relevant portion or all of the State, as applicable, to no more than the State's Phase I NO_X ozone season budget under paragraph (e) of this section.

Phase II SIP submission means a SIP revision submitted by a State in compliance with paragraph (b)(1)(ii) of this section to limit projected NO_X emissions during the ozone season from sources in the relevant portion or all of the State, as applicable, to no more than the State's final NO_X ozone season budget under paragraph (e) of this section.

* * * * *

(d) * * *

(2) Each SIP submission under this section must comply with § 51.103 (regarding submission of plans).

(e) * * *

(2)(i) The State-by-State amounts of the Phase I and final NO_X ozone season budgets, expressed in tons, are listed in Table 1 to this paragraph (e)(2)(i):

TABLE 1 TO PARAGRAPH (e)(2)(I)—STATE NO_X OZONE SEASON BUDGETS

State	Phase I NO_X ozone season budget (2004–2006)	Final NO_X ozone season budget (2007 and thereafter)
Alabama	124,795	119,827
Connecticut	42,891	42,850
Delaware	23,522	22,862
District of Columbia	6,658	6,657
Illinois	278,146	271,091
Indiana	234,625	230,381
Kentucky	165,075	162,519
Maryland	82,727	81,947
Massachusetts	85,871	84,848
Michigan	191,941	190,908
Missouri	.....	61,406
New Jersey	95,882	96,876
New York	241,981	240,322
North Carolina	171,332	165,306
Ohio	252,282	249,541
Pennsylvania	268,158	257,928
Rhode Island	9,570	9,378
South Carolina	127,756	123,496
Tennessee	201,163	198,286
Virginia	186,689	180,521
West Virginia	85,045	83,921

* * * * *

(i) * * *

(4) If the revision contains measures to control fossil fuel-fired NO_X sources serving electric generators with a nameplate capacity greater than 25 MWe or boilers, combustion turbines or combined cycle units with a maximum design heat input greater than 250 mmBtu/hr, then the revision may require some or all such sources to comply with the full set of monitoring, recordkeeping, and reporting provisions of 40 CFR part 75, subpart H. A State requiring such compliance authorizes the Administrator to assist the State in implementing the revision by carrying out the functions of the Administrator under such part.

(5) For purposes of paragraph (i)(4) of this section, the term ''fossil fuel-fired'' has the meaning set forth in paragraph (f)(3) of this section.

* * * * *

(r)(1) Notwithstanding any provisions of subparts A through I of 40 CFR part 96 and any State's SIP to the contrary, with regard to any ozone season that occurs after September 30, 2008, the Administrator will not carry out any of the functions set forth for the Administrator in subparts A through I of 40 CFR part 96 or in any emissions trading program provisions in a State's SIP approved under this section.

(2) Except as provided in 40 CFR 52.38(b)(10)(ii), a State whose SIP is approved as meeting the requirements of this section and that includes or included an emissions trading program approved under this section must revise the SIP to adopt control measures that satisfy the same portion of the State's NO_X emissions reduction requirements under this section as the State projected such emissions trading program would satisfy.

§ 51.122 [Amended]

■ 3. Section 51.122 is amended by:

■ a. In paragraph (c)(1)(ii), removing the text ''pursuant to a trading program approved under § 51.121(p) or'';

■ b. In paragraph (e), removing the first sentence;

■ c. In paragraph (f), removing the paragraph heading; and

■ d. Removing the second paragraph (g).

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 4. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

§ 52.38 [Amended]

■ 5. In § 52.38, paragraphs (b)(8)(ii), (b)(8)(iii)(A)(*2*), (b)(9)(ii), and (b)(9)(iii)(A)(*2*) are amended by removing the text ''§ 51.121(p)'' and adding in its place the text ''§ 51.121''.

[FR Doc. 2019–03854 Filed 3–7–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 06–150; DA 19–77]

Service Rules for the 698–746, 747–762, and 777–792 Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) describes the process for relicensing 700 MHz spectrum that is returned to the Commission's inventory

as a result of licensees' failure to meet applicable construction requirements. The document begins with the ''keep-what-you-serve'' (KWYS) rules applicable to failing licensees and ends with the specific rules and requirements for licensees that acquire unserved areas through the relicensing process, including through auction where necessary.

DATES: Effective April 8, 2019.

FOR FURTHER INFORMATION CONTACT: Melissa Conway, *Melissa.Conway@fcc.gov,* of the Wireless Telecommunications Bureau, Mobility Division, (202) 418–2887.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in WT Docket No. 06–150, FCC 19–77, released on February 12, 2019. The complete text of the document is available for viewing via the Commission's ECFS website by entering the docket number, WT Docket No. 06–150. The complete text of the document 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 document 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).

Synopsis

I. Background

1. For certain spectrum blocks in the 700 MHz band, licensees that fail to meet the Commission's construction benchmarks keep the areas of the license that they serve, and the remaining unserved areas are returned to the Commission's inventory for relicensing. This approach provides other parties with opportunities to acquire spectrum that is not adequately built out and to serve communities that might otherwise not receive service.

2. This document describes the process for relicensing unserved areas, beginning with the ''keep-what-you-serve'' (KWYS) rules applicable to failing licensees, and ending with the specific rules and requirements for licensees that acquire unserved areas through the relicensing process, including through auction where necessary. This document is not inclusive of all relevant requirements and restrictions applicable to operations in this band, and it is the responsibility of applicants and licensees to remain current with all Commission rules and with all public notices pertaining to the 700 MHz band, the KWYS rules, and the relicensing process. The Commission also offers maps or examples in certain instances for illustrative purposes only; these are not meant to exhaustively cover all rule requirements or describe the only permissible scenarios.

3. In 2007, the Commission, in the *700 MHz Second Report and Order* (72 FR 48814, Aug. 24, 2007), set forth rules governing certain wireless licenses in the 700 MHz band that, among other things, established interim and end-of-term construction benchmarks and status reporting requirements.[1] In 2013, the Commission released the *Interoperability Report and Order* (78 FR 66298, Nov. 5, 2013), which extended the interim construction deadline for Lower 700 MHz A and B Block licensees and removed the interim construction deadline for certain A Block licensees adjacent to Channel 51 operations.[2] For E Block licensees, the Commission also extended the interim and end-of-term deadlines and permitted a showing of population coverage, rather than geographic coverage. For licensees that fail to meet the applicable interim benchmark, the rules specify that the license term will be accelerated by two years for Lower A and B Block and Upper C Block licenses, and by one year for Lower E Block licenses. Most licensees in these blocks were auctioned in Auction 73 and have the respective construction requirements and deadlines listed in the document.

4. The Commission's rules require that licensees subject to the end-of-term deadline must file construction notifications, including coverage maps and supporting documentation, demonstrating that the licensee has met the end-of-term coverage requirement. Under the KWYS rules applicable to these blocks, if a licensee fails to meet its end-of-term construction deadline, its authorization to operate will terminate automatically without Commission action for those geographic areas of its license authorization in which the licensee is not providing service on the date of the end-of-term deadline, and those areas will become available for reassignment by the Commission. The Commission delegated authority to the Wireless Telecommunications Bureau (Bureau) to establish by public notice the process by which licenses will become available for relicensing under these rules.

5. On August 28, 2017, the Bureau released the *700 MHz Relicensing Comment PN* (82 FR 42263, Sept. 7, 2017), which described the foregoing rules and policies set forth in the *700 MHz Second Report and Order* and other relevant Commission rules and sought comment on the Bureau's proposed approach to the remaining elements of the KWYS and relicensing process.[3] The Bureau sought comment on several aspects of its proposed approach: (a) The process of identifying a failing licensee's service area and the resulting unserved areas to be returned to the Commission's inventory for relicensing; (b) rules and procedures for the administration of the two-phased relicensing process; and (c) the appropriate requirements and restrictions to be applied to relicensed areas. Interested parties, including mobile wireless providers and trade associations, submitted three comments and five reply comments in response to the *700 MHz Relicensing Comment PN*.

II. KWYS Rules and Process

A. Construction Notifications

6. Licensees must file a construction notification with the Commission no later than 15 days after the relevant end-of-term construction deadline, regardless of whether they have met the construction requirements. Licensees that have satisfied the construction requirement must continue to comply with the specific construction notification filing requirements the Bureau has previously provided by this public notice. Licensees that fail to satisfy the construction requirement must file their construction notification according to the specifications for KWYS, discussed below.

7. In the *700 MHz Second Report and Order,* the Commission delegated responsibility to the Bureau for establishing the specifications for filing maps and other documents (*e.g.,* file format and appropriate data) needed to determine a licensee's service area. The Bureau previously outlined the specific construction notifications required by the Commission's rules in a series of public notices. The Bureau places

[1] *See generally Service Rules for 698–746, 747–762, and 777–792 MHz Bands et al.,* Second Report and Order, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

[2] *See Promoting Interoperability in the 700 MHz Commercial Spectrum,* Report and Order and Order of Proposed Modification, 28 FCC Rcd 15122, 15151–52, paragraph 65 (2013) (*Interoperability Report and Order*).

[3] *See generally Wireless Telecommunications Bureau Seeks Comment on Process for Relicensing 700 MHz Spectrum Unserved Areas,* DA 17–810, Public Notice, 2017 WL 3725816 (WTB, rel. Aug. 28, 2017) (*700 MHz Relicensing Comment PN*); *see also generally 700 MHz Second Report and Order.*

construction notifications on public notice and reviews each notification and any related comments before making a determination regarding the notification. Interested parties are permitted to file comments, which must be filed no later than 30 days after the public notice release date.

8. After examining the construction notifications and public comments, the Bureau will determine whether each licensee has made a sufficient showing to satisfy the end-of-term construction benchmark and retain its entire license. The Bureau may return the filing and ask the licensee to amend the notification with additional or different information as it deems necessary, *e.g.,* description of service, description of technology, or link budgets. Alternatively, if a licensee files a notification admitting failure, but does not conform to the specifications required for the KWYS process, the Bureau will return the filing and ask the licensee to amend it with the requirements described herein. If a licensee files a request for an extension of time or a waiver of the construction deadline and the Bureau denies the request, the Bureau will instruct the licensee to file a construction notification, either demonstrating compliance with the construction benchmark as of the end-of-term construction deadline or admitting failure. Licensees that fail to meet the end-of-term construction benchmark—whether they admit failure or are deemed by the Bureau to have failed following review of the construction notification—are subject to the KWYS rules and must file their construction notification according to the specifications for KWYS described below.

B. Automatic Termination

9. The Commission implements its long-standing auto-termination process here, in combination with the additional filing procedures established below to address the failure of a licensee to make required filings. If a licensee does not file either a request for extension of time before the construction deadline or the required construction notification within 15 days after the construction deadline (as required by § 1.946 of the Commission's rules), the Commission presumes that the license has not been constructed or the coverage requirement has not been met. As a result, the Bureau places such licenses in ''Termination Pending'' status and lists the license on the Weekly Termination Pending Public Notice. The Bureau also notifies the licensee by letter that, if it has met its construction requirement, it has 30 days from the date of that public notice to file a petition for reconsideration showing that it timely met the construction deadline. If the licensee does not file a petition for reconsideration within the 30-day reconsideration period showing timely construction, the Bureau updates its licensing records in the Commission's Universal Licensing System (ULS) to show the license as ''Terminated,'' effective as of the construction deadline. The license is also listed on a weekly public notice reflecting its status as changed to Terminated. This process will be applied to 700 MHz KWYS licenses. As applied to such licenses, failure to file either the required construction notification or a timely petition for reconsideration will result in automatic termination of the entire license, regardless of whether a licensee provides service in its license area such that it might otherwise retain that portion of the license under the KWYS rules. The Commission anticipates that this approach will ensure time to confirm that areas are only classified as unserved where the licensee is actually failing to provide service required by the Commission's rules, while avoiding unnecessary delays to the relicensing process.

10. In contrast, one commenter asks the Bureau to find that if licensees fail to file the required construction notifications, the entire license will terminate and become available for relicensing. This commenter also asks the Bureau to require licensees that seek to challenge the Bureau's evaluation of their performance demonstration to submit a map identifying the unserved areas pursuant to the Bureau's evaluation, and it suggests that a licensee's failure to do so should result in termination of the license. The commenter argues that, without these requirements, licensees could thwart the relicensing process, ''which is dependent on a clear understanding of the geographic boundaries for served areas.'' The Commission declines to implement this specific request to automatically terminate a license if the licensee fails to file the required construction notification so that the license is available for relicensing because it finds that the Commission's long-standing auto-termination process, in combination with the additional filing procedures established in this public notice, will adequately address the failure of a licensee to make required filings. The Commission agrees that the prompt commencement of the relicensing process depends on having licensees that fail to satisfy their construction requirements make the required KWYS filings, as it is these filings that will enable the Bureau to identify the unserved areas available for relicensing.

C. Required KWYS Filing

11. In the *700 MHz Relicensing Comment PN,* the Commission noted that licensees that fail to meet the construction requirement—whether they admit failure or are found by the Bureau to have failed following review of the construction notification—are subject to the KWYS rules. Accordingly, they will be required to file an electronic coverage map that demarcates the geographic portion of the licensed area that the licensee will retain and the geographic area that will be returned to the Commission for reassignment. Licensees admitting failure must file their construction notification at the end-of-term construction deadline according to the specifications for KWYS described below. If a licensee claims to have met the construction benchmark, but the Bureau deems the licensee to have failed after review of the construction notification, the licensee will be asked to amend its initial construction notification filing to comply with the KWYS specifications.

1. Service Area

12. In the *700 MHz Relicensing Comment PN,* the Commission proposed a process whereby licensees would demonstrate the ''served'' areas of their license by submitting a shapefile showing a smooth enclosed 40 dBμV/m field strength contour [4] of existing facilities by the end-of-term deadline. The portion of the license market covered by the smooth contour would be deemed ''served'' for purposes of the KWYS rule and become the reduced licensed area that the licensee ''keeps.'' Noting the requirement that licensees not exceed 40 dBμV/m field strength at the license boundary, as well as the Commission's observations of existing services in the 700 MHz band, the Commission anticipated the 40 dBμV/m field strength smooth contour would be the most suitable means of determining licensees' service areas. However, because some licensees might provide service at lower field strength such that the 40 dBμV/m smooth contour would result in a reduced licensed area that might be substantially smaller than the licensee's actual service area, the Commission proposed an alternative

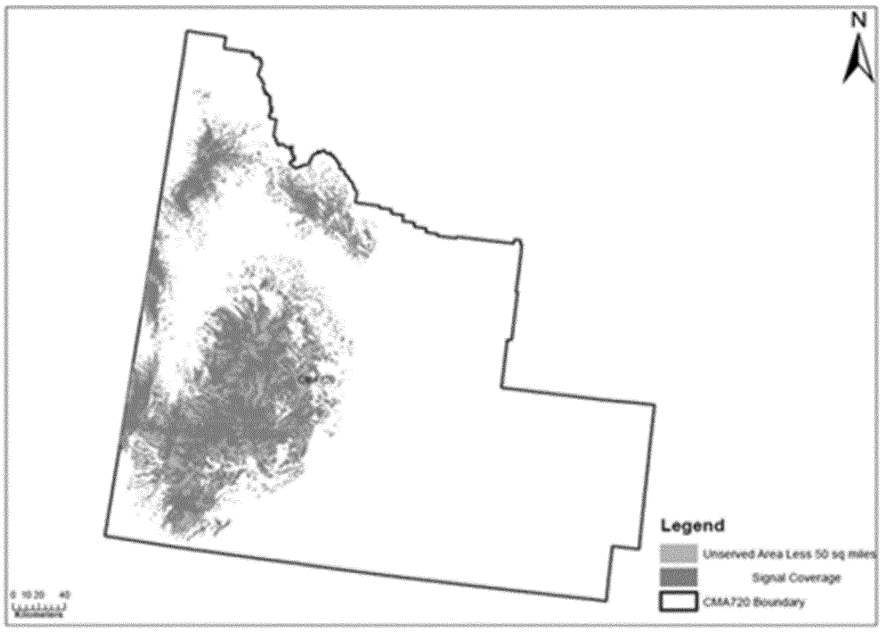
[4] A smooth contour is a closed, non-overlapping polygon. Here, the smooth contour would be a closed, non-overlapping polygon reflecting the signal area at 40 dBμV/m field strength.

option for licensees. Under the alternative option, if the 40 dBμV/m smooth contour would result in a reduced licensed area that is at least 25% smaller than the licensee's actual service area, the licensee could demonstrate the service area using a lower dBμV/m field strength smooth contour.

13. In response to the Commission's proposal, one commenter argues that the 40 dBμV/m field strength smooth contour will not accurately represent coverage provided by 700 MHz licensees, will penalize licensees providing service at lower field strengths, and will create unnecessarily duplicative coverage filings. Instead, this commenter suggests that the Commission allow licensees to ''provide a coverage showing that is based on real-world service to the public and not be bound to a particular metric or technology in doing so.'' Three additional commenters expressed general support of this position.

14. Because allowing licensees to tailor their demonstrations to the services they provide more accurately represents their service areas, the Commission agrees with these commenters' suggested modification of its proposal. Accordingly, licensees will be required to identify their service area based on the methodology the licensee deems to best represent the areas of coverage in which it provides service.[5] Licensees must file service area demonstrations that reflect the signal level that the licensee has previously represented as service to its customers (*e.g.,* in advertised coverage materials) and the Bureau (*e.g.,* in construction notifications), and licensees should be prepared to defend the methodology used. The Commission also reminds licensees that the service area demonstration will ultimately establish the licensees' revised license boundary; at the boundary, licensees will be required to comply with the 40 dBμV/m field strength limit for 700 MHz licensees set forth in the Commission's rules. Geographic areas to be made available for relicensing must include a contiguous area of at least 50 square miles, and areas smaller than that will be retained by the licensee. Licensees should include and identify such areas in the maps representing their service area. As with all other 700 MHz construction notifications, licensees are required to submit shapefiles, PDF maps, and technical narratives supporting their coverage demonstrations. As demonstrated in Figure 1 below, a licensee's shapefile map reflecting their service area must clearly reflect the market boundary and the areas served, and identify the unserved areas less than 50 square miles that the licensee is retaining.

Figure 1: Service Area Demonstration



15. One commenter asks the Bureau to consider a ''county-based approach,'' under which licensees that serve over 50% of the geography of a county would retain the entire county; licensees that cover 50% or less of a county, in contrast, would have their license area reduced so as to no longer include that county. This commenter argues that this approach would make spectrum available for relicensing in a more efficient manner and that, since most license authorizations are based on county boundaries, county-based areas would conform more easily to the boundaries of licensees' other spectrum assets. It further argues that allowing licensees to define license areas would be burdensome and could lead to inaccurate results. Three other commenters opposing the county-based

[5] Smooth contour methodology is permissible but not required. The Commission observes, however, that if a licensee's coverage demonstration contains a large number of non-contiguous, small areas (*e.g.,* the scattering of green dots in Figure 1), the revised license will have a large number of license boundaries—one around each non-contiguous area. At each of these boundaries, the licensee must observe the 40 dBμV/m field strength limit. Given that compliance with the field strength limit along a large number of these non-contiguous boundaries may be difficult to achieve, such licensees may want to opt for a smooth contour methodology, or other methodology that minimizes non-contiguous boundaries yet accurately depicts areas of coverage in which they provide service.

approach argue that it runs counter to the purpose of the KWYS rules, as it would require licensees serving up to 50% of a county to cease providing service in those areas, while allowing other licensees to retain an entire county even where there were unserved areas in the county, thus leaving potentially large portions of unserved areas unavailable for relicensing.

16. The Commission rejects the county-based approach. Implementing this approach would require a rule change, which is beyond the scope of the authority delegated to the Bureau in the *700 MHz Second Report and Order.* It also would be contrary to the underlying purpose of the KWYS rules. In other words, rather than fulfilling the purpose of the rules to allow failing licensees to keep the areas that they serve and make any unserved areas available for relicensing, a county-based determination of coverage would terminate the authorizations of certain licensees in areas where they actually are providing service, while allowing other licensees to retain up to half a county of unserved area.

2. Bureau Review

17. As noted above, the Commission will allow licensees to demonstrate coverage based on their actual service in each geographic license area. A licensee must submit a coverage showing that reflects its actual service to the public, based on the methodology it deems to best represent the areas in which the public receives its actual service.

18. As the Commission also stated above, demonstrations of service area should reflect the signal level that the licensee has previously represented as service to its customers (*e.g.,* in advertised coverage materials) and the Bureau (*e.g.,* in construction notifications), and licensees should be prepared to defend the methodology used. The Commission cautions licensees that the Bureau will look critically at demonstrations that deviate from the metrics used in the licensee's interim construction notification or represented to its customers, especially showings that materially reduce the signal level at the boundary such that the demonstration might artificially inflate the licensee's service area.

19. While the Commission recognizes that license boundaries will not be uniform (*see* Figure 1),[6] it warns licensees against including areas where no real service is provided that are merely figments of topography (*e.g.,* areas of high elevation distanced from and not part of areas where actual service is provided). Even though the reduced license boundaries will be non-uniform, applicants participating in the relicensing process can apply for adjacent unserved areas and take advantage of the flexibility in the Commission's power and secondary markets rules to coordinate and cooperate with neighboring licensees.

20. The Commission again reminds licensees that have not met their construction and service requirements that the service area demonstration, if approved, ultimately will establish the licensees' new license boundary. At the boundary, licensees will be required to comply with the 40 dBμV/m field strength limit for 700 MHz licensees set forth in the Commission's rules. Licensees must file demonstrations of service area using map and file formats similar to those required for construction notifications.

21. For these licensees, following the 30-day public notice period and after review of each KWYS filing and any related comments, if the Bureau agrees with the licensee's depiction of areas to be retained, it will accept the licensee's construction notification. The Bureau will also update ULS using the licensee's service area demonstration to reflect the reduced license area. The remaining portion of the original license market will be deemed unserved area and will return to the Commission's inventory for relicensing.

22. The Commission notes that the Bureau will have the opportunity to assess the success of this approach when it is implemented for the first group of licenses subject to KWYS. The Commission will monitor the results of the finalized process described above and will consider adjusting the methodology for future iterations of KWYS should the current approach prove to be cumbersome, inefficient, or ineffective.

D. Identifying Unserved Areas

23. Information about the available unserved areas will be publicly available. The Bureau will use the shapefiles submitted by failing licensees to determine the unserved areas of each market. The Bureau will then compile those unserved portions together as areas that will be available for relicensing and will provide instructions on how to access that information by public notice. The Bureau will provide applicants with access to a publicly available map displaying the areas available for relicensing, which they can view, download, and use to determine the areas for which they may wish to seek a license. The public notice announcing the unserved areas available for relicensing will also provide further instructions and specific dates for the commencement of the relicensing process. In setting these dates, the Bureau will provide at least 60 days before the commencement of relicensing to enable potential applicants to conduct all manner of due diligence, including evaluating sites and technical requirements, *e.g.,* site acquisition or lease, existing infrastructure, neighboring operations, and network and backhaul needs. These inquiries are particularly important, given the requirements of licensees described in Section IIV.

III. Phased Relicensing Process

24. Pursuant to the Commission's rules, relicensing of unserved areas will occur through a two-phase application process, beginning with a 30-day Phase 1 filing window, followed by a Phase 2 rolling window for applications. Applications for available unserved areas must be filed via ULS, and applicants must submit a shapefile describing the areas for which they seek a license.

A. Applications

25. In the interest of administrative clarity and functionality, the Commission proposed to limit the shapefiles attached to applications for unserved areas to include a single shape covering one contiguous area; if an applicant sought non-contiguous areas to be authorized under the same license, the Commission proposed requiring that the shapes be within a single market boundary.[7] The Commission also proposed that, if an applicant files for non-contiguous shapes in a single application, grant of the application would result in a single license and a single buildout requirement that would be applied to all shapes as a whole. Consequently, failure to meet the buildout requirement with respect to one non-contiguous shape would result in the imposition of the penalty for buildout failure on all shapes covered by the license.

26. Only one commenter addressed the Commission's proposals concerning the processing of applications. It requests that applicants be permitted to list all the unserved areas for which

[6] The maps and service area demonstrations presented in the Figures of this document are for illustrative purposes only. Any such maps or demonstrations contained in a given application must accurately reflect the unique characteristics of each applicant's specific demonstration or request.

[7] For example, a non-contiguous shapefile for A-Block areas must be contained within one Economic Area (EA); a non-contiguous shapefile for B-Block areas must be contained within one Cellular Market Area (CMA).

they seek a license within a single application to avoid the need to file multiple applications for each unserved area. Second, ''rather than relying only on a map to indicate areas available for relicensing, this commenter suggests that the Bureau also provide a 'drop-down list' of unserved areas that an interested party may select from when submitting its application.'' One other commenter supported both suggested changes in its reply.

27. Consistent with the Commission's initial proposal, licenses issued through the relicensing process may cover unserved area that crosses market boundaries, as long as the license area is a single contiguous shape; if an applicant seeks a single license for multiple non-contiguous areas, those non-contiguous areas must fall within a single FCC-defined market boundary for the appropriate channel block. The Commission will modify the ULS system, however, so that applicants may file requests for multiple licenses within a single application form.[8] Under this process, the number of shapefiles uploaded within a single application form will dictate the number of licenses that will be issued, if the application is granted. For example, if an applicant wishes to apply for multiple areas to be authorized under separate licenses, it may do so within a single application form by uploading separate shapefiles, each covering the area(s) for which it seeks an individual license. Grant of the application will result in separate licenses being issued for the area(s) covered by each shapefile and separate buildout requirements for each license. If an applicant seeks to apply for multiple non-contiguous areas within a single market boundary to be authorized under a single license, it may do so by uploading to its application a single shapefile that includes each of those areas. Grant of the application will result in a single license and a single buildout requirement, which will apply to all the non-contiguous areas as a whole. A request for such a license could be combined in the same application form with requests for other licenses—whether covering another set of non-contiguous areas within a single market boundary, or covering one contiguous area—in which case each additional shapefile uploaded to the application form would result in an additional license.

[8] ULS purpose code NE (New). This functionality will not apply to license modifications—ULS purpose code MD (Modification)—as applications to expand into unserved areas adjacent to an existing license require separate processing through an individual license modification application.

28. While the Commission is taking several steps to make the relicensing process efficient and easy to use, it rejects the suggested ''drop-down list'' of available unserved areas. In the 700 MHz relicensing context, available unserved areas will be determined based on the non-uniform, potentially scattered service areas of failing licensees, which will be constantly changing as unserved areas are returned to the Commission's inventory. Moreover, applicants are free to apply to serve as much or as little available unserved area as they choose. Instead, the Commission provides greater flexibility for applicants to choose whatever portions of available unserved areas they wish to serve at that time rather than limiting applicant's choices to a pre-defined ''drop-down list.'' Therefore, the Commission will allow applicants to select from the available unserved areas by uploading a shapefile covering the area(s) for which they seek a license.

29. Parties must file applications for available unserved areas via ULS by submitting a shapefile describing the area for which they seek a license. Applicants can download the publicly available map displaying the available unserved areas and use the file to create the shapefiles to be included in their application. Acceptable shapefiles include all GIS Map File types, including XML, KML, KMZ, and Shape(zip). Subject to the restrictions of Phase 1 and other relicensing rules described below, applicants may apply for any sized area or number of available areas they choose. For instance, while only unserved areas that are at least 50 square miles will be returned to the Commission for relicensing, there is no minimum size requirement for applications to license available unserved areas. Given the stringent construction benchmarks for relicensed areas and the penalty for failure, described in Section IIV, it is particularly important that potential participants in the relicensing process perform due diligence to determine the areas to which they will be able to provide service, including inquiries about site acquisition or lease, existing infrastructure, neighboring operations, and network and backhaul needs. Applicants should only apply for portions of available unserved areas that accurately reflect their predicted service area based on precise engineering and projected signal propagation specific to the area.

30. As with other processes for the licensing of spectrum, at the application stage applicants will not be required to, and should not, file any technical specifications of the services they intend to provide. If an applicant submits any technical specifications or other information not required in the application, the Bureau will not review such information, and the Bureau's acceptance of an application that includes such information is not an acceptance of those technical specifications. Such filings with technical specifications of the service provided will be reviewed when the licensee files its notification of construction, as discussed in Section IIV.

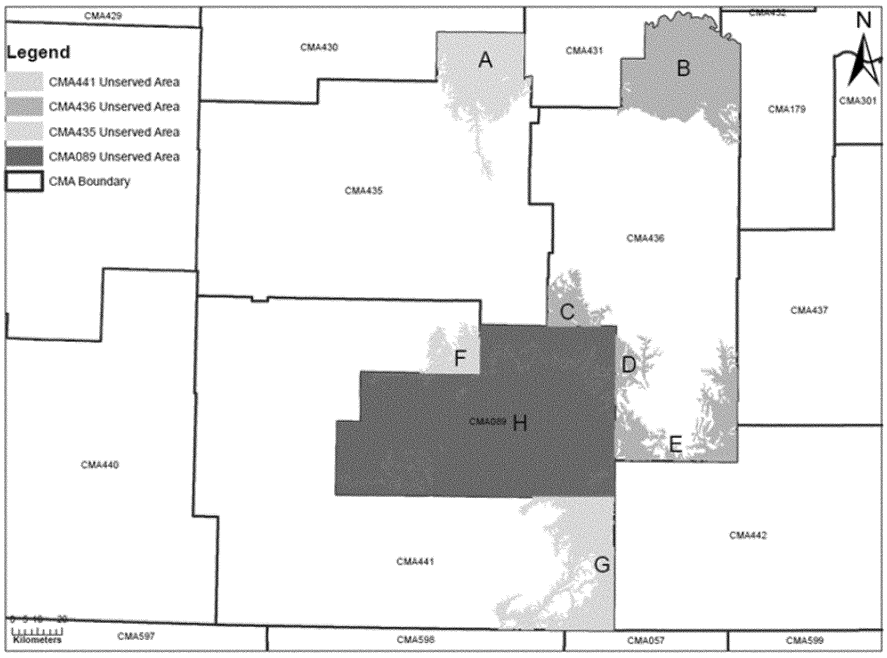
31. All applications for available unserved areas found acceptable for filing (including the shapefile) will be placed on public notice, and the applications will be available for public review and comment. Because the shapefile contains the primary substantive information for which public notice is provided, *i.e.,* details about the scope of the requested license area sufficient to determine whether the license application is mutually exclusive with another application, we do not anticipate a likely scenario in which confidential treatment of a shapefile would be warranted.

32. *Form of Application.* Applicants will file an application for either one or more new licenses or to modify an existing license. To file an application for a new license for available unserved area, applicants will select the ULS purpose code NE (New). Alternatively, modifications may be used where an applicant is an existing 700 MHz licensee of area adjacent to available unserved areas and wishes to expand the existing license area to contiguously cover a portion of that adjacent unserved area in the same frequency band. Licensees wishing to modify an existing license in such a manner will select the ULS purpose code MD (Modification). While unserved areas acquired as a new license will have a ten-year license term, the effect of requesting a modification of an existing license would be to include the same expiration date as the original license being modified. However, please note that the same construction requirements will apply, regardless of whether the area is acquired as a new license or a license modification.

33. *Permissible Area(s) under Single License.* A license issued through the relicensing process may cover unserved area that crosses market boundaries, as long as the license area is a single contiguous shape. If an applicant seeks a single license for multiple non-contiguous areas, those non-contiguous areas must fall within a single market boundary (*see* Figure 2). With the

exception of applicants filing license modifications during the first round of relicensing,[9] if a licensee wishes to modify an existing license to add available unserved area(s), it may do so as long as the area(s) are adjacent to the area of the existing license (*see* Figure 2).

Figure 2: Permissible Applications



34. In Figure 2 above, the areas labeled as A through H represent unserved areas in various adjacent Cellular Market Areas (CMAs). An applicant could file for F, H, and D to be authorized under a single license, even though those areas cross multiple CMA boundaries, because they are all contiguous with each other. An applicant could also file for B, C, D, and E to be authorized under a single license, even though the areas are non-contiguous, because the non-contiguous areas fall within the same CMA. An applicant could not, however, apply for A and B to be authorized under a single license, because the areas are non-contiguous *and* are in different CMAs. Multiple licenses would be required to offer service in these areas.

35. Now suppose that in Figure 2 above, the area marked H represents an existing license for the entire market area of CMA089, which is adjacent to market areas containing the available unserved areas labeled A through G. If the licensee in CMA089 wanted to modify its license to add available unserved areas, it could do so with areas C, D, E, F, and G, because they are all contiguous to the existing license. However, the licensee in CMA089 could not modify its license to add areas A or B, because they are not contiguous to the existing license and are not within the same market area as the existing license. Provision of service in areas A or B would require a new license.

36. *Applying for Multiple Licenses on a Single Application Form.* Applicants seeking new licenses will have the flexibility to file requests for multiple licenses on a single application form. Under this process, the number of shapefiles uploaded within a single application form will dictate the number of licenses that will be issued if the application is granted. For example, if an applicant wishes to apply for multiple contiguous or non-contiguous areas to be authorized under separate licenses, it may do so within a single application form by uploading separate shapefiles, each covering the areas for which it seeks an individual license; grant of the application would result in separate licenses for the areas covered by each shapefile and an individual buildout requirement for each license. If an applicant seeks to apply for multiple non-contiguous areas to be authorized under a single license, it may do so (as long as the areas are within a single market boundary) by uploading to its application a single shapefile that includes all of those areas. Grant of the application would result in a single license and a single buildout requirement would apply to all shapes as a whole. A request for such a license could be combined on the same application form with requests for other licenses—whether covering another set of non-contiguous areas within a single market boundary or covering one contiguous area—in which case each additional shapefile uploaded to the application form would result in an additional license. This functionality will not apply to license modifications, however, because applications to expand into unserved areas adjacent to an existing license require processing through an individual license modification application.

37. *Error Codes.* When an applicant uploads a shapefile in an application for

[9] Due to pending changes to ULS necessary for the processing of such applications, applicants during the first round of relicensing (*i.e.,* relicensing of unserved areas returned to the Commission's inventory as a result of failure to satisfy the June 13, 2017 construction deadline) will not have the ability to modify an existing license to add available unserved areas in an adjacent market. However, the Commission anticipates that the necessary system changes will be completed in time to process such applications during the next round of relicensing unserved areas resulting from any failures in 2019 or thereafter.

unserved area that does not conform to the requirements for shapefile filing format, the system will display an error code. The table in Figure 3 below provides an explanation of each error code and how it can be resolved.

FIGURE 3—ERROR CODES

Error code	Description of error/solution
Invalid Spectrum	The radio frequency data attribute does not match the selected radio service code or is not in the proper form. For example, the frequencies listed for the Lower B Block should appear as: 000704.00000000–000710.00000000, 000734.00000000–000740.00000000.
Invalid Market	(For Modifications Only) The Market Area Code listed in the shapefile data attributes does not match the Market Area Code for the license being modified.
Invalid Channel Block	(For Modifications Only) The channel block reflected in the shapefile data attributes does not match the channel block of the license being modified.
Missing Shapefile Attribute	The shapefile does not include all the required data attributes.
Please Upload at least one 700 MHz Relicensed Area Shapefile.	No shapefile has been uploaded.
Invalid Radio Service Code	The radio service code reflected in the shapefile data attributes does not match the Radio Service Code selected by the applicant at the beginning of the application.
Invalid Channel Block for Radio Service.	The channel block reflected in the shapefile data attributes does not match the Radio Service Code selected by the applicant at the beginning of the application.

38. *Ownership Certification.* Section 27.14 bars the original licensee of available unserved areas, whose authorization to serve that area terminated due to failure to meet the end-of-term construction benchmark, from applying to relicense that area during Phase 1. The section also permanently bars licensees of areas acquired through the relicensing process from applying to serve that area at any future date if they fail to satisfy the one-year 100% construction requirement.

39. In order to implement § 27.14(j)'s requirements, the Commission proposed to apply the prohibition to any applicant that has any interest or ownership in, or any control of, the original licensee and to any applicant in which the original licensee has any interest, ownership, or control. The Commission sought comment on requiring applicants to make certain certifications regarding the applicant's relationship to any barred parties in each application for unserved area (Ownership Certification).[10] Alternatively, the Commission sought comment on using a standard similar to the one the Commission uses in evaluating *pro forma* transfers of control, which considers both *de jure* and *de facto* control of the licensee, and the Commission asked whether such a standard might be more appropriate than the proposed bright-line test for ownership.

40. All commenters addressing this issue favored the alternate proposal, which would apply the bar based on *de jure* or *de facto* control. One commenter argues that barring parties with any interest in a barred party, as proposed, might go too far, and that such a bright-line rule ''could inadvertently exclude parties that were not in control of the initial 700 MHz licensee that failed to provide service.'' Instead, this commenter argues that determining ownership based on *de jure* and *de facto* control will allow the Bureau more effectively and precisely to bar the correct parties. Another commenter asks the Bureau to ''take an expansive view of this bar,'' and apply the bar to any parties that ''have had a management agreement, lease arrangement, or similar interests in the licensee.'' [11]

41. The Commission concludes, based on the record, that its alternative proposal of using *de jure* and *de facto* standards of control will best serve its goals of encouraging licensees to satisfy their construction requirements while providing others with the opportunity to serve areas that remain unconstructed, and ensuring that the appropriate entities are barred from filing pursuant to Commission rule § 27.14. The Commission's initial proposal was designed to provide an easily administered bright-line test to prevent potential gaming of the relicensing process. After review of the record, the Commission recognizes that such a broad standard may inadvertently exclude entities that do not have a significant connection, in terms of ownership or control, with the barred licensee to be indicative of the applicant's future actions. It is the Commission's predictive judgement that using a *de jure* and *de facto* standard of control approach strikes a balance that will help to promote a larger and more diverse pool of applicants—particularly given the Commission's goal of promoting prompt provision of service through adoption of a one-year construction period for relicensed areas. In light of this balance, the Commission does not agree with the commenter suggesting that the existence of management agreements or lease arrangements with a barred entity should be sufficient to bar an applicant in all cases. However, the Commission finds that the fact-specific, case-by-case nature of the *de jure* and *de facto* control standard will provide the Commission the flexibility to consider that nature of various business relationships between parties to determine whether a party is barred from filing under § 27.14.[12] The Commission therefore makes modifications to its proposed Ownership Certification as described below to implement the rule § 27.14 bar applicable to: (1) Temporarily during Phase 1 to licensees that failed to satisfy their initial term construction requirements (Original Licensee), and (2) permanently to licensees of relicensed area that fail to satisfy the construction requirements (Relicensed Area Licensee).

42. The Commission defines ''Original Licensee'' or ''Relicensed Area Licensee'' to include any entities or individuals that have either *de jure* or

[10] While the Commission did not use the defined term ''Ownership Certification'' in the *700 MHz Relicensing Comment PN,* the Commission does here to clarify that the Ownership Certification includes all the statements that will be required for applicants to certify to in order to determine which applicants are barred, as described in this section.

[11] While the commenter asserts that this ''expansive view'' is supported by the factors listed in the Commission's designated entity rule, those rules only include *present* management agreements, not past management agreements or past or present lease arrangements.

[12] While lease arrangements and management agreements are relevant considerations, they are not per se evidence of *de facto* control. Rather, the existence of such an agreement is one of many factors that may together or independently, depending on the factual circumstances, create a controlling interest.

de facto of the party that failed to satisfy the construction requirement, and any entities in which the party that failed to satisfy the construction requirement has either *de jure* or *de facto* control. A would-be applicant will be barred from applying to serve available unserved areas if any entity or individual that had or has *de jure* or *de facto* control of the Original Licensee or Relicensed Area Licensee also has *de jure* or *de facto* control of the applicant, the applicant has either *de jure* or *de facto* control of the Original Licensee or Relicensed Area Licensee, or if the Original Licensee or Relicensed Area Licensee has *de jure* or *de facto* control of the applicant.

43. All applications for available unserved areas filed during both phases of relicensing must include as an attachment the Ownership Certification provided below. While applicants will not be required to file any supporting documentation with respect to the Ownership Certification, the Bureau may request such information at its discretion.

Ownership Certification: ''By filing this certification and the accompanying application for 700 MHz unserved area, the applicant hereby certifies that, pursuant to Section 27.14(j)(1) and (3) of the Commission's rules: (1) The applicant is not the Original Licensee or Relicensed Area Licensee that is barred from applying to serve the area during the current phase of relicensing; (2) the applicant does not at the time of filing, and did not at the time of the relevant construction deadline, have *de jure* or *de facto* control over the Original Licensee or Relicensed Area Licensee (including any entity or individual that had or has *de jure* or *de facto* control of such entity) of the unserved area; and (3) the Original Licensee or Relicensed Area Licensee of the unserved area does not at the time of filing, and did not at the time of the relevant construction deadline, have *de jure* or *de facto* control of the applicant.'' [13]

B. Tribal Priority

44. One commenter asks the Bureau to create a ''Tribal Priority'' for the relicensing process. Under its proposal, qualifying Tribal entities would notify the Bureau of ''proposed Tribal Lands they wish to serve and, after notice and comment, such lands would be removed from the areas available for relicensing.'' This commenter asks for several amendments to the Commission's part 27 rules to implement its proposal. It also asks the Commission to delay the commencement of the relicensing process, as well as to modify and extend our construction obligations for qualifying Tribal entities.

45. The Commission did not adopt any type of priority for Tribal entities when it established the KWYS rules and relicensing process in the *700 MHz Second Report and Order.*[14] Moreover, the Bureau did not make any proposals relating to a Tribal Priority in the *700 MHz Relicensing Comment PN.* Accordingly, the Commission finds these requests are beyond the scope of the authority delegated to the Bureau in this context and that its comments are outside the scope of the public notice seeking comment on specific aspects for implementing that process. The Commission therefore takes no substantive action in response to those requests, and they will not be considered further in connection with the Bureau's implementation of this relicensing process.[15]

C. Phase 1 of Relicensing

46. *Filing Window.* Relicensing will begin with a 30-day Phase 1 filing window. At least 60 days before the commencement of the relicensing process, the Bureau will issue a public notice announcing the available unserved areas and the relevant dates on which the Phase 1 filing window will start and end. During this Phase 1 filing window, the original licensee of available unserved areas, whose authorization to serve that area terminated due to failure to meet the end-of-term construction benchmark, is barred from applying to relicense that area. This Phase 1 bar is specific to each unserved area, and therefore an applicant that is barred from applying for one unserved area during Phase 1 is not barred from applying for other available areas for which it was not the original licensee. All applications received during the Phase 1 filing window for a particular unserved area are treated as contemporaneous for the purposes of mutual exclusivity. At the end of the 30-day Phase 1 filing window, the Bureau will issue a public notice listing applications found acceptable for filing during Phase 1, and identifying which acceptable applications, if any, are mutually exclusive. No further applications that are mutually exclusive of a pending Phase 1 application may be filed after the 30-day Phase 1 filing window has ended, but licensees and third parties may file petitions to deny any pending applications within 30 days of the release of the public notice listing Phase 1 applications found acceptable for filing.

47. *Mutual Exclusivity.* Applications will be deemed mutually exclusive if they propose areas overlapping with other applications. As proposed, this definition of mutually exclusive applications includes ''daisy chains'' of mutual exclusivity, *see* Figure 7, which occur when two or more applications contain proposed areas that do not directly overlap, but are linked together into a chain by the overlapping proposals of others. Mutually exclusive applications are subject to auction and the Bureau will provide a limited settlement period for the applicants to resolve the mutual exclusivity prior to auction. Subject to the Greenmail Rule, applicants may resolve mutual exclusivity by withdrawing or filing a minor amendment to one or both mutually exclusive applications.

48. *Settlement.* Pursuant to the Communications Act and the Commission's rules, mutually exclusive applications are subject to auction. The Commission delegated authority to the Bureau to designate a limited settlement period for the applicants to resolve the mutual exclusivity prior to auction. In the *700 MHz Relicensing Comment PN,* the Commission proposed that Phase 1 applicants would be permitted to resolve their mutually exclusive applications during a 30-day period that follows the close of the Phase 1 filing window.

49. One commenter asks the Bureau to ''provide additional time for settlement discussions following the Phase 1 filing window,'' as the 30-day Phase 1 public notice period may be insufficient for the parties to negotiate and settle their mutually exclusive applications. No other parties filed comments in response to this request.

50. Given the complexity of resolving mutually exclusive applications in either Phase 1 or Phase 2,[16] the

[13] The Commission notes that, while it will require applicants to attach the Ownership Certification during both phases of relicensing, applicants are only certifying that they are not barred during the phase in which they are filing. For example, an applicant that would have been barred only during Phase 1 for a particular unserved area (*i.e.,* the original licensee of the unserved area or a related entity as defined by the certification) is not barred during Phase 2 and could make the necessary Ownership Certification stating that it is not a barred party.

[14] The Commission also notes that none of the interested parties commenting in that proceeding asked the Commission to consider the rule changes necessary to create a Tribal Priority for the relicensing process, nor did they file a petition for reconsideration of the *700 MHz Second Report and Order.*

[15] That said, the Commission's declining to take action here is without prejudice to any future request the commenter may choose to file with the full Commission to initiate further rulemaking action in these regards.

[16] In both Phase 1 and Phase 2, applicants must consider the likelihood of success at auction when compared to agreeing to reduce coverage in some way. Considerations of reducing coverage include meeting consumer demand in particular areas,

Continued

Commission provides applicants consistency by giving Phase 1 applicants the same settlement period that we proposed for Phase 2 applicants. Therefore, upon release of the public notice listing the applications found acceptable for filing during Phase 1, applicants will have 60 days to attempt to reach a settlement concerning the mutually exclusive applications. Any mutual exclusivity that is not resolved by the end of the 60-day period will subject the mutually exclusive applications to auction.

51. *Amendments.* Amendments to an application are considered either major amendments or minor amendments, depending on the circumstance. If one or both of the applicants agrees to reduce or ''pull back'' the area covered by the application to avoid mutual exclusivity, the change is deemed a minor amendment. Minor amendments do not materially alter the original applications and do not require a new public notice period. Such treatment, however, is not available when a modification to an application constitutes a major amendment. If the applicants' agreement would require that either application be modified to ''move'' the area applied for, such that it would include area that was not part of the area specified in the application as originally filed,[17] such a change would be deemed a major amendment. Because major amendments constitute new applications for unserved area, major amendments to Phase 1 applications after the 30-day Phase 1 filing window has ended are not permitted, and the underlying application may be dismissed unless the applicant withdraws the major amendment or adjusts the filing to represent only a minor amendment. At that point, the dismissed applicant could file a new application for a license covering the modified area, but such application, because it would be filed during Phase 2, would be subject to potential Phase 2 competing filings.

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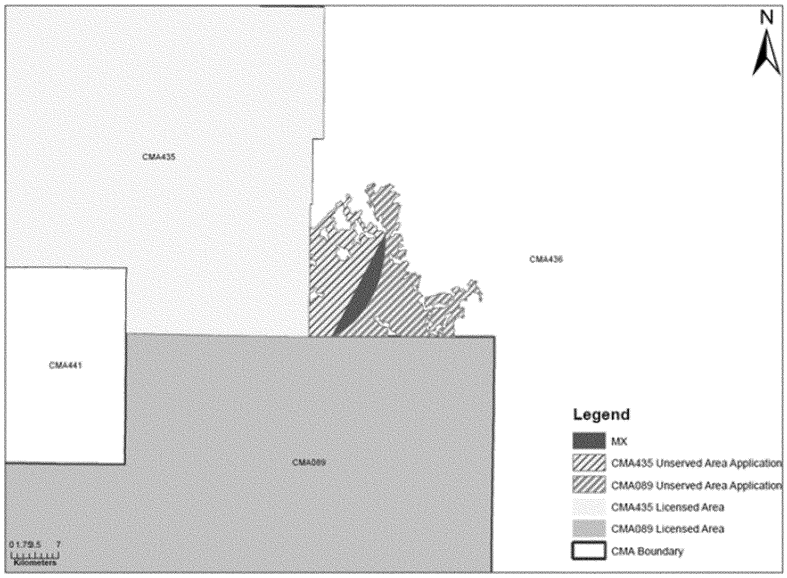
Figure 4: Mutual Exclusivity



whether other spectrum bands could be used to address these demands, whether sites can be economically re-engineered to reduce coverage as needed, etc.

[17] Such a modification could reflect an expansion of the originally requested area, or it could be the result of a substitution that maintains or reduces the net square mileage covered by the original request, but which describes an area that includes at least some geographic portion that was not requested in the application as originally filed.

Figure 5: Minor Amendment

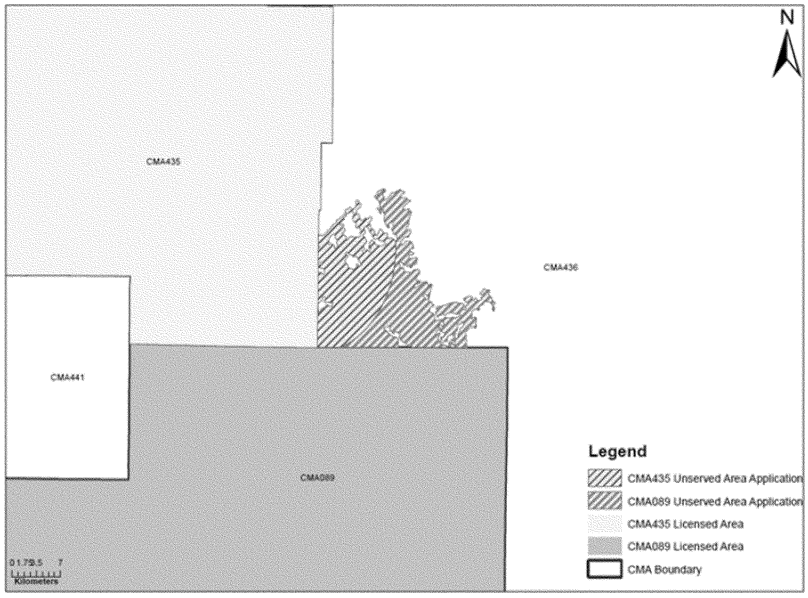


Figure 6: Major Amendment

52. Figure 4 above represents two existing licensees—one in CMA435 and one in CMA089—that have applied for available unserved areas adjacent to both existing licenses, in CMA436. Because the areas covered by the applications overlap, the applications are mutually exclusive. In Figure 5, the licensee in CMA089 has pulled back its application for unserved area to eliminate the overlapping area, thereby avoiding mutual exclusivity. Figure 5 reduces the area of the application and therefore represents a minor amendment. In contrast, in Figure 6, in addition to pulling back its application to eliminate the overlapping area, the licensee in CMA089 has also expanded its application to include additional available unserved area in CMA436. While the amendment in Figure 6 avoids mutual exclusivity, it adds unserved area that was not included in the application as originally filed, and therefore represents a major amendment. Such major amendments, if filed after the 30-day Phase 1 filing window has ended, are not permitted; therefore, the underlying application may be dismissed unless the applicant withdraws the major amendment or adjusts the filing to represent only a minor amendment.

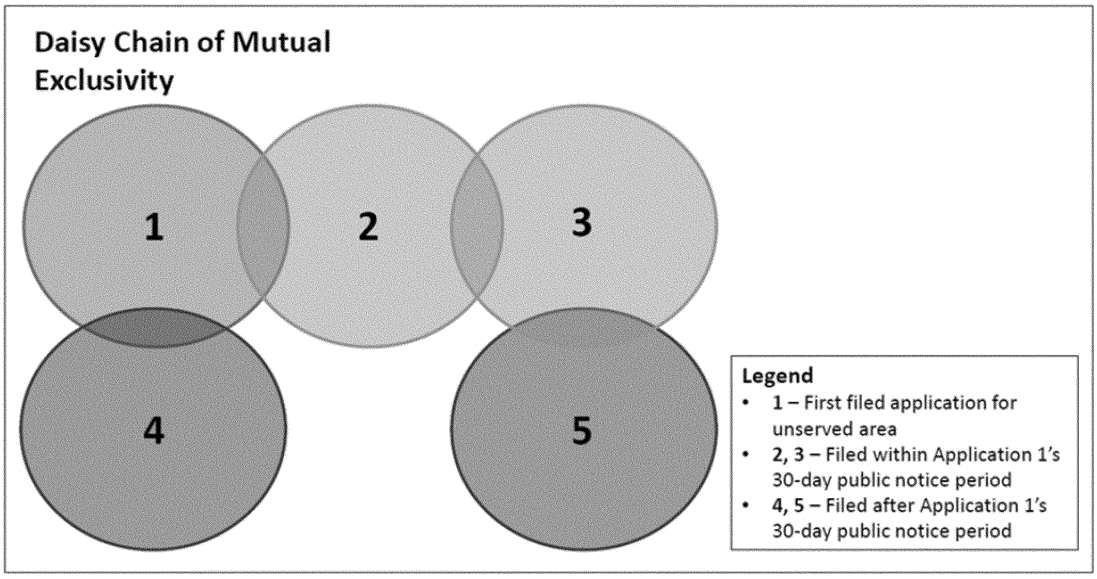
D. Phase 2 of Relicensing

53. Following Phase 1, the Bureau will issue a public notice that will (1) list applications found acceptable for filing during Phase 1, (2) direct interested parties to the publicly available information about the available unserved areas, and (3) announce the date on which the Bureau will begin accepting Phase 2 applications. The Bureau will update the publicly available relicensing map to reflect pending applications, licenses that were issued, and areas that remain available for relicensing.

54. During Phase 2, interested applicants, including those that were barred during Phase 1, may file applications on a rolling basis for available unserved areas that were not licensed during Phase 1 or for which there are no pending applications. However, licensees that have failed to satisfy the construction requirements for relicensed area are permanently barred from applying to serve that area at any future date, including during Phase 2. The Bureau will place each first-filed Phase 2 application deemed acceptable for filing on public notice for 30 days, during which interested applicants may file mutually exclusive applications subject to the guidelines in this document.

55. *Mutual Exclusivity.* As with Phase 1, Phase 2 applications will be deemed mutually exclusive if they propose areas overlapping with other applications. This definition of mutually exclusive applications includes ''daisy chains'' of mutual exclusivity, which occur when two or more applications contain proposed areas that do not directly overlap but are linked together in a chain by the overlapping proposal(s) of other(s), *see* Figure 7. The date of the public notice of the first-filed application in a given unserved area will establish the 30-day filing period for all subsequent applications that are mutually exclusive—whether directly or through a ''daisy chain'' relationship—with the first-filed application. The Bureau may dismiss any further mutually exclusive applications filed after this 30-day filing period, unless the applicant amends the application to avoid mutual exclusivity. Mutually exclusive applications are subject to auction and the Bureau may designate a limited settlement period for the applicants to resolve the mutual exclusivity prior to auction. Subject to the Greenmail Rule, applicants may resolve mutual exclusivity by withdrawing or filing a minor amendment to one or both mutually exclusive applications.

Figure 7: Daisy Chain of Mutual Exclusivity



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56. Figure 7 illustrates how applications that do not directly overlap with other applications may nevertheless be considered mutually exclusive through a daisy chain. In Figure 7, an applicant files Application 1 for available unserved area during Phase 2, which starts a 30-day public notice period during which third parties may file petitions to deny and applications that are mutually exclusive of Application 1. On day 10 of Application 1's public notice period, a party files Application 2, which is mutually exclusive of Application 1. On day 20 of Application 1's public notice period, another party files Application 3, which is mutually exclusive of Application 2, but not mutually exclusive of Application 1. Applications 1, 2, and 3 represent a daisy chain of mutual exclusivity and all three applicants would be required to reach a settlement to avoid an auction to resolve the conflicting applications. Applications 4 and 5 are filed on day 40, after the close of Application 1's public notice period. Unless Application 4 is amended to avoid mutual exclusivity, Application 4 may be dismissed because it is mutually exclusive of Application 1 and was filed after the close of Application 1's public notice period. Application 5 is mutually exclusive of Application 3 and may be dismissed unless amended to avoid mutual exclusivity, because it is part of the daisy chain of mutual exclusivity with Application 1 and was filed outside of the first-filed application's public notice period.

57. *Settlement.* As proposed, following a Phase 2 application's 30-day public notice period, if the Bureau determines there are existing applications that are mutually exclusive of the initial application, it will issue a public notice identifying the conflicting

applications and providing the parties with 60 days to resolve the mutual exclusivity. Any mutually exclusive applications that are not resolved by the end of the 60-day period are subject to auction.

58. *Amendments.* As with Phase 1, Phase 2 applicants may withdraw or amend their applications to avoid mutual exclusivity. In contrast to Phase 1, both major and minor amendments to Phase 2 applications are permitted, *see* Figures 4–6, and such amendments may be filed during the first-filed application's public notice period or the period for settlement of mutually exclusive applications described below. A major amendment to a pending application, however, will require a new public notice period during which the applicant would be subject to further mutually exclusive applications.

IV. Relicensed Area

A. Construction Requirement

59. Licensees of 700 MHz licenses acquired through the relicensing process will have one year from the date the new license is issued to complete construction, provide signal coverage, and offer service over 100% of the geographic area of the relicensed area. If the licensee fails to meet this construction requirement, its license will automatically terminate without Commission action and it will be ineligible to apply to provide service to that area at any future date. Unlike the KWYS rules, which provide that unserved area less than 50 square miles will be deemed ''served'' for purposes of determining a failing licensee's service area, the rules setting forth the construction requirements for relicensed area do not contain any provision for treating such smaller unserved portions of a licensee's service area as ''served.'' Rather, § 27.14(j)(3) states, without exception, that the failure of a licensee of relicensed area to complete its construction and provide signal coverage and offer service over 100% of the geographic area of the new license area will result in the automatic termination of the license. Therefore, any portion of the relicensed area that remains unserved at the one-year construction deadline—even if less than 50 square miles—will result in failure to satisfy this requirement and application of the penalty for failure.

1. Modifications

60. In the *700 MHz Relicensing Comment PN,* the Commission proposed that licensees would not be permitted to modify the license to reduce the licensed area before meeting the one-year construction benchmark, as this would effectively avoid the 100% geographic coverage requirement by reducing the area they must cover.

61. One commenter asks the Bureau to apply a *de minimis* standard to reductions in license area before the one-year construction benchmark and to permit license modifications as long as the modification does not result in a reduction of greater than 10% in the size of the licensed area. This commenter asserts that the ''vagaries of RF radiation'' make it difficult for a licensee to precisely duplicate its predicted coverage. The commenter argues that permitting 10% license reductions ''will balance the occasional need of a licensee to reduce the size of its coverage area by a *de minimis* amount to account for real world technical impediments against the Bureau's desire to deter manipulation of its relicensing process.'' None of the commenting parties filed in response to this request.

62. The Commission rejects this commenter's proposal, as it would permit a licensee to construct only 90% of the area originally authorized through relicensing without losing the license. Such a proposal is inconsistent with the 100% construction requirement that the Commission adopted and outside the scope of the Bureau's delegated authority. The Commission provided applicants with the flexibility to select whatever size of available unserved areas they choose, and applicants can take into account the variations in real world signal propagation when determining the area they seek to license.

63. Therefore, as proposed, the Commission will deem any modification to reduce the license area of a license acquired through the relicensing process as a failure to satisfy the 100% construction requirement. Such a failure will result in automatic termination of the license and a permanent bar on the licensee, including any entities that would be barred as a result of their relationship to the former licensee, from applying to serve that area at any future date.

2. Assignments

64. In the *700 MHz Relicensing Comment PN,* we proposed that licensees would be permitted to file applications to assign licenses acquired through relicensing (including requests to partition and disaggregate) only after they have demonstrated that they have met the construction benchmark. The Commission observed that, while the Bureau believes this procedure for assignment would best promote administrative efficiency, we would consider waivers for larger assignment transactions on a case-by-case basis.

65. One commenter objects to the Bureau's proposal to only allow assignment applications after a licensee has satisfied its construction requirement. It argues that the Bureau should permit such assignments ''so long as the successor entities are bound by the same 100% coverage requirement at the end of the one-year construction deadline.'' None of the commenting parties filed in response to this request.

66. The Commission agrees that this commenter's proposal would increase the flexibility of the Commission's proposed approach without creating unnecessary mutually exclusive applications filed against those of applicants that actually intend to serve those areas. In the *WRS Renewal Second Report and Order* (82 FR 41531, Sept. 1, 2017), the Commission adopted a requirement that parties to a partition or disaggregation agreement either: (1) Each certify that they will independently meet the construction requirements; or (2) agree to share the responsibility for satisfying the construction requirements.[18] Under the Commission's construction rules, however, in the case of a full assignment, only the assignee, not the assignor, is responsible for satisfying the one-year construction benchmark.

67. To provide the flexibility sought, while at the same time preventing potential gaming of the relicensing process, the Commission will permit assignment of relicensed area (including through partition or disaggregation) before satisfying the one-year construction benchmark subject to two restrictions.

68. First, the license may not be assigned to any parties that would have been barred, given their relationship to the assignor, from applying to serve the relicensed area during the phase of relicensing in which the assignor acquired it. For example, a party that would have been barred from applying during Phase 1 for a particular area could not acquire that area through assignment if the current licensee acquired it during Phase 1, but that

[18] *WRS Renewal Second Report and Order,* 2017 WL 3381028 at *23–28, paragraphs 74 through 89. The *WRS Renewal Second Report and Order* adopted a unified framework for construction, renewal, and service continuity rules for flexible-use geographic licenses in the Wireless Radio Services. While the rule the Commission adopted to address construction obligations resulting from partition and disaggregation—47 CFR 1.950—is pending approval from the Office of Management and Budget, the Commission anticipates this rule will take effect before commencement of the 700 MHz relicensing process.

same party could acquire it through assignment from a licensee who acquired it during Phase 2 (when the party would no longer have been barred from applying to serve the area). A party who is permanently barred from applying to serve an area due to failure to satisfy the construction requirements for relicensed area would be barred from acquiring that area through assignment in any case, irrespective of whether the current licensee acquired it during Phase 1 or 2.

69. Second, if the one-year construction benchmark is not satisfied with respect to the entire relicensed area, the penalty for failure, *i.e.,* automatic termination of the license and a permanent bar from serving that area at any future date, will apply to all parties to the transaction, including any entities that would be barred as a result of their relationship to either party to the transaction, regardless of whether the assignment is a full assignment, partition, or disaggregation.

Example 1: A, a licensee of relicensed area, assigns the entire license to B. B fails to satisfy the one-year 100% construction benchmark. The entire relicensed area, including any portion that B is serving, automatically terminates. Both A and B, including any entities that would be barred because of their relationship to A or B, are permanently barred from applying to serve that area at any future date.

Example 2: A, a licensee of relicensed area, partitions half of the license to B. B builds 100% of its half of the license by the one-year construction deadline, but A does not. The entire license area as originally licensed through the relicensing process, including any portion that A or B is serving, terminates automatically. Both A and B, including any entities that would be barred because of their relationship to A or B, are permanently barred from applying to serve the entire area as originally acquired through relicensing at any future date.

Example 3: A, a licensee of relicensed area, disaggregates half of its licensed spectrum to B. A and B must either individually or collectively offer services that provide combined coverage to 100% of the geographic area. Regardless of whether the licensees choose to meet the construction benchmark individually or collectively, if they fail to provide coverage to 100% of the geographic area as of the one-year deadline, both licenses will automatically terminate and both A and B, including any entities that would be barred as a result of their relationship to A or B, will be permanently barred from applying to serve that area at any future date.

70. By eliminating any potential secondary market for assignments to barred parties and holding the assignor, as well as the assignee, accountable for failure to satisfy the construction requirement, the Commission finds this approach will adequately discourage gaming and speculation during the relicensing process. The Commission will require assignment applications filed before the one-year construction benchmark to include the same Ownership Certification regarding non-barred status that applicants are required to file when applying for available unserved areas in the relicensing process.

3. Cancellation

71. In the *700 MHz Relicensing Comment PN,* the Commission proposed to treat any cancellation of a license before meeting the 100% coverage requirement as a failure to satisfy the performance obligations. No party objected to this proposal. The Commission adopts this proposal, based upon the rationale described in the public notice—namely, that it provides an incentive for rapid deployment of service on relicensed spectrum. Therefore, the Commission will deem the cancellation of a license before meeting the one-year construction benchmark as failure to satisfy the required performance obligations. Consequently, the cancelling licensee, including any entities that would be barred because of their relationship to the cancelling licensee, will be ineligible to apply to serve any portion of the cancelled license area at any future date.

B. Construction Showing

72. Licensees must demonstrate compliance with the one-year construction benchmark by filing a construction notification with the Commission no later than 15 days after the relevant deadline demonstrating that they have met the construction requirements. To implement this requirement, the Commission proposed that, at the one-year construction deadline, licensees would be required to demonstrate that they provide signal coverage and offer service to 100% of the geographic area by filing either a 40 dBμV/m smooth contour or an alternative smooth contour. No commenters responded directly to this proposal. Nonetheless, the Commission adjusts our final approach in light of the changes we made above to the required KWYS filing service area demonstration.

73. Accordingly, licensees must demonstrate compliance with the 100% geographic coverage requirement by filing a service area demonstration that reflects their actual service in the license area, based on the methodology the licensee deems to best represent the areas in which it provides an actual service. The Commission expects that licensees will have used due diligence and made necessary inquiries to ensure their ability to meet our 100% geographic coverage requirement before filing their application for unserved areas. Demonstrations of service area should reflect the signal strength that the licensee represents to its customers as service, and licensees should be prepared to defend the methodology used. The Commission cautions licensees that the Bureau will look critically at showings that materially reduce the signal level at the boundary such that the demonstration might artificially inflate the licensee's coverage area. While licensees are permitted to file construction demonstrations that reflect the signal levels they deem to represent the services they provide, those signal levels may not result in a field strength that exceeds 40 dBμV/m at the license boundary, as licensees of relicensed area will be bound by the same license boundary field strength limit applicable to all 700 MHz licensees. As with the KWYS showing, the Commission will require that construction demonstrations be filed using the map and filing formats described herein.

74. The Bureau places construction notifications on public notice and reviews each notification and any related comments before making a determination regarding the notification. Interested parties are permitted to file comments, which must be filed no later than 30 days after the public notice release date. After examining the construction notifications and public comments, the Bureau determines whether each licensee has made a sufficient showing to satisfy the one-year construction benchmark and retain its license.

75. If a licensee does not file either a request for extension of time before the construction deadline, or the required construction notification within 15 days after the construction deadline, as required by § 1.946 of the Commission's rules, the Commission presumes that the license has not been constructed, or the coverage requirement has not been met. As a result, the Bureau places such licenses in ''Termination Pending'' status and lists the license on the Weekly Termination Pending Public Notice. The Bureau also notifies the licensee by letter that, if it has met its construction requirement, it has 30 days from the date of that public notice to file a petition for reconsideration showing that it timely met the construction deadline. If the licensee does not file a petition for reconsideration within the 30-day reconsideration period showing timely construction, the Bureau updates its licensing records in ULS to show the

license as ''Terminated,'' effective as of the construction deadline. The license is also listed on a weekly public notice reflecting its status as changed to Terminated. The former licensee of the terminated license, including any entities that would be barred because of their relationship to the former licensee, will also be permanently barred from applying to serve the terminated license area at any future date.

C. Unserved Relicensed Area

76. If a licensee of relicensed area fails to satisfy the one-year 100% construction requirement, the entire relicensed area returns to the Commission's inventory for relicensing. Such area would enter relicensing via Phase 2 status, as there would be no applicable Phase 1 bar such that the 30-day Phase 1 filing window is necessary. Except for the barred parties and related entities, interested parties are permitted to begin filing applications to serve the area on the 30th day after the release of the public notice listing the license as terminated.

V. Procedural Matters

77. *Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) in connection with the *700 MHz Further Notice* [19] and a Final Regulatory Flexibility Analysis (FRFA) in connection with the *700 MHz Second Report and Order.*[20] While no commenter directly responded to the IRFA, the FRFA addressed concerns about the impact on small business of the KWYS rules. The IRFA and FRFA set forth the need for and objectives of the Commission's rules for the KWYS rules; the legal basis for those rules, a description and estimate of the number of small entities to which the rules apply; a description of projected reporting, recordkeeping, and other compliance requirements for small entities; steps taken to minimize the significant economic impact on small entities and significant alternatives considered; and a statement that there are no federal rules that may duplicate, overlap, or conflict with the rules. While the proposals in the *700 MHz Relicensing Comment PN* did not change any of those descriptions, the Commission sought comment on whether the implementation of our proposals might affect either the IRFA or the FRFA. No comments were filed in response to the *700 MHz Relicensing Comment PN* with respect to potential impacts on the IRFA or the FRFA, and the Commission concluded that the implementation of its proposals herein has had no further impact beyond that identified in the IRFA and FRFA.

78. *Paperwork Reduction Act.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

79. *Congressional Review Act.* The Commission will send a copy of this Public Notice to Congress and the Government Accountability office, pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

80. This document shall become effective thirty (30) days after the date of publication in the **Federal Register**.

VI. Authority

81. Action taken under delegated authority pursuant to §§ 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, 0.331, and *Service Rules for 698–746, 747–762, and 777–792 MHz Bands et al.,* Second Report and Order, 22 FCC Rcd 15289 (2007).

By the Chief, Mobility Division, Wireless Telecommunications Bureau.

Federal Communications Commission.

Katherine Harris,

Deputy Chief, Mobility Division, Wireless Telecommunications Bureau.

[FR Doc. 2019–04055 Filed 3–7–19; 8:45 am]

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[19] *Service Rules for 698–746, 747–762, and 777–792 MHz Bands et al.,* Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064, 8212 (2007) (*700 MHz Further Notice*).

[20] *700 MHz Second Report and Order,* 22 FCC Rcd at 15542.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 13–24 and 03–123; FCC 19–11]

IP CTS Improvements and Program Management

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) expands the telecommunications relay service (TRS) User Registration Database (Database) that the Commission created for the video relay service (VRS) program to encompass internet Protocol Captioned Telephone Service (IP CTS). Including IP CTS user registration information in the Database will help the program verify the identity of IP CTS users, audit and review IP CTS provider practices, substantiate provider compensation requests, and improve program management.

DATES:

Effective Date: These rules are effective April 8, 2019.

Compliance Date: Compliance will not be required for § 64.611(j)(2) and §§ 64.615(a)(3) and (a)(5) of the Commission's rules until after approval by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing that compliance date.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Consumer and Governmental Affairs Bureau, at (202) 418–1264, or email *Michael.Scott@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Misuse of internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order, document FCC 19–11, adopted on February 14, 2019, released on February 15, 2019, in CG Docket Nos. 03–123 and 13–24. The Commission previously sought comment on these issues in *Misuse of internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Difficulties,* published at 78 FR 54201, September 3, 2013 (*2013 IP CTS Reform FNPRM*). A Further Notice of Proposed Rulemaking (Further Notice) is contained in document FCC 19–11 and addresses additional issues concerning account identifiers, service for new users, and simplification of 911 call-handling for some forms of IP CTS. The Further Notice will be published elsewhere in the **Federal Register**. The full text of document FCC 19–11 will be available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS), and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files,