presumption.** When a CIS provider enters into a spectrum lease agreement with a wireless carrier with a CMRS regulatory status, the regulatory status of the lessor applies to the lessee such that the regulatory status of the managed access lessee is CMRS, unless changed, and the lessee is subject to common carrier obligations. However, most CISs in the correctional facility context qualify as PMRS, which would exempt the lessee from common carrier obligations. To change its regulatory status from CMRS to PMRS, a CIS lessee must file, for each approved lease, separate modification applications that are subject to additional public notice periods which, the Commission noted, may further delay CIS deployment.

24. In the *NPRM*, the Commission proposed to amend section 20.9 of its rules to establish that managed access services in correctional facilities provided on spectrum leased from CMRS providers will be presumptively treated as PMRS because the managed access provider is not offering service to the public or a substantial portion of the public. Under this proposal, the lessee would not need to separately file an application requesting PMRS treatment subsequent to spectrum lease approval or acceptance. Instead, the PMRS status would automatically attach to all spectrum lease applications or notifications that indicate that the leased spectrum would be used solely for the operation of a CIS in a correctional facility.

25. There is widespread support for the Commission's proposals to streamline the spectrum leasing process for CIS providers, which includes the PMRS presumption. The CIS operators specifically note their support for the PMRS presumption. For example, Tecore supports the presumption and suggests that it will further increase managed access deployment by expediting the administrative requirements involved with these services. The California Department of Corrections and Rehabilitation also directly offers its support of a rule amendment to establish the PMRS

presumption for MASs in correctional facilities.

26. We generally agree with commenters that reducing burdens associated with CIS operators' compliance with Commission rule section 20.9, as proposed in the *NPRM*, is in the public interest. However, we note that in 2016, the Commission proposed to eliminate section 20.9 in a separate proceeding (CMRS Presumption *NPRM*) (81 FR 55161, August 18, 2016). We find it unnecessary at this time to amend section 20.9 of the Commission's rules because we can achieve the same goal of reducing administrative costs and filing burdens through interim relief, subject to Commission action in the CMRS Presumption *NPRM* proceeding. We therefore find good cause to grant a waiver of section 20.9, to the extent necessary, so that CIS operators will not be required to file a separate modification application to reflect PMRS regulatory status subsequent to approval or acceptance of the lease. Rather, the CIS operator will be permitted to indicate in the exhibit to its lease application whether it is PMRS or CMRS for regulatory status purposes,<sup>5</sup> and the approved or accepted spectrum lease will subsequently reflect that regulatory status. This waiver will accomplish the shared goal of the Commission and the commenters of enabling CIS operators to be treated as PMRS without having to file an additional modification application with the Commission, or be subject to the 30 day public notice period applicable to certain radio services. We believe a waiver at this time will conserve resources and reduce burdens on the spectrum leasing parties and Commission staff and will expedite overall deployment of CIS in correctional facilities.

27. 911 and E911. In the *NPRM*, the Commission sought comment on whether the Commission should apply its 911 and E911 rules to MASs in correctional facilities that, if they are presumed to be PMRS, are not applicable, since only CMRS licensees are required to comply with 911 obligations. The Commission also sought comment on the costs and benefits of applying some or all of the Commission's 911 and E911 rules to a

<sup>4</sup> To the extent a lease filing provides sufficient information to enable Commission staff to identify and process the request as one involving a CIS, the processing may be delayed.

<sup>5</sup> Pursuant to our streamlined leasing process, spectrum leasing parties seeking a lease for a CIS in a correctional facility will include a brief description of the CIS sufficient to enable the Commission staff to determine that the lease is in fact for a CIS. In this submission, the parties will also identify whether they request PMRS or CMRS regulatory status.

managed access provider regulated as PMRS.

28. Comment varied concerning the implications of a PMRS presumption on 911 services. By and large, the comments generally suggest agreement that MASs should have the capability to route 911 calls to the appropriate public safety answering point (PSAP), and that the correctional facility, managed access operator, and/or the local PSAP should be involved in making the routing decision regarding a specific correctional facility. Tecore recommends that a MAS must support direct handling of E911 emergency calls with direct routing to the PSAP. In support of this proposal, Tecore reasons that the Commission has imposed standards in other situations where public safety and welfare have been involved. Indeed, Tecore explains that MASs can actually facilitate public safety services because they have the ability to complete 911 calls in a way that provides important public safety data while otherwise restricting service. ShawnTech also believes that MASs must include the ability to support emergency calling to the appropriate PSAPs, but that the agency should set the rules and policies for the facility so as to either enable or disable the emergency calling features.

29. CTIA and the wireless carriers, in contrast, do not take a firm stance one way or the other regarding the obligation of a managed access operator to comply with 911 obligations. CellAntenna, however, argues that MASs should not be required to complete 911 calls because 911 access remains available by landline and assistance is available to corrections officers through internal communications. In fact, CellAntenna states that allowing 911 calls from unauthorized wireless devices in correctional facilities holds the potential for harassment of PSAPs and there is no reason to permit any 911 calls from wireless devices originating within a correctional facility. Similarly, ACA states that any and all cell phone signals originating from inside a correctional facility—including E-911—are illegal signals.

30. Some commenters suggest that emergency calls should be delivered to the PSAP unless the specific PSAP concludes that emergency calls coming from a particular facility should be blocked. This recommendation appears in GTL's original petition, which states that the local PSAP operator is in the best position to determine whether blocking particular area 911 calls is in the public interest. MSS acknowledges that there is no general solution to the

problem of the role of 911 in MASs and recommends that the Commission allow PSAP operators and MAS operators to negotiate on a case-by-case basis regarding the handling of E911 calls.

31. We agree with commenters that delivering emergency calls to PSAPs facilitates public safety services and generally serves the public interest, and acknowledge the overriding importance of ensuring availability of emergency 911 calls from correctional facilities. We also act based on our long-standing recognition of the important role that state and local public safety officials play in the administration of the 911 system. We thus amend Commission rule section 20.18 (47 CFR 20.18) to require CIS providers regulated as PMRS to route all 911 calls to the local PSAP. At the same time, we recognize that, based on extensive experience assessing local community public safety needs, PSAPs should be able to inform the CIS provider that they do not wish to receive 911 calls from a given correctional facility, and CIS providers must abide by that request. We agree with commenters that this approach is warranted given the reported increased volume of PSAP harassment through repeated inmate fraudulent 911 calls. We clarify that CIS providers are not subject to the 911 routing requirement to the extent that they deploy a technology only to obtain identifying information from a contraband wireless device, and not to capture a call from a correctional facility that will either be terminated or forwarded to a serving carrier's network based on contraband status. Verizon raised a concern that CMRS licensees could be deemed in violation of our spectrum leasing rules addressing E911 compliance responsibility when a PSAP requests that a CIS provider not pass E911 calls from a correctional facility. Pursuant to amended rule section 20.18, the CIS provider, and not the CMRS licensee, is responsible for passing through E911 calls to the PSAP, unless the PSAP indicates it does not want to receive them.

32. We clarify the respective roles of CMRS licensees and CIS providers with regard to E911 call pass-through obligations by amending our spectrum leasing rules, specifically, sections 1.9020 (spectrum manager leasing arrangements), 1.9030 (long-term *de facto* transfer leasing arrangements), and 1.9035 (short-term *de facto* transfer leasing arrangements), to reflect that a CIS lessee is responsible for passing through E911 calls, unless the PSAP declines them, pursuant to amended rule section 20.18(r). Although Verizon requested this rule amendment only for

spectrum manager leasing arrangements under section 1.9020(d)(8), we adopt a similar amendment for short-term and long-term *de facto* transfer spectrum leasing arrangements under sections 1.9030(d)(8) and 1.9035(d)(4) in order to provide clarification for all possible types of CIS leasing arrangements to which the E911 obligations in amended rule section 20.18(r) apply.

33. Further, we find it appropriate to delay the effectiveness of the 911 call forwarding requirement and related leasing rule amendments addressing E911 call responsibilities until no earlier than 270 days after the publication of this document in the **Federal Register**. We anticipate this will provide CIS operators and local PSAPs a sufficient opportunity to determine whether routing of 911 calls is appropriate, if there is no current agreement. We also anticipate that wireless providers and CIS operators may use this period to update current contractual provisions addressing 911 call routing issues, if necessary.

34. We find this overall approach to 911 call forwarding to be consistent with the Commission's guidance clarifying that our 911 rules requiring mobile wireless carriers to forward all wireless 911 calls to PSAPs, without respect to the call validation process, does not preclude carriers from blocking fraudulent 911 calls from non-service initialized phones pursuant to applicable state and local law enforcement procedures. Again, we note that CIS operators are often required to pass through 911 and E911 calls through contracts with wireless provider lessors. Overall, we believe that the ability to make an emergency call and access emergency services, to the extent these are available in a correctional facility, is in the public interest, and our amended rule ensures this continued access, where appropriate, subject to PSAP discretion to not accept 911 calls.

#### *Streamlined Special Temporary Authority Request Processing*

35. In deploying CISs to combat contraband wireless device use in correctional facilities, a spectrum leasing arrangement with relevant wireless carriers as approved by the Commission is the appropriate mechanism for long-term CIS operation. However, in certain circumstances, there may be a justifiable need for emergency temporary authorization for system testing, where special temporary authority may be appropriate. Pursuant to existing rules, a CIS provider that seeks STA for its proposed operations must file such a request at least 10 days prior to the applicant's proposed

operation. Unless the STA application is exempt, it must be placed on public notice. Certain STA applications must also be filed manually.

36. As an additional measure designed to expedite the deployment of MASs in correctional facilities, the Commission proposed to exempt managed access providers seeking an STA for a MAS in a correctional facility from the requirement that they file the application 10 days prior to operation. Further, the Commission proposed to process an STA request without prior public notice and modify FCC Form 601 so that applicants would be able to identify that the application is being filed for a MAS in a correctional facility. Finally, the Commission proposed to modify ULS to electronically process STA applications for market-based licenses. Pursuant to the proposed streamlined STA procedures, the Commission also noted that applicants would still be required to satisfy all of the existing STA application requirements to be granted STA.

37. The carriers generally support the Commission's proposal to streamline the STA request process and agree that the proposed changes should expedite approval and deployment of MASs. Verizon supports the STA proposals, but questions whether the proposal would change the Commission's existing practice of verifying consent from the CMRS licensee prior to STA approval. Accordingly, Verizon requests that the Commission clarify through a rule modification that STA requests must include consent letters from each affected CMRS licensee prior to STA approval. CTIA also supports the STA streamlining proposals, but only so long as the existing requirement to obtain and demonstrate carrier consent continues to apply. Like Verizon, CTIA seeks a rule modification that makes explicit the carrier consent requirement in the STA process. This clarification in the rules, they claim, would not impose any additional burden in the process because consent letters are already part of the existing process.

38. One commenter, ShawnTech, does not support the Commission's proposal to modify the STA process to allow for expedited processing without prior public notice. Rather, without explaining its reasoning, ShawnTech states its preference for the existing process. In contrast, CellBlox supports the proposal to streamline the STA approval process for MASs in correctional facilities without prior public notice.

39. After consideration of the record, we conclude that streamlining the STA process will facilitate the deployment of

CISs, along with our adoption of the Commission's other streamlining proposals for expediting and encouraging spectrum leasing for CISs. The record includes significant support for any measures necessary to implement streamlining as a general matter, some broad support specifically for STA streamlining, and unsupported opposition to STA streamlining from one commenter. We believe that given the expedited CIS leasing process for full system deployment adopted herein, CIS operators will not generally need to rely on the modified STA process. However, we seek to streamline our rules wherever possible and provide options for obtaining expedited STA for short term emergency operations that qualify for temporary authority under our rules. Because qualifying CIS spectrum leasing arrangements will be subject to immediate processing pursuant to our revised rules, we will also conform our STA application rules for CIS operations to expedite processing.

40. Therefore, we adopt the Commission's proposal and amend section 1.931 of the Commission's rules (47 CFR 1.931) to exempt CIS providers seeking STA for a CIS from the requirement that they file the application 10 days prior to operation. We will process qualifying STA requests for CISs on an expedited basis and without prior public notice. However, for the same cost and resource-based reasons specified for not amending Form 608 for leases, we also find it unnecessary to modify Form 601 in order to achieve our streamlining goal of immediate processing of STAs for CISs. In the same way that we intend to process lease applications and notifications—*i.e.*, establishing internal procedures to ensure that qualified filings are identified and handled according to immediate processing procedures—we similarly intend to process STAs. Staff will review the STA filing and assess whether it is for a CIS in order to reliably determine whether the filing is subject to immediate processing.<sup>6</sup> We note that these STA applicants will continue to be required to comply with all existing requirements to be granted STA, including our practice of requiring applicants to file letters of consent from the CMRS carriers involved.<sup>7</sup>

<sup>6</sup> To the extent an STA filing provides insufficient information to enable Commission staff to identify and process the request as one involving a CIS, the processing may be delayed.

<sup>7</sup> However, pursuant to this document, WTB may issue an STA to an entity seeking to deploy a CIS in a correctional facility without carrier consent if, after a 45 day period, WTB determines that a CIS

41. In the *NPRM*, the Commission proposed to make the changes necessary to electronically process STA applications for market-based licenses (*e.g.*, PCS and 700 MHz). The record lacks comment on this issue. However, as a result of the Commission's flexible licensing policies in many services permitting the siting of facilities anywhere within the geographic license area, we have determined that very few applications are filed by market-based licensees seeking special temporary authority for a specific site location. Accordingly, while our rules mandate electronic filing for virtually all applications, because there are so few of them, ULS is not programmed to receive STA applications for spectrum licensed on a market basis. Such applications are currently filed manually along with a request for waiver of the electronic filing requirement. We will continue at this time to permit manual filing of an application for STA for CIS operation in a correctional facility, noting that the proposed electronic processing of STA applications necessitates substantial and costly changes to our ULS software and certain database updates that are not currently in place. To further streamline our filing processes and reduce filing burdens, we find good cause to grant a waiver of the electronic filing requirement under section 1.913 of the Commission's rules, so that market-based licensees seeking STA for CIS operation in a correctional facility are not required to request a waiver of the requirement with their manual applications. We also anticipate that our streamlining changes adopted today for processing lease applications for CIS authority in correctional facilities will reduce the number of requests for temporary authority using STA application procedures.

42. In response to the carriers' suggestion that we modify the Commission's rules to make carrier consent explicit in the STA approval process, we find it unnecessary to modify our rules because, even under our streamlined process, we will maintain our current policy that STA requests for CISs must be accompanied by carrier consent. STA applications will still be required to meet all the existing requirements to be granted STA.

*Compliance With Sections 308, 309, and 310(d) of the Act*

43. In the *NPRM*, the Commission proposed to extend that forbearance authority in order to immediately

provider has negotiated a lease agreement in good faith, and the CMRS licensee has not.

process *de facto* transfer spectrum leasing applications for MASs in correctional facilities that do not raise concerns with use and eligibility restrictions, that do not require a waiver or declaratory ruling with respect to a Commission rule, but that do involve leases of spectrum in the same geographic area or involve designated entity rules, affiliation restrictions, unjust enrichment prohibitions, and transfer restrictions. Specifically, the Commission proposed to forbear from the applicable prior public notice requirements and individualized review requirements of sections 308, 309, and 310(d) of the Act (47 U.S.C. 308, 309, 310(d)). The Commission sought comment in the *NPRM* on whether the statutory forbearance requirements are met for its forbearance proposal.

44. We hereby exercise our forbearance authority in order to implement the streamlining proposals adopted in this document for *de facto* transfer CIS spectrum leases and STAs. We conclude that CIS leases also generally qualify for the forbearance granted to all *de facto* transfer spectrum leases. We find that the statutory forbearance requirements are met for qualifying *de facto* transfer CIS spectrum leases that involve leases of spectrum in the same geographic area or involve designated entity unjust enrichment provisions and transfer restrictions. CISs necessarily involve overlapping spectrum in the same geographic area and likely are not contrary to the intent and purpose behind our rules governing unjust enrichment or transfer restrictions. We also find that the statutory forbearance requirements are met for STA applications for CIS providers that comply with the necessary expedited processing procedures in our rules. No commenter opposed our proposal that a streamlined approval process for CIS leases and STAs would facilitate technologies used to prevent inmates from using contraband wireless devices in correctional facilities.

#### *Standardization of the Leasing Process*

45. In the *NPRM*, the Commission sought comment on additional proposals, such as rule or procedural changes that could expedite the spectrum leasing process and thereby encourage and facilitate the deployment of MASs in correctional facilities. In response, some commenters suggest that the Commission consider additional mandates to facilitate managed access implementation by standardizing the leasing process and/or the leases themselves. The main proponent of lease standardization, Tecore, requests

that, failing forthcoming voluntary cooperation among the carriers, the Commission should mandate that carriers enter into lease agreements on commercially reasonable terms and conditions upon reasonable request; that a shot clock be in place to ensure that final agreements are executed between the managed access provider and all area carriers in a reasonable time; that leased access to spectrum be provided free of charge by the carrier; and that a model lease agreement be established and approved by the Commission with standard terms and conditions. Tecore claims that the model lease would eliminate lengthy negotiation processes.

46. In its comments, MSS reiterates GTL's proposal from its original petition that the Commission should require CMRS carriers to agree to managed access leases of their spectrum if technically feasible in a specific installation without undue harm to legitimate CMRS uses. MSS supports a mandate that would require carriers to enter into leases for MASs because of the need for all carriers in the relevant area to sign a lease, not just the major carriers. In other words, having the major carriers onboard to execute reasonable leases is not sufficient because they do not control all of the CMRS licenses near correctional facilities. MSS contends that all CMRS carriers must agree to the leases necessary to implement managed access on reasonable financial terms in order for this solution to be successful, and this agreement requires a Commission mandate in order to be a reasonable expectation. ACA agrees with MSS, and GTL in its original petition, that the Commission should implement requirements that all CMRS carriers must agree to managed access leases of their spectrum if technically feasible in a specific installation.

47. The thrust of the carriers' opposition to model leases, standardization of the process, and mandatory leasing is their belief that the Commission should not interfere with the carriers' spectrum rights and the business relationships between the carriers and the managed access providers, and that the proposals would be unnecessarily burdensome. In opposing the lease mandates proposed by Tecore and others to further facilitate MAS implementation through mandatory standardization, Verizon notes that the record lacks evidence of particular problems with deployment of MASs that would merit the Commission's imposition of mandatory solutions. Specifically, Verizon discusses the fact that the lease negotiation process has become easier

and quicker as time passes, and that Verizon uses the same template in all of its lease agreements with managed access providers so that it is relatively easy for vendors to become familiar with the terms and conditions and negotiate subsequent agreements. In addition, Verizon notes that it does not charge fees for managed access leasing.

48. CTIA also discusses the lack of evidence necessary to justify Commission mandates interfering with the business relationships between carriers and managed access providers. In that regard, CTIA believes that a shot clock, for example, is unnecessary and potentially harmful, noting what it describes as the strong record of cooperation between carriers and managed access providers. CTIA indicates that a shot clock could even be harmful because the lease for an initial deployment may necessarily and appropriately take longer for testing and evaluation, while subsequent deployments are often quicker such that a shot clock for later leases would be unnecessary. CTIA believes that, lacking any evidence of problems with the system, a rule regarding fees charged to lease spectrum or the adoption of a model lease would be an inappropriate and unnecessary intrusion into private business negotiations.

49. Although the record does not indicate a material, persistent problem with the MAS lease negotiation process between managed access operators and the major CMRS licensees, we emphasize that the effectiveness of CIS deployment requires all carriers in the relevant area of the correctional facility to execute a lease with the CIS provider, not only large carriers that have commented in this proceeding, but also smaller carriers that have not. Even if the major CMRS licensees negotiate expeditiously and in good faith, if one CMRS licensee in the area fails to engage in lease negotiations in a reasonable time frame or at all, the CIS solution will not be effective. Therefore, while some carriers have been cooperative, it is imperative that all CMRS licensees be required to engage in lease negotiations in good faith and in a timely fashion. We agree with Tecore that at least some baseline requirements should be in place to ensure that lease agreements with reasonable terms can be executed with all area carriers in a reasonable timeframe. Therefore, we adopt a rule requiring that CMRS licensees negotiate in good faith with entities seeking to deploy a CIS in a correctional facility. Upon receipt of a good faith request by an entity seeking to deploy a CIS in a correctional facility, a CMRS licensee must negotiate in good

faith toward a lease agreement. If, after a 45 day period, there is no agreement, CIS providers seeking STA to operate in the absence of CMRS licensee consent may file a request for STA with WTB, with a copy served at the same time on the CMRS licensee, accompanied by evidence demonstrating its good faith, and the unreasonableness of the CMRS licensee's actions, in negotiating an agreement. The CMRS licensee will then be given 10 days in which to respond. If WTB then determines that the CIS provider has negotiated in good faith, yet the CMRS licensee has not negotiated in good faith, WTB may issue STA to the entity seeking to deploy the CIS, notwithstanding lack of accompanying CMRS licensee consent. WTB will consider evidence of good faith negotiations on a case-by-case basis. In comparable contexts, the Commission has provided examples of factors to be considered when determining whether there is good faith. Here, such factors might also include whether the parties entered into timely discussions while providing appropriate points of contact, whether a model lease with reasonable terms was offered, etc. Further, the Commission may take additional steps as necessary to authorize CIS operations should we determine there is continued lack of good faith negotiations toward a CIS lease agreement.

50. We recognize that, to date, cooperation has largely existed among a majority of CMRS licensees and CIS providers in obtaining authorizations for CIS deployment. However, we reiterate that lack of cooperation of even a single wireless provider in a geographic area of a correctional facility can result in deployment of a system with insufficient spectral coverage, subject to abuse by inmates in possession of contraband wireless devices operating on frequencies not covered by a lease agreement. We do not believe that adopting this minimal requirement is unduly burdensome, but rather ensures that the public interest is served through deployment of robust CISs less subject to circumvention. We encourage all CMRS licensees to actively cooperate with CIS providers to simplify and standardize lease agreements and the negotiation process as much as possible and pursuant to reasonableness standards, and we commend carriers that have developed template lease agreements for CIS deployment. ShawnTech supports the current process of managed access providers working closely with the carriers to develop closer and more successful working relationships in order to

properly implement managed access technology. We support the establishment of best practices with regard to CIS lease terms and conditions, but we intend to continue monitoring the CIS leasing process and may take additional action if needed.

51. FCC Authorization of MAS. In its comments, Boeing argues that spectrum leases are unnecessary for MAS and that the Commission should permit the operation of MASs in correctional facilities without spectrum lease agreements or carrier consent. To support its argument for direct licensing, Boeing explains that the Commission has authority to authorize wireless operations on a secondary basis in the public interest which, in this case, is the need to neutralize contraband wireless devices in correctional facilities.

52. The carriers strongly oppose this proposal and consider it without merit and irrelevant, arguing that there is no basis for the Commission to adopt a different licensing model where there is no evidence that the current leasing process has failed to result in successful implementation of MAS. Given the Commission's proposals to streamline the leasing process and the significant benefits of carrier involvement in order to conduct necessary technical review and coordination, the carriers strongly oppose Boeing's proposal as an unnecessary intrusion on licensees' exclusive-use spectrum rights.

53. As a general matter, we agree that carrier participation in the spectrum leasing process contributes significantly to the successful implementation of a CIS. One benefit of carrier involvement in CIS deployment is coordination and involvement in the process of testing CIS accuracy. We believe that our adoption of streamlined spectrum leasing rules for CISs in correctional facilities, with the involvement and cooperation among the CMRS licensees and the CIS operators, will contribute greatly to the successful deployment of CISs and the effort to combat the contraband wireless device problem. We find it unnecessary at this time to adopt a direct licensing approach to CISs without spectrum lease agreements or carrier consent.

54. "Lead Application" Proposal. Taking the Commission's proposals to streamline the spectrum leasing process for MAS a step further, AT&T puts forward its "lead" application proposal whereby the first lease entered into between a CMRS carrier and a certain MAS provider becomes the "lead" application and, once approved, the carrier would only be required to amend that lease to add any new call signs,

coordinates for the new license area, and any other required data, for subsequent leases with the same MAS provider. AT&T claims that this process would not only conserve time, effort, and expense when a carrier enters into an identical lease with a certain MAS provider multiple times in different locations, but also continue to provide the information the Commission needs in order to track the leases. Verizon suggests that AT&T's proposal has merit and could expedite the lease agreement process. However, Verizon recognizes that in order for the proposal to be successful, the Commission would have to not only amend ULS to enable carriers to modify FCC Form 608 subsequent to lease approval, but also account for the fact that the carrier's licensee at one location may be different in name from the entity licensed in another location.

55. Through today's adoption of streamlined rules providing for immediate processing of spectrum leasing applications for CISs in correctional facilities, we substantially achieve the benefits AT&T seeks through its "lead" application proposal, without requiring either far-reaching revisions to our long-standing secondary markets rules or, as Verizon suggests, additional costly FCC Form and ULS system changes. For example, with our streamlined processing rule changes, AT&T will be able to seek immediate Commission approval for CIS spectrum leases by providing virtually the identical information in a lease that it would include in each and every amendment to a previously approved "lead application," e.g., the coordinates of the added facility and call sign identifying the relevant leased spectrum. We note that our rules do not prevent a wireless provider from entering into contracts with CIS operators to account for future proposed operation in multiple states, and then filing spectrum leasing applications with the Commission with the basic identifying information, tantamount to the requested filing of an "amendment," when deployment is contemplated. We believe that the rules adopted in this document to streamline the leasing process for CISs strike the appropriate balance between removing regulatory burdens and maintaining the required Commission oversight of these leases to ensure compliance with the Communications Act and our rules. We believe that our existing licensing and leasing procedures, as streamlined herein, will greatly facilitate stakeholder efforts to expedite the deployment of CISs in correctional facilities.

### Community Notification

56. In connection with streamlining the managed access spectrum lease notification and application process, the Commission sought comment on whether managed access operators should be encouraged or required to provide notification to households and businesses in the vicinity of the correctional facility at which a MAS is installed, as well as associated details and costs of any such notification. The record reflects a mixed reaction, even among managed access operators.

57. AT&T strongly supports giving notice to the surrounding community to inform users of the potential for accidental call blocking. One managed access operator, Tecore, agrees that the Commission should require notification of the households and businesses in the general vicinity of a correctional facility where a MAS is in place. Tecore supports this recommendation by reasoning that the public should be aware of a MAS because they are a measure of national security, and further, the notification can serve to limit the liability of the carriers, the institutions, and the managed access operators with the general public. Tecore suggests a standard method of notification such as a Web site posting, public notice in a common area, or signs on the grounds, and cautions the Commission against any specific notification requirements that may be burdensome or counterproductive. The Florida Department of Corrections specifically supports required notification, with the burden for notification on the facility, the managed access provider, and local carriers.

58. In the same vein, NENA: The 9–1–1 Association, believes that managed access operators should be required to undertake extensive public education campaigns directed toward businesses and households regarding the potential for call blocking at the borders of the systems' service areas before the systems become operational. The campaign would include mailings, door-hangers, and media campaigns. Similarly, AICC suggests not only that households and businesses located within a reasonable proximity to the correctional facility be provided prior written notice (as well as annual notifications), but also that the alarm industry and local alarm companies should receive prior written notice before a MAS is tested or put into service.

59. On the other hand, some managed access providers contend that the notification requirement is unnecessary. ShawnTech does not support a

notification requirement, stating that to date we have not had any issues with our secure private coverage area exceeding beyond the correctional facilities' secure fenced area. ShawnTech suggests that, in the unlikely event that there is an issue that could affect the local businesses or households, the parties involved will collaboratively agree on a course of action to remedy the situation. Similarly, CellBlox believes that a notification requirement is unnecessary and places an undue burden on the managed access provider because properly regulated systems do not bleed over into the community. Boeing recommends that the Commission refrain from adopting any community notification requirements because they are unnecessary given the technical and procedural requirements already in place. Boeing explains that such notification requirements would unnecessarily establish additional barriers of cost and will delay the deployment of MAS systems without benefit, because there is no evidence of a substantial risk of misidentification of legitimate devices.

60. A goal of this proceeding is to expedite the deployment of technological solutions to combat the use of contraband wireless devices, not to impose unnecessary barriers to CIS deployment. Consistent with that goal, we find that a flexible and community-tailored notification requirement for certain CISs outweighs the minimal burden of notification and furthers the public interest. After careful consideration of the record, we will require that, 10 days prior to deploying a CIS that prevents communications to or from mobile devices, a lessee must notify the community in which the correctional facility is located, and we amend our spectrum leasing rules to reflect this requirement. We agree with commenters that support notification of the surrounding community due to the potential for accidental call blocking and the public safety issues involved. The notification must include a description of what the system is intended to do, the date the system is scheduled to begin operating, and the location of the correctional facility. Notification must be tailored to reach the community immediately adjacent to the correctional facility, including through local television, radio, Internet news sources, or community groups, as may be appropriate. We note that this notification obligation does not apply for brief tests of a system prior to deployment. By giving the CIS operators flexibility to tailor the notification to the

specific community, we expect that the notification costs and burdens will be minimal. However, we remind licensees that the operation of a CIS is limited to the specific lease parameters as detailed in the applicable spectrum lease authorization and that we will strictly enforce any violation of the Commission's interference protection rules as they apply to the area in the vicinity of the correctional facility.

### Cost-Benefit Analysis

61. In the *NPRM*, the Commission acknowledged that spectrum leasing, STA, and other rules and processes related to the deployment of MASs could be time-consuming and cumbersome and sought specific comment on the costs and benefits of proposals to streamline those rules and procedures. After careful consideration of the record, we believe that the rules we adopt in this document will significantly reduce the time and resources needed to complete spectrum leases for CISs and speed the adoption and deployment of such systems in correctional facilities. More rapid adoption of CIS systems will increase public safety by reducing criminal activity coordinated in or through correctional facilities, while allowing such facilities to reduce the amount of staff time and resources dedicated to detecting and confiscating contraband cell phones.

62. The rules we adopt in this document are designed to minimize costs while maximizing public benefits. The benefits of these rules are discussed at length throughout this document. And for some of the rule changes, we anticipate that there will be little or no costs imposed on the public, given that the revisions are to make compliance easier. For instance, expediting processing of qualifying leases for CISs, exempting CIS providers seeking an STA from the requirement that they file the application 10 days prior to operation, and waiving our rules to eliminate certain CIS operator filings regarding regulatory status changes will all significantly reduce regulatory compliance costs while speeding up CIS deployment. To the extent that these revisions might impose costs on taxpayers, we have minimized those costs as well. For instance, rather than making costly changes to Form 601, Form 608, or ULS, we instead will implement a manual processing system that can be in place more quickly, and with minimal impact on Commission resources.

63. At the same time, however, we acknowledge that some of the rule changes we make here will impose some

costs on wireless providers and CIS operators. In particular, the requirements regarding 911 calls, community notification, as well as negotiation in good faith will require some effort and resources. In the *NPRM*, the Commission specifically asked for comment on the costs and benefits of all of the proposals presented, requesting that commenters provide specific data, such as actual or estimated dollar figures, for each proposal. Commenters did not, however, provide any detailed or concrete cost estimates, and therefore we must rely to some extent here on our general understanding and prediction of likely costs in making this cost-benefit assessment. We anticipate that adopting a rule to require that CIS providers operating as PMRS route 911 calls to PSAPs, unless PSAPs do not wish to receive 911 calls from a specific correctional facility, is likely to impose minimal costs. It is our understanding that pass through capability already generally exists in CISs, and we note that such requirements are already reflected in many leasing arrangements. We therefore believe that the public benefits of this requirement will exceed compliance costs. Requiring CMRS licensees to negotiate in good faith with entities seeking to deploy a CIS will impose only the cost of conducting negotiations, and given that a carrier's leasing terms may well become standardized fairly quickly, this burden seems minimal. In any event, because the lack of cooperation of even one wireless provider can seriously degrade the effectiveness of a CIS, we conclude that the small cost of negotiating will be easily outweighed by the public benefit of ensuring that CISs can be put into place. Finally, we find that the burden of requiring community notification of the implementation of certain CISs will be minimized by permitting the flexibility to tailor the notification to the potentially impacted community.

#### *Ombudsperson*

64. In order to assist CIS operators and CMRS licensees in complying with their regulatory obligations, we intend to designate a single point of contact at the Commission to serve as the ombudsperson on contraband wireless device issues. The ombudsperson's duties may include, as necessary, providing assistance to CIS operators in connecting with CMRS licensees, playing a role in identifying required CIS lease filings for a given correctional facility, facilitating the required Commission filings, thereby reducing regulatory burdens, resolving issues that may arise during the leasing process, and potentially transmitting qualifying

request for disabling to wireless providers. The ombudsperson will also conduct outreach and maintain a dialogue with all stakeholders on the issues important to furthering a solution to the problem of contraband wireless device use in correctional facilities. Finally, the ombudsperson will maintain a Web page, in conjunction with WTB, with a list of active CIS operators and locations where CISs have been deployed. With this appointment, we ensure continued focus on this important public safety issue and solidify our commitment to combating the problem. We direct WTB to release a public notice within one week of adoption of the *Order* naming the ombudsperson and providing contact information.

## **II. Procedural Matters**

### *Paperwork Reduction Act Analysis*

65. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

### *Regulatory Flexibility Analysis*

66. As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 603–604) as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This present FRFA conforms to the RFA.

67. Need for, and Objectives of, the Report and Order. In this document, the Commission adopts rules to facilitate the deployment of different technologies used to combat contraband wireless devices in correctional facilities nationwide. Inmates have used contraband wireless devices to order hits, run drug operations, operate phone scams, and otherwise engage in criminal activity. It is clear that inmate possession of wireless devices is a

serious threat to the safety and welfare of correctional facility employees, other inmates, and the general public.

68. This document reduces regulatory burdens for those seeking to expeditiously deploy Contraband Interdiction Systems (CISs), such as managed access systems or detection systems, which are used in correctional facilities to detect and block transmissions to or from contraband wireless devices or to obtain identifying information from these devices. The Commission streamlines the process for approving or accepting spectrum lease applications or notifications for spectrum leases entered into for CISs. The Commission grants a waiver for CISs reducing certain regulatory status filing requirements. Additionally, this document establishes requirements designed to ensure that agreements among CMRS licensees and CIS providers are negotiated expeditiously, while also adequately preserving licensees' exclusive spectrum rights.

69. In response to widespread support—across all stakeholders—for the proposed rule and procedural modifications to streamline the CIS leasing process, the Commission establishes rule changes to process all spectrum leases for CIS overnight, with the approval or acceptance posted to the Universal Licensing System the following business day after filing. The Commission finds that nothing in the expedited processing of CIS lease applications will have an adverse impact on the ability of a small businesses to participate in Commission processes to acquire spectrum or to provide wireless services and maintains the requirement to comply with unjust enrichment obligations where applicable.

70. In this document, the Commission grants a waiver of section 20.9 of the Commission's rules, to the extent necessary, so that CIS operators will not be required to file a separate modification application to receive private mobile radio system (PMRS) regulatory status. Instead, when a CIS operator submits the exhibit to its lease application stating that it is a CIS, it will be permitted to also indicate whether it is PMRS, and the approved or accepted spectrum lease will subsequently reflect that regulatory status.

71. Regulated as PMRS, CIS operators would no longer be obligated to comply with the Commission's common carrier 911 and E911 rules applicable to CMRS licensees. However, acknowledging the overriding importance of ensuring availability of emergency 911 calls from correctional facilities, subject to evaluation by the local public safety

answering point (PSAP), the Commission finds the public interest is best served by requiring CIS providers operating as PMRS to route 911 calls to the PSAP. Therefore, the Commission amends its rules to require CIS providers regulated as PMRS to transmit all wireless 911 calls to the PSAP, unless the PSAP informs the CIS provider that it does not wish to receive the calls.

72. As an additional measure designed to expedite the deployment of managed access and detection systems in correctional facilities, the Commission also amends section 1.931 of the Commission's rules to exempt CIS providers seeking a Special Temporary Authority (STA) for a CIS from the requirement that they file the application 10 days prior to operation. The Commission will process STA requests for CISs on an expedited basis and without prior public notice, but finds it unnecessary to modify Form 601 in order to achieve these streamlining goals.

73. In order to ensure cooperation among CIS providers and CMRS carriers—both large and small—the Commission will require that CMRS licensees negotiate in good faith with entities seeking to deploy a CIS in a correctional facility. Upon receipt of a good faith request by a CIS provider, a CMRS licensee will have 45 days to negotiate a lease agreement in good faith. If, after that 45-day period, there is no agreement, CIS providers seeking STA to operate in the absence of CMRS licensee consent may file a request for STA with the Wireless Telecommunications Bureau (WTB), with a copy served at the same time on the CMRS licensee, accompanied by evidence demonstrating its good faith, and the unreasonableness of the CMRS licensee's actions, in negotiating an agreement. The CMRS licensee will then be given 10 days to respond. If WTB then determines that the CIS provider has negotiated in good faith, yet the CMRS licensee has not negotiated in good faith, WTB may issue an STA to the entity seeking to deploy the CIS, notwithstanding the lack of accompanying CMRS licensee consent. We will consider evidence of good faith negotiations on a case-by-case basis, and may take additional steps as necessary to authorize CIS operations should we determine there is continued lack of good faith negotiations toward a CIS lease agreement.

74. As a further safeguard to minimize the potential impact of CIS implementation on surrounding areas, the Commission amends its leasing rules to require that, 10 days prior to

deploying a CIS that prevents communications to or from mobile devices, a lessee must notify the community in which the correctional facility is located. The notification must include a description of what the system is intended to do, the date the system is scheduled to begin operating, and the location of the correctional facility. Notification must be tailored to reach the community immediately adjacent to the correctional facility, including through local television, radio, internet news sources, or community groups, as may be appropriate. We note that this notification obligation does not apply for brief tests of a system prior to deployment. The Commission believes the adopted notification requirement strikes the appropriate balance between avoiding overly burdensome or costly requirements and promoting cooperation and coordination necessary to effectively implement CIS.

75. Finally, in order to assist CIS operators and CMRS licensees in complying with their regulatory obligations, the Commission intends to designate a single point of contact at the Commission to serve as the ombudsperson on contraband wireless device issues. The ombudsperson's duties may include, as necessary, providing assistance to CIS operators in connecting with CMRS licensees, playing a role in identifying required CIS lease filings for a given correctional facility, facilitating the required Commission filings, thereby reducing regulatory burdens, and resolving issues that may arise during the leasing process. The ombudsperson, in conjunction with WTB, will also maintain a Web page with a list of active CIS operators and locations where CIS has been deployed. With this appointment, the Commission ensures continued focus on this important public safety issue and solidifies our commitment to combating the problem.

76. Summary of Significant Issues Raised by Public Comments in Response to IRFA. There were no comments raised that specifically addressed the proposed rules and policies presented in the IRFA. Nonetheless, the agency considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all small entities in order to reduce the economic impact of the rules enacted herein on such entities.

77. Response to Comments by Chief Counsel for Advocacy of the Small Business Administration. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief

Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

78. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

79. Description and Estimate of the Number of Small Entities to Which Rules Will Apply. The RFA directs agencies to provide a description of—and where feasible, an estimate of—the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

80. Small Businesses. Nationwide, there are a total of approximately 28.8 million small businesses, according to the SBA.

81. Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

82. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers and the applicable small business size standard under SBA rules consists of all such companies having 1,500 or fewer employees. U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules adopted.

83. The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the rules adopted.

84. Toll Resellers. The SBA has not developed a small business size standard specifically for the category of Toll Resellers. The SBA category of Telecommunications Resellers is the

closest NAICS code category for toll resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the rules adopted.

85. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers and the applicable small business size standard under SBA rules consists of all such companies having 1,500 or fewer employees. U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted.

86. 800 and 800-Like Service Subscribers. Neither the Commission nor the SBA has developed a small

business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

87. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

88. Broadband Personal Communications Service. The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has

average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

89. Advanced Wireless Services. AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)). For the AWS–1 bands, the Commission has defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications

service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

90. Specialized Mobile Radio. The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (“SMR”) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

91. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

92. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not

know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

93. Lower 700 MHz Band Licenses. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—“entrepreneur”—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All

three winning bidders claimed small business status.

94. In 2007, the Commission reexamined its rules governing the 700 MHz band. An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years) won 49 licenses. Thirty-three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years) won 325 licenses.

95. Upper 700 MHz Band Licenses. In the 700 MHz Second Report and Order, the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years) and winning five licenses.

96. Satellite Telecommunications. This category comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than \$25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

97. All Other Telecommunications. The "All Other Telecommunications" category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also

includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of \$32.5 million or less. For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million. Thus, a majority of "All Other Telecommunications" firms potentially affected by the rules adopted can be considered small.

98. Other Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment). Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing. The SBA has established a size standard for this industry as 750 employees or less. Census data for 2012 show that 383 establishments operated in that year. Of that number, 379 operated with less than 500 employees. Based on that data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

99. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a size standard for this industry of 750 employees or less. U.S. Census data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 819 establishments

operated with less than 500 employees. Based on this data, we conclude that a majority of manufacturers in this industry is small.

100. Engineering Services. This industry comprises establishments primarily engaged in applying physical laws and principles of engineering in the design, development, and utilization of machines, materials, instruments, structures, process, and systems. The assignments undertaken by these establishments may involve any of the following activities: Provision of advice, preparation of feasibility studies, preparation of preliminary and final plans and designs, provision of technical services during the construction or installation phase, inspection and evaluation of engineering projects, and related services. The SBA deems engineering services firms to be small if they have \$15 million or less in annual receipts, except military and aerospace equipment and military weapons engineering establishments are deemed small if they have \$38 million or less an annual receipts. According to U.S. Census Bureau data for 2012, there were 49,092 establishments in this category that operated the full year. Of the 49,092 establishments, 45,848 had less than \$10 million in receipts and 3,244 had \$10 million or more in annual receipts. Accordingly, the Commission estimates that a majority of engineering service firms are small.

101. Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System Instrument Manufacturing. This U.S. industry comprises establishments primarily engaged in manufacturing search, detection, navigation, guidance, aeronautical, and nautical systems and instruments. Examples of products made by these establishments are aircraft instruments (except engine), flight recorders, navigational instruments and systems, radar systems and equipment, and sonar systems and equipment. The SBA has established a size standard for this industry of 1,250 employees or less. Data from the 2012 Economic Census show 588 establishments operated during that year. Of that number, 533 establishments operated with less than 500 employees. Based on this data, we conclude that the majority of manufacturers in this industry are small.

102. Security Guards and Patrol Services. The U.S. Census Bureau defines this category to include "establishments primarily engaged in providing guard and patrol services." The SBA deems security guards and patrol services firms to be small if they

have \$18.5 million or less in annual receipts. According to U.S. Census Bureau data for 2012, there were 8,742 establishments in operation the full year. Of the 8,842 establishments, 8,276 had less than \$10 million while 466 had more than \$10 million in annual receipts. Accordingly, the Commission estimates that a majority of firms in this category are small.

103. All Other Support Services. This U.S. industry comprises establishments primarily engaged in providing day-to-day business and other organizational support services (except office administrative services, facilities support services, employment services, business support services, travel arrangement and reservation services, security and investigation services, services to buildings and other structures, packaging and labeling services, and convention and trade show organizing services). The SBA deems all other support services firms to be small if they have \$11 million or less in annual receipts. According to U.S. Census Bureau data for 2012, there were 11,178 establishments in operation the full year. Of the 11,178 establishments, 10,886 had less than \$10 million while 292 had greater than \$10 million in annual receipts. Accordingly, the Commission estimates that a majority of firms in this category are small.

104. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities. The projected reporting, recordkeeping, and other compliance requirements resulting from this document will apply to all entities in the same manner, consistent with the approach we adopted in the *NPRM*. The rule modifications, taken as a whole, should have a beneficial, if any, reporting, recordkeeping, or compliance impact on small entities because all CMRS licensees and CIS providers will be subject to reduced filing burdens and recordkeeping. We also expect this document to better enable all CMRS licensees and CIS operators, no matter their size, to effectively coordinate and deploy systems to combat the use of contraband wireless devices in correctional facilities.

105. The primary changes are as follows: (1) We revise our rules to enable the immediate processing of lease applications or notifications for CISs regardless of whether the approval or acceptance will result in (a) the lessee holding or having access to geographically overlapping licenses, or (b) a license involving spectrum subject to designated entity unjust enrichment provisions or entrepreneur transfer restrictions; (2) we grant a waiver of

Section 20.9 to CISs; (3) we amend our rules to require CISs to route 911 calls to the local PSAP, unless the PSAPs does not wish to receive the calls, and to clarify that where a lessee is a CIS provider, the licensee that leases the spectrum to the CIS provider is not responsible for compliance with E911 obligations; (4) we exempt CIS providers seeking an STA from the requirement that they file the application 10 days prior to operation; (5) we provide 45 days for lease agreement negotiations between CMRS licensees and CIS operators, plus a 10 day response period, after which the Commission may issue an STA to the CIS operator; (6) we require CIS operators to provide notice to surrounding communities 10 days prior to deployment; and (7) we designate a single point of contact at the Commission to serve as the ombudsperson on contraband wireless device issues. With these reforms, we achieve the important public interest goal of combatting the use of contraband wireless devices in correctional facilities nationwide by reducing regulatory burdens for those seeking to expeditiously deploy CISs.

106. For small entities operating CISs at correctional facilities, the rules and processes adopted in this document eliminate several barriers to CIS deployment. The Commission adopts rules that cut down on the time it takes to process lease agreements and STAs, so that CIS providers can deploy their systems rapidly. Rather than requiring CIS providers to file additional forms demonstrating they will be operating as a CIS in order to receive expedited processing, the Commission instead implements its own internal procedures for identifying those qualifying applications and processing the request immediately. The Commission implements similar internal procedures for identifying STA requests for CISs as exempt from the requirement that they file the application 10 days prior to operation, thereby providing for immediate processing without imposing new or additional filing burdens on CIS operators. With the waiver of section 20.9, we have also eliminated the previous requirement that CIS operators file a separate modification application to request PMRS treatment, thereby conserving resources and reducing burdens on spectrum leasing parties.

107. The community notification requirement adopted in this document will require small entity CIS operators to provide notice to the surrounding community 10 days prior to deployment of the system, which must include a description of what the system is intended to do, the date the system is

scheduled to begin operating, and the location of the correctional facility. CIS operators must tailor the notification in the most effective way to reach the potentially impacted community and are able to choose the means of communication that is most appropriate for the particular community. By giving the CIS operators flexibility to tailor the notification to the specific community, we expect that the notification costs and burdens will be minimal, and would not require small entities to hire additional staff.

108. We recognize that smaller CMRS licensees may have less experience with CISs and fewer resources to provide for expedient and effective lease negotiations within the 45 day period we impose. However, given that the success of CIS deployment requires all carriers in the relevant area of the correctional facility to execute a lease with the CIS provider, we believe the minimal requirement that CMRS licensees negotiate in good faith is not unduly burdensome. By potentially granting an STA to the entity requesting a CIS deployment in the absence of carrier consent, we allow for any necessary emergency testing and evaluation until such time as the parties can conclude negotiations and submit the applicable lease applications.

109. Small entities seeking to deploy CISs in correctional facilities will not incur additional or significant compliance burdens as a result of this document. We maintain the current Forms 601 and 608 required for lease filings and provide for expedited processing without imposing any additional filing requirements. We reduce filing burdens by waiving section 20.9 for CIS operators, thereby eliminating the need to file a separate modification application to request PMRS treatment. While we create a requirement that CISs route 911 and E911 calls to local PSAPs, we permit PSAPs at their discretion to indicate they do not wish to receive 911 calls. We note that CIS operators are often required to pass through 911 and E911 calls, either by contracts with wireless provider lessors or pursuant to a state's requirements, and believe the local PSAPs are in the best position to determine emergency call procedures in the public interest.

110. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. In fact, the revisions adopted by the Commission should benefit small

entities by reducing certain administrative burdens while simultaneously giving the flexibility necessary to facilitate the deployment of CIS to correctional facilities nationwide.

111. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.”

112. In order to minimize the economic impact on small entities, the rules provide for streamlined leasing and STA application and notification processes, limited notification requirements, and flexible standards for lease negotiations and contractual obligations. While we considered several other proposals in the record that may have resulted in greater compliance burdens on small entities, we strike a balance between achieving our goals of combatting contraband wireless devices in correctional facilities and minimizing the costs and regulatory burdens of the adopted rules.

113. First, by adopting the 911 and E911 requirements for CISs subject to the discretion of PSAPs, we provide flexibility and avoid unnecessary burdens on CIS operators to deliver emergency calls where PSAPs would rather they be blocked. In order to avoid duplicitous burdens on both CIS operators and the CMRS providers from which they lease spectrum, we amend our rules to clarify that the burden to pass on calls or messages to the PSAP is on the CIS operator, not the CMRS provider.

114. Second, we take steps to limit the economic impact of the requirement that CIS operators provide advance notification to surrounding communities 10 days prior to deploying their systems by allowing flexibility for CIS operators to tailor notice to the specific community. The goal of this proceeding is to expedite the deployment of technological solutions to combat the use of contraband wireless devices, not to impose unnecessary barriers to CIS deployment.

However, we also recognize the importance to safeguard against the potential for accidental call blocking and the public safety issues involved. Therefore, we adopt a flexible notice requirement, rather than more specific requirements suggested in the record. For instance, we forego a proposed requirement that operators be required to undertake extensive public education campaigns that would include mailings, door-hangers, and media campaigns directed toward surrounding businesses and households, as well as the alarm industry and local alarm companies. Instead of creating an overly burdensome or potentially counterproductive requirement, we believe a flexible requirement tailored to the specific area of deployment strikes a reasonable balance between minimizing costs for CIS operators and reducing the likelihood of negative impact on the surrounding community.

115. Third, the good faith lease negotiation requirement we adopt today seeks to strike a balance between expediting the leasing process and protecting the exclusive spectrum rights of CMRS providers. The Commission notes that the effectiveness of CIS deployment requires all carriers in the relevant area of the correctional facility to execute a lease with the CIS provider, not only large carriers that commented in this proceeding, but also smaller carriers that did not. The Commission considered and rejected proposals by certain commenters to require carriers to create standard industry-wide lease agreements, adopt specific pricing standards for managed access leases, and implement a shot clock at the beginning of the leasing process, after which spectrum leases would automatically be granted. While these proposals would have decreased regulatory burdens on CIS providers by decreasing the time and costs of obtaining spectrum leases for their systems, the Commission favored an alternative that allowed for more flexible lease negotiations and protected the spectrum rights of CMRS providers—both large and small. By adopting a good faith negotiation period, after which the Commission may grant a CIS provider a STA, rather than a spectrum lease, if the CMRS provider has not negotiated in good faith, today’s Order ensures that CIS can be deployed quickly, while also protecting CMRS providers’ control over their spectrum rights. The Commission believes this approach limits the burdens on small entities—both CIS operators and CMRS providers—who

have limited resources to negotiate and enter into spectrum lease agreements.

116. Finally, in order to assist CIS operators and CMRS licensees, particularly small entities with limited resources to devote to compliance with regulatory obligations, this document announces the Commission’s intention to designate a single point of contact at the Commission to serve as the ombudsperson on contraband wireless device issues. The ombudsperson’s duties may include, as necessary, providing assistance to CIS operators in connecting with CMRS licensees, playing a role in identifying required CIS lease filings for a given correctional facility, facilitating the required Commission filings, thereby reducing regulatory burdens, and resolving issues that may arise during the leasing process. The ombudsperson will also conduct outreach and maintain a dialogue with all stakeholders on the issues important to furthering a solution to the problem of contraband wireless device use in correctional facilities. Finally, the ombudsperson, in conjunction with WTB, will maintain a Web page with a list of active CIS operators and locations where CIS has been deployed. With this appointment, we ensure continued focus on this important public safety issue and solidify our commitment to combating the problem.

#### *Report to Congress*

117. The Commission will send a copy of the *Order*, including the FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA (5 U.S.C. 603(a)).

#### *Congressional Review Act*

118. The Commission will send a copy of the *Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act (5 U.S.C. 801(a)(1)(A)).

### **III. Ordering Clauses**

119. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 301, 302, 303, 307, 308, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 310, and 332, the *Order* in GN Docket No. 13–111 *is adopted*.

120. *It is further ordered* that the *Order shall be effective* 30 days after publication of this document in the **Federal Register**.

121. *It is further ordered* that parts 1 and 20 of the Commission's rules, 47 CFR parts 1 and 20, *are amended* as specified in Appendix A of the *Order*, effective 30 days after publication in the **Federal Register**, with the exception of: (1) Amended rule §§ 1.9020(d)(8), 1.9030(d)(8), 1.9035(d)(4), and 20.18(a), 47 CFR 1.9020(d)(8), 1.9030(d)(8), 1.9035(d)(4), and 20.18(a), as specified in paragraph 122 below; and (2) §§ 1.9020(n), 1.9030(m), 1.9035(o), 20.18(r), and 20.23(a), which shall become effective after the Commission publishes a document in the **Federal Register** announcing OMB approval under the PRA and the relevant effective date.

122. *It is further ordered* that amended rule sections 1.9020(d)(8), 1.9030(d)(8), 1.9035(d)(4), and 20.18(a), 47 CFR 1.9020(d)(8), 1.9030(d)(8), 1.9035(d)(4), and 20.18(a), as specified in Appendix A of the *Order*, shall become effective the later of: 270 days after the publication of this document in the **Federal Register** or the Commission's publication of the document described in paragraph 121 above. In either case, the Commission will publish a document in the **Federal Register** announcing such approval and the effective date.

123. *It is further ordered* that, pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission *shall send* a copy of the *Order* to Congress and to the Government Accountability Office.

124. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Parts 1 and 20

Administrative practice and procedure, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

**Marlene H. Dortch**,  
Secretary.

#### Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 20 as follows:

#### PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 15 U.S.C. 79, *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 310, 332, 1403, 1404, 1451, 1452, and 1455.

- 2. Amend § 1.931 by:
  - a. Revising paragraph (a)(1);
  - b. Removing the “or” at the end of paragraph (a)(2)(iii);
  - c. Removing the period at the end of paragraph (a)(2)(iv) and adding “; or” in its place; and
  - d. Adding paragraph (a)(2)(v).

The revision and addition read as follows:

#### § 1.931 Application for special temporary authority.

(a) *Wireless Telecommunications Services.* (1) In circumstances requiring immediate or temporary use of station in the Wireless Telecommunications Services, carriers may request special temporary authority (STA) to operate new or modified equipment. Such requests must be filed electronically using FCC Form 601 and must contain complete details about the proposed operation and the circumstances that fully justify and necessitate the grant of STA. Such requests should be filed in time to be received by the Commission at least 10 days prior to the date of proposed operation or, where an extension is sought, 10 days prior to the expiration date of the existing STA. Requests received less than 10 days prior to the desired date of operation may be given expedited consideration only if compelling reasons are given for the delay in submitting the request. Otherwise, such late-filed requests are considered in turn, but action might not be taken prior to the desired date of operation. Requests for STA for operation of a station used in a Contraband Interdiction System, as defined in § 1.9003, will be afforded expedited consideration if filed at least one day prior to the desired date of operation. Requests for STA must be accompanied by the proper filing fee.

(2) \* \* \*

(v) The STA is for operation of a station used in a Contraband Interdiction System, as defined in § 1.9003.

\* \* \* \* \*

- 3. Amend § 1.9003 by adding definitions for “Contraband Interdiction System,” “Contraband wireless device,” and “Correctional facility” in alphabetical order to read as follows:

#### § 1.9003 Definitions.

*Contraband Interdiction System.*

Contraband Interdiction System is a system that transmits radio communication signals comprised of one or more stations used only in a correctional facility exclusively to prevent transmissions to or from contraband wireless devices within the boundaries of the facility and/or to obtain identifying information from such contraband wireless devices.

*Contraband wireless device.* A contraband wireless device is any wireless device, including the physical hardware or part of a device, such as a subscriber identification module (SIM), that is used within a correctional facility in violation of federal, state, or local law, or a correctional facility rule, regulation, or policy.

*Correctional facility.* A correctional facility is any facility operated or overseen by federal, state, or local authorities that houses or holds criminally charged or convicted inmates for any period of time, including privately owned and operated correctional facilities that operate through contracts with federal, state, or local jurisdictions.

\* \* \* \* \*

- 4. Amend § 1.9020 by revising paragraphs (d)(8) and (e)(2) introductory text, redesignate paragraphs (e)(2)(ii) and (iii) as (e)(2)(iii) and (iv), and adding paragraphs (e)(2)(ii) and (n) to read as follows:

#### § 1.9020 Spectrum manager leasing arrangements.

\* \* \* \* \*

(d) \* \* \*

(8) *E911 requirements.* If E911 obligations apply to the licensee (see § 20.18 of this chapter), the licensee retains the obligations with respect to leased spectrum. However, if the spectrum lessee is a Contraband Interdiction System (CIS) provider, as defined in § 1.9003, then the CIS provider is responsible for compliance with § 20.18(r) regarding E911 transmission obligations.

(e) \* \* \*

(2) *Immediate processing procedures.* Notifications that meet the requirements of paragraph (e)(2)(i) of this section, and notifications for Contraband Interdiction Systems as defined in § 1.9003 that meet the requirements of paragraph (e)(2)(ii) of this section, qualify for the immediate processing procedures.

\* \* \* \* \*

(ii) A lessee of spectrum used in a Contraband Interdiction System qualifies for these immediate processing procedures if the notification is

sufficiently complete and contains all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) required for notifications processed under the general notification procedures set forth in paragraph (e)(1)(i) of this section, and must not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

\* \* \* \* \*

(n) *Community notification requirement for certain contraband interdiction systems.* 10 days prior to deploying a Contraband Interdiction System that prevents communications to or from mobile devices, a lessee must notify the community in which the correctional facility is located. The notification must include a description of what the system is intended to do, the date the system is scheduled to begin operating, and the location of the correctional facility. Notification must be tailored to reach the community immediately adjacent to the correctional facility, including through local television, radio, Internet news sources, or community groups, as may be appropriate. No notification is required, however, for brief tests of a system prior to deployment.

■ 5. Amend § 1.9030 by revising paragraphs (d)(8) and (e)(2) introductory text, redesignate paragraphs (e)(2)(ii) and (iii) as (e)(2)(iii) and (iv), and adding paragraphs (e)(2)(ii) and (m) to read as follows:

**§ 1.9030 Long-term de facto transfer leasing arrangements.**

\* \* \* \* \*

(d) \* \* \*

(8) *E911 requirements.* To the extent the licensee is required to meet E911 obligations (see § 20.18 of this chapter), the spectrum lessee is required to meet those obligations with respect to the spectrum leased under the spectrum leasing arrangement insofar as the spectrum lessee's operations are encompassed within the E911 obligations. If the spectrum lessee is a Contraband Interdiction System (CIS) provider, as defined in § 1.9003, then the CIS provider is responsible for compliance with § 20.18(r) regarding E911 transmission obligations.

(e) \* \* \*

(2) *Immediate approval procedures.* Applications that meet the requirements of paragraph (e)(2)(i) of this section, and applications for Contraband Interdiction Systems as defined in § 1.9003 that meet the requirements of paragraph (e)(2)(ii) of this section, qualify for the immediate approval procedures.

\* \* \* \* \*

(ii) A lessee of spectrum used in a Contraband Interdiction System qualifies for these immediate approval procedures if the application is sufficiently complete and contains all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) required for applications processed under the general application procedures set forth in paragraph (e)(1)(i) of this section, and must not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

\* \* \* \* \*

(m) *Community notification requirement for certain contraband interdiction systems.* 10 days prior to deploying a Contraband Interdiction System that prevents communications to or from mobile devices, a lessee must notify the community in which the correctional facility is located. The notification must include a description of what the system is intended to do, the date the system is scheduled to begin operating, and the location of the correctional facility. Notification must be tailored to reach the community immediately adjacent to the correctional facility, including through local television, radio, Internet news sources, or community groups, as may be appropriate. No notification is required, however, for brief tests of a system prior to deployment.

■ 6. Amend § 1.9035 by revising paragraph (d)(4) and adding paragraph (o) to read as follows:

**§ 1.9035 Short-term de facto transfer leasing arrangements.**

\* \* \* \* \*

(d) \* \* \*

(4) *E911 requirements.* If E911 obligations apply to the licensee (see § 20.18 of this chapter), the licensee retains the obligations with respect to leased spectrum. A spectrum lessee entering into a short-term de facto transfer leasing arrangement is not separately required to comply with any such obligations in relation to the leased spectrum. However, if the spectrum lessee is a Contraband Interdiction System (CIS) provider, as defined in § 1.9003, then the CIS provider is responsible for compliance with § 20.18(r) regarding E911 transmission obligations.

\* \* \* \* \*

(o) *Community notification requirement for certain contraband interdiction systems.* 10 days prior to deploying a Contraband Interdiction System that prevents communications to or from mobile devices, a lessee must

notify the community in which the correctional facility is located. The notification must include a description of what the system is intended to do, the date the system is scheduled to begin operating, and the location of the correctional facility. Notification must be tailored to reach the community immediately adjacent to the correctional facility, including through local television, radio, Internet news sources, or community groups, as may be appropriate. No notification is required, however, for brief tests of a system prior to deployment.

**PART 20—COMMERCIAL MOBILE RADIO SERVICES**

■ 7. The authority citation for part 20 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

■ 8. Amend § 20.18 by revising paragraph (a) and adding paragraph (r) to read as follows:

**§ 20.18 911 Service.**

(a) *Scope of section.* Except as described in paragraph (r) of this section, the following requirements are only applicable to CMRS providers, excluding mobile satellite service (MSS) operators, to the extent that they:

- (1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and
- (2) Utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees.

\* \* \* \* \*

(r) *Contraband Interdiction System (CIS) requirement.* CIS providers regulated as private mobile radio service (see § 20.3) must transmit all wireless 911 calls without respect to their call validation process to a Public Safety Answering Point, or, where no Public Safety Answering Point has been designated, to a designated statewide default answering point or appropriate local emergency authority pursuant to § 64.3001 of this chapter, provided that “all wireless 911 calls” is defined as “any call initiated by a wireless user dialing 911 on a phone using a compliant radio frequency protocol of the serving carrier.” This requirement shall not apply if the Public Safety Answering Point or emergency authority

informs the CIS provider that it does not wish to receive 911 calls from the CIS provider.

■ 9. Section 20.23 is added to read as follows:

**§ 20.23 Contraband wireless devices in correctional facilities.**

(a) *Good faith negotiations.* CMRS licensees must negotiate in good faith with entities seeking to deploy a Contraband Interdiction System (CIS) in a correctional facility. Upon receipt of a good faith request by an entity seeking to deploy a CIS in a correctional facility, a CMRS licensee must negotiate toward a lease agreement. If, after a 45 day period, there is no agreement, CIS providers seeking Special Temporary Authority (STA) to operate in the absence of CMRS licensee consent may file a request for STA with the Wireless Telecommunications Bureau (WTB), accompanied by evidence demonstrating its good faith, and the unreasonableness of the CMRS licensee's actions, in negotiating an agreement. The request must be served on the CMRS licensee no later than the filing of the STA request, and the CMRS licensee may file a response with WTB, with a copy served on the CIS provider at that time, within 10 days of the filing of the STA request. If WTB determines that the CIS provider has negotiated in good faith, yet the CMRS licensee has not negotiated in good faith, WTB may issue STA to the entity seeking to deploy the CIS, notwithstanding lack of accompanying CMRS licensee consent.

(b) *[Reserved]*

[FR Doc. 2017-09885 Filed 5-17-17; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 161017970-6999-02]

RIN 0648-XF408

**Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS announces that the State of North Carolina is transferring a portion of its 2017 commercial summer flounder quota to the Commonwealth of Virginia. This quota adjustment is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provision. This announcement informs the public of the revised commercial quotas for North Carolina and Virginia.

**DATES:** Effective May 15, 2017, through December 31, 2017.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Hanson, Fishery Management Specialist, (978) 281-9180.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102, and the initial 2017 allocations were published on December 22, 2016 (81 FR 93842).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i)(A) through (C) in the evaluation of requests for quota transfers or combinations.

North Carolina is transferring 2,510 lb (1,139 kg) of summer flounder commercial quota to Virginia. This transfer was requested by North Carolina to repay landings by a North Carolina-permitted vessel that landed in Virginia under a safe harbor agreement.

The revised summer flounder quotas for calendar year 2017 are now: North Carolina, 1,539,693 lb (698,393 kg); and Virginia, 1,219,912 lb (553,343 kg); based on the initial quotas published in the 2017 Summer Flounder, Scup, and Black Sea Bass Specifications and subsequent transfers.

**Classification**

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 12, 2017.

**Karen H. Abrams,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017-10005 Filed 5-15-17; 11:15 am]

**BILLING CODE 3510-22-P**