

**Volume 38, No. 1, Pages 1 to 974,  
January 2 – January 28, 2023**

# **FCC Record**

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**A comprehensive compilation of decisions,  
reports, public notices and other documents  
of the Federal Communications Commission  
of the United States.**

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# **FCC Record**

**Volume 38, No. 1, Pages 1 to 974, January 2 – January 28, 2023**



# FEDERAL COMMUNICATIONS COMMISSION

Jessica Rosenworcel, Chairwoman  
Brendan Carr  
Geoffrey Starks  
Nathan Simington

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The appropriate citation for documents printed in the FCC Record should include the volume number, page number, and year. See 47 C.F.R. Section 1.14. Earlier Commission documents may continue to be cited to the FCC Reports.

**Citation Form: 38 FCC Rcd 1 (2023)**

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Federal Communications Commission  
Washington, D.C. 20554

November 21, 2022

DA 22-1217

WC Docket No. 18-213

VIA E-MAIL

Sean Whiteley-Ross  
Chief Financial Officer  
OCHIN, Inc.  
PO Box 5426  
Portland, OR 97228

Dear Mr. Whiteley-Ross,

The Federal Communications Commission received OCHIN, Inc.'s November 10, 2022 notice of withdrawal from the Connected Care Pilot Program. By this letter, we confirm OCHIN, Inc.'s withdrawal from the Program. If there are any questions regarding this withdrawal confirmation, please contact [ConnectedCare@fcc.gov](mailto:ConnectedCare@fcc.gov). Thank you for your interest in the Connected Care Pilot Program.

Sincerely,

/s/ Jodie Griffin  
Jodie Griffin  
Chief, Telecommunications Access Policy  
Division  
Wireline Competition Bureau

Attachment



*A driving force for health equity*

November 10, 2022

Jodie Griffin  
Division Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
45 L Street NE, Washington, DC 20554

Re: Connected Care Pilot Program Application No. CCP20200000030

Dear Chief Griffin,

As the Chief Financial Officer at OCHIN, Inc. I am writing this letter to formally withdraw my organization's pilot project from the Connected Care Pilot Program.

I thank the Commission for its ongoing partnership with OCHIN and our consortia of participating health centers across the United States. The FCC has been instrumental in partnering with us to connect rural health care providers with subsidized medical-grade broadband service through the [Healthcare Connect Fund Program](#), and providing community health centers across the country with telehealth technologies that connect underserved communities to health care in the wake of a global pandemic through the [COVID-19 Telehealth Program](#).

As you know, in January 2021, the Commission also selected OCHIN to administer up to \$5.8 million on behalf of a consortium of members to directly subsidize internet services to patient homes in Ohio, Oregon, and Washington states through the [Connected Care Pilot Program](#). Following a period of analysis and discussion with your attorney advisory team, we have made the hard decision to withdraw from the program. Despite both OCHIN and the FCC's desire and efforts to find a workable solution, unfortunately we are not able to move the project forward.

This program was authorized during the worst of the pandemic, and community health care has since pivoted. Health care institutions have changed drastically to accommodate today's reality, with precious provider capacity directed to preserving patient access in a contracting economy. Accordingly, OCHIN's anchor health care providers have encountered operational barriers and limited capacity to implement this pilot project according to the Connected Care Pilot Program's complex requirements.

On OCHIN's behalf I express our sincere gratitude for the Commission's selection of our pilot project. We continue to be committed to advancing the critical digital equity work of FCC programs through our long-standing consortia efforts. We look forward to sharing our learnings in supporting rural, tribal, frontier, and safety net providers and continuing our successful partnership with the FCC. If we can ever be of assistance, please do not hesitate to reach out to me.

Respectfully,

DocuSigned by:  
A handwritten signature in black ink that reads "Sean Whiteley-Ross".  
66756E66A0E645D...

Chief Financial Officer



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
TTY: 1-888-835-5322

DA 23-1

Released: January 3, 2023

## PUBLIC SAFETY AND HOMELAND SECURITY BUREAU OPENS THE EAS TEST REPORTING SYSTEM FOR FILINGS

### PS Docket No. 15-94

The Public Safety and Homeland Security Bureau (Bureau) provides notice that the EAS Test Reporting System (ETRS) is now available to accept Form One filings. As stated in the Bureau's recently released Public Notice, EAS Participants must file their ETRS Form One on or before February 28, 2023.<sup>1</sup> Pursuant to Section 11.61 of the Commission's rules, EAS Participants must renew their identifying information required by ETRS Form One on a yearly basis.<sup>2</sup>

#### I. FILING INFORMATION

##### A. ETRS Login and Weblinks

Filers can access ETRS by visiting the ETRS page of the Commission's website at <https://www.fcc.gov/general/eas-test-reporting-system>.<sup>3</sup> Filers must use their registered FCC Username (Username) that is associated with the FCC Registration Numbers (FRNs) for which they will file. Filers that have already created a Username for use with another FCC system may access the ETRS with that Username. Filers that do not remember the password that corresponds with their Username may reset it at <https://apps2.fcc.gov/fccUserReg/pages/reset-passwd-identify.htm>. Filers that have not previously created a Username may do so by visiting the User Registration System at <https://apps2.fcc.gov/fccUserReg/pages/createAccount.htm>. Filers can associate their Username to an FRN by logging in at <https://apps.fcc.gov/cores/userLogin.do> and clicking on the appropriate option. Additional information regarding creating and associating FRNs with a Username can be found on the CORES FAQs page at <https://apps.fcc.gov/cores/publicHome.do?faq=true&csrfToken=>.

##### B. Excepted Filers

All EAS Participants – including Low Power FM stations (LPFM), Class D non-commercial educational FM stations, and EAS Participants that are silent pursuant to a grant of Special Temporary Authority – are required to register and file in ETRS, with the following exceptions: Analog and digital low power television (LPTV) stations that operate as television broadcast translator stations, FM broadcast booster stations and FM translator stations that entirely rebroadcast the programming of other local FM broadcast stations, and analog and digital broadcast stations that operate as satellites or repeaters of a hub station (or common studio or control point if there is no hub station) and rebroadcast 100 percent of the programming of the hub station (or common studio or control point) are not required to register and

<sup>1</sup> *Public Safety and Homeland Security Bureau Establishes February 28, 2023 Deadline for Annual Filing of Form One in the EAS Test Reporting System*, Public Notice, DA 22-1330 (rel. Dec. 15, 2022). See also 47 CFR §§ 11.2(b), 11.11(a) (defining and listing categories of EAS Participants).

<sup>2</sup> See 47 CFR § 11.61(a)(3)(iv)(A).

<sup>3</sup> Instructional videos regarding registration and completion of the ETRS Form One are also available on the ETRS website.

file in ETRS. However, the hub station (or common studio or control point) is required to register and file in ETRS.<sup>4</sup>

### C. Miscellaneous Filing Information

Filers can update previously filed forms in ETRS by clicking on the “My Filings” menu option and then clicking on the record for that form. Broadcasters can pre-populate Form One by completing the FRN and Facility ID fields. Cable systems can pre-populate Form One by completing the FRN and Physical System ID (PSID) fields. EAS Participants that pre-populate Form One using a Facility ID number or a PSID number are urged to review their pre-populated data to ensure accuracy.

Each EAS Participant should file a separate copy of Form One for each of its EAS decoders, EAS encoders, or units combining such decoder and encoder functions. For example, if an individual is filing for a broadcaster (or cable headend) that uses two units combining decoder and encoder functions, that individual should file two copies of Form One.

The Bureau urges EAS Participants to review Form One as soon as possible to allow sufficient time for possible corrections. EAS Participants are allowed thirty days after submission to submit any updates or corrections to their filings.<sup>5</sup>

## II. FURTHER ASSISTANCE

For further information regarding the nationwide EAS test, contact Maureen Bizhko, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418-0011 or [maureen.bizhko@fcc.gov](mailto:maureen.bizhko@fcc.gov).

Filers may contact FCC Licensing Support for assistance with creating a Username or other CORES troubleshooting via the web at <https://www.fcc.gov/wireless/available-support-services>, or by telephone at 1-877-480-3201. The support hours of operation are 8 a.m. to 6 p.m. Eastern Time, Monday through Friday (except Federal holidays). Filers may contact Bureau staff for assistance with ETRS filings via [ETRS@fcc.gov](mailto:ETRS@fcc.gov).

-FCC-

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<sup>4</sup> See 47 CFR § 11.11(b).

<sup>5</sup> *In the Matter of Review of the Emergency Alert System*, Report and Order, 30 FCC Rcd 6520, 6532-33, para. 27 (2015) (EAS Participants are allowed thirty days after final submission to review their filings and to correct errors).



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street, N.E.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
TTY: 1-888-835-5322

DA 23-2

Released: January 3, 2023

## TELEVISION LICENSE EXPIRATIONS

On October 3, 2022, television stations located in Alaska, American Samoa, Guam, Hawaii, Marianas Islands, Oregon, and Washington were required to file applications for license renewal for terms expiring on February 1, 2023. The following stations failed to file license renewal applications and their licenses will expire as of February 1, 2023, provided no renewal application is received by midnight on the date of expiration:

Call	Community of License	Fac. ID	Licensee
K22FC-D	Grant Pass, OR	24574	BETTER LIFE TELEVISION
K03FO	Seward, AK	11547	KENAI MOUNTAINS PUBLIC MEDIA, INC
K09SL-D	Kotlik, AK	62502	STATE OF ALASKA
K11QG-D	Toksook Bay, AK	62830	STATE OF ALASKA
K03FM-D	Haines, AK	39332	STATE OF ALASKA
K03GP-D	Sheldon Point, AK	62486	STATE OF ALASKA
K09QL-D	Allakaket, AK	62492	STATE OF ALASKA
K13UK-D	Kwigillingok, AK	62524	STATE OF ALASKA
K08ID-D	Tuluksak, AK	62547	STATE OF ALASKA
K10LD-D	Dillingham, AK	62549	STATE OF ALASKA
K02KZ-D	Kobuk, AK	62554	STATE OF ALASKA
K11QN-D	Aniak, AK	62661	STATE OF ALASKA
K07RZ-D	Crooked Creek, AK	62662	STATE OF ALASKA
K09TM-D	Kakhonak, AK	62697	STATE OF ALASKA
K11RQ-D	Chignik Lake, AK	62721	STATE OF ALASKA
K09QE-D	Larsen Bay, AK	62733	STATE OF ALASKA
K09QD-D	Huslia, AK	62789	STATE OF ALASKA
K09SO-D	Chignik Lagoon, AK	62796	STATE OF ALASKA
K09RG-D	Kongiganak, AK	62806	STATE OF ALASKA
K06LG-D	Chuathbaluk, AK	62827	STATE OF ALASKA
K09RV-D	Arctic Village, AK	62854	STATE OF ALASKA
K07QV-D	Hoonah, AK	62871	STATE OF ALASKA
K07RC-D	Fort Yukon, AK	62884	STATE OF ALASKA
K07QU-D	Shaktoolik, AK	62921	STATE OF ALASKA
K09UB-D	Whittier, AK	62933	STATE OF ALASKA
K17AF-D	Delta Junction, AK	62941	STATE OF ALASKA
KITM-LD	Lahaina, HI	188776	MARK C. ALLEN

<b>K44FH-D</b>	<b>Coos Bay, OR</b>	<b>5006</b>	<b>BETTER LIFE TELEVISION</b>
<b>K26HS-D</b>	<b>Tillamook, OR</b>	<b>130787</b>	<b>BETTER LIFE TELEVISION, INC.</b>
<b>K03DI-D</b>	<b>Chelan Butte, WA</b>	<b>64452</b>	<b>APPLE VALLEY TV ASSOCIATION, INC</b>
<b>K12BE-D</b>	<b>Orondo,Ect, WA</b>	<b>64454</b>	<b>APPLE VALLEY TV ASSOCIATION, INC</b>
<b>KCEM-LD</b>	<b>Chelan Butte, WA</b>	<b>64455</b>	<b>APPLE VALLEY TV ASSOCIATION, INC</b>
<b>K10BB-D</b>	<b>Ardenvoir, WA</b>	<b>64456</b>	<b>APPLE VALLEY TV ASSOCIATION, INC</b>
<b>K08AX-D</b>	<b>Ardenvoir, WA</b>	<b>64458</b>	<b>APPLE VALLEY TV ASSOCIATION, INC</b>
<b>K13BI-D</b>	<b>Entiat, WA</b>	<b>64465</b>	<b>APPLE VALLEY TV ASSOCIATION, INC</b>
<b>K09BJ-D</b>	<b>Entiat, WA</b>	<b>64466</b>	<b>APPLE VALLEY TV ASSOCIATION, INC</b>
<b>K11BI-D</b>	<b>Entiat, WA</b>	<b>64469</b>	<b>APPLE VALLEY TV ASSOCIATION, INC</b>
<b>K10BA-D</b>	<b>Orondo,Ect, WA</b>	<b>64473</b>	<b>APPLE VALLEY TV ASSOCIATION, INC</b>
<b>K08BA-D</b>	<b>Orondo,Ect, WA</b>	<b>64474</b>	<b>APPLE VALLEY TV ASSOCIATION, INC</b>
<b>K12BF-D</b>	<b>Ardenvoir, WA</b>	<b>64477</b>	<b>APPLE VALLEY TV ASSOCIATION, INC</b>
<b>K49KV-D</b>	<b>Stemilt,Ect, WA</b>	<b>2493</b>	<b>APPLE VALLEY TV ASSOCIATION, INC</b>
<b>K11FJ-D</b>	<b>Squilchuck St. Park, WA</b>	<b>2490</b>	<b>APPLE VALLEY TV ASSOCIATION, INC.</b>
<b>K13CQ-D</b>	<b>Rock Island, WA</b>	<b>2498</b>	<b>APPLE VALLEY TV ASSOCIATION, INC.</b>
<b>K09FF-D</b>	<b>Squilchuck St. Park, WA</b>	<b>2504</b>	<b>APPLE VALLEY TV ASSOCIATION, INC.</b>
<b>K09CL-D</b>	<b>Rock Island, WA</b>	<b>2510</b>	<b>APPLE VALLEY TV ASSOCIATION, INC.</b>
<b>K13EZ-D</b>	<b>Squilchuck St. Park, WA</b>	<b>2514</b>	<b>APPLE VALLEY TV ASSOCIATION, INC.</b>
<b>K11CS-D</b>	<b>Rock Island, WA</b>	<b>2515</b>	<b>APPLE VALLEY TV ASSOCIATION, INC.</b>
<b>K22JF-D</b>	<b>Stemilt,Ect, WA</b>	<b>2503</b>	<b>APPLE VALLEY TV ASSOCIATION, INC.</b>
<b>K51DR-D</b>	<b>Wenatchee, WA</b>	<b>2513</b>	<b>APPLE VALLEY TV ASSOCIATION, INC.</b>
<b>KWVG-LD</b>	<b>Malaga,Ect, WA</b>	<b>2499</b>	<b>APPLE VALLEY TV ASSOCIATION, INC.</b>

<b>KWVC-LD</b>	<b>Malaga,Ect, WA</b>	<b>2500</b>	<b>APPLE VALLEY TV ASSOCIATION, INC.</b>
<b>K16HP-D</b>	<b>East Wenatchee, WA</b>	<b>2507</b>	<b>APPLE VALLEY TV ASSOCIATION, INC.</b>
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<b>K05MU-D</b>	<b>Leavenworth, WA</b>	<b>187540</b>	<b>LEAVENWORTH NON-PROFIT TV ASSOCIATION</b>
<b>K09ZA-D</b>	<b>Leavenworth, WA</b>	<b>187541</b>	<b>LEAVENWORTH NON-PROFIT TV ASSOCIATION</b>
<b>K07ZL-D</b>	<b>Leavenworth, WA</b>	<b>187542</b>	<b>LEAVENWORTH NON-PROFIT TV ASSOCIATION</b>
<b>K13IY-D</b>	<b>Leavenworth, WA</b>	<b>187543</b>	<b>LEAVENWORTH NON-PROFIT TV ASSOCIATION</b>
<b>K12LV-D</b>	<b>Dryden, WA</b>	<b>69501</b>	<b>UPPER WENATCHEE VALLEY TV ASSOCIATION INC</b>
<b>K08JP-D</b>	<b>Dryden, WA</b>	<b>69506</b>	<b>UPPER WENATCHEE VALLEY TV ASSOCIATION INC</b>
<b>K10LG-D</b>	<b>Dryden, WA</b>	<b>69513</b>	<b>UPPER WENATCHEE VALLEY TV ASSOCIATION INC</b>
<b>K13ER-D</b>	<b>Cashmere, WA</b>	<b>69503</b>	<b>UPPER WENATCHEE VALLEY TV ASSOCIATION INC</b>
<b>K40AE-D</b>	<b>Cashmere, Ect, WA</b>	<b>69502</b>	<b>UPPER WENATCHEE VALLEY TV ASSOCIATION INC</b>
<b>K09ES-D</b>	<b>Cashmere, WA</b>	<b>69504</b>	<b>UPPER WENATCHEE VALLEY TV ASSOCIATION INC</b>
<b>K11EZ-D</b>	<b>Cashmere, WA</b>	<b>69509</b>	<b>UPPER WENATCHEE VALLEY TV ASSOCIATION INC</b>

- FCC -

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Pine Cellular Phones, Inc. )  
 ) File No. 0010253218  
Limited Waiver and Further Extension of Time to )  
Satisfy the Construction Requirement )  
 )

ORDER

Adopted: January 4, 2023

Released: January 4, 2023

By the Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we grant the above-captioned request by Pine Cellular Phones, Inc. (Pine Cellular) for a limited waiver and further extension of time to meet the Tribal lands bidding credit (TLBC) construction requirement to deploy service to the Choctaw Nation of Oklahoma communities in Eastern Oklahoma (Choctaw Nation communities). For the reasons stated below, we grant a limited waiver of section 1.2110(f)(3)(vii) to provide one additional year for Pine Cellular to meet the TLBC construction requirement associated with Call Sign WRAM805, one of its 600 MHz licenses.

II. BACKGROUND

2. Pine Cellular was the winning bidder in Auction No. 1002 for two 600 MHz licenses, including the Texarkana, TX (PEA 181) E-Block license that is the subject of this Third Extension Request.<sup>1</sup> On January 9, 2018, the Wireless Telecommunications Bureau (Bureau) issued Pine Cellular’s license for this market, Call Sign WRAM805, which included a TLBC of \$2,009,350 to serve the Choctaw Nation communities.<sup>2</sup> As a condition of receiving the TLBC, Pine Cellular was initially required to construct and operate a system capable of serving 75 percent of the population of the Choctaw Nation communities within the relevant service area within three years of the license grant, by January 9, 2021.<sup>3</sup>

3. *Supply Chain Proceeding.* In November 2019, the Commission adopted a rule to prospectively prohibit recipients from using USF funds “to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain”<sup>4</sup> (covered companies), and initially designated Huawei Technologies Company (Huawei) and ZTE

<sup>1</sup> Pine Cellular Phones, Inc., Request for Extension of Time, File No. 0010253218, Exhibit 3: Request for Limited Waiver and Further Extension of Time to Satisfy the Construction Requirement (filed Oct. 25, 2022) (Third Extension Request).

<sup>2</sup> *Incentive Auction Task Force and Wireless Telecommunications Bureau Grant 600 MHz Licenses*, Auction No. 1002, Public Notice, 33 FCC Rcd 99, 100 (Attach. A) (IATF/WTB 2018); Market No. PEA 181, Texarkana, Texas, Channel Block E, File No. 0007750369.

<sup>3</sup> 47 CFR § 1.2110(f)(3)(iii), (iv), (vii).

<sup>4</sup> 47 CFR § 54.9(a).

Corporation (ZTE) as covered companies for purposes of this rule.<sup>5</sup> In June 2020, the Public Safety and Homeland Security Bureau issued final designations of Huawei and ZTE as covered companies, effective immediately.<sup>6</sup> In the *Supply Chain Second Report and Order*,<sup>7</sup> the Commission promulgated rules for the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) to reimburse eligible providers of advanced communications service for costs reasonably incurred in the removal, replacement, and disposal of communications equipment/services.<sup>8</sup> The *Supply Chain Third Report and Order*, adopted on July 13, 2021, amended the rules for the Reimbursement Program to be consistent with the Consolidated Appropriations Act, 2021, passed on December 27, 2020.<sup>9</sup>

4. *Initial Extension Request.* On May 22, 2020, Pine Cellular filed its Initial Extension Request,<sup>10</sup> which sought a waiver of section 1.2110(f)(3)(vii) to allow for additional time to meet the TLBC construction requirement.<sup>11</sup> Pine Cellular explained that, when its license was issued in January 2018, it already had wireless mobile infrastructure in place and was well-positioned to deploy service to the Choctaw Nation communities within the three-year period.<sup>12</sup> Soon after Pine Cellular's license was issued, however, the Commission initiated the *Supply Chain* proceeding and later adopted the rule to prospectively prohibit use of USF funds to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by covered companies.<sup>13</sup> Pine Cellular receives high-cost support from the Commission's Mobility Fund Phase I and Connect America Fund Phase II programs, and Pine Cellular is an Eligible Telecommunications Carrier.<sup>14</sup> Pine Cellular asserted that it needed additional time to deploy its network to serve the Choctaw Nation communities because its existing network in that geographic area uses Huawei equipment for the performance of core functions.<sup>15</sup>

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<sup>5</sup> See 47 CFR § 54.9(b); *In the Matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Report and Order and Further Notice of Proposed Rulemaking and Order, 34 FCC Rcd 11423 (2019) (*Supply Chain Order* or *Supply Chain Further Notice*).

<sup>6</sup> *In the Matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – Huawei Designation*, PS Docket No. 19-351, Order, 35 FCC Rcd 6604, 6631 para. 63 (PSHSB 2020) (*Huawei Designation Order*); *In the Matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – ZTE Designation*, PS Docket No. 19-352, Order, 35 FCC Rcd 6633, 6646-47 para. 29 (PSHSB 2020).

<sup>7</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Second Report and Order, WC Docket 18-89, 35 FCC Rcd 14284 (rel. Dec. 11, 2020) (*Supply Chain Second Report and Order*).

<sup>8</sup> See generally *Supply Chain Second Report and Order*.

<sup>9</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Third Report and Order, WC Docket 18-89 (rel. July 14, 2021) (*Supply Chain Third Report and Order*); see also Pub. L. 116-260, Division N-Additional Coronavirus Response and Relief, Title IX-Broadband Internet access Service, §§ 901, 906, 134 Stat. 1182 (2020) (2021 Consolidated Appropriations Act or CAA).

<sup>10</sup> Pine Cellular Phones, Inc., Request for Extension of Time, File No. 0009088322, Exhibit 1: Limited Waiver and Extension of Time to Satisfy the Construction Requirement (filed May 22, 2020) (Initial Extension Request).

<sup>11</sup> See generally Initial Extension Request.

<sup>12</sup> *Id.* at 12-13. In this request, Pine Cellular stated that it “planned to enhance [its] infrastructure by constructing approximately 20 new antenna sites, and adding a number of new remote radio heads, at a cost of approximately \$1 million, to utilize the 600 MHz spectrum.” *Id.* at 12.

<sup>13</sup> See *Supply Chain Notice*; 47 CFR § 54.9; *Supply Chain Order*. In adopting the rule, the Commission initially designated Huawei as one of the covered companies for purposes of the rule. *Id.*; see also 47 CFR § 54.9(b). In June 2020, the determination that Huawei is a covered company was made final, effective immediately. See *Huawei Designation Order*.

<sup>14</sup> See Initial Extension Request at 2.

<sup>15</sup> *Id.* at 2, 13.

5. Specifically, because Pine Cellular is prohibited from using USF funds to maintain, improve, modify, operate, manage, or otherwise support its Huawei equipment,<sup>16</sup> it asserted that it could not act without a significant cost burden until the Commission acted in the *Supply Chain* proceeding to establish a cost reimbursement program for USF recipients to replace equipment from covered companies.<sup>17</sup> Further, Pine Cellular argued, if it did expand its existing Huawei network it faced penalties if it could not prove to the Commission's satisfaction that it used non-USF funds.<sup>18</sup> As a result, Pine Cellular claimed that it was unreasonable to build out its existing network in the area to serve the Choctaw Nation communities at that time.<sup>19</sup> Pine Cellular asserted that imposition of the rule would have been inequitable and unduly burdensome, and given the complications with construction, Pine Cellular had no reasonable alternative.<sup>20</sup> Pine Cellular sought a construction extension to "a date not earlier than eighteen (18) months after the Commission adopts a Report and Order based upon the *Supply Chain Further Notice*."<sup>21</sup> On October 1, 2020, the Bureau partially granted Pine Cellular's request, extending the construction deadline by one year to January 9, 2022.<sup>22</sup>

6. *Second Extension Request.* On July 27, 2021, Pine Cellular filed its Second Extension Request, which sought waiver of section 1.2110(f)(3)(vii) to allow Pine Cellular an additional year to meet its TLBC construction requirement.<sup>23</sup> Pine Cellular explained that its TLBC construction progress had been affected by the continued development of the Reimbursement Program and uncertainty as to what extent it would be reimbursed for costs associated with its removal of Huawei equipment it installed before June 30, 2020, if it took action before it could participate in the Reimbursement Program.<sup>24</sup> Pine Cellular also stated that, in order to meet the extended January 9, 2022 deadline, it would have to complete a significant number of steps and expressed doubt that such efforts could be completed in time

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<sup>16</sup> See 47 CFR § 54.9(a).

<sup>17</sup> Initial Extension Request at 18-19 (*referencing Supply Chain Further Notice*). Specifically, Pine Cellular explained that if it built out its existing Huawei network to the Choctaw Nation communities as originally planned, it would be using insecure equipment, and may ultimately need to rip out and replace the newly-installed network due to the *Supply Chain* restrictions. *Id.* at 21.

<sup>18</sup> See 47 CFR § 54.9; Initial Extension Request at 24. See also *Supply Chain Order*, 34 FCC Rcd at 11452, para. 72. Although the rule does not prohibit USF recipients from using their own funds to purchase or obtain equipment or services from covered companies, the Commission stated that it "believe[s] it unlikely that many USF recipients will be able to show the detailed records necessary to demonstrate that no USF funds were used" and expressed skepticism "that any USF recipient seeking to use USF funds on an 'eligible' portion of such a project would will be able to establish with the necessary certainty." *Id.*

<sup>19</sup> Initial Extension Request at 23-24.

<sup>20</sup> *Id.* at 22-23. Pine Cellular argued that if it had constructed a parallel network without using Huawei equipment to meet its TLBC construction deadline, it would not be eligible for cost reimbursement for the additional expense, estimated at \$8 million, through the *Supply Chain* proceeding. *Id.* at 17-19, 21. Pine Cellular's net winning bid for the license at issue was approximately \$4.88 million; and it was granted a Tribal lands bidding credit of approximately \$2 million. See File No. 0007750369.

<sup>21</sup> Initial Extension Request at 2. See also *Supply Chain Further Notice*.

<sup>22</sup> *Pine Cellular Phones, Inc. Limited Waiver and Extension of Time to Satisfy the Construction Requirement*, Order, File No. 0009088322, 36 FCC Rcd 10677 (WTB BD 2020) (*Pine Cellular Order*).

<sup>23</sup> See generally *Pine Cellular Phones, Inc., Request for Extension of Time*, File No. 0009638398, Exhibit 1: Further Limited Waiver and Extension of Time to Satisfy the Construction Requirement (filed July 27, 2021) (Second Extension Request).

<sup>24</sup> *Id.* at 7.

to meet the deadline.<sup>25</sup> On December 14, 2021, the Bureau granted Pine Cellular's request, extending the construction deadline by one year to January 9, 2023.<sup>26</sup>

7. Since Pine Cellular's Second Extension Request was granted, the Reimbursement Program application window closed.<sup>27</sup> Pine Cellular's applications for reimbursement have been approved by the Commission and it has received allocations from the Reimbursement Program.<sup>28</sup>

8. *Third Extension Request.* On October 25, 2022, Pine Cellular filed the instant Third Extension Request, which seeks waiver of Section 1.2110(f)(3)(vii) to allow additional time to meet the TLBC construction requirement.<sup>29</sup> Pine Cellular argues that it needs additional time to construct because it faces "unique and unusual circumstances" and "ongoing equipment supply chain issues, related in part to the COVID-19 pandemic, have undermined Pine Cellular's efforts to move forward with the deployment of facilities utilizing 600 MHz spectrum to serve the Choctaw Nation communities."<sup>30</sup> Pine Cellular requests that the Bureau further extend its deadline to meet its TLBC construction obligation "so that this deadline is the same as the one-year deadline for the Company's completion of the permanent removal, replacement, and disposal of covered communications equipment pursuant to the Reimbursement Program."<sup>31</sup>

9. On November 30, 2022, the Bureau issued a Public Notice seeking comment on Pine Cellular's Third Extension Request.<sup>32</sup> No commenters filed in response to Pine Cellular's request, and we have received no opposition from the Choctaw Nation of Oklahoma.

### III. DISCUSSION

10. Pursuant to section 1.925 of the Commission's rules, a waiver may be granted if the petitioner establishes that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable

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<sup>25</sup> *Id.* at 10. Specifically, Pine Cellular stated that, in order to meet the extended January 9, 2022 deadline, it would have to (1) complete construction of a parallel mobile wireless broadband network in the areas served by its current network; (2) switch its operations over to this parallel network; (3) remove its old network facilities, including facilities serving Choctaw Nation communities, which had relied on Huawei equipment for core functions; and (4) complete the extension of the newly-built parallel network to serve the Choctaw Nation communities, in compliance with the TLBC construction requirements. *Id.* at 6-7.

<sup>26</sup> *Pine Cellular Phones, Inc. Further Limited Waiver and Extension of Time to Satisfy the Construction Requirement*, Order, File No. 0009638398, DA 21-1553 (WTB BD 2021) (*Second Pine Cellular Order*).

<sup>27</sup> *See generally Reimbursement Program Extension Order.*

<sup>28</sup> Third Extension Request at 10; *see also Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Public Notice, DA 22-131, WC Docket 18-89 (rel. Feb. 9, 2022); *see also Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Public Notice, DA 22-774, WC Docket 18-89 (rel. July. 18, 2022).

<sup>29</sup> *See generally* Third Extension Request.

<sup>30</sup> *Id.* at 6-7.

<sup>31</sup> *Id.* at 16. For example, if Pine Cellular were to submit its initial Reimbursement Program reimbursement claim on December 15, 2022, and the Commission issued an initial draw down disbursement to Pine Cellular on January 15, 2023, then Pine Cellular's TLBC construction deadline would be January 15, 2024, the same date as its Reimbursement Program deadline for the removal of covered communications equipment. In addition, Pine Cellular argues, if the Commission extends the one-year Reimbursement Program deadline by six months for all recipients, pursuant to section 1.50004(h)(1) of its rules, this extension should also apply to Pine Cellular's TLBC construction deadline. *Id.*

<sup>32</sup> Public Notice, Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing, Report Number 17305 (Nov. 30, 2022).

alternative.<sup>33</sup> Section 1.946 of the Commission's rules governs extensions of construction periods for stations in the wireless radio services.<sup>34</sup> The rule provides that relief may be granted for good cause if such relief is requested before the expiration of the construction period.<sup>35</sup> As described in more detail below, we find that the unique circumstances described by Pine Cellular warrant a third limited waiver and further extension of Pine Cellular's TLBC construction requirement deadline.

11. As an initial matter, we note that the Commission has recognized that "members of federally-recognized American Indian Tribes and Alaska Native Villages . . . and other residents of Tribal lands have lacked meaningful access to wired and wireless communications services."<sup>36</sup> In recognition of this challenge, the Commission established the TLBC program to provide incentives for wireless service providers to deploy advanced wireless services to benefit the residents and communities on Tribal lands.<sup>37</sup> The Commission recognized that various circumstances, including economic factors, could affect the ability of recipients to meet the TLBC requirements,<sup>38</sup> and "strongly encourage[d] parties to seek waivers of specific rules or file other requests for regulatory relief in those instances where greater flexibility than the rules allow would facilitate the provision of service to tribal lands."<sup>39</sup>

12. For the reasons discussed below, we conclude that Pine Cellular has no reasonable alternative to meet its TLBC construction requirement, and that application of the deadline set by section 1.2110(f)(3)(vii) of the Commission's rules would be contrary to the public interest.<sup>40</sup> As Pine Cellular noted in its prior extension requests, it already had wireless mobile infrastructure in place in this service area and did not anticipate that the *Supply Chain* rules would substantially alter its plans to build out its existing network when it received its 600 MHz license with a Tribal land bidding credit.<sup>41</sup> Pine Cellular explains that its TLBC construction progress has since been further affected by equipment supply chain issues, related in part to the COVID-19 pandemic.<sup>42</sup> Specifically, Pine Cellular explains that its efforts to meet the January 9, 2023 TLBC construction deadline have been negatively impacted by the global

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<sup>33</sup> 47 CFR § 1.925(b)(3).

<sup>34</sup> 47 CFR § 1.946(e).

<sup>35</sup> *Id.* Pine Cellular's TLBC construction deadline is January 9, 2023, and it filed its request prior to that deadline, on October 25, 2022.

<sup>36</sup> *Improving Communications Services for Tribal Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, Notice of Proposed Rulemaking, 26 FCC Rcd 2623, 2624, para. 1 (2011); *see also Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion*, 2018 Broadband Deployment Report, 33 FCC Rcd 1660, 1662, 1687-88, paras. 6, 57-58 (2018) (noting that Tribal lands continue to lag behind with respect to broadband deployment).

<sup>37</sup> *See Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Report and Order and Further Notice of Proposed Rule Making, 15 FCC Rcd 11794 (2000) (*Tribal Lands Order*). More recently, the Commission has established other initiatives to facilitate the deployment of advanced wireless services on Tribal lands. *See, e.g., In the Matter of Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Report and Order, 34 FCC Rcd 5446, 5463, para. 47 (2019) (establishing a Tribal priority window for Tribal entities to obtain unassigned 2.5 GHz spectrum on Tribal lands that are located in rural areas).

<sup>38</sup> *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 4775, 4783, para. 22 (2003).

<sup>39</sup> *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Third Report and Order, 19 FCC Rcd 17652, 17656, para. 8 (2004) (*citing Tribal Lands Order*, 15 FCC Rcd at 11808, para. 39).

<sup>40</sup> *See* 47 CFR § 1.925(b)(3)(ii).

<sup>41</sup> Second Extension Request at 2; *see also generally* Initial Extension Request.

<sup>42</sup> Third Extension Request at 7.

semiconductor shortage, and that it lacks any reasonable alternatives for meeting the deadline.<sup>43</sup> Pine Cellular explains that it “cannot add covered communications equipment to its existing network in order to enable deployment of 600 MHz broadband service in the Choctaw Nation communities, because the Commission’s rules prohibit such use of covered communications equipment.”<sup>44</sup> Further, Pine Cellular states that, even if it could obtain all of the needed compliant equipment in a timely manner—which it asserts it cannot—it could not add this compliant equipment to its network because it would not be compatible with Huawei equipment still in use in its existing network.<sup>45</sup> Pine Cellular notes that its only alternative is to first remove and replace all Huawei equipment in its existing network, and then to construct a new network with compliant equipment.<sup>46</sup> Pine Cellular asserts that, unfortunately, this alternative has not been (and is not currently) viable by the January 9, 2023 deadline.<sup>47</sup>

13. We agree that Pine Cellular’s current choices for network deployment to the Choctaw Nation communities are not reasonable alternatives. Moreover, we find that strict application of the TLBC construction requirement, which would result in either Pine Cellular’s repayment of its TLBC or automatic termination of its license, is not warranted.<sup>48</sup> Neither the repayment of the TLBC nor the automatic termination of the license would facilitate the provision of wireless broadband service to the Choctaw Nation communities, and thus would not serve the public interest or the underlying purpose of the TLBC rule. We also find that grant of a waiver to Pine Cellular under these circumstances is consistent with prior TLBC construction deadline waiver requests granted by the Bureau.<sup>49</sup>

14. With respect to the length of the extension, we determine that extending Pine Cellular’s construction deadline one year, until January 9, 2024, is sufficient and decline to extend its TLBC buildout date “so that this deadline is the same as the one-year deadline for the Company’s completion of the permanent removal, replacement, and disposal of covered communications equipment pursuant to the

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<sup>43</sup> *Id.* at 11. Although Pine Cellular began placing orders in January 2022 for needed replacements for the Huawei equipment throughout its existing network, it states that it had received only 80 percent of the orders as of October 2022 because of “the unprecedented demand for semiconductors and the vendors’ inability to obtain semiconductors in sufficient quantities to construct equipment and fill pending orders in a timely fashion.” *Id.* at 10-11.

<sup>44</sup> *Id.* at 11, *citing* 47 CFR § 54.9 (prohibiting use of Universal Service funds for covered equipment). We further note that since the filing of Pine Cellular’s Third Extension Request, the Commission has adopted its proposal to prohibit authorization of equipment that has been identified on the Commission’s Covered List. *See generally Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program, Protecting Against National Security Threats to the Communications Supply Chain through the Competitive Bidding Program*; ET Docket No. 21-232, EA Docket No. 21-233; Report and Order, Order, and Further Notice of Proposed Rulemaking; FCC 22-84 (2022).

<sup>45</sup> Third Extension Request at 11.

<sup>46</sup> *Id.* at 11-12.

<sup>47</sup> *Id.* at 12.

<sup>48</sup> 47 CFR § 1.2110(f)(3)(viii). Any licensee that fails to provide the post-construction certification demonstrating it met its TLBC buildout obligation in a timely manner must repay the bidding credit amount in its entirety, plus interest, within 30 days of the deadline, or face automatic termination of its license. With imposition of these penalties, a licensee’s commitment to serve the Tribal land is no longer applicable.

<sup>49</sup> For example, the Bureau has granted extensions due to lack of available equipment that meets regulatory requirements. *See LL License Holdings, LLC Waiver Request for Extension of Time for Wireless Services, Call Signs WQKH490 and WQKH491 (File Numbers 0005204801 and 0005204802)*, Order, 30 FCC Rcd 1937 (2015) (granting additional time for TLBC buildout due to lack of available interoperable 700 MHz equipment); *Space Data Spectrum Holdings, LLC, AWS Station WQIA880, A Block, Alaska 1–Wade Hampton CMA, Request for Waiver and Extension of Time of Tribal Land Bidding Credit Construction Requirement*, Memorandum Opinion and Order, 29 FCC Rcd 3523 (2014) (granting additional time for TLBC buildout due to lack of suitable Advanced Wireless Services equipment).

Reimbursement Program,” including any related extensions.<sup>50</sup> At the time Pine Cellular filed this Third Extension Request, it expected that by the end of 2022 it would have received sufficient compliant equipment from its suppliers to enable the removal, replacement, and disposal of covered communications equipment, and committed to giving first priority to its existing network facilities in the Choctaw Nation communities.<sup>51</sup> We believe that, with this one-year extension, Pine Cellular will have sufficient time to determine how it can navigate equipment supply chain issues and serve the Choctaw Nation communities while meeting Commission requirements.

#### IV. CONCLUSION

15. Pine Cellular has demonstrated that an extension of its TLBC construction deadline is warranted under the standards contained in sections 1.925 and 1.946 of the Commission’s rules. We grant Pine Cellular a waiver of section 1.2110(f)(3)(vii) of the Commission’s rules and extend the TLBC construction deadline until January 9, 2024, for Call Sign WRAM805. Notification that such construction has been completed must be filed with the Commission within fifteen (15) days of the deadline, by January 24, 2024.

#### V. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and sections 1.925, 1.946, and 1.2110(f)(3) of the Commission’s Rules, 47 CFR §§ 1.925, 1.946, and 1.2110(f)(3), the Request for Limited Waiver and Further Extension of Time to Satisfy the Construction Requirement, Call Sign WRAM805, filed by Pine Cellular Phones, Inc. on October 25, 2022, is GRANTED to the extent described herein.

17. These actions are taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission’s Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Blaise A. Scinto  
Chief, Broadband Division  
Wireless Telecommunications Bureau

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<sup>50</sup> See Third Extension Request at 16. Pine Cellular further asks that “if the Commission extends the one-year Reimbursement Program deadline by six months for all recipients, pursuant to Section 1.50004(h)(1) of its rules, this extension should also apply to the Company’s TLBC construction deadline.” *Id.*

<sup>51</sup> *Id.* at 15-18.



# PUBLIC NOTICE

Federal Communications Commission  
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DA 23-4

Released: January 4, 2023

## MEDIA BUREAU ANNOUNCES FILING OF PETITION FOR DECLARATORY RULING BY SEARCHLIGHT II HMT, L.P.

MB Docket No. 23-2

**Comment Date: February 3, 2023**

**Reply Date: February 21, 2023**

Searchlight II HMT, L.P. (Searchlight II HMT or Petitioner) has filed a petition for declaratory ruling<sup>1</sup> (Petition) requesting the Federal Communications Commission (Commission) to find that it would be in the public interest to permit foreign ownership of Searchlight II HMT's controlling U.S. parent, Hemisphere Media Group, Inc. (HMTV), to exceed the 25% benchmarks in section 310(b)(4) of the Communications Act of 1934, as amended.<sup>2</sup> HMTV has an existing declaratory ruling in which the Commission previously authorized foreign ownership up to 100 percent of HMTV's equity and voting interests in the aggregate.<sup>3</sup>

The Commission's approval is being sought in connection with two applications pending at the Commission to (1) transfer control of broadcast television licenses held by Televiscentro of Puerto Rico, LLC (Televiscentro), an indirect, wholly owned subsidiary of HMTV, from Gato Investments LP (Gato) to Searchlight II HMT<sup>4</sup> (HMTV Transaction); and (2) transfer control of WLII/WSUR Licensee Partnership,

<sup>1</sup> 47 U.S.C. § 310(b)(4) ("No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license."). See also 47 CFR § 1.5000 *et seq.*

<sup>2</sup> Petition at 2. The Petition was filed on September 23, 2022, amended on October 13, 2022 (Amended & Restated Petition), and further amended on November 10, 2022 (Second Amended & Restated Petition).

<sup>3</sup> See *Hemisphere Media Group, Inc. Petition for Declaratory Ruling*, Declaratory Ruling and Memorandum Opinion and Order, 34 FCC Rcd 10504 (2019) (*Hemisphere Declaratory Ruling*). The Amended & Restated Petition made clear that Searchlight II HMT was seeking a new ruling under section 310(b)(4) of the Act and section 1.5000 *et seq.* of the Commission's rules, but to the extent necessary, requested the Commission to reissue its approval for foreign entities and/or individuals, in the aggregate, to hold up to 100 percent of HMTV's equity and voting interests. See 47 CFR § 1.5000 *et seq.* The *Hemisphere Declaratory Ruling* provided specific approval for certain foreign investors, but the interests held by those investors were acquired by Gato Investments LP (Gato) in connection with a take-private transaction that was consummated on September 13, 2022. Upon the closing of that transaction, 100 percent of the outstanding common stock of HMTV became indirectly owned by Gato, and HMTV became no longer publicly traded. See LMS File No. 0000191021. See also Amended & Restated Petition at 2-3 and nn. 4 and 6.

<sup>4</sup> Second Amended & Restated Petition at 1.

G.P. (WLII/WSUR), a subsidiary of Univision of Puerto Rico, Inc., and an indirect, wholly owned subsidiary of TelevisaUnivision, Inc., from Univision Puerto Rico Station Operating Company to Intermedia Español, Inc. (TU Transaction).<sup>5</sup>

The Petition lays out the proposed post-closing ownership of HMTV, Telecentro, and WLII/WSUR in light of the HMTV and TU Transactions.<sup>6</sup> Upon the closing of the wind-up of Gato, Searchlight II HMT will hold 100 percent of the membership interests in HWK Parent, LLC, and will indirectly hold 100 percent of the equity and voting interests in HMTV.<sup>7</sup> At the same time as the closing of the HMTV Transaction, Searchlight Capital II EXU AIV, L.P., Searchlight Capital II PV, L.P., and SC II HMT, L.P., which each hold warrants in Searchlight II HMT, will exercise their respective warrants and will be issued new limited partnership interests in Searchlight II HMT.<sup>8</sup> As a result, each of these investment fund vehicles will hold indirect equity interests in HMTV.<sup>9</sup> Conversion of the warrants to equity interests will cause attribution of foreign ownership interests indirectly in HMTV through certain Searchlight investment fund entities organized in the Cayman Islands and that are ultimately controlled by foreign individuals, as well as through the foreign limited partners in each of the investment fund entities.<sup>10</sup> In addition, the proposed TU Transaction will ultimately result in the transfer of control of the WLII/WSUR broadcast radio stations to HMTV.<sup>11</sup> HMTV is the parent of Intermedia Español, Inc. (Intermedia Español), and HMTV and Intermedia Español will be directly ultimately controlled by Searchlight II HMT.<sup>12</sup>

Pursuant to section 1.5001(h) of the Commission's rules, the Petitioner requests approval of up to an aggregate 100% indirect foreign ownership of the controlling U.S. parent, HMTV.<sup>13</sup> In the Petition, Searchlight II HMT requests specific approval<sup>14</sup> for certain foreign individuals and entities that will hold, indirectly, more than five percent of the equity and/or voting interests of HMTV and advance approval<sup>15</sup> for each individual and entity to increase their interests in HMTV to certain percentages at some future time.<sup>16</sup> Specifically, the Petition makes the following requests for advance approval: Erol Uzumeri (Canada) to hold up to 49.9% equity and be deemed to hold 100% voting; Oliver Haarmann (Germany) to hold up to 49.9% equity and be deemed to hold 100% voting; Searchlight Capital II PV, L.P. (Cayman Islands) to hold up to 100% equity and be deemed to hold 100% voting; SC II HMT Holdings, Ltd. (Cayman Islands) to hold up to 100% equity and be deemed to hold 100% voting; Searchlight Capital II UNR AIV, L.P. (Cayman Islands) to hold up to 100% equity and be deemed to hold 100% voting; and Searchlight Capital Partners II GP, L.P. (Cayman Islands) to hold up to 100% equity and be deemed to hold 100% voting.<sup>17</sup> Searchlight II HMT contends that granting this Petition is in the public interest

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 6-8, Exhibit A.

<sup>7</sup> *Id.* at 6.

<sup>8</sup> *Id.* at 6-7.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 8.

<sup>12</sup> *Id.*

<sup>13</sup> 47 CFR § 1.5001(h).

<sup>14</sup> 47 CFR § 1.5001(i).

<sup>15</sup> 47 CFR § 1.5001(k).

<sup>16</sup> Second Amended & Restated Petition at 16.

<sup>17</sup> *Id.*

because it will, *inter alia*, further the Commission's goals of encouraging greater access to foreign investment in broadcast stations and increasing regulatory transparency.<sup>18</sup>

According to the Petition, Searchlight Capital Partners, L.P. ("Searchlight") provides management and other advisory services to Searchlight-affiliated investment funds in return for a fee.<sup>19</sup> Nonetheless, the Petition asserts that Searchlight has no economic ownership interest in the investment funds and has no decision-making authority with respect to their operations.<sup>20</sup> The Petition asserts that all management and decision-making authority with respect to the funds rests with the general partners of the funds.<sup>21</sup> Petitioner states that Searchlight is controlled by its general partner, Searchlight Capital Partners, LLC (Delaware), which is controlled by its three members, Messrs. Eric Zinterhofer (United States), Eric Uzumeri (Canada), and Oliver Haarmann (Germany).<sup>22</sup> These same three individuals are also the only limited partners of Searchlight.<sup>23</sup> All other funds that Searchlight manages are also controlled by Messrs. Zinterhofer, Uzumeri, and Haarmann.<sup>24</sup> Petitioner states that aside from Mr. Zinterhofer, neither Searchlight, nor any of its employees have any active or direct role at HMTV or its subsidiaries.<sup>25</sup>

The Petition has been found, on initial review, to be acceptable for filing. The Commission may require Searchlight II HMT, L.P. to submit additional documents or statements of fact that in the Commission's judgment may be necessary. The Commission also reserves the right to return the Petition if, on further examination, it is determined to be defective and not in conformance with its rules and policies. In addition, pursuant to Commission practice, the Petition will be referred to relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of Searchlight II HMT, L.P.<sup>26</sup>

#### **EX PARTE STATUS OF THIS PROCEEDING**

In order to assure the staff's ability to discuss and obtain information needed to resolve the issues presented, by this Public Notice and pursuant to Section 1.1200(a) of the Rules,<sup>27</sup> we establish a docket for this proceeding and announce that the *ex parte* procedures applicable to permit-but-disclose proceedings will govern our consideration of this Petition.<sup>28</sup>

Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a

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<sup>18</sup> See *id.* at 16-18; see also *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11272, 11273, para. 2 (2016).

<sup>19</sup> Second Amended & Restated Petition at n.10.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020). See also *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-20, paras. 61-63 (1997) (*Foreign Participation Order*), *recon. denied*, 15 FCC Rcd 18158 (2000).

<sup>27</sup> 47 CFR § 1.1200(a).

<sup>28</sup> See 47 CFR § 1.1206.

different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation.<sup>29</sup> If the presentation consisted in whole or in part of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum.<sup>30</sup> Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Rules.<sup>31</sup> Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.<sup>32</sup> We strongly urge parties to use the Electronic Comment Filing System (ECFS) to file *ex parte* submissions. All *ex parte* filings must be clearly labeled as such and must reference MB Docket No. 23-2.

### GENERAL INFORMATION

The Petition referred to in this Public Notice has been accepted for filing upon initial review. The Commission reserves the right to return any filing if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. Interested persons must file comments no later than February 3, 2023. Replies must be filed no later than February 21, 2023.

To allow the Commission to consider fully all substantive issues regarding the Petition in as timely and efficient a manner as possible, commenters should raise all issues in their initial filings. A party or interested person seeking to raise a new issue after the comment period has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the comment period has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

All filings concerning matters referenced in this Public Notice should refer to MB Docket No. 23-2, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

*Filing Requirements.* Submissions may be filed electronically using ECFS or by filing paper copies.<sup>33</sup>

- Electronic Filers: Documents may be filed electronically using the Internet by accessing ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

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<sup>29</sup> 47 CFR § 1.1206(b)(1).

<sup>30</sup> *Id.*

<sup>31</sup> 47 CFR § 1.1206(b).

<sup>32</sup> See 47 CFR § 1.1200 *et seq.*

<sup>33</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, 13 FCC Rcd 11322 (1998).

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.<sup>34</sup>
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

**In addition, one copy of each submission must be sent to the following:**

- David Brown, Video Division, Media Bureau, e-mail [David.Brown@fcc.gov](mailto:David.Brown@fcc.gov)
- Emily Harrison, Video Division, Media Bureau, e-mail [Emily.Harrison@fcc.gov](mailto:Emily.Harrison@fcc.gov)

Any submission that is e-mailed to David Brown or Emily Harrison should include in the subject line of the e-mail: (1) MB Docket No. 23-2; (2) the name of the submitting party; (3) a brief description or title identifying the type of document being submitted (e.g., MB Docket No. 23-2, Searchlight II HMT, L.P. Petition for Declaratory Ruling, *Ex Parte* Notice).

*Availability of Documents.* Documents in this proceeding are available electronically through ECFS. ECFS may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

*People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

For further information, contact David Brown at (202) 418-1645 or Emily Harrison at (202) 418-1665. For press inquiries, contact Janice Wise at (202) 418-8165.

This action is taken by the Chief, Media Bureau, pursuant to authority delegated by sections 0.61 and 0.283 of the Commission's rules.<sup>35</sup>

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<sup>34</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Red 2788 (2020).

<sup>35</sup> 47 CFR §§ 0.61 and 0.283.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Core Communications, Inc., et al.	)	WC Docket No. 21-191
Tariff F.C.C. No. 3	)	
	)	Transmittal No. 17

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 4, 2023**

**Released: January 4, 2023**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we approve the plan submitted by Core Communications, Inc. (Core) to refund certain interstate access service charges Core assessed certain interexchange carriers (IXCs) pursuant to its unlawful tariff.<sup>1</sup> This Order follows the *Core Tariff Investigation Order* in which the Commission concluded the investigation into Core’s tariff revisions, directed Core to revise its tariff, and directed the Wireline Competition Bureau (Bureau) to determine any refunds that may be required once the newly revised tariff is effective.<sup>2</sup>

**II. BACKGROUND**

2. Core is a competitive local exchange carrier (LEC) that serves as an intermediate carrier, primarily for toll free calls. As a competitive LEC, Core is permitted, but not required, to file interstate switched access service tariffs with the Commission.<sup>3</sup> On April 22, 2021, Core filed Transmittal No. 17 (Revised Tariff), revising various provisions of its interstate access services Tariff F.C.C. No. 3, including provisions regarding billing disputes, late-payment fees, cancellation, and toll free (8YY) database query charges.<sup>4</sup> Core’s revisions included changes to section 2.10.5 of the tariff, which increased the monthly late-payment fee from a maximum of 1.5% to the lesser of 3.0% or “the highest rate permitted by applicable law,” if the “unpaid amount is not part of a good faith dispute as described in [the] tariff.”<sup>5</sup> On May 6, 2021, the Bureau adopted the *Suspension Order*, finding that substantial questions existed

<sup>1</sup> Letter from Carey Roesel, Consultant, Inteserra, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-191, Attach., Refund Plan of Core Communications, Inc. (filed June 29, 2022) (Refund Plan).

<sup>2</sup> *Core Communications, Inc., et al., Tariff F.C.C. No. 3*, WC Docket No. 21-191, Transmittal No. 17, Memorandum Opinion and Order, 36 FCC Rcd 15128, 15150-52, 15157-58, paras. 52-57, 69-70, 73 (2021) (*Core Tariff Investigation Order*), *pet. for review dismissed per stipulation, CoreTel Delaware, Inc. v. FCC*, No. 21-3170 (3d Cir. Mar. 17, 2022).

<sup>3</sup> *Core Tariff Investigation Order*, 36 FCC Rcd at 15129, para. 2 & n.3.

<sup>4</sup> Letter from Carey Roesel, Consultant, Inteserra Consulting Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-191, Transmittal No. 17 (filed Apr. 22, 2021) (available via the Commission’s Electronic Tariff Filing System (ETFS), and in the Electronic Comment Filing System (ECFS) in WC Docket No. 21-191 (listed as received on May 6, 2021)); Core Communications, Inc., et al., Tariff F.C.C. No. 3, Transmittal No. 17, 10th Rev. Page No. 28, § 2.10.4.A; 3rd Rev. Page No. 29, § 2.10.5; 3rd Rev. Page No. 33, § 2.13.3.H; 3d Rev. Page No. 40, § 2.21; 1st Rev. Page No. 43.1, § 3.3.5 (Apr. 22, 2021) (Transmittal No. 17) (available via ETFS, and in ECFS in WC Docket No. 21-191 (listed as received on May 6, 2021)).

<sup>5</sup> Core Tariff F.C.C. No. 3, 3rd Rev. Page No. 29, § 2.10.5 (filed Apr. 22, 2021).

regarding the lawfulness of Core's Revised Tariff that required further investigation.<sup>6</sup> The Bureau suspended the Revised Tariff for one day, thereby allowing it to go into effect without being deemed lawful, adopted an accounting order, and initiated an investigation into the lawfulness of the Revised Tariff.<sup>7</sup>

3. On June 23, 2021, the Bureau released a *Designation Order* directing Core to provide information that the Commission needed to determine whether the late-payment fee provision was just and reasonable.<sup>8</sup> Core then filed its Direct Case responding to the questions the Bureau asked in the *Designation Order*.<sup>9</sup> AT&T and Verizon filed oppositions to the Direct Case, arguing that Core's late-payment fee was unjust and unreasonable.<sup>10</sup>

4. In the *Core Tariff Investigation Order*, the Commission found, in relevant part, that Core failed to demonstrate that the late-payment fee provision in section 2.10.5 of the Revised Tariff was just and reasonable.<sup>11</sup> The Commission found that the 3% late-payment fee was unreasonable, and that the reference to the "highest rate permitted by applicable law" was unlawful because the provision was impermissibly ambiguous, in violation of section 61.2 of the Commission's rules.<sup>12</sup> Accordingly, the Commission found that the revisions to the tariff, including those to section 2.10.5, were not just and reasonable, as required by section 201(b) of the Communications Act of 1934, as amended (the Act).<sup>13</sup> The Commission, therefore, instructed Core to delete the revisions it made in Transmittal No. 17.<sup>14</sup> The Commission also instructed the Bureau to: (1) ensure that Core made the appropriate changes to its tariff to reflect the Commission's findings; and (2) determine the amount of any refunds Core owed to its customers.<sup>15</sup>

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<sup>6</sup> *Core Communication, Inc., et al., Tariff F.C.C. No. 3*, WC Docket No. 21-191, Transmittal No. 17, Order, 36 FCC Rcd 8198, 8198, 8200, paras. 1, 6 (WCB 2021) (*Suspension Order*).

<sup>7</sup> *Id.* at 8200, para. 8.

<sup>8</sup> *Core Communications, Inc., et al., Tariff F.C.C. No. 3*, WC Docket No. 21-191, Transmittal No. 17, Order Designating Issues for Investigation, 36 FCC Rcd 9997, 10010, para. 38 (WCB 2021) (*Designation Order*). The Bureau also directed Core to answer questions about its other tariff revisions, including revisions to the dispute resolution process, charges for services to customers to which it discontinues service, and charges for 8YY database queries when the underlying call is not completed. *Id.* at 10008-11, paras. 31-37, 39-41.

<sup>9</sup> Direct Case of Core, WC Docket No. 21-191, Transmittal No. 17 (filed July 14, 2021) (Direct Case).

<sup>10</sup> AT&T Services, Inc.'s Opposition to Direct Case of Core, WC Docket No. 21-191, Transmittal No. 17, at 25-26 (filed July 28, 2021) (AT&T Opposition to Direct Case); Verizon's Opposition to the Direct Case of Core, WC Docket No. 21-191, Transmittal No. 17, at 20-21 (filed July 28, 2021) (Verizon Opposition to Direct Case). AT&T also asserted that Core's dispute resolution provisions and database query provisions are unlawful. AT&T Opposition to Direct Case at 10-24, 26-29. Verizon argued that Core failed to adequately respond to the *Designation Order* and violated Commission rules governing factual submissions. Verizon also argued that if the Commission addressed the tariff provisions on the merits, the Commission should reject each tariff provision as unlawful. Verizon Opposition to Direct Case at 7-23.

<sup>11</sup> *Core Tariff Investigation Order*, 36 FCC Rcd at 15150-52, paras. 52-57.

<sup>12</sup> *Id.* at 15151-52, paras. 54-56; Core Tariff F.C.C. No. 3, 3rd Rev. Page No. 29, § 2.10.5 (filed Apr. 22, 2021); 47 CFR § 61.2.

<sup>13</sup> 47 U.S.C. § 201; *Core Tariff Investigation Order*, 36 FCC Rcd at 15152, para. 57.

<sup>14</sup> *Id.* at 15152, para. 70.

<sup>15</sup> *Id.*

5. On October 15, 2021, Core filed tariff Transmittal No. 21, deleting the unlawful revisions it made to its tariff in Transmittal No. 17. Transmittal No. 21 became effective on October 30, 2021.<sup>16</sup> The period during which the unlawful tariff was in effect (the Refund Period), therefore, is May 7, 2021 (the day after the *Suspension Order* was released) through October 29, 2021 (the day before Transmittal No. 21 became effective).

6. Core filed a proposed Refund Plan on June 29, 2022, which calculated the reductions Core would make to its late-payment fees during the Refund Period.<sup>17</sup> We sought comment on Core's proposed Refund Plan.<sup>18</sup> Verizon filed an Opposition asking the Commission to reject the Refund Plan and instead direct Core to submit a revised plan under which Core would collect no late-payment fees during the Refund Period.<sup>19</sup> Otherwise, it claimed, Core "would suffer no consequences for its unlawful tariff filing."<sup>20</sup> AT&T filed a comment urging the Commission "not to disturb any of the findings it made in its *Core Orders*, or otherwise address the specifics of any payment disputes between Core and AT&T."<sup>21</sup>

### III. DISCUSSION

7. We find that the refunds proposed in Core's Refund Plan are reasonable and properly reflect the findings in the *Core Tariff Investigation Order*.<sup>22</sup> We reject arguments made by Verizon in its Opposition, which seek relief inconsistent with section 204 of the Act, and address issues AT&T raised in its comment concerning the potential effect of this Order on pending disputes.<sup>23</sup>

8. In its Refund Plan and attached spreadsheet, Core calculates the specific amounts it will refund to individual customers as a result of having assessed an unlawfully high 3% monthly late-payment fee during the Refund Period<sup>24</sup> instead of the 1.5% monthly late-payment fee ceiling that had previously been in effect.<sup>25</sup> Core's spreadsheet provides the relevant invoice amounts necessary to support its calculations.<sup>26</sup>

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<sup>16</sup> Core Communications, Inc., et al., Tariff F.C.C. No. 3, Transmittal No. 21, 11th Rev. Page No. 28, § 2.10.4.A; 4th Rev. Page No. 29, § 2.10.5; 4th Rev. Page No. 33, § 2.13.3.G; 4th Rev. Page No. 40, § 2.20.1; 2nd Rev. Page 43.1, § 3.3.5 (Oct. 15, 2021) (Transmittal No. 21) (available via ETFS).

<sup>17</sup> Refund Plan at 2.

<sup>18</sup> *Wireline Competition Bureau Seeks Comment on Refund Plan of Core Communications, Inc.*, WC Docket No. 21-191, Public Notice, DA 22-731 (WCB July 8, 2022).

<sup>19</sup> Verizon's Opposition to the Refund Plan of Core, WC Docket No. 21-191, Transmittal No. 17, at 2 (filed July 25, 2022) (Verizon Refund Plan Opposition).

<sup>20</sup> *Id.*

<sup>21</sup> AT&T Services, Inc.'s Comment on Refund Plan of Core, WC Docket No. 21-191, Transmittal No. 17, at 2 (filed July 25, 2022) (AT&T Refund Plan Comment).

<sup>22</sup> *Core Tariff Investigation Order*, 36 FCC Rcd at 15152, 15157, paras. 57, 70.

<sup>23</sup> AT&T Refund Plan Comment; Verizon Refund Plan Opposition.

<sup>24</sup> Refund Plan at 2.

<sup>25</sup> Core Tariff F.C.C. No. 3, 2nd Rev. Page No. 29, § 2.10.5 (filed Apr. 6, 2021).

<sup>26</sup> Refund Plan, Attach. (Exhibit Core Late Fee Adjustment (Transmittal 17)) (Refund Plan Spreadsheet). We note that the Refund Plan Spreadsheet appears to contain certain typographical errors in the "Interest Rate Adjustment" worksheet that do not affect the calculation of the refunds. Commenting parties neither noted nor objected to these errors.

9. Core incorrectly argues that it is not making any refunds, and is only making downward adjustments to the outstanding balances of some of its customers.<sup>27</sup> Core’s attempt to distinguish between the term “refunds” and its planned “downward adjustments” is a distinction without substance and does not affect its refund obligations pursuant to the *Core Tariff Investigation Order*. Moreover, in a section 204 tariff investigation proceeding, “refunds” are not restricted to cash payments but may also include a variety of forms of non-cash payment. For example, in the South Dakota Network (SDN) tariff investigation, the Bureau directed SDN to make a refund in the form of a credit on the invoices of affected customers.<sup>28</sup> In this tariff investigation, the refunds Core is required to make take the form of reductions to customers’ late-payment fees, another form of non-cash payment. Put simply, those reductions *are* the refunds contemplated by the Commission in the *Core Tariff Investigation Order*.

10. Verizon asks the Commission to reject the Refund Plan, direct Core to submit a new plan, and bar Core from assessing any late-payment fees during the Refund Period.<sup>29</sup> Verizon argues that Core’s Revised Tariff “imposed substantial costs on other carriers and on the Commission,” and that Core “should face consequences that deter the filing of such unlawful tariffs in the first place.”<sup>30</sup> Verizon essentially is asking the Commission to award damages similar to punitive damages by requiring Core to forgo the 1.5% monthly late-payment fee that its tariff would otherwise allow during the Refund Period. Verizon does not contend that the 1.5% late-payment fee is unlawful, only that it and other customers should be granted other relief to dissuade Core from future unlawful tariff filings. But section 204 of the Act grants the Commission the authority to order refunds, not punitive damages.<sup>31</sup> Further, Verizon makes no argument that Core’s Refund Plan would not adequately compensate carriers for excessive charges they incurred as a result of Transmittal No. 17. We therefore deny Verizon’s request to direct Core to submit a revised refund plan that imposes no late-payment fees during the Refund Period.<sup>32</sup>

11. In its comment, AT&T raises concerns about the potential impact of this Order on prior Commission decisions concerning Core’s tariffs, and pending litigation between Core and AT&T.<sup>33</sup> We affirm that this Order neither modifies the Commission’s previous findings in this or any other related proceedings nor addresses pending litigation.

12. We find that the refunds proposed by Core are sufficient to implement the Commission’s decision in the *Core Tariff Investigation Order*. Core explains that it “made no other changes to its

<sup>27</sup> Refund Plan at 2 (“[T]here is no refund—only a downward adjustment . . .”).

<sup>28</sup> *July 1, 2018 Annual Access Charge Tariff Filings; South Dakota Network, LLC, Tariff F.C.C. No. 1*, WC Docket No. 18-100, Transmittal No. 13, Memorandum Opinion and Order, 34 FCC Rcd 3671, 3672, para. 5 (WCB 2019) (“issuing a credit on the invoices of affected customers”).

<sup>29</sup> Verizon Refund Plan Opposition at 1. Verizon’s position is a reversal from its prior request for an unspecified “lower, modern rate.” Verizon Opposition to Direct Case at 21. Verizon provides no explanation for its new request for what amounts to a 0% interest rate, other than its new request for punitive damages. Verizon Refund Plan Opposition at 1.

<sup>30</sup> Verizon Refund Plan Opposition at 1.

<sup>31</sup> 47 U.S.C. § 204; see *MCI Telecommunications Corp. v. Pacific Bell Tel. Co. et al.*, File No. E-88-46S et al., Memorandum Opinion and Order, 8 FCC Rcd 1517, 1521, para. 14 (1993) (“[R]efunds ordered under Section 204 of the Act are different from individual actions for damages under Section 208.”).

<sup>32</sup> Verizon attempts to bolster its request for punitive damages by claiming that without punitive damages, competitive LECs could slip unlawful tariffs through the 15-day review process and have the tariffs be deemed lawful, “knowing that there is no downside to that gamble.” Verizon Refund Plan Opposition at 2; 47 U.S.C. § 204(a)(3). But a rate that is deemed lawful can be evaluated as “to its future effect under sections 205 and 208 [of the Act,] and the Commission may prescribe a rate as to the future under section 205.” *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, Report and Order, 12 FCC Rcd 2170, 2183, para. 21 (1997).

<sup>33</sup> AT&T Refund Plan Comment at 1-2.

billing practices, dispute procedures, or any other customer-impacting issues as a result of Transmittal No. 17,<sup>34</sup> and no commenter claimed that other refunds were necessary. We, therefore, approve Core's proposal to lower the monthly late-payment fee from the 3% Core assessed during the Refund Period to 1.5% for the Refund Period, and direct Core to make those changes for the affected customers. This refund effectively eliminates any impact of the Revised Tariff on Core's customers<sup>35</sup> and restores the status quo that existed prior to Core's filing of its Revised Tariff.

#### IV. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i), 5, 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201-205, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91 and 0.291, and the *Core Tariff Investigation Order*,<sup>36</sup> that the Refund Plan filed by Core Communications, Inc., on June 29, 2022, is APPROVED.

14. IT IS ORDERED that Core Communications, Inc., must implement the revised rate for its assessed late-payment fee for the Refund Period in accordance with the Refund Plan within 45 days of the release date of this Memorandum Opinion and Order.

15. IT IS ORDERED pursuant to section 1.102(b) of the Commission's rules, 47 CFR § 1.102(b), that this Memorandum Opinion and Order shall be EFFECTIVE ON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Wireline Competition Bureau

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<sup>34</sup> Refund Plan at 2.

<sup>35</sup> There do not appear to be any customers that would have been affected by the higher late-payment fee that are no longer customers of Core and therefore would not benefit from the refunds required here. See Refund Plan at 2 (indicating that Core applied the new 3% late-payment fee only to two of its accounts).

<sup>36</sup> *Core Tariff Investigation Order*, 36 FCC Rcd at 15157, para. 70.



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>

DA 23-6

Released: January 4, 2023

## ACP OUTREACH GRANT AND PILOT PROGRAMS APPLICATIONS DUE JANUARY 9, 2023

WC Docket No. 21-450

The Consumer and Governmental Affairs Bureau (Bureau) reminds potential applicants that complete applications to the Affordable Connectivity Outreach Grant Program (ACP Outreach Grant Program) must be received electronically through [Grants.gov](https://www.grants.gov) no later than 11:59 PM Eastern Standard Time (EST) on Monday, January 9, 2023. Additionally, completed applications for the Your Home, Your Internet Pilot Program (YHYI) and the ACP Navigator Pilot Program (NPP) must be received electronically through both the USAC Application Portal ([register to create an account](#) or [login](#)) and through [Grants.gov](https://www.grants.gov) no later than 9:00 PM EST on January 9, 2023. Late applications will not be accepted. Please note the different timing for each submission deadline.

In November 2022, the Federal Communications Commission (FCC) launched the ACP Outreach Grant Program to raise awareness about the nation's largest ever broadband affordability effort, the Affordable Connectivity Program (ACP). The ACP Outreach Grant Program provides grant funding for four complementary programs: the National Competitive Outreach Program (NCOP);<sup>1</sup> the Tribal Competitive Outreach Program (TCOP);<sup>2</sup> the BHYI Outreach Grants;<sup>3</sup> and the NPP Outreach Grants.<sup>4</sup> These programs provide new federal funding for the FCC to grant eligible governmental and non-governmental entities funding and resources needed to increase awareness of and participation in the ACP among those households most in need of affordable connectivity.

Through the ACP Outreach Grant Program, the FCC seeks to enlist and empower trusted community messengers to develop innovative outreach strategies to reach historically underserved and unserved communities. This includes providing those partners with the funding and resources needed to increase participation among eligible, low-income households.

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<sup>1</sup> The NCOP provides up to \$60 million in available funding (information about NCOP is in the [ACP Grant Program NOFO](#)). See Affordable Connectivity Outreach Grant Program, Notice of Funding Opportunity, FCC-ACOGP-23-001 (Nov. 10, 2022).

<sup>2</sup> The TCOP provides a minimum of \$10 million in funding (information about TCOP is in [the ACP Grant Program NOFO](#)). See *id.*

<sup>3</sup> The [Your Home, Your Internet Pilot Program \(YHYI\) Outreach Grants](#) provides up to \$5 million in available funding. See Affordable Connectivity Outreach Grant Program – Pilot Program Grants, Notice of Funding Opportunity, FCC-ACOGP-23-002 (Nov. 21, 2022).

<sup>4</sup> The [ACP Navigator Pilot Program \(NPP\) Outreach Grants](#) provides up to \$5 million in available funding. See *id.*

**ACP Grant Resources for Potential Applicants:**

- [FY 2023 ACP Outreach Grant Program Notice of Funding Opportunity](#) (NOFO, Funding Opportunity Number: FCC-ACOGP-23-001) with information about the grant opportunity, how to apply, the application submission process, and program requirements.
- [ACP Outreach Program NOFO Frequently Asked Questions](#).
- Help through Grants.gov:
  - [How to Register with Grants.gov](#) – Video tutorials on how to receive a grants.gov organization identification number.
  - [How to obtain a Unique Entity I.D.](#)
  - [Getting Started with Sam.gov Workspace Application](#).
- Information about the ACP Grant Program and ACP Pilot Programs is available by visiting [fcc.gov/acp-grants](#). Potential applicants are encouraged to review additional resources such as pre-recorded webinars that explain the program and application submission requirements.
- The ACP Grants Leadership team is available to answer general questions about the grant program and how to apply via email at [ACPgrants@fcc.gov](mailto:ACPgrants@fcc.gov).

**For the YHYI and the NPP, complete applications must be received electronically through both the USAC Application Portal and through [grants.gov](#) no later than 9:00 PM EST on January 9, 2023.**

Potential YHYI and NPP applicants are encouraged to:

- Read the *FY 2023 Pilot Program Outreach Grants NOFO* available at [grants.gov](#) (Funding Opportunity Number: FCC-ACOGP-23-002) thoroughly to better understand the grant opportunity, how to apply, application submission process, and program requirements;
- Review additional resources such as a fact sheet and frequently asked questions (FAQ) document available at [fcc.gov/acp-grants](#) and [fcc.gov/acp-pilots](#);
- Reach out to the Pilot Team with any questions about the pilot programs at [ACPPilots@fcc.gov](mailto:ACPPilots@fcc.gov).

YHYI and NPP applicants have the option, but are not required, to seek grant funding for their proposed pilot activities.



# PUBLIC NOTICE

**Federal Communications Commission**  
45 L Street NE  
Washington, DC 20554

News Media Information 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
TTY: 888-835-5322

DA 23-7

Released: January 5, 2023

## WIRELESS TELECOMMUNICATIONS BUREAU GRANTS 900 MHZ BROADBAND SEGMENT APPLICATIONS

### WT Docket No. 17-200

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) announces the grant of five 900 MHz broadband segment license applications (see Appendix). On May 13, 2020, the Commission realigned the 900 MHz band to make available six megahertz of low-band spectrum for the development of critical wireless broadband technologies and services, while reserving the remaining four megahertz of spectrum for continued narrowband operations.<sup>1</sup> In accordance with the *900 MHz Report and Order*,<sup>2</sup> the Bureau announced that the opening date for acceptance of 900 MHz broadband segment applications began on May 27, 2021.<sup>3</sup>

The Bureau finds the 900 MHz broadband segment applications listed in the Appendix to be complete and in conformance with the Commission's rules. No petitions to deny these applications were filed, and the applications sufficiently demonstrate conformance with the eligibility conditions (Eligibility Certification) and requirements for transitioning the 900 MHz band in the particular county requested (Transition Plan).<sup>4</sup> Furthermore, the Commission has received full anti-windfall payments for the licenses listed in the Appendix, as required by section 27.1503(c)(2). Therefore, the Bureau finds that granting the applications for the 900 MHz broadband segment licenses listed in the Appendix serves the public interest, convenience, and necessity.

Accordingly, by this Public Notice, we announce the grant of the licenses listed in the Appendix. We grant these licenses pursuant to section 309(a) of the Communications Act, 47 U.S.C. § 309(a), and sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331. New 900 MHz broadband licensees may begin operation in the applicable counties, subject to protecting covered incumbents.<sup>5</sup>

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<sup>1</sup> *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, WT Docket No. 17-200, Report and Order, Order of Proposed Modification, and Order, 35 FCC Rcd 5183 (2020) (*900 MHz Report and Order*).

<sup>2</sup> *900 MHz Report and Order*, 35 FCC Rcd at 5229, para. 113.

<sup>3</sup> See *Wireless Telecommunications Bureau to Accept 900 MHz Broadband Segment Applications Beginning May 27, 2021*, WTB Docket No. 17-200, Public Notice, 36 FCC Rcd 7377 (WTB 2021) (*900 MHz Broadband Segment Applications Public Notice*).

<sup>4</sup> 47 CFR § 27.1503; see also *900 MHz Broadband Segment Applications Public Notice, Attachment A*.

<sup>5</sup> A Covered Incumbent is any 900 MHz site-based licensee in the broadband segment that is required under section 90.621(b) to be protected by a broadband licensee with a base station at any location within the county, or any 900 MHz geographic-based SMR licensee in the broadband segment whose license area completely or partially overlaps the county. 47 CFR § 27.1501(g).

We remind licensees that they should review the Commission's part 27 rules and all Commission orders and public notices establishing rules and policies for the 900 MHz band.<sup>6</sup> Each licensee is solely responsible for complying with all FCC rules and regulations associated with these licenses.

This Public Notice includes one appendix, which is included at the end of this document:

Appendix – 900 MHz Broadband Segment Licenses Granted – Sorted by Licensee

Applicants who have questions concerning this Public Notice may contact Morgan Mendenhall of the Wireless Telecommunications Bureau, Mobility Division, (202) 418-0154, [morgan.mendenhall@fcc.gov](mailto:morgan.mendenhall@fcc.gov).

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice).

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<sup>6</sup> See 47 CFR pt. 27; see also *900 MHz Report and Order*, 35 FCC Rcd 5183; *900 MHz Broadband Segment Applications Public Notice*.

APPENDIX  
 900 MHZ BROADBAND SEGMENT LICENSES  
 APPLICATIONS GRANTED  
 SORTED BY LICENSEE

Licensee Name	File Number	FRN	Market/County Number (FIPS)	Market Description	Mandatory Relocation <sup>7</sup>
PDV Spectrum Holding Company, LLC	0010204012	0023948573	D29021	Buchanan County, MO	N/A
PDV Spectrum Holding Company, LLC	0010204019	0023948573	D20043	Doniphan County, KS	N/A
PDV Spectrum Holding Company, LLC	0010204023	0023948573	D20005	Atchison County, KS	N/A
PDV Spectrum Holding Company, LLC	0010204024	0023948573	D20103	Leavenworth County, KS	N/A
PDV Spectrum Holding Company, LLC	0010204030	0023948573	D29165	Platte County, MO	N/A

<sup>7</sup> Section 27.1504 permits a broadband licensee to relocate mandatorily certain incumbents from the 900 MHz broadband section. Incumbent licensees identified for mandatory relocation by new licensees will appear in this column. When there are no incumbent licensees identified for mandatory relocation, N/A will appear.



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, D.C. 20554

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DA 23-8

Released: January 4, 2023

## WIRELINE COMPETITION BUREAU ANNOUNCES NEW DOCKET WC DOCKET NO. 23-1 FOR USE IN NORTH AMERICAN NUMBERING COUNCIL FILINGS

### WC DOCKET NO. 23-1 CC DOCKET NO. 92-237

By this Public Notice, the Wireline Competition Bureau establishes WC Docket No. 23-1 for use in filing materials related to the North American Numbering Council (NANC).<sup>1</sup> The NANC is a federal advisory committee created to advise the Commission on numbering issues and to make recommendations that foster efficient and impartial number administration. It is organized under, and operates in accordance with, the provisions of the Federal Advisory Committee Act (FACA).<sup>2</sup> Opening a new, dedicated docket will enable the public to more easily access materials related to the NANC going forward.

*Ex Parte Exemptions and Filings.* Under the FACA, the Commission is responsible for oversight of the NANC, including its working groups and any subcommittees.<sup>3</sup> As a result, FCC Commissioners and staff may participate in or attend meetings or other activities held by both the NANC and its working groups and subcommittees. For this reason, pursuant to section 1.1200(a) of the Commission's rules, 47 CFR § 1.1200(a), presentations to the NANC, including to its working groups and subcommittees, and at any roundtable discussions sponsored by the NANC, as well as presentations between NANC members (including members of any working groups and subcommittees) and FCC Commissioners or staff incidental to and in connection with such NANC meetings or roundtable discussions, will be treated as exempt presentations for *ex parte* purposes.<sup>4</sup> This exemption covers presentations from NANC members to FCC Commissioners and staff in other settings only to the extent that the NANC members are presenting the views of the NANC or its working groups, as opposed to an individual member's own views or that of a member's organization.

We recognize that some issues may be addressed by the NANC that are the subject of pending FCC proceedings. For these proceedings, the Commission will not rely on any information submitted to

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<sup>1</sup> Filings relating to the NANC previously submitted to CC Docket No. 92-237 are incorporated into the new NANC docket WC No. 23-1 by reference.

<sup>2</sup> 5 U.S.C. App. 2.

<sup>3</sup> *See id.*

<sup>4</sup> Exempt presentations are not subject to the restrictions and reporting requirements that otherwise would apply to *ex parte* presentations and presentations made during the Sunshine Agenda Period. *See* 47 CFR § 1.1204 (a) (providing that exempt *ex parte* presentations are not subject to the prohibitions in sections 1.1203 and 1.1208 and the disclosure requirements in section 1.1206); *see also* 47 CFR §§ 1.1202(a), (b) (definitions of "presentation" and "ex parte presentation"); *Notice Concerning Ex Parte Status of Information Submitted to the North American Numbering Council*, CC Docket No. 92-237, Public Notice, DA 21-1335 (2021) (*NANC 2021 Ex Parte Public Notice*).

the NANC, or to any of its working groups, subcommittees or sponsored roundtables, or information conveyed by NANC members, including members of any working groups and subcommittees, to FCC Commissioners or staff unless that information is first placed in the record of the relevant proceeding.<sup>5</sup>

Members of the public may submit comments to the NANC in the FCC's Electronic Comment Filing System, ECFS, at [www.fcc.gov/ecfs](http://www.fcc.gov/ecfs). Comments or other filings to the NANC should now be filed in new docket WC Docket No.23-1 and should no longer be filed in CC Docket No. 92-237.

More information about the NANC is available at <https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council>. You may also contact Christi Shewman, Designated Federal Officer, at [christi.shewman@fcc.gov](mailto:christi.shewman@fcc.gov) or 202-418-0646.

– FCC –

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<sup>5</sup> See NANC 2021 Ex Parte Public Notice.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Empowering Broadband Consumers Through ) CG Docket No. 22-2  
Transparency )  
 )  
 )  
 )

ORDER

Adopted: January 4, 2023

Released: January 4, 2023

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. By this Order, the Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission grants a request filed by seventeen groups and individuals for an extension of the time in which to file comments in response to the Further Notice of Proposed Rulemaking (*Further Notice*) in this docket. As determined by the date of publication in the Federal Register, comments and reply comments were originally due on January 17, 2023 and February 14, 2023, respectively. Pursuant to this Order, we extend the comment date 30 days to February 16, 2023. Reply comments are now due March 16, 2023.

II. BACKGROUND

2. On December 16, 2022, the Federal Register published a summary<sup>1</sup> of *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Further Notice of Proposed Rulemaking.<sup>2</sup> The *Further Notice* sets deadlines for filing comments and reply comments at 30 and 60 days after the date of publication of the summary of the *Further Notice* in the Federal Register. Consistent with the *Further Notice*, the *Federal Register Notice* states that comments are due no later than January 17, 2023, and reply comments are due no later than February 14, 2023.<sup>3</sup>

3. On December 21, 2022, Free Press and sixteen other groups and individuals submitted a request for a 60-day extension of time to the comment and reply comment deadlines.<sup>4</sup> These parties assert that an extension to the comment deadline is reasonable and warranted in order to adequately develop the record in this proceeding.<sup>5</sup> They observe that the comment period overlaps with the winter

<sup>1</sup> Federal Communications Commission, *Empowering Broadband Consumers Through Transparency*, Proposed Rule, 87 Fed. Reg. 77048 (Dec. 16, 2022) (*Federal Register Notice*).

<sup>2</sup> *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86 (rel. Nov. 17, 2022).

<sup>3</sup> See *Federal Register Notice*, 87 Fed. Reg. at 77048.

<sup>4</sup> See Letter from Free Press, Benton Institute for Broadband & Society, Center for Democracy & Technology, Common Sense, Consumer Reports, Greenlining Institute, INCOMPAS, Massachusetts Law Reform Institute, National Broadband Mapping Coalition, National Consumer Law Center, National Digital Inclusion Alliance, New America’s Open Technology Institute, Next Century Cities, NTEN, OpenMedia, Public Knowledge, and Scott Jordan, to Erica H. McMahon, Federal Communications Commission, December 21, 2022 (Extension Request).

<sup>5</sup> Extension Request at 1.

holiday season in addition to other important broadband-related deadlines, including the deadline for challenges to the broadband availability maps and a Federal Trade Commission (FTC) deadline for comments on its “junk fees” proceeding.<sup>6</sup> The parties assert that an extension would “enable people to participate in all relevant proceedings, which would benefit the Commission, comity with the FTC, and the public interest.”<sup>7</sup> Finally, they argue that an “additional 60 days would provide reasonable accommodation for the many public interest advocates, civil rights organizations, researchers, data experts, and consumers whose voices should be heard in this proceeding.”<sup>8</sup>

### III. DISCUSSION

4. As set forth in section 1.46 of the Commission’s rules, it is the policy of the Commission that extensions of time shall not be routinely granted.<sup>9</sup> However, extensions may be considered “to the extent that good cause for an extension is demonstrated.”<sup>10</sup> The criteria for granting requests for extensions of time “are that the extension be in the public interest, cause no harm to any party in the proceeding, and cause no significant delay.”<sup>11</sup> The Commission has previously found that an extension of time is warranted when it is “necessary to ensure that the Commission receives full and informed responses and that affected parties have a meaningful opportunity to develop a complete record for the Commission’s consideration.”<sup>12</sup>

5. We find good cause to grant an extension. Christmas Day, New Year’s Day, and the Birthday of Martin Luther King, Jr. are all within the comment period, shortening the normal time for drafting and filing comments. We agree with Free Press and the others that an extension will more fully develop the record in this proceeding while affording commenters more ability to participate in other important, consumer-oriented proceedings.

6. We disagree with the petitioners that a full two months is necessary in this case. We find that an extension of 30 days better balances the needs the petitioners describe and timely action on the Label. We therefore find that a 30-day extension is appropriate.<sup>13</sup> Accordingly, comments are due on or before February 16, 2023, and reply comments are due on or before March 16, 2023.

7. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an email to: [fcc504@fcc.gov](mailto:fcc504@fcc.gov), or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

8. For additional information, contact Erica McMahon, Attorney Advisor, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at [erica.mcmahon@fcc.gov](mailto:erica.mcmahon@fcc.gov), (202) 418-0346.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 47 CFR § 1.46.

<sup>10</sup> See, e.g., *Audio Enterprises, Inc. Apparent Liability for Forfeiture*, File No. ENF-88-04, Order, 3 FCC Rcd 5402, para. 2 (Com. Car. Bur. 1988).

<sup>11</sup> *Id.*

<sup>12</sup> See, e.g., *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Order, 35 FCC Rcd 193, 194, para. 3 (PSHSB 2020); see also *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, 35 FCC Rcd 2998, 2999, para. 6 (WCB & OEA 2020).

<sup>13</sup> See, e.g., *Intel Corporation’s Request for Waiver of Section 76.640(B)(4) of the Commission’s Rules*, CS Docket No. 97-80, Order, 24 FCC Rcd 14104 (MB 2015) (in response to a request, extending deadline for filing oppositions to a waiver request by ten days “[g]iven that the Thanksgiving holiday effectively shortened the normal time for filing comments, and that the requested extension will not interfere with the Commission’s ability to timely consider the waiver request”).

**IV. ORDERING CLAUSES**

9. Accordingly, IT IS ORDERED, pursuant to sections 0.204, 0.361, and 1.46 of the Commission's rules, 47 CFR §§ 0.204, 0.361, 1.46, that the Request For Extension Of Comment Deadline filed on December 21, 2022 is GRANTED to the extent indicated herein and is otherwise DISMISSED.

10. IT IS FURTHER ORDERED that the date for filing comments in response to the *Further Notice* is EXTENDED to February 16, 2023.

11. IT IS FURTHER ORDERED that the date for filing reply comments in response to the *Further Notice* is EXTENDED to March 16, 2023.

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark  
Chief  
Consumer and Governmental Affairs Bureau

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Rates for Interstate Inmate Calling Services ) WC Docket No. 12-375  
 )

ORDER

Adopted: January 5, 2023

Released: January 5, 2023

Revised Reply Comment Date: March 3, 2023

By the Chief, Wireline Competition Bureau:

1. By this Order, the Wireline Competition Bureau (Bureau) of the Federal Communications Commission (Commission) grants a 45-day extension of time for filing reply comments on the *Sixth Further Notice of Proposed Rulemaking* in the above-captioned proceeding. With the 45-day extension, reply comments are now due March 3, 2023.

2. On September 30, 2022, the Commission released the *Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking*.<sup>1</sup> In that item, the Commission adopted reforms of interstate inmate calling services, including improvements to access to communications services for incarcerated people with communication disabilities.<sup>2</sup> In the *Sixth Further Notice* portion of the item, the Commission sought comment on a number of outstanding issues.<sup>3</sup> The filing deadlines were set at December 15, 2022 for initial comments and January 17, 2023 for reply comments.<sup>4</sup>

3. On December 19, 2022, HEARD, the Wright Petitioners, Telecommunications for the Deaf and Hard of Hearing, Inc., Hearing Loss Association of America, National Association of the Deaf, the Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University, Benton Institute for Broadband & Society, Prison Policy Initiative, Public Knowledge, United Church of Christ Media Justice Ministry, and Worth Rises (collectively, the Public Interest Parties) filed a motion to extend the reply comment deadline by 45 days to March 3, 2023.<sup>5</sup> Movants assert that an additional grant of time would allow for “a thorough and well-developed record, including from stakeholder reply comments” and “would enable more fulsome public participation in the reply comment round.”<sup>6</sup> They argue, *inter alia*, that their analysis of the record, “totaling over 500 pages, including at least 100 pages of expert reports, statistical studies, and other exhibits,” will cause “resource challenges,” and request the additional time to help “secure the resources necessary to actively

<sup>1</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, FCC 22-76 (rel. Sept. 30, 2022) (Sixth Further Notice).

<sup>2</sup> *Id.* at para. 3.

<sup>3</sup> *Id.* at paras. 93-162.

<sup>4</sup> *Comment Due Dates Set for Sixth Further Notice on Calling Services for Incarcerated People*, WC Docket No. 12-375, Public Notice, DA 23-1249 (rel. Dec. 2, 2022).

<sup>5</sup> The Public Interest Parties, Motion for Extension of Time, WC Docket No. 12-375, at 2 (filed Dec. 19, 2022) (Motion for Extension).

<sup>6</sup> Motion for Extension at 1, 3.

participate.”<sup>7</sup>

4. Section 1.46 of the Commission’s rules provides that “[i]t is the policy of the Commission that extensions of time shall not be routinely granted.”<sup>8</sup> Upon review, however, we agree with the Public Interest Parties that an extension of time will more fully allow parties to provide us with fulsome comments that will facilitate the compilation of a complete record in this proceeding, without causing undue delay to the Commission’s consideration of these issues.

5. Accordingly, IT IS ORDERED, pursuant to sections 0.204, 0.291, and 1.46 of the Commission’s rules, 47 CFR §§ 0.204, 0.291, and 1.46 that the Motion for Extension of Time filed by the Public Interest Parties on December 19, 2022 is GRANTED.

6. IT IS ALSO ORDERED that the deadline for filing reply comments to the *Sixth Further Notice* is EXTENDED to March 3, 2023.

7. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to: [fcc504@fcc.gov](mailto:fcc504@fcc.gov), or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY).

8. For further information concerning this proceeding, please contact Erik Raven-Hansen, Pricing Policy Division, Wireline Competition Bureau, (202) 418-1532, [Erik.Raven-Hansen@fcc.gov](mailto:Erik.Raven-Hansen@fcc.gov).

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader  
Chief  
Wireline Competition Bureau

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<sup>7</sup> Motion for Extension at 2-3.

<sup>8</sup> 47 CFR § 1.46.



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**ITC-T/C-20221206-00151**      E                      Commnet Wireless, LLC

Transfer of Control

Grant of Authority

Date of Action:    01/03/2023

**Current Licensee:**    Commnet Wireless, LLC

**FROM:** ATN International, Inc.

**TO:**    Alloy, Inc.

On December 6, 2022, Commnet Wireless, LLC (Commnet), a Delaware limited liability company that holds an international section 214 authorization (ITC-214-20081113-0096), filed a notification of the pro forma transfer of control of Commnet from ATN International, Inc. (ATN) to Alloy, Inc. (Alloy), effective November 7, 2022. Prior to the transaction, Commnet was a direct wholly owned subsidiary of ATN, a Delaware company. In an internal reorganization, Alloy, a Delaware company that is wholly owned by ATN, was inserted between ATN and Commnet. Commnet is now a direct wholly owned subsidiary of Alloy and an indirect wholly owned subsidiary of ATN.

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## CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

(1) These authorizations are subject to the Exclusion List for International Section 214 Authorizations, which identifies restrictions on providing service to particular countries or using particular facilities. The most recent Exclusion List is at the end of this Public Notice. The list applies to all U.S. international carriers, including those that have previously received global or limited global Section 214 authority, whether by Public Notice or specific written order. Carriers are advised that the attached Exclusion List is subject to amendment at any time pursuant to the procedures set forth in Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118, 11 FCC Rcd 12884 (1996), para. 18. A copy of the current Exclusion List is maintained in the FCC Reference Information Center and is available at <https://www.fcc.gov/exclusion-list-international-section-214-authorizations>. It is also attached to each Public Notice that grants international Section 214 authority.

(2) The export of telecommunications services and related payments to countries that are subject to economic sanctions may be restricted. For information concerning current restrictions, call the Office of Foreign Assets Control, U.S. Department of the Treasury, (202) 622-2520.

(3) Carriers shall comply with the requirements of Section 63.11 of the Commission's rules, which requires notification by, and in certain circumstances prior notification by, U.S. carriers acquiring an affiliation with foreign carriers. A carrier that acquires an affiliation with a foreign carrier will be subject to possible reclassification as a dominant carrier on an affiliated route pursuant to the provisions of Section 63.10 of the rules.

(4) A carrier may provide switched services over its authorized resold private lines in the circumstances specified in Section 63.23(d) of the rules, 47 CFR § 63.23(d).

(5) Carriers shall comply with the "No Special Concessions" rule, Section 63.14, 47 CFR § 63.14.

(6) Carriers regulated as dominant for the provision of a particular communications service on a particular route for any reason other than a foreign carrier affiliation under Section 63.10 of the rules shall file tariffs pursuant to Section 203 of the Communications Act, as amended, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 CFR Part 61. Carriers shall not otherwise file tariffs except as permitted by Section 61.19 of the rules, 47 C.F.R. § 61.19. Except as specified in Section 20.15 with respect to commercial mobile radio service providers, carriers regulated as non-dominant, as defined in Section 61.3, and providing detariffed international services pursuant to Section 61.19, must comply with all applicable public disclosure and maintenance of information requirements in Sections 42.10 and 42.11.

(7) International facilities-based service providers must file and maintain a list of U.S.-international routes on which they have direct termination arrangements with a foreign carrier. 47 CFR § 63.22(h). A new international facilities-based service provider or one without existing direct termination arrangements must file its list within thirty (30) days of entering into a direct termination arrangement(s) with a foreign carrier(s). Thereafter, international facilities-based service providers must update their lists within thirty (30) days after adding a termination arrangement for a new foreign destination or discontinuing an arrangement with a previously listed destination. See Process For The Filing Of Routes On Which International Service Providers Have Direct Termination Arrangements With A Foreign Carrier, ITC-MS-20181015-00182, Public Notice, 33 FCC Rcd 10008 (IB 2018).

(8) Any U.S. Carrier that owned or leased bare capacity on a submarine cable between the United States and any foreign point must file a Circuit Capacity Report to provide information about the submarine cable capacity it holds. 47 CFR § 43.82(a)(2). See <https://www.fcc.gov/circuit-capacity-data-us-international-submarine-cables>.

(9) Carriers should consult Section 63.19 of the rules when contemplating a discontinuance, reduction or impairment of service.

(10) If any carrier is reselling service obtained pursuant to a contract with another carrier, the services obtained by contract shall be made generally available by the underlying carrier to similarly situated customers at the same terms, conditions and rates. 47 U.S.C. § 203.

(11) To the extent the applicant is, or is affiliated with, an incumbent independent local exchange carrier, as those terms are defined in Section 64.1902 of the rules, it shall provide the authorized services in compliance with the requirements of Section 64.1903.

(12) Except as otherwise ordered by the Commission, a carrier authorized here to provide facilities-based service that (i) is classified as dominant under Section 63.10 of the rules for the provision of such service on a particular route and (ii) is affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide facilities-based switched service on that route unless the current rates the affiliate charges U.S. international carriers to terminate traffic are at or below the Commission's relevant benchmark adopted in International Settlement Rates, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997). See also Report and Order on Reconsideration and Order Lifting Stay in IB Docket No. 96-261, FCC 99-124 (rel. June 11, 1999). For the purposes of this rule, "affiliated" and "foreign carrier" are defined in Section 63.09.

(13) Carriers shall comply with the Communications Assistance for Law Enforcement Act (CALEA), see 47 CFR §§ 1.20000 et seq.

(14) Every carrier must designate an agent for service in the District of Columbia. See 47 U.S.C. § 413, 47 CFR §§ 1.47(h), 64.1195.

#### Exclusion List for International Section 214 Authorizations

The following is a list of countries and facilities not covered by grant of global Section 214 authority under Section 63.18(e)(1) of the Commission's Rules, 47 CFR § 63.18(e)(1). Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate Section 214 application pursuant to Section 63.18(e)(3) of the Commission's Rules. See 47 CFR § 63.22(c).

#### Countries:

None.

#### Facilities:

Any non-U.S.-licensed space station that has not received Commission approval to operate in the U.S. market pursuant to the procedures adopted in the Commission's DISCO II Order, IB Docket No. 96-111, Report and Order, FCC 97-399, 12 FCC Rcd 24094, 24107-72 paragraphs 30-182 (1997) (DISCO II Order). Information regarding non-U.S.-licensed space stations approved to operate in the U.S. market pursuant to the Commission's DISCO II procedures is maintained at <https://www.fcc.gov/approved-space-station-list>.

This list is subject to change by the Commission when the public interest requires. The most current version of the list is maintained at <https://www.fcc.gov/exclusion-list-international-section-214-authorizations>.

For additional information, contact the International Bureau's Telecommunications and Analysis Division, (202) 418-1480.



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
TTY: 888-835-5322

DA 23-12

Released: January 5, 2023

## WIRELESS TELECOMMUNICATIONS BUREAU GRANTS AUCTION 108 LICENSES

### Auction No. 108

By this Public Notice, the Wireless Telecommunications Bureau (WTB) announces the grant of four long-form applications and issuance of 12 licenses for Auction 108. On August 29, 2022, the Federal Communications Commission (Commission) completed the auction of new flexible-use geographic overlay licenses in the (2.5 GHz) band, and the Office of Economics and Analytics (OEA) and the Wireless Telecommunications Bureau (WTB) announced the results of that auction on September 1, 2022.<sup>1</sup> This auction raised a total of \$419,133,261 in net bids and \$427,789,670 in gross bids, with 63 bidders winning a total of 7,872 licenses.<sup>2</sup> Long-form applications for licenses won in Auction 108 were due on September 16, 2022.<sup>3</sup> WTB accepted these four Auction 108 applications for filing on December 8, 2022.<sup>4</sup>

Upon further review and examination, WTB finds the applications for the licenses listed in Attachment A to be complete and in conformance with the Commission's rules. We find that granting the applications for the licenses listed in Attachment A serves the public interest, convenience, and necessity. Furthermore, the Commission has received full payment for the licenses listed in Attachment A, as required by section 1.2109(a) of its rules.<sup>5</sup> Accordingly, by this Public Notice, we announce the grant of the licenses listed in Attachment A. We grant these licenses pursuant to section 309(a) of the Communications Act, 47 U.S.C. § 309(a), and sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

We remind licensees that they should review all Commission orders and public notices establishing rules and policies for the 2.5 GHz Band.<sup>6</sup> Each licensee is solely responsible for complying

<sup>1</sup> *Auction of Flexible-Use Licenses in the 2.5 GHz Band Closes*, Public Notice, DA 22-910 (OEA & WTB Sept. 1, 2022).

<sup>2</sup> "Gross bids" refers to the total of winning bid amounts at the close of bidding and does not reflect any small business or rural service provider bidding credits claimed by eligible winning bidders. "Net bids" refers to the total of winning bid amounts as adjusted for any small business or rural service provider bidding credits claimed by winning bidders.

<sup>3</sup> On October 26, 2022, WTB released the first accepted for filing public notice for Auction 108 which found 52 applications acceptable for filing. *Wireless Telecommunications Bureau Announces that Applications for Auction 108 Licenses Are Accepted for Filing*, Public Notice, DA 22-1125 (WTB Oct. 26, 2022). Subsequently, on December 1, 2022, WTB granted 51 of those 52 applications. *Wireless Telecommunications Bureau Grants Auction 108 Licenses*, Public Notice, DA 22-1243 (WTB Dec. 1, 2022).

<sup>4</sup> *Wireless Telecommunications Bureau Announces that Applications for Auction 108 Licenses Are Accepted for Filing*, Public Notice, DA 22-1269 (WTB Dec. 8, 2022).

<sup>5</sup> 47 CFR § 1.2109(a).

<sup>6</sup> *See generally Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Report and Order, 34 FCC Rcd 5446 (2019) (modified by Erratum, 34 FCC Rcd 10386 (WTB 2019)) (*2.5 GHz Report and Order*).

with all FCC rules and regulations associated with these licenses. Notably, we remind Auction 108 licensees that they must protect existing incumbent licenses, including Rural Tribal Priority Window (RTPW) licenses.<sup>7</sup> We further remind licensees that pending RTPW applications may affect the licenses issued in Auction 108. Licenses granted through applications received during the RTPW will have incumbent status vis-à-vis licenses awarded in Auction 108.<sup>8</sup> In other words, any winning bidder awarded a license in Auction 108 may not operate within the license area of a successful RTPW applicant, even if that RTPW application remains pending at the time of issuance of the Auction 108 overlay license.

This Public Notice includes two attachments:

Attachment A – Flexible-Use Licenses Granted – Sorted by Licensee

Attachment B – Flexible-Use Licenses Granted – Sorted by Market Number

Please contact Madelaine Maior or Nadja Sodos-Wallace at [Madelaine.Maior@fcc.gov](mailto:Madelaine.Maior@fcc.gov) and [Nadja.SodosWallace@fcc.gov](mailto:Nadja.SodosWallace@fcc.gov) for questions regarding legal matters or licensing issues. Please contact Anne Veigle at (202) 418-0500 or [Anne.Veigle@fcc.gov](mailto:Anne.Veigle@fcc.gov) for press questions.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice).

- FCC -

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<sup>7</sup> See 2.5 Report and Order at 28, para. 77; 47 CFR § 27.1206(b)(2)(ii).

<sup>8</sup> *Id.* at 14, para. 9.

**ATTACHMENT A**  
**2.5 GHz EDUCATIONAL BROADBAND SERVICES**  
**APPLICATIONS GRANTED**  
**AUCTION ID: 108**  
**SORTED BY LICENSEE**  
**DATE OF REPORT: January 5, 2023**



<b>Licensee Name</b>	<b>Market Number</b>	<b>Market Description</b>	<b>Channel Block</b>	<b>File Number</b>	<b>Callsign</b>	<b>Tribal Land Bidding Credit</b>
Farmers Mutual Telephone Company, Inc.	D16075	PAYETTE, ID	1	0010206056	WRVU249	N
Farmers Mutual Telephone Company, Inc.	D41045	MALHEUR, OR	1	0010206056	WRVU250	N
Michigan Wireless, LLC	D55001	ADAMS, WI	1	0010206949	WRVU253	N
Michigan Wireless, LLC	D55047	GREEN LAKE, WI	1	0010206949	WRVU254	N
Michigan Wireless, LLC	D55049	IOWA, WI	1	0010206949	WRVU255	N
Michigan Wireless, LLC	D55103	RICHLAND, WI	1	0010206949	WRVU256	N
Michigan Wireless, LLC	D55111	SAUK, WI	1	0010206949	WRVU257	N
Michigan Wireless, LLC	D55137	WAUSHARA, WI	1	0010206949	WRVU258	N
Northwest Open Access Network	D53049	PACIFIC, WA	1	0010206553	WRVU251	N
Northwest Open Access Network	D53049	PACIFIC, WA	2	0010206553	WRVU252	N
Rocky Mountain Broadband, LLC	D08065	LAKE, CO	1	0010205237	WRVU259	N
Rocky Mountain Broadband, LLC	D08097	PITKIN, CO	1	0010205237	WRVU260	N

**ATTACHMENT B**  
**2.5 GHz EDUCATIONAL BROADBAND SERVICES**  
**APPLICATIONS GRANTED**  
**AUCTION ID: 108**  
**SORTED BY MARKET**  
**DATE OF REPORT: January 5, 2023**



<b>Licensee Name</b>	<b>Market Number</b>	<b>Market Description</b>	<b>Channel Block</b>	<b>File Number</b>	<b>Callsign</b>	<b>Tribal Land Bidding Credit</b>
Rocky Mountain Broadband, LLC	D08065	LAKE, CO	1	0010205237	WRVU259	N
Rocky Mountain Broadband, LLC	D08097	PITKIN, CO	1	0010205237	WRVU260	N
Farmers Mutual Telephone Company, Inc.	D16075	PAYETTE, ID	1	0010206056	WRVU249	N
Farmers Mutual Telephone Company, Inc.	D41045	MALHEUR, OR	1	0010206056	WRVU250	N
Northwest Open Access Network	D53049	PACIFIC, WA	1	0010206553	WRVU251	N
Northwest Open Access Network	D53049	PACIFIC, WA	2	0010206553	WRVU252	N
Michigan Wireless, LLC	D55001	ADAMS, WI	1	0010206949	WRVU253	N
Michigan Wireless, LLC	D55047	GREEN LAKE, WI	1	0010206949	WRVU254	N
Michigan Wireless, LLC	D55049	IOWA, WI	1	0010206949	WRVU255	N
Michigan Wireless, LLC	D55103	RICHLAND, WI	1	0010206949	WRVU256	N
Michigan Wireless, LLC	D55111	SAUK, WI	1	0010206949	WRVU257	N
Michigan Wireless, LLC	D55137	WAUSHARA, WI	1	0010206949	WRVU258	N



extension “to the extent that good cause for an extension is demonstrated.”<sup>8</sup> The criteria for granting requests for extensions of time “are that the extension be in the public interest, cause no harm to any party in the proceeding, and cause no significant delay.”<sup>9</sup> The Commission has previously found that an extension of time is warranted when it is “necessary to ensure that the Commission receives full and informed responses and that affected parties have a meaningful opportunity to develop a complete record for the Commission’s consideration.”<sup>10</sup>

5. Here, the Bureau finds good cause to grant the extension request. The holiday season, including two Federal holidays,<sup>11</sup> fell within the reply comment period, and the Bureau is cognizant of the challenges this poses to commenters, specifically smaller companies with more limited resources over the holiday season. The Bureau finds that an extension of 12 days to file reply comments is warranted to allow interested parties the time to meaningfully review and reply to the information in the record, and that this brief extension will not harm any party in the proceeding nor cause a significant delay in the Commission’s ability to consider the issues raised in this proceeding in a timely manner.<sup>12</sup> Thus, the Bureau extends the deadline for the filing of reply comments until January 23, 2023.

6. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

7. For additional information on this proceeding, contact Connor Ferraro, Wireline Competition Bureau, Competition Policy Division, at [Connor.Ferraro@fcc.gov](mailto:Connor.Ferraro@fcc.gov) or (202) 418-1322.

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to sections 0.204, 0.291, and 1.46 of the Commission’s rules, 47 CFR §§ 0.204, 0.291, 1.46, that the Motion for Extension of the Reply Comment deadline is hereby GRANTED.

9. IT IS FURTHER ORDERED that the date for filing reply comments in response to the *Notice* is EXTENDED to January 23, 2023.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader  
Chief  
Wireline Competition Bureau

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<sup>8</sup> See e.g., *Advanced Methods to Target and Eliminate Unlawful Robocalls; Call Authentication Trust Anchor*, CG Docket No. 17-59 and WC Docket No. 17-97, Order, 36 FCC Rcd 15572, 15573, para. 4 (WCB & CGB 2021) (*2021 Extension Request Order*).

<sup>9</sup> *2021 Extension Request Order*, 36 FCC Rcd at 15573, para. 4.

<sup>10</sup> *Id.*

<sup>11</sup> See Office of Personnel Management, *Federal Holidays*, <https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays/>.

<sup>12</sup> *2021 Extension Request Order*, 36 FCC Rcd at 15573, para. 5 (finding good cause to grant a 14-day extension for filing comments and reply comments where “[t]he Thanksgiving and Christmas Federal holidays both fall within two days of the original comment and reply comment deadlines, thus effectively shortening the normal time for filing comments”).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Emergency Broadband Benefit Program
WC Docket No. 20-445

ORDER

Adopted: January 5, 2023

Released: January 5, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) addresses the petition of VPNet, Inc. (VPNet), seeking a limited waiver of the Emergency Broadband Benefit Program (EBB Program) reimbursement rules. VPNet requests a waiver of the requirement that it certify reimbursement by the 15th of the month for the October 2021 service month.

2. Based on our established waiver standard, we grant VPNet a waiver to submit certified claims for the October 2021 service month by February 15, 2023. In addition, we grant, on our own motion, a limited waiver to participating providers that uploaded, but did not certify, their reimbursement claims for discounted service provided in the December 2021, January 2022, and February 2022 service months by their respective claims deadlines. This limited waiver will allow the limited number of affected providers to certify any such previously uploaded claims for the December 2021, January 2022, and February 2022 service months by February 15, 2023. We conclude that these limited waivers are consistent with the Program’s statutory requirements and will serve the public interest.

II. DISCUSSION

3. As a general matter, “an agency must adhere to its own rules and regulations.” Although strict application of a rule may be justified “to preserve incentives for compliance and to realize the benefits of easy administration that the rule was designed to achieve,” the Commission’s rules may be waived for “good cause shown.” The Commission may exercise its discretion to waive a rule where special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. The Bureau, under delegated authority, may act on requests for waiver of rules.

1 VPNet, Inc. Petition for Waiver, WC Docket No. 20-445 (filed June 8, 2022) (VPNet Waiver Petition).

2 47 CFR § 54.1608(g).

3 VPNet Waiver Petition at 1.

4 NetworkIP, LLC v. FCC, 548 F.3d 116, 127 (D.C. Cir. 2008).

5 Mary V. Harris Found. v. FCC, 776 F.3d 21, 28 (D.C. Cir. 2015).

6 47 CFR § 1.3.

7 Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

8 Northeast Cellular, 897 F.2d at 1166; WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

4. To receive reimbursement under the EBB Program rules, providers must submit certified reimbursement claims through the Lifeline Claims System by the 15th of each month, or the following business day in the event the 15th is a holiday or falls on a weekend.<sup>10</sup> If the participating provider fails to submit a certified reimbursement claim by the deadline for that service month, the reimbursement claim will not be processed.<sup>11</sup> The Bureau has previously released waivers on June 8, 2021,<sup>12</sup> August 10, 2021,<sup>13</sup> September 3, 2021,<sup>14</sup> and February 11, 2022,<sup>15</sup> that allowed providers additional time to file certified reimbursement claims.

5. Based on the record before us, we grant the limited waiver request of VPNet. We will permit VPNet an extension of time until February 15, 2023 to submit certified reimbursement claims for its October 2021 service month claims. VPNet requests a limited waiver of the certification requirement for the October 2021 service month.<sup>16</sup> VPNet says that it began processing its claims for the October 2021 service month on November 11, 2021, but was unable to successfully upload the Claims Input Template.<sup>17</sup> VPNet argues that good cause exists to grant a waiver of the reimbursement rules because VPNet took steps that should have been sufficient to timely complete and certify its reimbursement claim for the October 2021 service month.<sup>18</sup> VPNet further argues that grant of a waiver will avoid a miscarriage of justice and further provide assurance to participating providers that continued participation in the EBB Program and its successor program the Affordable Connectivity Program (ACP) will not expose them to undue risk of economic harm.<sup>19</sup> VPNet further states that granting a waiver will not undermine the EBB Program or ACP.<sup>20</sup>

6. Based on the record before us, the Bureau finds that good cause exists for a limited waiver of the requirement of section 54.1608(g) of the Commission's rules to permit VPNet to submit certified reimbursement claims for the October 2021 service month by February 15, 2023. We find that it

(Continued from previous page) \_\_\_\_\_

<sup>9</sup> 47 CFR § 0.291(b).

<sup>10</sup> 47 CFR § 54.1608(g).

<sup>11</sup> *Id.*

<sup>12</sup> *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, 36 FCC Rcd 9434 (WCB 2021), <https://docs.fcc.gov/public/attachments/DA-21-671A1.pdf> (granting all participating providers an additional month, until July 15, 2021, to submit the first reimbursement claim for service provided in May 2021).

<sup>13</sup> *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, 36 FCC Rcd 12470 (WCB 2021), <https://docs.fcc.gov/public/attachments/DA-21-980A1.pdf> (granting participating providers that uploaded but did not certify reimbursement claims for the May and/or June 2021 service months by the July 15, 2021 deadline until August 16, 2021 to certify such claims).

<sup>14</sup> *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, 36 FCC Rcd 13299 (WCB 2021), <https://docs.fcc.gov/public/attachments/DA-21-1098A1.pdf> (granting participating providers that uploaded but did not certify reimbursement claims for the July 2021 service month by the August 16, 2021 deadline until September 15, 2021 to certify such claims).

<sup>15</sup> *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, DA 22-146 (WCB 2022), <https://docs.fcc.gov/public/attachments/DA-22-146A1.pdf> (granting T-Mobile a waiver of the certification requirement for the October 2021 service month and also granting participating providers that uploaded but did not certify reimbursement claims for the October 2021 and November 2021 service months by the November 15, 2021 and December 15, 2021 deadlines respectively, until March 15, 2022 to certify such claims).

<sup>16</sup> VPNet Waiver Petition at 1.

<sup>17</sup> *Id.* at 2-3.

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.* at 4-5.

<sup>20</sup> *Id.* at 5.

is in the public interest to allow VPNet the opportunity to certify its reimbursement claims for October 2021, given that VPNet in good faith attempted to timely submit its reimbursement claims by the deadline, and the financial hardship VPNet may face if not allowed to seek reimbursement. We also find that granting this waiver to VPNet should neither undermine any program integrity controls, nor invite waste, fraud, and abuse because VPNet will still only be able to claim reimbursement for subscribers that completed the eligibility verification process and did receive discounted service. This waiver is limited to VPNet's claims for the October 2021 service month.

7. Additionally, the Bureau, on its own motion, grants a limited waiver to allow those EBB Program providers that uploaded but did not certify their claims for the December 2021, January 2022, and February 2022 service months by their respective claims deadline additional time to complete the certification process. Those providers will have until February 15, 2023 to submit certified reimbursement claims for discounts provided in the December 2021, January 2022, and February 2022 service months.

8. Based on the record before us, the Bureau finds that good cause exists for a limited waiver of the requirement of section 54.1608(g) of the Commission's rules to permit providers that uploaded their reimbursement claims for the December 2021, January 2022, and February 2022 service months by January 18, 2022, February 15, 2022, and March 15, 2022 respectively, but failed to certify those claims by those respective deadlines, until February 15, 2023 to certify such claims. We find that it is in the public interest to allow these providers the opportunity to certify their submitted reimbursement claims, given the substantial hardship they may face if not allowed to seek reimbursement. We also find that granting this waiver should not undermine any program integrity controls, nor invite waste, fraud, and abuse. This waiver is limited to participating providers that successfully uploaded their reimbursement claims for the December 2021, January 2022, and February 2022 service months for discounted service provided to qualified subscribers, but did not certify them, thus ensuring that the providers' claimed subscribers were in fact enrolled in National Lifeline Accountability Database (NLAD) as of the snapshot date on the 1st of the month and that the provider had made a good faith effort at identifying and claiming reimbursement for those subscribers by the deadline.

### III. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that section 47 CFR § 54.1608(g) of the Commission's rules is WAIVED to the limited extent provided herein.

10. IT IS FURTHER ORDERED, that pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the request for waiver filed by VPNet, Inc. is GRANTED.

11. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Wireline Competition Bureau



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
45 L STREET NE  
WASHINGTON D.C. 20554

News media information 202-418-0500  
Internet: <http://www.fcc.gov> (or <ftp.fcc.gov>)  
TTY (202) 418-2555

DA No. 23-15

Friday January 6, 2023

Report No. SAT-01691

## Satellite Policy Branch Information

### Actions Taken

The Commission, by its International Bureau, took the following actions pursuant to delegated authority. The effective date of these actions is the release date of this Notice, except where an effective date is specified.

SAT-AMD-20220630-00067	E S3014	Astro Digital US, Inc.	
Amendment			
Withdrawn			Effective Date: 12/24/2022

Nature of Service: Earth Exploration Satellite Service

### INFORMATIVE

SAT-LOA-20220607-00058 S3148 Intelsat License LLC

On December 29, 2022, the Satellite Division granted a 60-day extension, to March 8, 2023, for Intelsat License LLC to satisfy the condition in its license for Galaxy 36 requiring Intelsat to post a surety bond in satisfaction of 46 CFR §§ 25.165(a) & (b).

For more information concerning this Notice, contact the Satellite Division at 202-418-0719.



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street, N.E.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
TTY: 1-888-835-5322

DA 23-16

Released: January 6, 2023

## **MEDIA BUREAU ANNOUNCES EXTENSION OF TIME FOR ENTITIES TO FILE DOCUMENTS INTO THEIR ONLINE PUBLIC INSPECTION FILES**

As a result of current technical issues adversely affecting the responsiveness of the Commission's Online Public Inspection File (OPIF) system, we extend the deadline by which all broadcast, cable, and satellite entities must upload required documents into their OPIF. All documents that were due to be placed in an entities OPIF since January 1, 2023, must be filed no later than January 31, 2023.<sup>1</sup> Extending OPIF filing deadlines will not significantly impact the public's or the Bureau's review of licensee's compliance with the Commission's rules. While we are extending OPIF filing deadlines, we encourage licensees to file all documents as soon as practicable.

For further information: Radio, please contact Albert Shuldiner, Audio Division, Media Bureau, at [Albert.Shuldiner@fcc.gov](mailto:Albert.Shuldiner@fcc.gov); Television, please contact Barbara Kreisman, Video Division, Media Bureau, at [Barbara.Kreisman@fcc.gov](mailto:Barbara.Kreisman@fcc.gov); Cable and Satellite, please contact Stephen Broeckaert, Policy Division, Media Bureau, at [Steven.Broeckaert@fcc.gov](mailto:Steven.Broeckaert@fcc.gov). Press inquiries, please contact Janice Wise at [Janice.Wise@fcc.gov](mailto:Janice.Wise@fcc.gov).

This action is taken by the Chief, Media Bureau, pursuant to authority delegated by sections 0.61 and 0.283 of the Commission's rules.<sup>2</sup>

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<sup>1</sup> See 47 CFR §§ 25.601, 25.701, 25.702, 73.3526 73.3527 and 76.1700.

<sup>2</sup> 47 CFR §§ 0.61 and 0.283.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.622(j),	)	MB Docket No. 22-146
Table of Allotments, Television Broadcast	)	RM-11925
Stations (Memphis, Tennessee)	)	
	)	

**REPORT AND ORDER**

**(Proceeding Terminated)**

**Adopted: January 9, 2023**

**Released: January 9, 2023**

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking<sup>1</sup> issued in response to a Petition for Rulemaking filed by Gray Television Licensee, LLC (Gray or Petitioner),<sup>2</sup> the licensee of television station WMC-TV (WMC-TV or Station), channel 5, Memphis, Tennessee. The Petitioner has requested the substitution of UHF channel 30 for VHF channel 5 in the Table of TV Allotments.<sup>3</sup> The Petitioner filed comments in support of the petition, as required by the Commission’s rules (rules),<sup>4</sup> reaffirming its commitment to apply for channel 30. No other comments were received.

2. We believe the public interest would be served by substituting channel 30 for channel 5 at Memphis, Tennessee. The Petitioner states that the proposed channel substitution resolves significant over-the-air reception problems in WMC-TV’s service area due to its operation on a low VHF channel, reception problems which the Commission has recognized exist on VHF channels.<sup>5</sup> An analysis using the Commission’s *TVStudy* software tool indicates that WMC-TV’s move from channel 5 to channel 30 is predicted to create an area where 4,072 persons may lose service. The loss area, however, is largely overlapped by the noise limited contours of other NBC affiliated stations and most viewers will continue

<sup>1</sup> *Amendment of Section 73.622(j), Table of Allotments, Television Stations (Memphis, Tennessee)*, MB Docket No. 22-146, Notice of Proposed Rulemaking, DA 21-694 (rel. Apr. 5, 2022) (*NPRM*).

<sup>2</sup> Petition of Gray Television Licensee, LLC for Rulemaking, as amended (filed Nov. 27, 2020, LMS File No. 0000127522) (Petition). Gray requested confidential treatment for certain information contained in the November 2020 Petition pursuant to sections 0.459 and 0.457 of the Commission’s rules (rules), 47 CFR §§ 0.457, 0.459, and the Freedom of Information Act, 5 U.S.C. § 552. Gray amended the November 2020 Petition on February 10, 2022 (Amended Petition and Supplemental Engineering Statement) to provide a supplemental engineering statement with a further analysis of the population served by the proposed channel 30 facility, and to report that it had acquired three low power television (LPTV) stations which it intended to modify to better serve the predicted loss areas. Because the Amended Petition and Supplemental Engineering Statement did not include the confidential information or the legal and economic arguments on which it was based, we dismissed the November 2020 Petition. *NPRM* at n.1 and para. 17.

<sup>3</sup> 47 CFR § 73.622(j).

<sup>4</sup> 47 CFR §§ 1.415, 1.419; *see also Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

<sup>5</sup> Amended Petition at 3; *NPRM* at para. 2.

to receive service from five or more stations,<sup>6</sup> In addition, the Petitioner acquired three LPTV stations (WANF-LD, Dyersburg, Tennessee (channel 32); WDDY-LD, Jackson, Tennessee (channel 15); and W20DW-D, Clarksdale, Mississippi (channel 20)) and constructed modified facilities to deliver NBC programming to viewers in the loss area.<sup>7</sup> As a result, only 64 persons would either (1) no longer receive NBC network programming or (2) no longer receive service from five or more full power television services.<sup>8</sup> In practice, Gray expects that few, if any, persons who are currently able to receive WMC-TV's over-the-air signal on channel 5 would no longer be able to receive WMC-TV's over-the-air signal as a result of the Station's transition to channel 30.<sup>9</sup>

3. As proposed, channel 30 can be substituted for channel 5 at Memphis, Tennessee, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,<sup>10</sup> at coordinates 35° 10' 09" N and 89° 53' 10" W. Although the Petitioner's proposal would result in a loss for a limited number of viewers, we find that the overall benefits of the proposed channel change outweighs any possible harm to the public interest when taking into account the ability of all but a *de minimis* number of viewers to access NBC programming from another source. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:<sup>11</sup>

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Memphis, Tennessee	30	515	307.7	1,556,336

4. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.<sup>12</sup> An expedited effective date is necessary in this case to ensure that WMC-TV can operate with improved service to its viewers as quickly as possible.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g), (r) and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b), and sections 0.61, 0.204(b) and 0.283 of the rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS ORDERED**, That effective immediately upon the date of publication in the Federal Register, the Table of

<sup>6</sup> These stations are WTVA, Tupelo, Mississippi (channel 11), licensed to Mississippi TV License Company LLC; KAIT, Jonesboro, Arkansas (channel 27), licensed to the Petitioner; and WNBj-LD, Jackson, Tennessee (channel 16), licensed to CTT Licensee LLC. Supplemental Engineering Exhibit, Figures 2, 3.

<sup>7</sup> Gray amended its Petition on December 29, 2022, to confirm that the three LPTV stations have been built and licensed, and that these stations are now operating and serving the predicted loss areas. See LMS File Nos. 0000205962, 0000203485, and 0000199038. While these LPTV stations, as well as WNBj-LD referenced above, *supra* note 7, are secondary and can be displaced, we believe that it is unlikely that these stations would be displaced and, if they were, the licensees would be able to find displacement channels for them. See *NPRM* at n.5.

<sup>8</sup> Amended Petition at 5; Supplemental Engineering Statement at 4-5, Figure 3. The Commission has previously stated that it is "generally most concerned where there is a loss of an area's only network or NCE TV service, or where the loss results in an area becoming less that well-served, i.e., served by fewer than five full-power stations." *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Notice of Proposed Rulemaking, 22 FCC Rcd 9478, 9493, para. 38 (2007).

<sup>9</sup> Amended Petition at 5.

<sup>10</sup> 47 CFR § 73.625(a).

<sup>11</sup> 47 CFR §§ 73.616, 73.623.

<sup>12</sup> 5 U.S.C. § 553(d)(3).

Allotments, section 73.622(j) of the Commission's rules, 47 CFR § 73.622(j), **IS AMENDED**, with respect to the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>
Memphis, Tennessee	13, 23, 25, 28, *29, 30, 31, 33

6. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this Order, Gray Television Licensee, LLC shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 30.

7. **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.

8. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 22-146 and RM-11925 **SHALL BE TERMINATED** and its docket closed.

9. For further information concerning the proceeding listed above, contact Joyce L. Bernstein, Video Division, Media Bureau, (202) 418-1647, Joyce.Bernstein@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau



# PUBLIC NOTICE

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**DA No. 23-18**

**Released: January 6, 2023**

**ALPHA MEDIA HOLDINGS INC. SEEKS FOREIGN OWNERSHIP RULING PURSUANT TO SECTION 310(b)(4) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED**

**PLEADING CYCLE ESTABLISHED**

**MB Docket No. 23-11**

**Comment Date: February 6, 2023**

**Reply Date: February 21, 2023**

Alpha Media Holdings Inc. (New Alpha) has filed a petition for declaratory ruling<sup>1</sup> requesting that the Federal Communications Commission (Commission) find, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, (Act)<sup>2</sup> and section 1.5000(a)(1) of the Commission's rules,<sup>3</sup> that it would serve the public interest to allow New Alpha to accept foreign investment in excess of the 25% benchmarks set forth in section 310(b)(4).<sup>4</sup> Specifically, New Alpha seeks a Commission ruling to (1) permit up to 100% aggregate foreign investment (voting and equity) in the company, and (2) specifically approve<sup>5</sup> certain foreign investors to hold more than 5% equity and/or voting interest in New

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<sup>1</sup> Petition for Declaratory Ruling of Alpha Media Holdings Inc., Application File Nos. 0000157131, 0000157330, *et al.* (filed Aug. 13, 2021) (Petition); Supplement to Petition for Declaratory Ruling, Application File Nos. 0000157131, 0000157330, *et al.* (filed Apr. 12, 2022) (First Supplement); Supplement to Petition for Declaratory Ruling, Application File Nos. 0000157131, 0000157330, *et al.* (filed Sept. 21, 2022) (Second Supplement). New Alpha concurrently filed with the Petition applications for the transfer of control of the licenses held by its indirect wholly owned subsidiaries. *See* Application of Alpha Media Licensee LLC for Consent to Transfer Control, Application File No. 0000157131 *et al.* (filed Aug. 13, 2021); Application of Alpha 3E Licensee LLC, Application File No. 0000157330 *et al.* (filed Aug. 13, 2021).

<sup>2</sup> 47 U.S.C. § 310(b)(4); *Review of Foreign Ownership Policies for Broadcast, Common Carrier, and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11272 (2016) (*2016 Foreign Ownership R&O*).

<sup>3</sup> 47 CFR § 1.5000(a)(1); *2016 Foreign Ownership R&O*, 31 FCC Rcd 11272.

<sup>4</sup> 47 U.S.C. § 310(b)(4) (“No broadcast station or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.”).

<sup>5</sup> Under section 1.5001(i)(1) of the Commission's rules, petitioners for a declaratory ruling are required to identify and seek specific approval for any foreign individual, entity, or group that holds or would hold, directly and/or indirectly, more than 5% of equity and/or voting interests, or a controlling interest, in the petitioner's controlling U.S. parent, subject to certain exemptions, including an exemption that increases the specific approval threshold to 10% for certain institutional investors. 47 CFR § 1.5001(i)(1).

Alpha.<sup>6</sup> New Alpha filed the Petition on behalf of itself and each of its indirect wholly owned subsidiaries that hold Commission broadcast licenses.<sup>7</sup>

New Alpha seeks this declaratory ruling due to changes in its ownership structure that are an outgrowth of the recent bankruptcy reorganization of New Alpha and its subsidiaries, which hold broadcast licenses.<sup>8</sup> Following its emergence from bankruptcy, and pursuant to Commission approval and waiver of section 1.5000(a)(1) of the Commission's rules,<sup>9</sup> New Alpha is currently owned by former creditors that held second lien note claims in Alpha Media Holdings LLC Debtor-in-Possession (Old Alpha) prior to New Alpha's emergence from bankruptcy (the Owners).<sup>10</sup> In accordance with New Alpha's Joint Plan of Reorganization (Plan),<sup>11</sup> the Owners exchanged their second lien note claims in Old Alpha for pro rata equity shares representing (1) New Alpha Common Stock (Equity Interests), which confer voting rights, and (2) New Alpha Warrants (Warrants).<sup>12</sup>

Specifically, the Owners holding direct attributable interests in New Alpha after its emergence from bankruptcy are: (1) MetLife Private Equity Holdings, LLC (MPEH), a Delaware limited liability company (41.7% equity and voting); (2) Florida Growth Fund LLC (FGH), a Delaware limited liability company (27.4% equity and voting); (3) Hamilton Lane Strategic Opportunities 2016 Fund LP (HLSOF), a Delaware limited partnership (21.6% equity and voting); and (4) ICG North America Holdings Ltd. (ICGNA), a Cayman Islands corporation (5.7% equity and voting).<sup>13</sup>

New Alpha's Plan contemplates that a "substantial majority of the New Alpha Warrants will be exercised for New Equity Interests that would cause (a) New Alpha's aggregate foreign ownership to exceed 25 percent and (b) certain foreign Owners to hold equity and/or voting interests in New Alpha that

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<sup>6</sup> Petition at 1-2. Each of the entities and individuals requiring specific approval will hold a non-controlling interest in New Alpha. *Id.* New Alpha states that its post-declaratory ruling day-to-day operations will remain under the control of U.S. citizens. *Id.* at 2.

<sup>7</sup> See *id.* at 2 & Attach. A, Petitioners, Subsidiaries, Licenses, and Applications. New Alpha, a Delaware corporation, through two wholly owned subsidiaries (Alpha Media Licensee LLC and Alpha 3E Licensee LLC), owns and operates 236 full power radio broadcast stations and translator stations licensed by the Commission. The licensees, Alpha Media Licensee LLC and Alpha 3E Licensee LLC, are Delaware limited liability companies.

<sup>8</sup> *Id.* at 2. New Alpha emerged from bankruptcy on July 15, 2021. *Id.* at 3; see *Alpha Media Licensee LLC, Debtor-in-Possession (Assignor) and Alpha Media Licensee LLC (Assignee); Alpha 3E Licensee LLC, Debtor-in-Possession (Assignor) and Alpha 3E Licensee LLC (Assignee)*, Application File Nos. 0000138519, 0000138678, 0000138727, 0000138774, *et al.*, Order, DA 21-825 (July 13, 2021) (*Alpha Approval Order*). The Petition was timely filed pursuant to section 1.5000(a)(1) of the Commission rules and the condition imposed in the *Alpha Approval Order*. See *Alpha Approval Order* at 17, para. 48 (requiring filing of a petition for declaratory ruling within 30 days of emergence from bankruptcy).

<sup>9</sup> *Alpha Approval Order* at 15-16, paras. 42-46 (grant of temporary and limited waiver of section 1.5000(a)(1) of the Commission's rules, which requires an applicant for a broadcast station license to file a petition for declaratory ruling to exceed the aggregate foreign ownership benchmark set forth in section 310(b)(4) of the Act "at the same time that it files its application" for transfer of control and requiring filing of a petition for declaratory ruling within 30 days of emergence from bankruptcy).

<sup>10</sup> See Petition at 3.

<sup>11</sup> Pursuant to the Plan, New Alpha acquired 100% of the equity interests in Old Alpha. *Id.* at 4.

<sup>12</sup> *Id.* at 3. New Alpha states that the Warrants carry no voting rights, confer no rights to economic distributions, and are convertible instruments that by their terms may be exercised only if consistent with the Communications Act. *Id.* at 3, n.6.

<sup>13</sup> *Id.* at 4. The foreign equity and voting percentages include interests held directly and indirectly in New Alpha. The remaining 3.6% voting and equity interests in New Alpha are held by non-attributable interest holders. See Attach. C-1.

would require specific approval.”<sup>14</sup> New Alpha estimates that if the Commission were to grant the Petition and the Warrants are fully exercised, it would have foreign ownership of more than 70% on both an equity and voting basis.<sup>15</sup> The Petition seeks authorization for up to 100% aggregate foreign voting and equity investment in order to permit flexibility for New Alpha to take on additional foreign ownership in the future.

After the exercise of the Warrants, five entities will hold the following direct attributable interests in New Alpha: (1) MPEH (23.6% equity; 25% voting);<sup>16</sup> FGH (7.9% equity; 8.3% voting);<sup>17</sup> (3) HLSOF (7.9% equity; 8.3% voting);<sup>18</sup> (4) ICGNA (39.1% equity; 41.4% voting);<sup>19</sup> and (5) BigSur Capital Partners Three Corp. (BigSur), a British Virgin Islands corporation (6.3% equity; 6.7% voting).<sup>20</sup> New Alpha seeks specific approval for BigSur, ICGNA, and four foreign entities affiliated with ICGNA, to each hold more than 5% of New Alpha’s equity and/or voting interests.<sup>21</sup> New Alpha also seeks advance

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<sup>14</sup> *Id.* at 5. New Alpha expects that the holders of more than 91% of its Warrants will exercise their Warrants following grant of the Petition. *Id.* at 7. New Alpha states that one group of its Warrant holders has indicated that it does not intend to exercise its Warrants, but “even considering the group’s Warrants on a fully diluted basis, the group would not hold an interest in New Alpha that requires specific approval.” *Id.* New Alpha also states that two additional New Alpha Warrant holders, which are indirectly commonly controlled by a Cayman Islands limited partnership, hold Warrants that, if fully exercised, would cause the partnership to hold an indirect voting and equity interest of more than 5%. New Alpha explains, however, that the holders “have indicated that they intend to transfer a sufficient number of Warrants or take other action to ensure that the Cayman Islands partnership’s interest does not exceed 5 percent of Alpha’s voting or equity and, thus, does not require specific approval.” *Id.* According to New Alpha, these two Warrant holders are U.S. insurance companies whose combined interest represents an approximately 5.75% interest in New Alpha calculated on a fully-diluted basis. Second Supplement at 3. Aside from the interests held indirectly through the insurance companies and a de minimis interest held through an insulated limited partner of ICG North American Private Debt Fund LP (see First Supplement at 5, n.10) the Cayman Island partnerships hold no other direct or indirect interests in New Alpha. Second Supplement at 3-4, n.11. Further, in addition to committing to reduce their combined interest to less than 5%, New Alpha asserts that specific approval is not required for these entities as they hold less than a 10% interest in New Alpha (a privately held company); are prohibited from becoming actively involved in New Alpha; and hold rights equal to or less than minority shareholder protections permitted by the Commission’s rules. Second Supplement at 3-4. In addition, New Alpha indicates that it has entered into an agreement with the insurance companies reaffirming the limitations on the involvement of those entities. Second Supplement at 4-6, Attach. B.

<sup>15</sup> Petition at 8. New Alpha clarifies that “this estimate is based upon direct inquiry of the entities that will hold direct and/or indirect ownership interests in New Alpha and calculations performed by New Alpha’s advisors.” *Id.*, Attach. D.

<sup>16</sup> *Id.* at 13 (detailing MPEH’s interest in New Alpha).

<sup>17</sup> *Id.* at 14 (detailing FGH’s interest in New Alpha).

<sup>18</sup> *Id.* at 15 (detailing HLSOF’s interest in New Alpha).

<sup>19</sup> *Id.* at 9-12 (detailing ICGNA’s interest in New Alpha).

<sup>20</sup> *Id.* at 12 (detailing BigSur’s interest in New Alpha); *see also* Attach. B (listing all the entities and individuals that will hold direct and indirect attributable interests in New Alpha), Attach. C (detailing New Alpha’s current ownership structure following emergence from bankruptcy and its proposed ownership structure following the exercise of the Warrants), and Attach. D (listing percentage estimates of New Alpha’s aggregate direct and indirect foreign equity and voting interests following the exercise of the Warrants and a general description of the methods used to determine the percentages). The remaining equity and voting interests in New Alpha are held by other non-attributable shareholders. *See* Attach. C-5.

<sup>21</sup> In the Petition, New Alpha indicated that MPEH had a Japanese affiliate, MetLife Insurance, K.K. (MIK). According to New Alpha, the interests held by MIK were to be transferred to MPEH prior to the exercise of Warrants, and accordingly, MIK would not require specific approval. *See* Petition at 8, 13. By its Second Supplement, New Alpha has confirmed that MIK has assigned all of the warrants and stock MIK received at Alpha’s  
(continued....)

approval for BigSur, ICGNA, and the four ICGNA-affiliated foreign entities to hold up to 49.99% of New Alpha's equity and/or voting interests.<sup>22</sup> The ownership of these entities, and projected equity and voting interests in New Alpha, is discussed below.<sup>23</sup> New Alpha states that neither MPEH, FGH, HLSOF, nor any of the entities or individuals in each of those entity's ownership structure, require specific approval.<sup>24</sup>

New Alpha argues that grant of the Petition will serve the public interest by "enabling it to better compete in the media marketplace, incentivizing foreign investment in broadcasting, and promoting U.S. trade policy by encouraging reciprocal investment opportunities for U.S. companies in foreign markets, while avoiding any risks to national security, law enforcement, or foreign or trade policy."<sup>25</sup> New Alpha emphasizes that the proposed foreign owners of interests requiring specific approval are organized under the laws of the United Kingdom, the British Virgin Islands, the Cayman Islands, and Jersey, "all of which are allies of the United States and investors in its economy, and with which the U.S. is engaged in robust reciprocal trade."<sup>26</sup>

#### *ICGNA and Affiliated Foreign Entities*

As proposed in the Petition, ICGNA, a Cayman Islands corporation, will hold an approximate 39.1% direct equity interest and 41.4% direct voting interest in New Alpha. The following four foreign entities affiliated with ICGNA will hold the following indirect equity and voting interests in New Alpha, and therefore, also require specific approval: (1) Intermediate Capital Group PLC (ICG PLC), a United Kingdom private limited company (10.6% equity; 46.7% voting); (2) ICG FMC Limited (ICG FMC), a United Kingdom private limited company (0% equity; 43.2% voting); (3) ICG Global Investment Jersey Limited (ICG Jersey), a Jersey registered private company (7.3% equity; 7.7% voting); and (4) ICG Global Investment UK Limited (ICG UK), a United Kingdom private limited company (7.3% equity; 7.7% voting).<sup>27</sup> New Alpha also seeks authorization for ICGNA, ICG PLC, ICG FMC, ICG Jersey, and ICG UK to hold up to 49.99% of New Alpha's equity and/or voting interests.<sup>28</sup> The ownership structure of ICGNA and its affiliated entities is detailed below.

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emergence from bankruptcy to MEH. Second Supplement at 1- 2, Attach. A (providing copies of the executed assignment of warrants and stock). New Alpha indicates that MIK assigned its interests to MPEH ten days after the filing of the Petition and no longer holds any interest in Alpha, and therefore does not require specific approval. *Id.* at 2.

<sup>22</sup> *See id.* at 16 & nn.40-41.

<sup>23</sup> *See also* Petition, Attach. E (listing each entity or individual for which specific approval is requested).

<sup>24</sup> *Id.* at 13-15; Supplement at 2-3 & Attach. A. New Alpha explains that although "MPEH, FGH, and HLSOF themselves have some foreign ownership and thus contribute modest amounts of foreign ownership to New Alpha's aggregate foreign ownership . . . no entity affiliated with these U.S. [Owners] requires specific approval." Petition at 8. None of the foreign owners will hold more than a 5 percent indirect voting or equity interest in New Alpha and, accordingly, none will require specific approval under the Commission's rules. Petition at 13-15.

<sup>25</sup> *Id.* at 2, 17-25. New Alpha states that the "important public interest benefits with enabling greater foreign investment in communications companies take on added significance in the context of a company, such as New Alpha, that has recently restructured its debt load through the Chapter 11 bankruptcy process." *Id.* at 19. According to New Alpha, "permitting the conversion of debt to equity (or warrants to equity) following the grant of any necessary declaratory ruling will serve the important goal of incentivizing . . . foreign debt investments in companies subject to the Communication Act's foreign ownership limitations, allowing such companies to emerge in a stronger economic position." *Id.*

<sup>26</sup> *Id.* at 23.

<sup>27</sup> *See id.* at 16 & Attach. E. New Alpha states that the projected equity and voting percentages are approximate and may differ from what is reported at the closing of the transaction, but that it will supplement the Petition to the extent it determines that any material changes are likely to occur. *Id.*

<sup>28</sup> *See id.* at 16 & nn.40-41.

ICG Jersey holds a 18.57% equity and voting interest in ICGNA. Following the exercise of ICGNA's Warrants, ICG Jersey will hold an approximate 7.3% equity and 7.7% voting interest in New Alpha, indirectly through ICGNA. Therefore ICG Jersey, a foreign entity, requires specific approval.<sup>29</sup> ICG Jersey is wholly owned by ICG UK, also a foreign entity, and therefore ICG UK, through its ownership of ICG Jersey, similarly holds an indirect 7.3% equity and 7.7% voting interest in New Alpha that requires specific approval under the Commission's rules.<sup>30</sup>

ICG North American Private Debt Fund LP (ICG North American LP), a Delaware limited partnership, holds a 79.64% equity and voting interest in ICGNA.<sup>31</sup> ICG North American LP's sole general partner is ICG North American Private Debt GP LP (ICG North American GP), a Delaware limited partnership, with a 100% voting interest in ICG North American LP.<sup>32</sup> ICG North American LP's limited partners, which New Alpha states are insulated in accordance with the Commission's rules, hold 100% of its equity.<sup>33</sup> ICG North American GP's sole general partner is ICG North America Associates LLC, a Delaware limited liability company,<sup>34</sup> which is wholly owned by its sole member, ICG FMC, a foreign entity.<sup>35</sup>

ICG Fund Advisors, LLC (ICG Advisors), a Delaware limited liability company, is the investment manager of ICGNA's investment in New Alpha and controls, as investment advisor, ICGNA's 41.4% voting interest in New Alpha.<sup>36</sup> In addition, ICG Advisors also acts as the investment manager for, and controls a portion of the interests held by, two additional warrant holders that New Alpha states will not hold an attributable interest in New Alpha or require specific approval. This amounts to ICG Advisors holding an additional voting interest of approximately 1.8% in New Alpha.<sup>37</sup> ICG Advisors is wholly owned by Intermediate Capital Group, Inc., a Delaware corporation, which, in turn, is wholly owned by ICG FMC, a foreign entity.<sup>38</sup> Accordingly, ICG FMC, through its indirect ownership of ICGNA and ICG Advisors, holds an indirect 43.2% voting interest in New Alpha that requires specific approval under the Commission's rules.<sup>39</sup>

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<sup>29</sup> *Id.* at 10; 47 CFR § 1.5000(i).

<sup>30</sup> Petition at 10; 47 CFR § 1.5000(i).

<sup>31</sup> Petition at 10.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 11; Supplement, Attach. C (certification of Brian Spenner on behalf of ICG North American LP). New Alpha states that each of the foreign insulated limited partners of ICG North American LP holds less than a 32.11% equity interest in ICG North American LP, and accordingly, no such limited partner requires specific approval. Supplement at 3-5.

<sup>34</sup> ICG North American GP's limited partners, which New Alpha states are insulated in accordance with the Commission's rules, hold all of its equity. Petition at 11; Supplement, Attach. D (certification of Brian Spenner on behalf of ICG North American GP). Because ICGNA's equity flows through ICG North American LP to its limited partners, neither ICG North American GP nor its limited partners have an indirect equity interest in ICGNA. Petition, Attach. C at 8.

<sup>35</sup> *Id.* at 11.

<sup>36</sup> *Id.* at 9-10.

<sup>37</sup> *Id.* at 11, n.26 & Attach. C at 8.

<sup>38</sup> *Id.* at 10. New Alpha explains that ICG FMC requires specific approval as a result of its ultimate control of ICGNA's interest in New Alpha. *Id.*

<sup>39</sup> *Id.* at 11, n.26.

Finally, ICG PLC, a foreign entity, ultimately controls ICGNA as the sole shareholder of ICG FMC and ICG UK, with a direct interest of 100% (equity and voting) in those two entities.<sup>40</sup> In addition, ICG PLC will also directly hold approximately a 3.3% equity interest and a 3.5% voting interest in New Alpha.<sup>41</sup> Accordingly, when combined with the indirect 7.3% equity and 43.2% voting interests that it holds in New Alpha through its ownership of ICG FMC and ICG UK, ICG PLC will hold an approximate 10.6% total equity interest and 46.7% total voting interest in New Alpha.<sup>42</sup>

### *BigSur*

As proposed in the Petition, BigSur, a British Virgin Islands corporation, will hold an approximate 6.3% direct equity interest and a 6.7% direct voting interest in New Alpha.<sup>43</sup> New Alpha seeks authorization for BigSur to hold up to 49.99% of New Alpha's equity and/or voting interests.<sup>44</sup> BigSur Partners, LLC (BigSur LLC), a Delaware limited liability company, holds a 100% voting interest and 0% equity interest in BigSur.<sup>45</sup> BigSur LLC has three U.S. members: (1) Gorriti Investments, LLC, a Florida limited liability company; (2) BigSur Advisors Corp., a Florida corporation;<sup>46</sup> and (3) PCP Advisors Corp., a Florida corporation.<sup>47</sup>

BigSur's equity interests are owned by 15 funds registered in the Bahamas, Netherlands, British Virgin Islands, Cayman Islands, and New Zealand. According to New Alpha, each fund holds an equity interest of between 3.0% and 12.2% in BigSur, is insulated in accordance with the Commission's broadcast attribution rules, and will hold less than a 1% indirect equity (and deemed voting) interest in New Alpha.<sup>48</sup>

Pursuant to Commission practice, the Petition will be referred to relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of New Alpha.<sup>49</sup>

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<sup>40</sup> *Id.* at 10.

<sup>41</sup> *Id.* at 11.

<sup>42</sup> *Id.* at 11-12, 16 & n.27.

<sup>43</sup> *Id.* at 12.

<sup>44</sup> *See id.* at 16 & nn.40-41.

<sup>45</sup> *Id.* at 12.

<sup>46</sup> BigSur Advisors Corp. is wholly owned by Ignacio Pakciarz, a U.S. citizen. *Id.*

<sup>47</sup> *Id.* New Alpha states that "as U.S.-organized and -controlled entities, none of the members of BigSur LLC will require specific approval." *Id.*

<sup>48</sup> Petition at 12. New Alpha states that "none of the funds holding interests in BigSur will require specific approval." *Id.*

<sup>49</sup> *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020). *See also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997) (*Foreign Participation Order*), recon. denied, 15 FCC Rcd 18158 (2000).

### EX PARTE STATUS OF THIS PROCEEDING

Pursuant to section 1.1200(a) of the Commission's rules,<sup>50</sup> the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.<sup>51</sup>

Parties making oral *ex parte* presentations are directed to the Commission's *ex parte* rules. Parties are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.<sup>52</sup> More than a one- or two-sentence description of the views and arguments presented is generally required.<sup>53</sup> Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.<sup>54</sup>

### GENERAL INFORMATION

The petition for declaratory ruling referred to in this Public Notice has been accepted for filing upon initial review. The Commission reserves the right to return any filing if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. Interested persons must file comments no later than **February 6, 2023**. Replies must be filed no later than **February 21, 2023**.

To allow the Commission to fully consider all substantive issues regarding the Petition in as timely and efficient a manner as possible, commenters should raise all issues in their initial filings. A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously.<sup>55</sup> Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

All filings concerning matters referenced in this Public Notice should refer to MB Docket No. 23-11, as well as the specific file number of any relevant individual application or other matters to which the filings pertain.

Submissions in this matter may be filed electronically (i.e., through ECFS) or by filing paper copies.

- *Electronic Filers:* Documents may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier or by first-class or overnight U.S.

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<sup>50</sup> 47 CFR § 1.1200(a).

<sup>51</sup> 47 CFR § 1.1206.

<sup>52</sup> See 47 CFR § 1.1206(b)(1).

<sup>53</sup> See *id.*

<sup>54</sup> 47 CFR § 1.1206(b).

<sup>55</sup> 47 CFR §§ 1.46(a), 73.3584(e).

Postal Service mail.<sup>56</sup> All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

One copy of each pleading must be delivered electronically, by e-mail, or if delivered as paper copy, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: (1) Albert Shuldiner, Audio Division, Media Bureau, at [albert.shuldiner@fcc.gov](mailto:albert.shuldiner@fcc.gov); (2) Christopher Clark, Audio Division, Media Bureau, at [christopher.clark@fcc.gov](mailto:christopher.clark@fcc.gov); and (3) Brendan Holland, Audio Division, Media Bureau, at [brendan.holland@fcc.gov](mailto:brendan.holland@fcc.gov). Any submission that is e-mailed to Albert Shuldiner, Christopher Clark, and Brendan Holland should include in the subject line of the e-mail: (1) MB Docket No. 23-11; (2) the name of the submitting party; and (3) a brief description or title identifying the type of document being submitted (e.g., MB Docket No. 23-11, [name of submitting party], Comments).

Copies of the Petition and any subsequently filed documents in this matter are available electronically through the Commission's Electronic Filing Comment System (ECFS), which may be accessed on the Commission's Internet website.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov); phone: (202) 418-0530.

For further information, contact Albert Shuldiner, Audio Division, Media Bureau, at (202) 418-2726. Press inquiries should be directed to Janice Wise, Media Bureau, (202) 418-8165 or (888) 835-5322.

This action is taken by the Chief, Media Bureau, pursuant to authority delegated by sections 0.61 and 0.283 of the Commission's rules.<sup>57</sup>

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<sup>56</sup> Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, DA 20-304 (rel. Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

<sup>57</sup> 47 CFR §§ 0.61 and 0.283.



# PUBLIC NOTICE

**Federal Communications Commission**  
45 L Street NE  
Washington, DC 20554

News Media Information 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
TTY: 888-835-5322

DA 23-19

Released: January 6, 2023

## MEDIA BUREAU AND OFFICE OF ECONOMICS AND ANALYTICS ACTION

### THIRD QUARTER 2022 INFLATION ADJUSTMENT FIGURES FOR CABLE OPERATORS USING FCC RATE REGULATION FORM 1240 NOW AVAILABLE

This Public Notice is applicable to rate-regulated cable operators that use FCC Forms to justify their cable rates.<sup>1</sup> Cable operators adjusting the non-external cost portion of their rates for inflation should follow the instructions provided with the applicable FCC Form. All inflation adjustment figures are based on changes in the Gross National Product Price Index (GNP-PI) published by the United States Department of Commerce, Bureau of Economic Analysis (BEA). The chain-type price indexes were obtained from the BEA Table 1.7.4 (Price Indexes for Gross Domestic Product, Gross National Product, and Net National Product) Line 4 (Gross National Product) on December 23, 2022.<sup>2</sup>

Operators filing FCC Form 1240 may make an adjustment based on quarterly figures. The third quarter 2022 inflation factor for operators using FCC Form 1240 is 4.37%. The adjustment factor of 4.37% is a measure of the annualized change in prices occurring over the period from July 1, 2022 to September 30, 2022. The inflation adjustment factor is calculated by dividing the GNP-PI for the third quarter of 2022 (128.248) by the GNP-PI for the second quarter of 2022 (126.885). The result of this calculation is converted from a quarterly change measurement factor to an annual change measurement factor by raising it to the fourth power. We then convert the calculation to an inflation adjustment factor by subtracting one.

Operators calculating the Inflation Factor for a True-Up Period that includes some portion of the third quarter of 2022 should enter the inflation factor on the appropriate lines of Worksheet 1 of FCC Form 1240 as “0.0437.” Operators using this factor for calculating the Projected Period Inflation Segment of FCC Form 1240 should enter this number on Line C3 (January 1996 version), or Line C5 (July 1996 version) as “1.0437”.

Each quarter the Commission releases a quarterly inflation factor for use with FCC Form 1240. The following table lists these factors beginning in 2017.<sup>3</sup>

<sup>1</sup> Pursuant to 47 CFR § 76.922(d)(2) and § 76.922(e)(2) of the Commission’s rules, cable operators may adjust the non-external cost portion of their rates for inflation.

<sup>2</sup> Table 1.7.4 can be found at this link:

<https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwYLDNdLkCkYXRhIjpbWyJjYXRIZ29yaWVzIiwU3VydmV5Ilo0sWyJOSVBBX1RhYmxlX0xpc3QiLCI0MiJdXX0=>

<sup>3</sup> For pre-2017 inflation figures see DA 17-646, 32 FCC Rcd 5479 (rel. Jul. 5, 2017), available at <https://www.fcc.gov/general/inflation-updates-forms-1210-and-1240>.

Year	Quarter	Dates Covered	Inflation Factor
2017	First	Jan. 1, 2017 – Mar. 31, 2017	1.96%
2017	Second	Apr. 1, 2017 – Jun. 30, 2017	1.01%
2017	Third	Jul. 1, 2017 – Sep. 30, 2017	2.09%
2017	Fourth	Oct. 1, 2017 – Dec. 31, 2017	2.33%
2018	First	Jan. 1, 2018 – Mar. 31, 2018	2.20%
2018	Second	Apr. 1, 2018 – Jun. 30, 2018	3.04%
2018	Third	Jul. 1, 2018 – Sep. 30, 2018	1.81%
2018	Fourth	Oct. 1, 2018 – Dec. 31, 2018	1.68%
2019	First	Jan. 1, 2019 – Mar. 31, 2019	0.90%
2019	Second	Apr. 1, 2019 – Jun. 30, 2019	2.42%
2019	Third	Jul. 1, 2019 – Sep. 30, 2019	1.81%
2019	Fourth	Oct. 1, 2019 – Dec. 31, 2019	1.28%
2020	First	Jan. 1, 2020 – Mar. 31, 2020	1.41%
2020	Second	Apr. 1, 2020 – Jun. 30, 2020	-1.82%
2020	Third	Jul. 1, 2020 – Sep. 30, 2020	3.51%
2020	Fourth	Oct. 1, 2020 – Dec. 31, 2020	2.04%
2021	First	Jan. 1, 2021 – Mar. 31, 2021	4.32%
2021	Second	Apr. 1, 2021 – Jun. 30, 2021	6.07%
2021	Third	Jul. 1, 2021 – Sep. 30, 2021	5.95%
2021	Fourth	Oct. 1, 2021 – Dec. 31, 2021	7.13%
2022	First	Jan. 1, 2022 – Mar. 31, 2022	8.19%
2022	Second	Apr. 1, 2022 – Jun. 30, 2022	9.00%
2022	Third	Jul. 1, 2022 – Sep. 30, 2022	4.37%

The Commission releases a new quarterly inflation factor for operators using FCC Form 1240 four times each year. The inflation factor for a given quarter is usually released between three and four months after the end of the quarter, depending on the schedule of the Department of Commerce. The release of a new factor is posted on the Commission's Internet site at: <https://www.fcc.gov/general/inflation-updates-forms-1210-and-1240>.

For additional information, contact Jake Riehm, [jake.riehm@fcc.gov](mailto:jake.riehm@fcc.gov), (202) 418-2166 or Kim Makuch, [kim.makuch@fcc.gov](mailto:kim.makuch@fcc.gov), (202) 418-2252.

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.622(j),	)	MB Docket No. 22-376
Table of Allotments, Television Broadcast	)	RM-11934
Stations (Norwell, Massachusetts)	)	
	)	

**REPORT AND ORDER**

**(Proceeding Terminated)**

**Adopted: January 9, 2023**

**Released: January 9, 2023**

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking<sup>1</sup> issued in response to a Petition for Rulemaking<sup>2</sup> filed by RNN Boston License Co., LLC (Petitioner), the licensee of full power television station WWDP, Norwell, Massachusetts (Station or WWDP). The Petitioner has requested the substitution of UHF channel 36 for VHF channel 10 in the Table of TV Allotments. The Petitioner filed comments in support of the petition, as required by the Commission's rules (rules),<sup>3</sup> reaffirming its commitment to apply for channel 36. No other comments were received.

2. We believe the public interest would be served by substituting channel 36 for channel 10 at Norwell, Massachusetts. According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on channel 10, a VHF channel.<sup>4</sup> The Petitioner further states that the Commission has recognized the deleterious effects manmade noise has on the reception of digital VHF signals, and that the propagation characteristics of these channels allow undesired signals and noise to be receivable at relatively farther distances compared to UHF channels, and nearby electrical devices can cause interference.<sup>5</sup>

3. An analysis conducted using the Commission's *TVStudy* software tool indicates that WWDP's proposed channel substitution is predicted to create areas where viewers may lose service. However, we believe any possible harm resulting from the loss of service to some viewers is outweighed by the overall benefit of improving reception to the Station's viewers, including the Station's community

<sup>1</sup> *Amendment of Section 73.622(j), Table of Allotments, Television Stations (Norwell, Massachusetts)*, MB Docket No. 23-376, Notice of Proposed Rulemaking, DA 22-1132 (rel. Oct. 27, 2022) (*NPRM*).

<sup>2</sup> Petition of RNN Boston License Co., LLC for Rulemaking, LMS File No. 0000193261, as amended (filed June 13, 2022) (Petition).

<sup>3</sup> 47 CFR §§ 1.415, 1.419; *see also Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

<sup>4</sup> Petition at 2.

<sup>5</sup> *Id.* citing *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235, Notice of Proposed Rulemaking, 25 FCC Rcd 16498, 16511, para. 42 (2010). WWDP's channel sharing partner, WMFP(TV), Foxborough, Massachusetts, which is also owned by RNN, has similarly received complaints and would benefit from the proposed channel change. *NPRM* at para. 2.

of license. Moreover, the viewers in the loss area are already well-served by five or more stations and no viewers will lose service from one of the four major networks or any noncommercial educational station.<sup>6</sup>

4. As proposed, channel 36 can be substituted for channel 10 at Norwell, Massachusetts, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,<sup>7</sup> at coordinates 42° 18' 37.0" N and 71° 14' 12.0" W. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:<sup>8</sup>

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Norwell, Massachusetts	36	1000	318.4	6,509,527

5. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.<sup>9</sup> An expedited effective date is necessary in this case to ensure that WWDP can operate with improved service to its viewers as quickly as possible.

6. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g), (r), and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b), and sections 0.61, 0.204(b), and 0.283 of the rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS ORDERED**, That effective immediately upon the date of publication in the Federal Register, the Table of Allotments, section 73.622(j) of the rules, 47 CFR § 73.622(j), **IS AMENDED**, with respect to the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>
Norwell, Massachusetts	36

7. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this Order, RNN Boston License Co., LLC shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 36 in lieu of channel 10.

8. **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.

9. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 22-376 and RM-11934 **SHALL BE TERMINATED** and its docket closed.

<sup>6</sup> *Id.* As the Petitioner points out, the Commission is “generally most concerned where there is a loss of an area’s only network or NCE TV service, or where the loss results in an area becoming less that well-served, i.e., served by fewer than five full-power stations.” *Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Notice of Proposed Rulemaking, 22 FCC Rcd 9478, 9493, para. 38 (2007); *NPRM* at n.5.

<sup>7</sup> 47 CFR § 73.625(a).

<sup>8</sup> 47 CFR §§ 73.616, 73.623.

<sup>9</sup> 5 U.S.C. § 553(d)(3).

10. For further information concerning the proceeding listed above, contact Joyce L. Bernstein, Video Division, Media Bureau, (202) 418-1647, [Joyce.Bernstein@fcc.gov](mailto:Joyce.Bernstein@fcc.gov).

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
TTY: 888-835-5322

DA 23-21

Released: January 11, 2023

## BROADCAST STATION TOTALS AS OF DECEMBER 31, 2022

The Commission has announced the following totals for broadcast stations licensed as of December 31, 2022:

AM STATIONS	4,484	
FM COMMERCIAL	6,686	
FM EDUCATIONAL	4,207	
<b>TOTAL</b>		<b>15,377</b>
UHF COMMERCIAL TV	1,006	
VHF COMMERCIAL TV	369	
UHF EDUCATIONAL TV	263	
VHF EDUCATIONAL TV	120	
<b>TOTAL</b>		<b>1,758</b>
CLASS A UHF STATIONS	352	
CLASS A VHF STATIONS	31	
<b>TOTAL</b>		<b>383</b>
FM TRANSLATORS & BOOSTERS	8,950	
UHF TRANSLATORS	2,427	
VHF TRANSLATORS	695	
<b>TOTAL</b>		<b>12,072</b>
UHF LOW POWER TV	1,589	
VHF LOW POWER TV	323	
<b>TOTAL</b>		<b>1,912</b>
LOW POWER FM	2,015	<b>2,015</b>
<b>TOTAL BROADCAST STATIONS</b>		<b>33,517</b>

- FCC -



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
TTY: 888-835-5322

DA 23-22

Released: January 10, 2023

## WIRELESS TELECOMMUNICATIONS BUREAU AND OFFICE OF ENGINEERING AND TECHNOLOGY ANNOUNCE THE APPROVAL AND REGISTRATION OF ADDITIONAL ENVIRONMENTAL SENSING CAPABILITY SENSORS FOR THE 3.5 GHZ BAND

### GN Docket No. 15-319

With this *Public Notice*, the Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET) (collectively, WTB/OET) of the Federal Communications Commission (Commission or FCC) approve new Environmental Sensing Capability (ESC) sensor deployment and coverage plans (ESC Sensor Registrations) for Federated Wireless, Inc. (Federated Wireless).<sup>1</sup> WTB/OET, in close consultation with the National Telecommunications and Information Administration (NTIA) and the Department of Defense (DoD), have reviewed and approved the updated ESC Sensor Registrations, which sufficiently describe the proposed coverage for the dynamic protection areas (DPAs)<sup>2</sup> listed below.

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<sup>1</sup> Federated Wireless is an approved ESC operator. *Wireless Telecommunications Bureau and Office of Engineering and Technology Announce the Approval of Environmental Sensing Capabilities for the 3.5 GHz Band*, GN Docket No. 15-319, Public Notice, 34 FCC Rcd 2792 (WTB/OET 2019) (*2019 ESC Operator Approval Public Notice*). WTB/OET have established procedures for submitting ESC Sensor Registrations for approval. See *Wireless Telecommunications Bureau and Office of Engineering and Technology Establish Procedure for Registering Environmental Sensing Capability Sensors*, GN Docket No. 15-319, Public Notice, 33 FCC Rcd 10016 (WTB/OET 2018) (*ESC Sensor Registration Public Notice*); *Wireless Telecommunications Bureau and Office of Engineering and Technology Announce the Approval and Registration of Additional Environmental Sensing Capability Sensors of ESC Operators for the 3.5 GHz Band*, GN Docket No. 15-319, Public Notice, 34 FCC Rcd 11048, 11050 (WTB/OET 2019) (*November 2019 ESC Sensor Registration Public Notice*). Federated Wireless submitted ESC Sensor Registrations to WTB/OET consistent with the process described in the *ESC Sensor Registration Public Notice*, as updated in the *November 2019 ESC Sensor Registration Public Notice*. Federated Wireless requested confidentiality when it submitted its ESC Sensor Registration and filed a list of dynamic protection areas covered by its ESC sensors consistent with the filing instructions in the *ESC Sensor Registration Public Notice*. See Letter from Jennifer M. McCarthy, Vice President, Legal Advocacy, Federated Wireless, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 15-319 (filed September 21, 2022); Letter from Jennifer M. McCarthy, Vice President, Legal Advocacy, Federated Wireless, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 15-319 (filed September December 13, 2022); Letter from Jennifer M. McCarthy, Vice President, Legal Advocacy, Federated Wireless, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 15-319 (filed December 20, 2022) (Federated Wireless December 20, 2022 ESC Sensor Registration).

<sup>2</sup> DPAs are pre-defined protection areas that extend beyond the coastline or that enclose a protected terrestrial radar facility, which may be activated or deactivated as necessary to protect DoD radar systems. *Promoting Investment in the 3550-3700 MHz Band*, GN Docket No. 17-258, Order, 33 FCC Rcd 4987 (WTB/OET 2018). NTIA depicts the DPAs in Attachment A of a letter sent by Paige R. Atkins, NTIA, to Julius P. Knapp and Donald K. Stockdale Jr. of the FCC on May 17, 2018. This letter and the specific coordinates for the DPAs are available at <https://www.ntia.doc.gov/fcc-filing/2015/ntia-letter-fcc-commercial-operations-3550-3650-mhz-band>.

Federated Wireless is authorized to operate its ESC sensors consistent with the information—including sensor locations, configuration, and DPA coverage—submitted to, and approved by, WTB/OET.<sup>3</sup> In addition, Federated Wireless must operate in conjunction with at least one Spectrum Access System (SAS) that has been approved for commercial deployment by the Commission.<sup>4</sup> Before providing commercial service for any given DPA, Federated Wireless must file a notification in GN Docket No. 15-319, which must affirm that the approved sensors covering the DPA are constructed and operational and must list the approved SASs with which the ESC is communicating.

ESC Operator Federated Wireless has satisfied the sensor coverage requirements for the following DPA:

- Alaska 38.<sup>5</sup>

Federated Wireless is permitted to update its ESC Sensor Registrations at any time in accordance with the process established in the *ESC Sensor Registration Public Notice*, and it must provide updates on an ongoing basis if any changes are made to the parameters of its approved ESC sensor deployments. WTB/OET will continue to approve ESC Sensor Registrations on a rolling basis as described in the *ESC Sensor Registration Public Notice*.<sup>6</sup> We remind ESC operators that, going forward, they must file ESC Sensor Registrations and any supplements with the Commission using the Commission's Electronic Comment Filing System.<sup>7</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). ESC operators may request confidential treatment of information contained in their filings consistent with Section 0.459 of the Commission's rules.<sup>8</sup> All such filings should refer to **GN Docket 15-319**. These modified procedural requirements supersede those set forth in the *ESC Sensor Registration Public Notice*.<sup>9</sup>

By the Acting Chief, Wireless Telecommunications Bureau, and the Acting Chief, Office of Engineering and Technology.

- FCC -

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<sup>3</sup> 2019 *ESC Operator Approval Public Notice*, 34 FCC Rcd at 2794, para. 5 (citing *ESC Sensor Registration Public Notice*, 33 FCC Rcd at 10016); see also *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959 at 4070-71, para. 386 (2015 *Report and Order* and 2015 *FNPRM*, respectively).

<sup>4</sup> 2019 *ESC Operator Approval Public Notice*, 34 FCC Rcd at 2794, para. 5 (citing *ESC Sensor Registration Public Notice*, 33 FCC Rcd at 10016).

<sup>5</sup> Federated Wireless made three filings which included possible ESC sensor configurations for the Alaska 38 DPA. This approval applies only to the ESC Sensor configurations included in Federated Wireless's December 20, 2022 filing. See Federated Wireless December 20, 2022 ESC Sensor Registration.

<sup>6</sup> *ESC Sensor Registration Public Notice*, 33 FCC Rcd at 10017.

<sup>7</sup> November 2019 *ESC Sensor Registration Public Notice*, 34 FCC Rcd at 11050; *Key Bridge ESC Operator Approval Public Notice*, 35 FCC Rcd at 7004, para. 5.

<sup>8</sup> See 47 CFR § 0.459.

<sup>9</sup> *ESC Sensor Registration Public Notice*, 33 FCC Rcd at 10018.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.622(j), Table of	)	MB Docket No. 23-14
Allotments, Television Broadcast Stations	)	RM-11943
(Roanoke, Virginia)	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: January 10, 2023**

**Released: January 11, 2023**

**Comment Date: [30 days after date of publication in the Federal Register]**

**Reply Comment Date: [45 days after date of publication in the Federal Register]**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. The Video Division, Media Bureau has before it a petition for rulemaking filed by Blue Ridge Public Television, Inc. (Petitioner or Blue Ridge PBS), the licensee of noncommercial educational television PBS member station WBRA-TV (WBRA-TV or Station), channel \*3, Roanoke, Virginia.<sup>1</sup> The Petitioner requests the substitution of channel \*13 in place of channel \*3 at Roanoke, Virginia in the Table of TV Allotments.<sup>2</sup>

**II. BACKGROUND**

2. In support of its channel substitution request, the Petitioner states that apart from WBRA-TV, only one of the seven other full-power television stations in the Roanoke-Lynchburg DMA operates on a VHF channel, and it operates on high-VHF channel 7. The Petitioner asserts that allowing the Station to move to a high-VHF channel would improve viewers’ access to the Station’s PBS and other public television programming by improving reception and resolving low-VHF reception issues.<sup>3</sup> According to Petitioner, it has received many complaints from viewers unable to receive a reliable signal on channel \*3, with some viewers noting that WBRA-TV is the only Roanoke station they cannot receive reliably over the air.<sup>4</sup> Petitioner further states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers, as well as the existence of environmental noise blockages affecting VHF signal strength and reception, which may

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<sup>1</sup> Petition of Blue Ridge Public Television, Inc. for Rulemaking, LMS File No. 0000203784 (filed Nov. 18, 2022) (Petition). We note that Petitioner amended its Petition on January 9, 2023 (Amended Engineering Statement) to include further analysis of the population that may lose predicted service as a result of the proposed channel substitution. Amended Engineering Statement at 1. Noncommercial educational television stations are identified in the Table of TV Allotments by an asterisk to indicate they are reserved for noncommercial educational use. 47 CFR § 73.622(a).

<sup>2</sup> 47 CFR § 73.622(j).

<sup>3</sup> Petition at 2-3. WBRA-TV is the only full-power noncommercial educational television station serving the Roanoke-Lynchburg DMA. WBRA-TV currently broadcasts its PBS, public affairs programming, and emergency notifications through WBRA-TV’s participation in PBS’s Warning, Alert Response Network. The Petitioner asserts that the proposed channel substitution will allow WBRA-TV to better serve the community by substantially improving viewer access to its educational and public affairs programming and emergency notifications. *Id.* at 2.

<sup>4</sup> *Id.* at 3 and Exhibit 2, Statement of Will Anderson.

vary widely by service area.<sup>5</sup> The Engineering Statement provided with the Petition confirms that the proposed channel \*13 contour would provide full principal community coverage to Roanoke. An analysis using the Commission's *TVStudy* software tool, according to Petitioner, indicates that WBRA-TV's move from channel \*3 to channel \*13 is predicted to create an area where 64,309 persons are predicted to lose service without considering the service from other PBS stations.<sup>6</sup> However, when taking into account service from other PBS stations, only 94 persons are predicted to lose PBS service, a number which the Petitioner asserts the Commission has found to be *de minimis*.<sup>7</sup>

### III. DISCUSSION

3. We believe that the Petitioner's channel substitution proposal warrants consideration. Channel \*13 can be substituted in place of channel \*3 at Roanoke, Virginia, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's rules (rules),<sup>8</sup> at coordinates 37° 11' 46.0" N and 80° 09' 16.0" W. We believe any possible harm resulting from the loss of noncommercial educational service to some viewers is outweighed by the overall public interest benefit of improving reception to the Station's viewers, including within the Station's community of license. Although the Petitioner's proposal would result in a loss of PBS network programming to some viewers, when taking into account the service provided by noncommercial educational WUNC-TV and WUNL-TV to the WBRA-TV noise limited service contour area, fewer than 500 persons will lose access to PBS network programming, a number the Commission has deemed to be *de minimis*.<sup>9</sup> We also find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules.<sup>10</sup> Thus, we propose to substitute channel \*13 in place of channel \*3 for WBRA-TV with the following specifications:

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>
Roanoke, Virginia	*13	66	630.6

4. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,<sup>11</sup> for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	<u>Proposed</u>
Roanoke, Virginia	*3, 27, 30, 34, 36	*13, 27, 30, 34, 36

### IV. PROCEDURAL MATTERS

5. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (*NPRM*). The Petitioner or any proponent that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The petitioner of a

<sup>5</sup> *Id.* at 3-4.

<sup>6</sup> Amended Engineering Statement, Exhibit 1, Revised Engineering Statement of William Godfrey, Jr. at 4.

<sup>7</sup> Engineering Statement at 5. Petitioner's analysis takes into account service being provided by PBS stations WUNC-TV, Chapel Hill, North Carolina (WUNC) and WUNL-TV, Winston-Salem, North Carolina (WUNL).

<sup>8</sup> 47 CFR § 73.625(a).

<sup>9</sup> See *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding that loss of service to approximately 550 persons is *de minimis*). The vast majority of viewers that will no longer receive WBRA-TV are located in North Carolina and continue to be served by WUNL and WUNC, which are both North Carolina PBS affiliates. In fact, many of those impacted viewers may already primarily rely upon WUNL and WUNC for their PBS network and public television programming.

<sup>10</sup> 47 CFR §§ 73.616, 73.623.

<sup>11</sup> 47 CFR § 73.622(j).

proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The petitioner must restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly.<sup>12</sup> Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the rules.<sup>13</sup>

6. *Cut-off Protection.* The following procedures will govern the consideration of the filings in this proceeding:

- (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.<sup>14</sup>
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.<sup>15</sup>

7. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,<sup>16</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>17</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>. Parties that choose to file electronically only need to submit one copy of each filing so long as the submission conforms to all procedural and filing requirements. Online filing is optional.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Any paper filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, D.C. 20554.
  - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.<sup>18</sup>

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<sup>12</sup> See, e.g., *Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

<sup>13</sup> 47 CFR § 1.420(j).

<sup>14</sup> 47 CFR § 1.420(d).

<sup>15</sup> 47 CFR § 1.420(g)(2).

<sup>16</sup> 47 CFR §§ 1.415, 1.419, and 1.420.

<sup>17</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

<sup>18</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

8. *Service.* Pursuant section 1.420 of the rules,<sup>19</sup> all submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments.<sup>20</sup> Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Brad Deutsch, Esq.  
Foster Garvey PC  
1000 Potomac Street, NW, Suite 200  
Washington, D.C. 20007

9. *Ex Parte Notices– Restricted.* The proceeding this Notice initiates shall be treated as a “restricted” proceeding in accordance with the Commission’s *ex parte* rules.<sup>21</sup> For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a notice of proposed rulemaking until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court.<sup>22</sup> An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.<sup>23</sup> However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement.<sup>24</sup> Any comment that has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

10. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection via ECFS (<http://apps.fcc.gov/ecfs/>). Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

11. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,<sup>25</sup> do not apply to a

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<sup>19</sup> 47 CFR § 1.420.

<sup>20</sup> See 47 CFR §1.420(a), (b), and (c).

<sup>21</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>22</sup> 47 CFR § 1.1208.

<sup>23</sup> 47 CFR § 1.1204(a)(10).

<sup>24</sup> 47 CFR § 1.1204(a)(10)(ii). In addition, an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay is permitted. A detailed summary of the presentation must be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement. 47 CFR § 1.1204(a)(11).

<sup>25</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

rulemaking proceeding to amend the Table of Allotments, section 73.622(j) of the rules.<sup>26</sup> This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.<sup>27</sup> In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002.<sup>28</sup>

12. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

13. *Additional Information.* For further information concerning the proceeding listed above, contact Joyce Bernstein, Video Division, Media Bureau, (202) 418-1647, [Joyce.Bernstein@fcc.gov](mailto:Joyce.Bernstein@fcc.gov), or Emily Harrison, Video Division, Media Bureau, (202) 418-1665, [Emily.Harrison@fcc.gov](mailto:Emily.Harrison@fcc.gov).

#### V. ORDERING CLAUSES

14. **IT IS ORDERED** that, pursuant to authority found in 47 U.S.C. sections 4(i), 5(c)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b) and sections 0.61, 0.204(b), and 0.283 of the rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS PROPOSED TO AMEND** the Table of Allotments, section 73.622(j) of the rules, 47 CFR § 73.622(j), as set forth in this *NPRM*, and this *NPRM IS ADOPTED*.

15. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415, 1.419, 1.420 of the rules, 47 CFR §§ 1.415, 1.419, and 1.420, interested parties may file comments, including counterproposals, on the *NPRM* in MB Docket No. 23-14 and RM-11943 on or before thirty (30) days after publication in the Federal Register and reply comments on or before forty five (45) days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>26</sup> 47 CFR § 73.622(j).

<sup>27</sup> See 44 U.S.C. §§ 3501-3520.

<sup>28</sup> See 44 U.S.C. § 3506(c)(4).



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street, NE  
Washington, DC 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

DA 23-24  
January 11, 2023

## PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 8 (NEW YORK METROPOLITAN AND NORTHERN NEW JERSEY) REGIONAL PLANNING COMMITTEES TO HOLD 700 MHZ AND 800 MHZ MEETINGS

### Gen. Docket 88-476 and WT Docket No. 02-378

The Region 8 (New York Metropolitan and Northern New Jersey)<sup>1</sup> 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold their 2023 quarterly meetings on the following dates. The Region Secretary will email the virtual meeting link information two weeks prior to each virtual meeting. To be added to the email distribution list, please email your contact information to David Stern, Region Secretary, at [david.stern@vcomm-eng.com](mailto:david.stern@vcomm-eng.com). The 700 MHz meeting will begin at 10:00 am and the 800 MHz meeting will immediately follow.

#### **Region 8: 2023 Meeting Dates**

- February 9, 2023, 10:00 am – **Virtual Meeting**
- May 11, 2023, 10:00 am – Rockland County Fire Academy, Pomona, NY
- September 14, 2023, 10:00 am – **Virtual Meeting**
- December 7, 2023, 10:00 am – Rockland County Fire Academy, Pomona, NY

The purpose of these meetings is to discuss the needs of the 700 and 800 MHz spectrum users including public safety, public health, emergency management, and public utility services.

The agenda for the 700 MHz meeting includes:

- Review and approve meeting agenda
- Review and approve previous meeting report
- Interoperability (SIEC/SWIC Reports)
  - New York State
  - New Jersey
- 700 MHz Technical Subcommittee
  - Applications Status
  - Adjacent Region Concurrence Requests
- 4.9 GHz Updates
- Old Business
- New Business/Comments
- Next Meeting - TBA

<sup>1</sup> The Region 8 700 MHz and 800 MHz regional planning area consists of the following counties in New York State and New Jersey: Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Dutchess, and Westchester Counties, New York; Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union, Warren, Middlesex, Somerset, Hunterdon, Mercer, and Monmouth Counties, New Jersey. Region 8's 800 MHz planning area also includes the following counties from Connecticut: Fairfield, Litchfield, New Haven, and Middlesex Counties, Connecticut.

The agenda for the 800 MHz meeting includes:

- Review and approve meeting agenda
- Review and approve previous meeting report
- 800MHz Technical Subcommittee
  - Applications Status
  - Adjacent Region Concurrence requests
- Old Business
  - NRPC Updates
- New Business/Comments
- Next Meeting - TBA

All eligible public safety providers whose sole purpose or principal purpose is to protect the safety of life, health, or property in Region 8 would utilize these frequencies. It is essential that not only public safety, but all government, Native American Tribal, and non-governmental organizations eligible under Section 90.523 of the Commission's Rules be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Interested parties wishing to participate in the planning process for utilization of the new public safety spectrum in the 700 MHz and 800 MHz are encouraged to attend. For additional information concerning these meetings, or to be put on the Region's email list, please contact either the Region 8 Chair or Secretary listed below or visit the committee web site at <http://www.dhSES.ny.gov/oiec/committees>.

Maribel Martinez-Bradwell  
Chair, FCC Region 8 700 and 800-MHz Planning Committees  
New York State Police, Radio Engineer  
1220 Washington Ave.  
State Campus, Building 22  
Albany, NY 12226  
Office: (518) 457-8995  
[Maribel.Martinez-Bradwell@troopers.ny.gov](mailto:Maribel.Martinez-Bradwell@troopers.ny.gov)

David K. Stern  
Secretary, FCC Region 8 700 and 800-MHz Planning Committees  
V-COMM, L.L.C.  
2540 U.S. Highway 130, Suite 101  
Cranbury, NJ 08512  
Office: (609) 655-1200, ext. 323  
Fax: (609) 409-1927  
[david.stern@vcomm-eng.com](mailto:david.stern@vcomm-eng.com)

– FCC –



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>

DA 23-25

Released: January 11, 2023

## WIRELINE COMPETITION BUREAU REMINDS SECURE AND TRUSTED COMMUNICATIONS NETWORKS REIMBURSEMENT PROGRAM RECIPIENTS OF THEIR SPENDING REPORT FILING OBLIGATION

### WC Docket No. 18-89

By this Public Notice, the Wireline Competition Bureau (Bureau) reminds recipients in the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) of their obligation to file reimbursement spending reports with the Federal Communications Commission (Commission) by February 10, 2023.<sup>1</sup>

As directed in the Secure and Trusted Communications Networks Act of 2019 (the Act), the Commission established the Reimbursement Program to reimburse providers of advanced communications services with ten million or fewer customers for reasonable costs incurred in the removal, replacement, and disposal of covered communications equipment or services from their networks that pose a national security risk.<sup>2</sup> In accordance with the Act and Commission rules, each Reimbursement Program recipient must submit reports to the Commission describing “how reimbursement funds have been spent, including detailed accounting of the covered communications equipment or services permanently removed and disposed of, and the replacement equipment or services purchased, rented, leased or otherwise obtained, using reimbursement funds”<sup>3</sup> within 10 days after the end of January and July, starting with the recipient’s initial draw down of reimbursement funds.<sup>4</sup> This reporting obligation terminates once the recipient has filed a “final spending report showing the expenditure of all funds received as compared to the estimated costs” submitted.<sup>5</sup> In the *2020 Supply Chain Order*, the Commission noted that spending reports “help mitigate waste, fraud, and abuse by

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<sup>1</sup> 47 CFR § 1.50004(l).

<sup>2</sup> Secure and Trusted Communications Act of 2019, Pub. L. No. 116-124, 134 Stat. 158, § 9(11) (2019) (codified as amended at 47 U.S.C. §§ 1601-09), *as amended by* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 901, 134 Stat. 1182 (2021). The Commission implemented the Secure Networks Act on December 10, 2020. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Second Report and Order, 35 FCC Rcd 14284 (2020) (*2020 Supply Chain Order*). On July 13, 2021, the Commission amended its rules, consistent with amendments to the Secure Networks Act included in the Consolidated Appropriations Act, 2021. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Third Report and Order, 36 FCC Rcd 11958 (2021).

<sup>3</sup> 47 CFR § 1.50004(l).

<sup>4</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14360, para. 188; 47 CFR § 1.50004(l)(1).

<sup>5</sup> 47 CFR § 1.50004(l)(2). The final spending report is due after the filing of a final certification by the recipient. *2020 Supply Chain Order*, 35 FCC Rcd at 14360, para. 188.

allowing the Commission to monitor the recipient's funding use to help make sure funds are spent as intended."<sup>6</sup>

Recipients that have been notified of the approval of a reimbursement claim request<sup>7</sup> must submit their first spending report on February 10, 2023. Recipients must submit their spending reports through the Supply Chain Reimbursement Program Online Portal, <https://fccprod.servicenow.com/scrp> by completing FCC Form 5640 Part L: Spending Reports.

*Public Posting and Requests for Confidentiality.* Pursuant to the Commission's rules, the Bureau will make information submitted by recipients in their spending reports publicly available on the Commission's website, "subject to confidentiality concerns consistent with the Commission's rules."<sup>8</sup> The Commission "consider[s] detailed accounting information on the covered communications equipment or services permanently removed and disposed of, and the replacement equipment or services purchased, rented, leased, or otherwise obtained, using reimbursement funds presumptively confidential and will withhold such disaggregated information from routine public inspection."<sup>9</sup> Recipients may request confidential treatment of other information submitted in their spending reports pursuant to section 0.459 of the Commission's rules.<sup>10</sup> Requests for confidential treatment must be submitted by filing a written request electronically in WC Docket No. 18-89 in the Commission's Electronic Comments Filing System (ECFS), <https://www.fcc.gov/ecfs>.

*Additional Information and Resources.* Recipients with questions may contact the Fund Administrator Help Desk by email at [SCRPFundAdmin@fcc.gov](mailto:SCRPFundAdmin@fcc.gov) or by calling (202) 418-7540 from 9:00 AM ET to 5:00 PM ET, Monday through Friday, except for Federal holidays. General information and Commission documents regarding the Reimbursement Program are available on the Reimbursement Program webpage, <https://www.fcc.gov/supplychain/reimbursement>.

-FCC-

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<sup>6</sup> 2020 *Supply Chain Order*, 35 FCC Rcd at 14359-60, para. 186.

<sup>7</sup> 47 CFR § 1.50004(g) ("[A] Reimbursement Program recipient may file a reimbursement claim request for the draw down disbursement of funds from the recipient's funding allocation.").

<sup>8</sup> 47 CFR § 1.50004(l)(3).

<sup>9</sup> *Id.*; 2020 *Supply Chain Order*, 35 FCC Rcd at 14360, para. 189.

<sup>10</sup> 47 CFR § 0.459.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Discount Long Distance, LLC	)	Complaint No. 5853364
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**ORDER**

**Adopted: January 10, 2023**

**Released: January 11, 2023**

By the Acting Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider a complaint alleging that Discount Long Distance, LLC (DLD) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.<sup>1</sup> We find that DLD has responded fully to the Complainant's complaint and has taken action to resolve the complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.<sup>2</sup> The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>3</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the order.<sup>4</sup> The Commission has also adopted rules to limit the liability of subscribers when an unauthorized carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.<sup>5</sup>

3. We received Complainant's complaint alleging that DLD had changed Complainant's telecommunications service provider without Complainant's authorization. Pursuant to our rules, we

<sup>1</sup> See Informal Complaint No. 5853364 (filed Nov. 9, 2022); see also 47 CFR §§ 64.1100 – 64.1190.

<sup>2</sup> 47 U.S.C. § 258(a).

<sup>3</sup> See 47 CFR § 64.1120.

<sup>4</sup> See *id.* § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

<sup>5</sup> These rules require the unauthorized carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See *id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. See *id.* §§ 64.1140, 64.1170.

notified DLD of the complaint.<sup>6</sup> Based on the information provided by DLD, it appears that DLD has fully absolved Complainant of all charges assessed by DLD in a manner consistent with the Commission's liability rules.<sup>7</sup> We therefore find that the complaint referenced herein has been resolved.<sup>8</sup>

4. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Discount Long Distance, LLC IS RESOLVED.

5. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kristi Thornton  
Acting Chief  
Consumer Policy Division  
Consumer and Governmental Affairs Bureau

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<sup>6</sup> *Id.* § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

<sup>7</sup> *See* DLD's Response to Informal Complaint No. 5853364 (filed Dec. 15, 2022) (stating that DLD issued Complainant a full credit of all services billed and that the account was cancelled); *see also* 47 CFR § 64.1160.

<sup>8</sup> If Complainant is unsatisfied with the resolution of its complaint, the Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, 47 CFR § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See id.* § 1.719.



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>

DA 23-27

Released: January 11, 2023

## CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION FOR EXPEDITED DECLARATORY RULING OR WAIVER FILED BY DENTALPLANS.COM

CG Docket No. 02-278

Comments Due: February 10, 2023

Reply Comments Due: February 27, 2023

With this Public Notice, the Consumer and Governmental Affairs Bureau seeks comment on a request for expedited declaratory ruling or retroactive waiver filed by DentalPlans.com (DentalPlans).<sup>1</sup> Specifically, DentalPlans seeks a ruling that: (i) DentalPlans' renewal notifications do not constitute telemarketing or advertising under the Telephone Consumer Protection Act (TCPA), and (ii) the language in its online enrollment forms and the language used by its customer service representatives during telephone conversations with potential DentalPlans customers satisfies the disclosure requirements set forth in 47 U.S.C. §§ 227(b)(1)(A)(iii) and 227(b)(2)(c).<sup>2</sup> In the alternative, DentalPlans requests that the Commission retroactively waive the application of its rules regarding advertisements and telemarketing for the period prior to December 31, 2020.<sup>3</sup>

We seek comment on these and any other issues raised by the request.

*Filing Requirements.* Interested parties may file comments on or before the dates indicated above.<sup>4</sup> All filings must reference CG Docket No. 02-278. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>5</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers:
  - Parties who choose to file by paper must file an original and one copy of each filing.
  - Filings can be sent, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission

<sup>1</sup> See *Petition for Expedited Declaratory Ruling or in the Alternative Retroactive Waiver of DentalPlans.com*, CG Docket No. 02-278 (filed Jan. 3, 2023).

<sup>2</sup> *Id.* at 4-7.

<sup>3</sup> *Id.* at 8-10.

<sup>4</sup> See 47 CFR §§ 1.1, 1.49.

<sup>5</sup> *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, Maryland 20701.<sup>6</sup>

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail may be addressed to 45 L Street, NE, Washington, DC 20554.

*Ex Parte Rules.* The proceeding this Public Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.<sup>7</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Bureau at 202-418-0530 (voice).

*Additional Information.* For further information regarding this Public Notice, please contact Richard D. Smith, Consumer and Governmental Affairs Bureau, at 717-338-2797 or by e-mail at [Richard.Smith@fcc.gov](mailto:Richard.Smith@fcc.gov).

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<sup>6</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Red 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

<sup>7</sup> 47 CFR §§ 1.1200 *et seq.*



# PUBLIC NOTICE

**Federal Communications Commission**  
45 L Street NE  
Washington, DC 20554

News Media Information 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
TTY: 888-835-5322

DA 23-28

Released: January 12, 2023

**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON  
SORENSEN COMMUNICATIONS, LLC'S PETITION FOR A LIMITED WAIVER OF THE  
PRIVACY SCREEN RULE FOR VIDEO RELAY SERVICE**

**CG Docket Nos. 03-123 and 10-51**

**Comments due: February 13, 2023**

**Reply Comments due: February 28, 2023**

Pursuant to sections 1.1, 1.3, and 1.45 of the Commission's Rules (47 CFR §§ 1.1, 1.3, and 1.45), the Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) seeks comment on a Petition for a Limited Waiver filed by Sorenson Communications, LLC (Sorenson).<sup>1</sup> As a provider of Video Relay Service (VRS), Sorenson requests the Commission waive its visual privacy screen rule to allow VRS providers to pilot integration of VRS with video conferencing services.<sup>2</sup> A "visual privacy screen" is defined as "a screen or any other feature that is designed to prevent one party or both parties on the video leg of a VRS call from viewing the other party during a call."<sup>3</sup> The privacy screen rule prohibits a VRS communications assistant (CA) from enabling a visual privacy screen or similar feature during a VRS call and requires the CA to disconnect a VRS call if the caller or called party enables a privacy screen or similar feature for more than five minutes or is otherwise unresponsive or unengaged for more than five minutes.<sup>4</sup> This rule was adopted to prevent fraudulent practices where VRS minutes were logged while no one was engaged in a conversation.<sup>5</sup>

Sorenson contends that enforcement of the privacy screen rule would hinder the participation of VRS users in video conferencing calls because the participants, including deaf participants, in such calls may turn off their video connections for reasons unrelated to inactivity.<sup>6</sup> Sorenson seeks a limited waiver of the rule that would allow VRS users to use interactive video conferencing services without video being activated, for longer than five minutes.<sup>7</sup> Sorenson does not seek a waiver that would allow CAs to turn off their videos or use a privacy screen.<sup>8</sup>

<sup>1</sup> Petition of Sorenson Communications, LLC for a Limited Waiver of the Privacy Screen Rule for Piloting VRS Integration with Video Conferencing Services, CG Docket Nos. 03-123 and 10-51 (filed Dec. 19, 2022) (Petition), <https://www.fcc.gov/ecfs/document/12190888126091/1>.

<sup>2</sup> See Petition at 1-3.

<sup>3</sup> 47 CFR § 64.601(a)(51).

<sup>4</sup> 47 CFR § 64.604(a)(6).

<sup>5</sup> See *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, 26 FCC Rcd 5545, 5566-68, paras. 39-42 (2011).

<sup>6</sup> See Petition at 3-7.

<sup>7</sup> See Petition at 9.

<sup>8</sup> See Petition at 7.

*Filing Requirements.* Interested parties may file comments on Sorenson’s Petition on or before the dates shown on the first page of this document.<sup>9</sup> All comments must reference CG Docket Nos. 03-123 and 10-51. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).<sup>10</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers:
  - Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
  - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
  - Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission’s office located at 9050 Junction Drive, Annapolis Junction, MD 20701.<sup>11</sup>
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail may be addressed to 45 L Street, NE, Washington, DC 20554.
  - During the time the Commission’s building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

*Ex Parte Rules.* The proceeding the Notice of Proposed Rulemaking initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules.<sup>12</sup> Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments,

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<sup>9</sup> See 47 CFR §§ 1.1, 1.3, 1.45.

<sup>10</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

<sup>11</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

<sup>12</sup> 47 CFR § 1.1200 *et seq.*

memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with section 1.1206(b). In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

*Accessible Materials.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530.

*Additional Information.* For additional information on this proceeding, contact William Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-2716, or [William.Wallace@fcc.gov](mailto:William.Wallace@fcc.gov).

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# PUBLIC NOTICE

Federal Communications Commission  
45 L Street, N.E.  
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DA 23-29

Released: January 12, 2023

## COMMENT SOUGHT ON PETITION FOR PARTIAL RECONSIDERATION OF REPORT AND ORDER ON TRS USER REGISTRATION

CG Docket Nos. 03-123, 10-51, and 13-24

**Oppositions Due: [15 days after date of publication in the Federal Register]**  
**Replies Due: [10 days after date oppositions are due]**

The Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (Commission) seeks comment on a petition for partial reconsideration of the *Registration Grace Period Order*.<sup>1</sup> In that Report and Order, the Commission amended its rules for Video Relay Service (VRS) and Internet Protocol Captioned Telephone Service (IP CTS) to allow consumers who are registering for service for the first time, or changing their service provider, to begin using the service without delay, pending completion of the user registration process.

Sorenson Communications, LLC (Sorenson), a provider of VRS, has petitioned for reconsideration of two aspects of that decision.<sup>2</sup> First, Sorenson asks the Commission to reconsider the requirement for VRS providers to terminate service to users who cannot complete the registration process within the two-week “grace period.”<sup>3</sup> Second, Sorenson asks the Commission reconsider the requirement to port a user back to the user’s prior provider when re-registration upon porting-in to a new provider has not been completed within two weeks.<sup>4</sup>

Pursuant to sections 1.1 and 1.429 of the Commission’s rules, we invite interested parties to file and serve oppositions to and replies to oppositions to this petition on or before the dates specified above.<sup>5</sup> All filings must reference CG Docket Nos. 03-123, 10-51, and 13-24.

Oppositions and replies may be filed using the Commission’s Electronic Comment Filing System (ECFS).<sup>6</sup>

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<sup>1</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Misuse of Internet Protocol (IP) Captioned Telephone Service; Petition for Rulemaking and Interim Waiver of Convo Communications, LLC*, CG Docket Nos. 03-123, 10-51, and 13-24, Report and Order, Notice of Proposed Rulemaking, Order, and Declaratory Ruling, FCC 22-51 (June 30, 2022) (*Registration Grace Period Order*).

<sup>2</sup> See Sorenson Communications, LLC, Petition for Partial Reconsideration, CG Docket Nos. 03-123, 10-51, and 13-24 (filed Oct. 21, 2022) (Petition), <https://www.fcc.gov/ecfs/document/1021129108560/1>.

<sup>3</sup> See *Registration Grace Period Order*, para. 20; Petition at 6-8.

<sup>4</sup> See *Registration Grace Period Order*, para. 21; Petition at 8-10.

<sup>5</sup> 47 CFR §§ 1.1, 1.429.

<sup>6</sup> See FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers:
  - Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
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For further information, please contact William Wallace, at (202) 418-2716 or [William.Wallace@fcc.gov](mailto:William.Wallace@fcc.gov).

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<sup>7</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.



# PUBLIC NOTICE

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DA 23-30

Released: January 12, 2023

## WIRELESS TELECOMMUNICATIONS BUREAU AND OFFICE OF ENGINEERING AND TECHNOLOGY APPROVE RED TECHNOLOGIES TO BEGIN INITIAL COMMERCIAL DEPLOYMENT IN THE 3.5 GHZ BAND

GN Docket No. 15-319

### I. INTRODUCTION

1. With this *Public Notice*, the Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET) (collectively, WTB/OET) of the Federal Communications Commission (Commission or FCC) certify that the Spectrum Access System (SAS) operated by RED Technologies SAS (RED) has satisfied the Commission's SAS laboratory testing requirements<sup>1</sup> and is approved to begin its initial commercial deployment (Initial Commercial Deployment or ICD) as described in its ICD proposal and consistent with the obligations and conditions detailed in this Public Notice and contained in the ICD Proposals Public Notice.<sup>2</sup> WTB/OET, in consultation with the Department of Defense (DoD) and the National Telecommunications and Information Administration (NTIA), have reviewed both RED's SAS laboratory testing report and its ICD proposal.

### II. BACKGROUND

2. In the *2015 Report and Order*, the Commission directed WTB/OET—in consultation with the DoD and NTIA—to oversee the review, certification, and approval of SASs in the 3.5 GHz band.<sup>3</sup> As required in the *2015 Report and Order*, and as further described in the *SAS/ESC Proposal Public Notice*, all prospective SAS administrators must complete a two-stage review process prior to final

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<sup>1</sup> Conditionally approved SAS Administrators are permitted to file their laboratory testing reports in GN Docket No. 15-319. *Wireless Telecommunications Bureau and Office of Engineering and Technology Establish Procedure and Deadline for Filing Spectrum Access System Initial Commercial Deployment Proposals*, Public Notice, 33 FCC Rcd 7390, 7392, para. 5 (WTB/OET 2018) (*ICD Proposals Public Notice*). RED chose to file its laboratory testing report with the Commission and requested confidential treatment. See Performance Certification Results for a 3.5 GHz Spectrum Access System Provided for Testing by RED Technologies SAS; Final SAS Certification Test Report Submission, GN Docket No. 15-319 (filed September 25, 2022) (RED SAS Test Report).

<sup>2</sup> RED's ICD proposal was filed in GN Docket No. 15-319 consistent with the Commission's instructions and RED requested confidential treatment for its ICD filings. See *ICD Proposals Public Notice*, 33 FCC Rcd at 7394-95, para. 11; RED Technologies SAS Proposal for Spectrum Access System Initial Commercial Deployment, GN Docket No. 15-319, (filed November 6, 2022) (RED ICD Proposal).

<sup>3</sup> See generally *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959, 4067, paras. 369-373 (2015) (*2015 Report and Order* and *2015 FNPRM*, respectively); see also 47 CFR §§ 0.241(j), 0.331(f).

certification.<sup>4</sup> In the first stage, a prospective SAS Administrator must submit a proposal describing how its system will comply with all Commission rules governing the construction, operation, and approval of SASs and perform all core functions described in the *2015 Report and Order*.<sup>5</sup> The second stage involves SAS testing both in a controlled lab environment and in a real-world setting.<sup>6</sup> On May 7, 2021, WTB/OET conditionally approved RED's SAS.<sup>7</sup>

3. As part of the second stage testing process, RED elected to collaborate with the Institute for Telecommunication Sciences (ITS), NTIA's research and development arm, in order to complete the laboratory testing requirement.<sup>8</sup> ITS completed its laboratory testing and subsequently provided RED with a SAS laboratory test report, which RED submitted for the Commission's review on September 25, 2022.<sup>9</sup>

4. In order to comply with the field testing requirement, in July 2018, WTB/OET sought proposals for short-term, limited geographic commercial deployment.<sup>10</sup> Consistent with the requirements set forth in the *ICD Proposals Public Notice*, RED submitted its ICD proposal on November 6, 2022.<sup>11</sup>

### III. DISCUSSION

5. WTB/OET, in coordination with NTIA and DoD, are responsible for assessing and testing each conditionally approved SAS prior to final certification in both laboratory and real-world environments.<sup>12</sup> ICD will satisfy the real-world element of the testing process and will allow WTB/OET to assess whether a SAS can operate under actual deployment conditions.<sup>13</sup>

6. WTB/OET, in coordination with NTIA and DoD, reviewed RED's laboratory test report and ICD proposal in detail. Based on the information contained in those documents, WTB/OET find that RED's laboratory test report satisfies the Commission's requirement to assess and test each SAS in a

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<sup>4</sup> See *Wireless Telecommunications Bureau and Office of Engineering and Technology Establish Procedure and Deadline for Filing Spectrum Access System (SAS) Administrator(s) and Environmental Sensing Capability (ESC) Operator(s) Applications*, GN Docket No. 15-319, Public Notice, 30 FCC Rcd 14170, 14174-77 (WTB/OET 2015) (*SAS/ESC Proposal Public Notice*).

<sup>5</sup> See *2015 Report and Order*, 30 FCC Rcd at 4054-55, para. 320 (listing SAS core functions); see also *SAS/ESC Proposal Public Notice*, 30 FCC Rcd 14170; *Wireless Telecommunications Bureau and Office of Engineering and Technology Conditionally Approve Three Spectrum Access System Administrators for the 3.5 GHz Band*, Public Notice, 36 FCC Rcd 8255 (WTB/OET 2021) (*Second Wave SAS Conditional Approval Public Notice*).

<sup>6</sup> See *2015 Report and Order*, 30 FCC Rcd at 4067, para. 372 (noting that the final compliance testing phase can include a public testing period, testing of protections for incumbent systems, and field trials). On July 27, 2018, WTB/OET released a Public Notice that described the procedure and deadline for filing ICD proposals. See *ICD Proposals Public Notice*, 33 FCC Rcd 7390. ICD is meant to fulfill the Commission's requirement that applicants conduct a public testing period and field trials prior to final certification. *2015 Report and Order*, 30 FCC Rcd at 4067, para. 372.

<sup>7</sup> See *Second Wave SAS Conditional Approval Public Notice*.

<sup>8</sup> While lab testing of individual SASs is required before final certification, participation in either the process of verifying and validating the test harness or the subsequent lab testing of an individual SAS with ITS is optional and is not a prerequisite to submitting an ICD proposal or to obtaining final certification. *ICD Proposals Public Notice*, 33 FCC Rcd at 7392, para. 4.

<sup>9</sup> See RED SAS Test Report.

<sup>10</sup> *ICD Proposals Public Notice*, 33 FCC Rcd at 7390, para. 1.

<sup>11</sup> See RED ICD Proposal.

<sup>12</sup> See *2015 Report and Order*, 30 FCC Rcd at 4067, para. 372.

<sup>13</sup> *ICD Proposals Public Notice*, 33 FCC Rcd at 7392, para. 6.

controlled lab environment and that the ICD proposal meets the requirements set forth in the *ICD Proposals Public Notice*. WTB/OET therefore approve RED's SAS for Initial Commercial Deployment subject to the following ongoing compliance obligations:

- RED must file a notification in GN Docket No. 15-319 stating: (1) the beginning date of its ICD period; (2) the specific geographic areas covered by ICD deployments; (3) whether its SAS is DPA-enabled;<sup>14</sup> (4) whether its SAS will be operating with an approved Environmental Sensing Capability (ESC) operator during ICD and, if so, which ESC they will be using;<sup>15</sup> and (5) the expected end date of the ICD reporting period. The notification must also include a primary point of contact for incumbent operators to use to report potential interference issues to its SAS<sup>16</sup> and to obtain additional information about ICD operations, if needed. The ICD period may begin once this notification is filed.
- ICD must continue for a minimum of 30 consecutive days, consistent with RED's ICD proposal, and they must demonstrate compliance with the Commission's rules and other requirements set forth in the *ICD Proposals Public Notice*.<sup>17</sup> ICDs must involve a variety of testing scenarios featuring multiple Citizen Broadband Radio Service Devices (CBSDs)<sup>18</sup> that result in the generation of data upon which the Commission can reasonably predict that its SAS can reliably operate in compliance with the Commission's rules.<sup>19</sup>
- During ICD, RED must operate a SAS that is functionally consistent with its SAS tested in the laboratory environment. SAS operators may implement software upgrades and patches to address any issues identified during ICD.
- RED must comply with all current and future Commission rules, instructions, and procedures.

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<sup>14</sup> Dynamic Protection Areas (DPAs) are pre-defined protection areas that extend beyond the coastline or that enclose a protected terrestrial radar facility, which may be activated or deactivated as necessary to protect DoD radar systems. *Promoting Investment in the 3550-3700 MHz Band*, GN Docket No. 17-258, Order, 33 FCC Rcd 4987, 4990, para. 5 (WTB/OET 2018) (*DPA Waiver Order*). In the *DPA Waiver Order*, WTB and OET conditionally waived sections 96.7(a), 96.15(a)(2)-(3), 96.15(b)(2)-(3), 96.45(b), 96.53(g), and 96.57(d) of the Commission's rules to allow: (1) DPA-enabled SASs to authorize both Category A and Category B CBSDs in the 3.5 GHz band prior to ESC deployment and certification; and (2) DPA-enabled SASs to be certified without being tested for compliance with phase one Exclusion Zone requirements in areas where NTIA has published DPAs.

<sup>15</sup> See *Wireless Telecommunications Bureau and Office of Engineering and Technology Announce the Approval and Registration of Environmental Sensing Capability Sensors of Three ESC Operators for the 3.5 GHz Band*, GN Docket No. 15-319, Public Notice, DA 19-718 (WTB/OET July 29, 2019); *Wireless Telecommunications Bureau and Office of Engineering and Technology Announce Approval of Key Bridge's Environmental Sensing Capability*, GN Docket No. 15-319, DA 22-175 (WTB/OET February 18, 2022); *DPA Waiver Order*, 33 FCC Rcd at 4993-94, para.16.

<sup>16</sup> See 47 CFR § 96.17(f).

<sup>17</sup> See *ICD Proposals Public Notice*, 33 FCC Rcd at 7392-94, paras. 7-8, 10.

<sup>18</sup> CBSDs are fixed stations, or networks of such stations, that operate on a Priority Access or General Authorized Access basis in the Citizens Broadband Radio Service. 47 CFR § 96.3.

<sup>19</sup> *ICD Proposals Public Notice*, 33 FCC Rcd at 7394, para. 10. These scenarios are included in RED's ICD Proposal. See *supra* note 2.

- RED must comply with all instructions issued by WTB and OET pursuant to sections 0.241(j) and 0.331(f) of the Commission's rules.<sup>20</sup>
- RED must promptly respond to any Commission, WTB, Enforcement Bureau, or OET requests for additional information.
- During ICD, each conditionally approved SAS must promptly deactivate, or make changes in the operational parameters of any CBSD or group of CBSDs, if directed to do so by the Commission, WTB, OET, or Enforcement Bureau. If, during ICD, a SAS is continually shown to cause interference to incumbents, WTB/OET may require that SAS to cease all operations until the underlying issues are resolved.

7. In addition, consistent with the *ICD Proposals Public Notice* and RED's ICD proposal, RED must satisfy the following requirements during ICD:

- RED must demonstrate that users can register with its SAS, receive authentication, and obtain user IDs during ICD.<sup>21</sup>
- RED must demonstrate how its SAS will communicate with and manage multiple CBSD or Domain Proxy (DP) products, including the protocols for SAS-CBSD communications for registration, channel grant, and channel release.<sup>22</sup> RED must identify all of its commercial partners that will operate during ICD.
- RED must demonstrate that a certified professional installer (CPI) can register CBSDs/DPs during ICD and must explain how that professional installation will ensure its SAS can accurately locate devices in compliance with part 96.<sup>23</sup>
- RED must demonstrate that its SAS can access, read, and use data directly from FCC databases during ICD.<sup>24</sup>
- RED must demonstrate its ability to correctly synchronize and exchange information with other SASs and to correctly apply information security procedures and incumbent protection methods during ICD.<sup>25</sup>
- RED must demonstrate the processes that it will use to ensure the correct implementation of all relevant interference protection criteria, including how its SAS's over-the-air propagation testing addresses the protection of Fixed Satellite Service earth station sites, federal inland radar test sites, and area-based protections.<sup>26</sup> RED should include the results of these protection tests in its ICD Report consistent with its approved final ICD deployment plan.

<sup>20</sup> See 47 CFR §§ 0.241(j), 0.331(f).

<sup>21</sup> See, e.g., 47 CFR §§ 96.25(c), 96.33, 96.39, 96.57.

<sup>22</sup> See, e.g., 47 CFR §§ 96.39, 96.55-59. ICD will not need to cover all test cases performed in ITS lab testing.

<sup>23</sup> See *3.5 GHz First Report & Order*, 30 FCC Rcd at 4028, para. 220 (stressing the importance of accurate CBSD geo-location for coordinating interactions between and among users in the band and for protecting Incumbent Users from harmful interference in compliance with Part 96). WinnForum has developed standards and a program to approve CPIs that successfully complete their training in the relevant Part 96 rules and the associated technical best practices, per the Commission's strong encouragement to multi-stakeholder groups and industry associations in the *3.5 GHz First Report & Order*. See *id.* at 4028-29, paras. 221-222.

<sup>24</sup> See 47 CFR § 96.55(d), 96.63.

<sup>25</sup> See 47 CFR §§ 96.55(a)(2), 96.57, 96.59, 96.63(i).

<sup>26</sup> See 47 CFR §§ 96.15, 96.17, 96.21, 96.57, 96.59; <https://www.ntia.doc.gov/fcc-filing/2015/ntia-letter-fcc-commercial-operations-3550-3650-mhz-band>.

- If RED is DPA-enabled, RED must demonstrate the ability to implement notification-based DPA protection using a DPA portal.<sup>27</sup>
- RED must provide a method by which WTB, Enforcement Bureau, OET, NTIA, and DoD will have access to its SAS and data generated by its SAS during ICD in order to verify that its SAS complies with the relevant rules. RED must also provide a primary point of contact to address questions about SAS operations or information from the Commission, NTIA, and the DoD.
- RED must demonstrate real-world application of interference reporting and timely interference mitigation processes, including providing FCC enforcement personnel with access to SAS data upon request.<sup>28</sup>
- Once RED completes its ICD, it must submit an ICD Report to the Commission, according to its approved proposal format and including a demonstration of compliance with these conditions, as well as any outstanding issues identified in RED's lab test report.<sup>29</sup>

8. These conditions will ensure that RED will comply with the Commission's rules. RED will not receive final certification unless the conditions described in this *Public Notice* are met, and such certification may be revoked at any time if RED fails to comply with the Commission's rules and guidance on an ongoing basis.

#### IV. NEXT STEPS

9. WTB/OET will carefully oversee RED's operations during the ICD period. WTB/OET, in coordination with NTIA and the DoD, will review RED's ICD Report and will publicly announce if RED successfully completes ICD and receives final certification to operate a SAS.

10. After RED submits its ICD Report to the Commission, it may continue Initial Commercial Deployment, subject to the conditions described in this *Public Notice*, during the review period and pending further Commission review. RED may expand operations seven business days after providing notice to the Commission, provided that such notice includes all information required by the *ICD Proposals Public Notice*. All ICD deployments must comply with all conditions listed in this *Public Notice* and contained in the *ICD Proposals Public Notice*.<sup>30</sup>

11. If RED successfully completes ICD and receives final certification to operate, it will be allowed to make its SAS available for commercial use for the five-year term specified in our rules.<sup>31</sup> WTB/OET will publicly announce the availability of each SAS, at which time the five-year term will commence.

#### V. PROCEDURAL REQUIREMENTS

12. RED must file: (1) ICD Reports and any supplements; and (2) ICD notifications with the Commission using the Commission's Electronic Comment Filing System.<sup>32</sup> *See Electronic Filing of*

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<sup>27</sup> *ICD Proposals Public Notice*, 33 FCC Rcd at 7393, para. 7.

<sup>28</sup> *See, e.g.*, 47 CFR §§ 96.53, 96.55.

<sup>29</sup> *ICD Proposals Public Notice*, 33 FCC Rcd at 7394, para. 10.

<sup>30</sup> *ICD Proposals Public Notice*, 33 FCC Rcd at 7392-94, paras. 7-10.

<sup>31</sup> *See* 47 CFR § 96.63(e).

<sup>32</sup> While we will accept proposals electronically, we are not requesting public comment on the reports or notifications at this time.

*Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). REDs may request confidential treatment of information contained in their filings consistent with Section 0.459 of the Commission's rules.<sup>33</sup>

13. Questions regarding this *Public Notice* may be directed to Paul Powell, Associate Division Chief, Wireless Telecommunications Bureau, Mobility Division at (202) 418-1613 or paul.powell@fcc.gov, or Navid Golshahi, Electronics Engineer, Office of Engineering and Technology, Policy and Rules Division at (202) 418-2422 or navid.golshahi@fcc.gov.

14. By the Acting Chief, Wireless Telecommunications Bureau, and the Acting Chief, Office of Engineering and Technology.

-FCC-

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<sup>33</sup> See 47 CFR § 0.459.



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
45 L STREET NE  
WASHINGTON D.C. 20554

News media information 202-418-0500  
Internet: <http://www.fcc.gov> (or <ftp.fcc.gov>)  
TTY (202) 418-2555

DA No. 23-31

Friday January 13, 2023

Report No. SAT-01693

## Satellite Policy Branch Information

### Actions Taken

The Commission, by its International Bureau, took the following actions pursuant to delegated authority. The effective date of these actions is the release date of this Notice, except where an effective date is specified.

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SAT-AMD-20220805-00078 E S3032 BlackSky Global LLC  
Amendment  
Granted in Part/ Deferred in Part Effective Date: 01/10/2023

Nature of Service: Earth Exploration Satellite Service

See IBFS File No. SAT-MOD-20211230-00205 for description of the action taken.

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SAT-ASG-20221109-00156 E Telesat Canada  
Assignment  
Grant of Authority Effective Date: 01/12/2023

Current Licensee: SES Americom, Inc.  
FROM: SES AMERICOM, INC.  
TO: Telesat Canada

No. of Station(s) listed: 1

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SAT-MOD-20211230-00205 E S3032 BlackSky Global LLC  
Modification  
Granted in Part/ Deferred in Part Effective Date: 01/10/2023

Nature of Service: Earth Exploration Satellite Service

On January 10, 2023, the Satellite Division modified the license of BlackSky Global LLC for its non-geostationary satellite orbit system to update the technical parameters for three satellites. Specifically, the modification reflects: (1) operations planned for orbits ranging between 385 km and 500 km, with inclinations between 40 degrees and 60 degrees; (2) a water-based propulsion system; and (3) certain other technical changes. Action on additional requests for license modification by BlackSky Global in IBFS File No. SAT-AMD-20220805-00078 is deferred.

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SAT-STA-20221020-00147 E S2750 Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/12/2023

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Application listed as granted in IBFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

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**SAT-STA-20221026-00149** E S2381 Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/12/2023

Application listed as granted in IBFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

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**SAT-STA-20221122-00165** E S2750 Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/12/2023

Application listed as granted in IBFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

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**SAT-STA-20221123-00166** E S2381 Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/12/2023

Application listed as granted in IBFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

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**SAT-STA-20221221-00179** E S2750 Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/12/2023

On January 12, 2022, the Satellite Division granted, with conditions, special temporary authority for an additional period of 30 days to Intelsat License LLC, to continue operating Intelsat 16's Ku-band beam over a new coverage area in the fixed satellite service, using the 11.7-12.2 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) frequency bands at the 76.2° W.L. orbital location.

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**SAT-STA-20221228-00181** E S2381 Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/12/2023

On January 12, 2022, the Satellite Division granted, with conditions, special temporary authority for an additional period of 30 days to Intelsat License LLC in order for Galaxy 3C to provide fixed-satellite service at the 94.85° W.L. orbital location using the 3700-4200 MHz, 11.45-12.2 GHz (space-to-Earth), 5925-6425 MHz and 13.75-14.5 GHz (Earth-to-space) frequency bands. Galaxy 3C operates telemetry, tracking and command using the following center frequencies: 11702 MHz, 11703 MHz, 11704 MHz, and 12199 MHz (space-to-Earth), 13753 MHz and 14001 MHz (Earth-to-space).

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For more information concerning this Notice, contact the Satellite Division at 202-418-0719.



# PUBLIC NOTICE

Federal Communications Commission  
45 L St., N.E.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>

DA 23-32  
Released: January 12, 2023

## DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS OF VDL, INC. BY XTEL COMMUNICATIONS, INC.

### STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 22-467

**Comments Due: January 26, 2023**  
**Reply Comment Due: February 2, 2023**

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by VDL, Inc. (VDL) and Xtel, Communications, Inc., (Xtel) (VDL and Xtel, together, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules, requesting consent for the acquisition of assets and customers of VDL by Xtel.<sup>1</sup>

VDL, a Maryland corporation d/b/a Global Telecom Brokers, provides competitive local exchange carrier (LEC) services in Maryland.<sup>2</sup> Xtel, a New Jersey corporation, is authorized to provide competitive LEC and interexchange services in Delaware, Maryland, New Jersey, and Pennsylvania, and provides these services in Delaware, New Jersey, and Pennsylvania.<sup>3</sup>

Pursuant to the terms of the proposed transaction, Xtel will acquire VDL's current communications-related accounts and substantially all of the communications-related assets of VDL, including all of its customer contracts.

Applicants request streamlined treatment of the proposed transaction under the Commission's rules and assert that a grant of the application would serve the public interest,

<sup>1</sup> See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications. On January 9, 2023, Applicants filed a supplement to their domestic section 214 application. Letter from Mark C. Del Bianco, Counsel to Xtel Communications, Inc., and Glenn Richards, Counsel to VDL, Inc., to Marlene H. Dortch, Secretary, FCC. WC Docket No. 22-467 (filed Jan. 9, 2023). Applicants also filed applications for the transfer of authorizations associated with international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

<sup>2</sup> VDL also provides broadband internet access and interconnected Voice over Internet Protocol (VoIP) services to business customers in 12 states and the District of Columbia.

<sup>3</sup> Xtel also provides broadband internet access and VoIP services to business customers in 16 states.

convenience, and necessity. We accept the application for streamlined filing under section 63.03(b)(2)(i) of the Commission's rules.<sup>4</sup>

Domestic Section 214 Application Filed for the Acquisition of Certain Assets of VDL, Inc. by Xtel Communications, Inc., WC Docket No. 22-467 (filed Dec. 22, 2022).

### **GENERAL INFORMATION**

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before January 26, 2023**, and reply comments **on or before February 2, 2023**. Pursuant to section 63.52 of the Commission's rules, 47 CFR § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents using the Commission's Electronic Comment Filing System (ECFS): <http://apps.fcc.gov/ecfs/>.

**In addition, e-mail one copy of each pleading to each of the following:**

- 1) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, [gregory.kwan@fcc.gov](mailto:gregory.kwan@fcc.gov);
- 2) Sumita Mukhoty, Telecommunications and Analysis Division, International Bureau, [Sumita.mukhoty@fcc.gov](mailto:Sumita.mukhoty@fcc.gov); and
- 3) Jim Bird, Office of General Counsel, [jim.bird@fcc.gov](mailto:jim.bird@fcc.gov).

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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<sup>4</sup> 47 CFR § 63.03(b)(2)(i).

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.<sup>5</sup> A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Gregory Kwan at (202) 418-1191.

**FCC**

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<sup>5</sup> See 47 CFR § 1.45(c).



# PUBLIC NOTICE

**Federal Communications Commission**  
45 L Street, N.E.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
TTY: 1-888-835-5322

DA 23-33

Released: January 13, 2023

**RURAL DIGITAL OPPORTUNITY FUND SUPPORT AUTHORIZED  
FOR 1,764 WINNING BIDS; ETHERIC COMMUNICATIONS LLC'S PETITION FOR  
WAIVER OF THE JUNE 7, 2021 ELIGIBLE TELECOMMUNICATIONS CARRIER  
DOCUMENTATION DEADLINE DENIED**

**AU Docket No. 20-34**  
**WC Docket No. 19-126**  
**WC Docket No. 10-90**

By this Public Notice, the Wireline Competition Bureau (WCB), in conjunction with the Office of Economics and Analytics (OEA), authorizes Rural Digital Opportunity Fund (Auction 904) support for the winning bids identified in Attachment A of this Public Notice. We also dismiss as moot and alternatively deny Etheric Communications LLC's (Etheric) petition for waiver of the June 7, 2021 deadline requiring each Rural Digital Opportunity Fund long-form applicant to demonstrate, with appropriate documentation, that it has been designated as an eligible telecommunications carrier (ETC) in each of the geographic areas for which it seeks to be authorized for Auction 904 support.<sup>1</sup>

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<sup>1</sup> 47 CFR § 54.804(b)(5); Etheric Communications, LLC Petition for Waiver of Section 54.804(b)(3) of the Commission's Rules, AU Docket No. 20-34 et al. (filed May 12, 2021) (Etheric ETC Petition). We note that despite Etheric's reference to rule 54.804(b)(3) (letter of credit commitment letter) in its request, based on the context of the request, WCB has determined the applicant actually seeks waiver of rule 54.804(b)(5) regarding the ETC designation deadline.

Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 1.3. Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule and (2) such deviation will serve the public interest. *See* Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing WAIT Radio v. FCC, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), cert. denied, 93 S.Ct. 461(1972)).

On December 15, 2022, the California Public Utilities Commission (CPUC) issued a decision denying Etheric's request for an ETC designation covering its Auction 904 winning bids in the state. California Public Utilities Commission, Application of Etheric Communications, LCC for a Certificate of Public Convenience and Necessity to Provide Full Facilities-Based and Resold Competitive Local Exchange and Non-Dominant Interexchange Service and Designation as an Eligible Telecommunications Carrier in California, Application 21-01-002, Decision Granting Etheric a Certificate of Public Convenience and Necessity in Order to Provide Full Facilities-Based and Resold Competitive Local Exchange Services and Resold Interexchange Services but Denying Designation as an Eligible Telecommunications Carrier, Decision 22-12-026 (Dec. 15, 2022). Because Etheric has been unable to obtain an ETC designation covering its winning bid areas in California, Etheric cannot be authorized to receive Auction 904 support in those areas. *See Rural Digital Opportunity Fund Auction et al.*, AU Docket No. 20-34 et al., Order, DA 22-912 (WCB/OEA Aug. 31, 2022) (dismissing California Internet, L.P. dba GeoLinks and Cal.Net, Inc.'s petitions for waiver as moot after the CPUC denied their requests for ETC designation).

In addition and in the alternative, we deny Etheric's petition for waiver on the merits. *See* Letter from Stephen E. Coran, Counsel to Etheric Communications LLC, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-34 et al. (filed Dec. 21, 2022) (claiming that "Etheric is considering its options to respond to the CPUC Decision and

(continued....)

For each of the winning bids identified in Attachment A, we have reviewed the long-form application information, including the letter(s) of credit and Bankruptcy Code opinion letter(s) from the long-form applicant's legal counsel. Based on the representations and certifications in the relevant long-form application, we authorize and obligate support for the winning bids listed in Attachment A.

We will also soon post a state-level summary under the "Results" tab on the Auction 904 webpage at <https://www.fcc.gov/auction/904/round-results>. The summary will provide for each long-form applicant included in this Public Notice: 1) the total support amount over 10 years and total number of locations that the long-form applicant is being authorized for in each state; 2) the total number of locations to which the authorized support recipient must offer the required voice and broadband services for each performance tier and latency in each state; and 3) the eligible census blocks included in the winning bids that are being authorized in each state.

Upon issuance of this Public Notice, the Universal Service Administrative Company (USAC) is authorized and directed to take the steps necessary to disburse from the Universal Service Fund the amounts identified in Attachment A to the long-form applicant associated with each study area specified in Attachment A. Payments will be to the account on file for the 498 ID associated with the study area code (SAC). The support will be disbursed in 120 monthly payments, which will begin at the end of this month.

Below, we provide a summary of the various obligations of authorized Auction 904 support recipients. The list below is not a comprehensive list; thus, each support recipient is still responsible for conducting the due diligence required to comply with universal service fund requirements and the Commission's rules.

*Summary of Obligations and Relevant Dates.* **All** Auction 904 authorized long-form applicants are subject to the following requirements:

- **Annual reporting of location information.** Auction 904 support recipients are required to file location information with USAC through the High-Cost Universal Broadband (HUBB) portal.<sup>2</sup> This information includes geolocation data for each qualifying location to which they are offering the requisite service and the technology the Auction 904 support recipient is using to offer the requisite service to the qualifying locations.<sup>3</sup> The requisite service is at least one standalone voice plan and one service plan that provides broadband at the relevant performance tier, and latency

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further proceedings to obtain ETC status in California"). Although Etheric filed its petition within the 30-day window for presuming good faith efforts, we find that it would not serve the public interest to delay action on Etheric's Rural Digital Opportunity Fund application indefinitely after the CPUC has already denied Etheric's ETC petition and while Etheric considers its options for moving forward. Etheric ETC Petition at 2; *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 723, para. 81 (2020) (*Rural Digital Opportunity Fund Order*). Numerous federal and state programs have been established or are being established to promote and fund broadband deployment. By denying Etheric's petition, we open the relevant areas covered by Etheric's Auction 904 winning bids up to eligibility for future funding programs to the extent they remain unserved, rather than tying up these areas for an indefinite period of time with no indication that Etheric will ultimately obtain an ETC designation from California.

Accordingly, we also dismiss Etheric's petition for waiver of the deadline to submit audited financial statements as moot. 47 CFR § 54.804(b)(4); Etheric Communications, LLC Petition for Waiver of Section 54.804(b)(4) of the Commission's Rules, AU Docket No. 20-34 et al. (filed June 4, 2021). Etheric filed its audited financial statements on July 27, 2021. Etheric Communications, LLC, Supplement to Petition for Waiver, AU Docket No. 20-34 et al. (filed July 27, 2021). The Bureau will release a public notice in the near future announcing Etheric's default in these areas.

<sup>2</sup> 47 CFR §§ 54.316(a)(8), 54.806(a); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 56.

<sup>3</sup> 47 CFR § 54.316(a)(8).

requirements at rates that are reasonably comparable to rates offered in urban areas.<sup>4</sup> The locations must be in the eligible census blocks covered by the long-form applicant's winning bids.<sup>5</sup>

The Commission has consistently encouraged carriers subject to defined deployment obligations and HUBB reporting obligations to report location data on a rolling basis and has adopted a best practice of filing this information within 30 days after the initial offering of service.<sup>6</sup> While reporting on a rolling basis is encouraged, the first deadline for long-form applicants authorized by this Public Notice to submit their location data is **March 1, 2024**.<sup>7</sup> All support recipients must continue to report this information by March 1 in each year thereafter until all build-out requirements are satisfied. For more information about the HUBB portal and reporting location data, visit <https://www.usac.org/high-cost/annual-requirements/submit-data-in-the-hubb/>.

- **Service milestones.** The service milestones for Auction 904 support recipients authorized by this Public Notice will be as follows:<sup>8</sup>

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<sup>4</sup> 47 CFR § 54.805; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 707, para. 42. See also *Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2021 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers*, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 13667 (WCB/OEA 2020). We remind all applicants that an eligible telecommunications carrier (ETC) satisfies its obligation to “offer” qualifying services by being legally responsible for dealing with customer problems, providing quality of service guarantees, and meeting universal service fund-related requirements. Accordingly, a broadband provider may satisfy its voice obligations by offering voice service through an affiliate or by offering a managed voice solution (including VoIP) through a third-party vendor, but a provider cannot simply rely on the availability of over-the-top voice options to satisfy this obligation. *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6129, para. 139 (2020) (*Auction 904 Procedures Public Notice*).

<sup>5</sup> See also *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding their Broadband Location Reporting Obligations*, Public Notice, 31 FCC Rcd 12900 (WCB 2016) (*Location Guidance Public Notice*).

<sup>6</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 56 & n.156. A support recipient is deemed to be commercially offering voice and/or broadband service to a location if it provides service to the location or could provide it within 10 business days upon request. *Id.* at 711-12, para. 54.

<sup>7</sup> 47 CFR § 54.316(c)(1). On our own motion we waive the March 1, 2023 deadline for applicants authorized by this Public Notice. We find special circumstances warrant waiver because these applicants are being authorized less than two months prior to the March 1, 2023 HUBB filing date. We also conclude that the waiver will serve the public interest because it will allow USAC sufficient time to make modifications to the HUBB to incorporate the applicants' information. Therefore, the first deadline for annual location reporting for these applicants is March 1, 2024, although we continue to encourage reporting on a rolling basis as a best practice.

<sup>8</sup> 47 CFR § 54.802; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 709-12, paras. 45-55. In the 13<sup>th</sup> Ready to Authorize Public Notice, we found good cause to grant a limited waiver of section 54.802(c)(1) of the Commission's rules to require the applicants with winning bids being authorized by this Public Notice to meet the same service milestones as all Auction 904 support recipients that were authorized in 2022. *Rural Digital Opportunity Fund Support for 1,764 Winning Bids Ready to Be Authorized; Bid Defaults Announced*, AU Docket No. 20-34 et al., Public Notice, DA 22-1321 at 1-2 (WCB/OEA Dec. 16, 2022).

Percentage of Locations in a State	Service Milestone Deadline
40	December 31, 2025
60	December 31, 2026
80	December 31, 2027
100	December 31, 2028

WCB has been directed to publish revised location counts before the end of service milestone year six.<sup>9</sup> In areas where the revised location total is higher than the number of Connect America Cost Model (CAM)-calculated locations, support recipients will be required to have begun commercially offering service to 100% of the CAM-calculated location count by the end of the sixth calendar year.<sup>10</sup> Such support recipients must then offer service to 100% of the revised location count by the end of the eighth calendar year.<sup>11</sup> In areas where there are fewer locations than calculated by the CAM, support recipients must notify WCB no later than March 1 following the fifth year of deployment.<sup>12</sup> Upon confirmation by WCB, such a support recipient will be required to reach 100% of the new number by the end of the sixth calendar year.<sup>13</sup> All support recipients must also offer service on reasonable request to locations built subsequently to the revised location count announced by WCB but prior to the end of service milestone year eight.<sup>14</sup>

By **March 1st** following each relevant service milestone, an Auction 904 support recipient must file a certification in the HUBB portal that it has met its service milestone and is meeting the requisite public interest obligations.<sup>15</sup> Compliance with service milestones will be determined at the state level.<sup>16</sup> The Commission will verify that the support recipient offers the required service to the total number of locations across all the eligible census blocks included in all of the support

<sup>9</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 709, para. 45.

<sup>10</sup> *Id.* at 710, para. 49. Carriers for which the new location count exceeds the CAM locations within their area in each state by more than 35% will have the opportunity to seek additional support or relief from the Commission. *Id.*

<sup>11</sup> *Id.* Any such support recipient with increased deployment obligations may also seek to have its new location count adjusted to exclude additional locations, beyond the number identified by the CAM, that it determines before the end of year eight are ineligible (e.g., are not habitable), unreasonable to deploy to (e.g., if it would require a carrier to install new backhaul facilities or other major network upgrades solely to provide broadband to that location), or part of a development newly built after year six for which the cost and/or time to deploy before the end of the support term would be unreasonable. *Id.* at 710-11, para. 50.

<sup>12</sup> *Id.* at 711, para. 51. Carriers for which the new location count is less than 65% of the CAM locations within their area in each state shall have their support amount reduced on a pro rata basis by the number of reduced locations. *Id.* For example, if a carrier was authorized to receive \$3 million per year for 1,000 model locations in a state, but the WCB confirms that there are only 600 actual locations (fewer than 650 locations, or 65%), WCB would reduce that carrier's support to \$2,769,231 (or \$3,000,000 \* (600/650)).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 711, para. 52. Support recipients are not obligated to offer service to newly built locations that do not request service, or to those with exclusive arrangements with other providers. *Id.* See also *Connect America Fund et al.*, Report and Order et al., 29 FCC Rcd 7051, 7070, paras. 59-72 (2014) (issuing declaratory ruling regarding which requests should be deemed unreasonable under our current rules and policies to provide greater clarity to all affected stakeholders).

<sup>15</sup> 47 CFR §§ 54.316(b)(5), 54.806(a); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 56.

<sup>16</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 54.

recipient's authorized bid areas (i.e., census block groups) in a state.<sup>17</sup> If a support recipient is authorized to receive support in a state for different performance tier and latency combinations, it will be required to demonstrate that it is offering service meeting the relevant performance requirements to the required number of locations for each performance tier and latency combination within that state.<sup>18</sup>

If an ETC is unable to meet a service milestone, it must notify the Commission, USAC, and the relevant state, U.S. Territory, or Tribal government as appropriate, no later than ten business days after the applicable deadline.<sup>19</sup> If the ETC is unable to meet the required deployment obligations due to circumstances beyond its control, it may also seek waiver of the service milestones.<sup>20</sup> The Commission has repeatedly warned support recipients, however, that it does not expect to routinely grant such waiver requests, emphasizing the difficulty of demonstrating good cause under circumstances where carriers fail to plan for contingencies that would prevent compliance with defined deployment obligations.<sup>21</sup>

- **Annual section 54.313 report.** Long-form applicants authorized in this Public Notice will be required to file their first annual section 54.313 report by **July 1, 2024** and each subsequent year until the year after their support terms have ended.<sup>22</sup> Annual reports are filed with USAC. Support recipients must complete the FCC Form 481 on USAC's website.<sup>23</sup> They must also test and certify compliance with relevant performance requirements in section 54.805 of the Commission's rules on an annual basis.<sup>24</sup> WCB, the Wireless Telecommunications Bureau, and the Office of Engineering and Technology have adopted a uniform framework to measure and report on the performance of ETCs' service.<sup>25</sup>

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<sup>17</sup> Winning bidders must use Rural Digital Opportunity Fund support to deploy service to locations in only the eligible census blocks, not to the other, ineligible census blocks within a census block group won in the auction.

<sup>18</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 54.

<sup>19</sup> 47 CFR §§ 54.320(d), 54.806(c).

<sup>20</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15700, para. 154 (2014) (*December 2014 Connect America Order*).

<sup>21</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order on Reconsideration, 33 FCC Rcd 1380, 1394, para. 35 (2018) (explaining that "it would be difficult for a recipient to meet its burden of demonstrating good cause to grant a waiver of the deployment obligations if it did not plan to build to 100 percent of funded locations at the outset of its support term"); *id.* at 1394, para. 33 & n.88 (explaining that "the Commission has cautioned that it does not expect such waiver requests will be granted routinely, and a failure to plan for some contingencies would make it difficult to establish that there is good cause to warrant waiver") (citing *December 2014 Connect America Order*, 29 FCC Rcd at 15660, para. 40 & n.93).

<sup>22</sup> 47 CFR §§ 54.313, 54.806(a); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 713, para. 57. Long-form applicants being authorized by this Public Notice that have also been designated as Lifeline-only ETCs in census blocks that are not eligible for Auction 904 support must comply with all relevant reporting requirements for the Lifeline program in sections 54.416 and 54.422 of the Lifeline rules, including completing and submitting FCC Form 481 on USAC's website, if applicable. 47 CFR §§ 54.416, 54.422.

<sup>23</sup> See Universal Service Administrative Company, File FCC Form 481, <https://www.usac.org/high-cost/annual-requirements/file-fcc-form-481/>.

<sup>24</sup> 47 CFR §§ 54.313(a)(6), 54.805.

<sup>25</sup> *Performance Measures for Connect America High-Cost Universal Service Support Recipients*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509 (WCB/WTB/OET 2018) (*CAF Performance Measures Order*); 47 CFR § 54.313(a)(6). Further modifications were made to the performance measures requirements in subsequent reconsideration orders. See *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 8081 (WCB/WTB/OET 2019); *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109 (2019).

- **Annual section 54.314 certification.** The first annual section 54.314 certification is due for the long-form applicants that are being authorized by this Public Notice by **October 1, 2024**.<sup>26</sup> Pursuant to section 54.314 of the Commission’s rules, if a support recipient was designated by a state, that state must certify on the support recipient’s behalf “that all federal high-cost support provided . . . within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>27</sup>

If a support recipient was designated an ETC by the Federal Communications Commission, it must self-certify by filing a sworn affidavit executed by a corporate officer attesting to the relevant facts.<sup>28</sup> Certifications must be filed with both the Commission and USAC. ETCs may submit their certifications to USAC via its online filing system or by sending the appropriate certification sample letter (provided on USAC’s website) via email or U.S. mail.<sup>29</sup> Certifications must also be submitted to the Commission’s Office of the Secretary on or before **October 1, 2024**.<sup>30</sup> The submission should clearly reference WC Docket No. 14-58, ETC Annual Reports and Certifications.

All post-designation ETC-related filings must be submitted in good faith and include a certification that, to the best of the ETC’s knowledge and belief, the information is complete and accurate.<sup>31</sup> In addition, ETCs have an on-going duty to correct or amend information if they have reason to believe, either through their own investigation or upon notice from USAC, that the data are inaccurate, incomplete, or contain errors or anomalies.<sup>32</sup> The failure to timely file information may result in penalties in the form of a reduction in support.<sup>33</sup>

*National Security Supply Chain Proceeding.* We remind winning bidders that all Auction 904 support recipients will be subject to the Commission’s National Security Supply Chain proceeding, including the rule that “no universal service support may be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain.”<sup>34</sup> The prohibition on using universal service funds applies “to upgrades and maintenance of

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<sup>26</sup> 47 CFR §§ 54.314, 54.806(a).

<sup>27</sup> 47 CFR § 54.314(a).

<sup>28</sup> 47 CFR § 54.314(b), (c)(2).

<sup>29</sup> See Universal Service Administrative Company, Certify Data with 54.314, <https://www.usac.org/high-cost/annual-requirements/certify-data-with-54-314/>.

<sup>30</sup> For the reasons articulated in the *First Auction 904 Authorization Public Notice*, we find there is good cause to waive on our own motion the general high-cost program requirement that the relevant states (or the ETCs, if applicable) file a section 54.314 certification by October 1, 2023 with respect to the use of Auction 904 support for the applicants authorized in this Public Notice. *Rural Digital Opportunity Fund Support Authorized for 466 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, 36 FCC Rcd 13574, 13578 (WCB/OEA 2021).

<sup>31</sup> See, e.g., FCC Form 481 Officer Certification (requiring an officer of a petitioning entity to certify that he/she is “an officer of the reporting carrier; my responsibilities include ensuring the accuracy of the annual reporting requirements for universal service support recipients; and, to the best of my knowledge, the information reported on this form and in any attachments is accurate”); see also 47 CFR § 1.17(a)(2) (stating that no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading”).

<sup>32</sup> See *Location Guidance Public Notice*, 31 FCC Rcd at 12910.

<sup>33</sup> 47 CFR §§ 54.313(j), 54.314(d), 54.316(c), 54.320, 54.806.

<sup>34</sup> 47 CFR § 54.9(a).

existing equipment and services.”<sup>35</sup> Additionally, federal subsidies made available through a program administered by the Commission that are “to be used for the capital expenditures necessary for the provision of advanced communications service” cannot be used to “purchase, rent, lease, or otherwise obtain any covered communications equipment or service; or maintain any covered communications equipment or service.”<sup>36</sup> Moreover, the Commission will require ETCs to certify prior to receiving universal service funds that they do not use covered communications equipment or services.<sup>37</sup>

*Document Retention and Compliance Audits.* Under section 54.320 of the Commission’s rules, recipients of high-cost support must retain, for at least ten years, all records necessary to demonstrate to auditors that the support received was consistent with universal service high-cost program rules and to make these documents available upon request to the Commission (and any of its Bureaus or Offices) and to USAC, and to their respective auditors.<sup>38</sup> In addition, all ETCs that receive high-cost support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders, including verification of actual deployment to reported locations.<sup>39</sup>

*Consequences for Non-Compliance.* A support recipient is subject to non-compliance measures once it becomes a support recipient if it fails or is unable to meet its minimum coverage requirement or other service requirements, or if it fails to fulfill any other term or condition of Auction 904 support.<sup>40</sup> These measures scale with the extent of non-compliance and include additional reporting, withholding of support, and support recovery.<sup>41</sup> A defaulting support recipient may also be subject to sanctions, including, but not limited to, potential revocation of ETC designations and suspension or debarment.<sup>42</sup>

*ETC Obligations.* All Auction 904 support recipients were required to obtain a high-cost ETC designation prior to being authorized for Auction 904 support, and thus should be familiar with ETC requirements. For example, all high-cost ETCs commit to serving the entire area covered by an ETC designation and must offer Lifeline voice and broadband service throughout such area to qualifying low-income consumers pursuant to the Lifeline program rules.<sup>43</sup> While an Auction 904 support recipient was not required to obtain an ETC designation that was limited only to the eligible census blocks covered by its winning bids, it may only use its Auction 904 support to offer the required voice and broadband services to locations in eligible census blocks. If an Auction 904 support recipient has obtained an ETC

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<sup>35</sup> *Protecting Against National Security Threats to the Communication Supply Chain through FCC Programs et al.*, WC Docket No. 18-89 et al., Report and Order et al., 34 FCC Rcd 11423, 11453, para. 77 (2019).

<sup>36</sup> 47 CFR § 54.10.

<sup>37</sup> *Id.* § 54.11. This certification requirement is not required “until one year after the date the Commission releases a Public Notice announcing the acceptance of applications for filing during the initial filing window of the [Secure and Trusted Communications Networks] Reimbursement Program.” *Id.* § 54.11(c). See *Wireline Competition Bureau Announces Application Filing Window for the Secure and Trusted Communications Networks Reimbursement Program – Filing Window Opens October 29, 2021*, WC Docket No. 18-89, Public Notice, 36 FCC Rcd 13937 (WCB 2021). “Covered communications equipment or services means any communications equipment or service that is on the Covered List” published pursuant to section 1.50002 of the Commission’s rules. 47 CFR §§ 1.50002, 54.11(b).

<sup>38</sup> 47 CFR §§ 54.320(b), 54.806(b).

<sup>39</sup> *Id.* §§ 54.320(a), 54.806(b).

<sup>40</sup> *Id.* §§ 54.320, 54.804(c)(4), 54.806(c); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 713-16, paras. 58-64; *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-54; *CAF Performance Measures Order*, 33 FCC Rcd at 6531-33, paras. 60-67.

<sup>41</sup> 47 CFR §§ 54.320, 54.804(c)(4), 54.806(c); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 713-16, paras. 58-64; *December 2014 Connect America Order*, 29 FCC Rcd at 15694-701, paras. 142-57; *CAF Performance Measures Order*, 33 FCC Rcd at 6531-33, paras. 60-67.

<sup>42</sup> 47 CFR §§ 54.320(c), 54.806(b); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 715-16, para. 63.

<sup>43</sup> See 47 CFR §§ 54.101(d), 54.405(a); 47 CFR Subpart E.

designation that covers more area than the eligible census blocks in its winning bids, that support recipient has the obligation to provide Lifeline services throughout its designated service area, including in areas where it cannot use its Auction 904 support.<sup>44</sup> A high-cost ETC may also be subject to state-specific requirements imposed by the state that designated it as an ETC.

*Discontinuance of Service and/or Relinquishment of Support.* It is a violation of Commission rules to receive universal service support if that support is not used to provide, maintain, and upgrade voice and/or broadband facilities and services in eligible areas or if the recipient is no longer offering supported services. A carrier that cannot appropriately use universal service support must relinquish its ETC designation pursuant to section 214(e)(4) of the Communications Act of 1934, as amended (the Communications Act).<sup>45</sup> An ETC that was designated by a state commission should follow the state commission's rules to seek relinquishment.<sup>46</sup> ETCs designated by the Commission must file a notice of relinquishment in WC Docket No. 09-197, Telecommunications Carriers Eligible for Universal Service Support, using the Commission's Electronic Comment Filing System (ECFS).<sup>47</sup> WCB will release an order approving the relinquishment if the relinquishing ETC demonstrates that the affected area will continue to be served by at least one ETC.<sup>48</sup> The ETC must then send a copy of its relinquishment notice and a copy of the relinquishment order (within one week of its release) to USAC at [hcorders@usac.org](mailto:hcorders@usac.org). A carrier that intends to discontinue service must first obtain authorization to discontinue service pursuant to section 214(a) of the Communications Act and section 63.71 of the Commission's rules.<sup>49</sup>

*Transfers of Control.* ETCs seeking to transfer control of their domestic authorizations to operate pursuant to section 214 of the Communications Act of 1934, as amended, or to engage in the sale of assets under section 214 must first receive approval from the Commission in accordance with sections 63.03 and 63.04 of the Commission's rules governing the procedures for domestic transfer of control/asset applications.<sup>50</sup> Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules.<sup>51</sup> Except where the Commission has forbore from the application of section 214, this requirement applies to all transfers of control or asset acquisitions involving ETCs. More information is available on the Commission's website at <http://www.fcc.gov/general/transfer-control>.

*Price Cap Carrier Obligations.* Price cap carriers that serve the census blocks where an Auction 904 long-form applicant that is not the incumbent price cap carrier has been authorized to receive support will no longer have a federal high-cost ETC obligation to continue to offer voice service in those census blocks pursuant to the forbearance granted by the Commission. We also note that price cap carriers that

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<sup>44</sup> For example, some Auction 904 support recipients may have obtained an ETC designation for an entire census block group(s) that was covered by its winning bid(s) but may only use its Auction 904 support to offer service to locations in the eligible census blocks within the census block group(s).

<sup>45</sup> 47 U.S.C. § 214(e)(4).

<sup>46</sup> 47 CFR § 54.205.

<sup>47</sup> 47 U.S.C. § 214(e)(4); *Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*; WC Docket Nos. 09-197; 10-90, Order, 36 FCC Rcd 9384, 9393, para. 30 (WCB 2021).

<sup>48</sup> See, e.g., *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, 36 FCC Rcd 9377 (WCB 2021) (approving T-Mobile USA, Inc.'s request on behalf of T-Mobile Northeast LLC to relinquish its ETC designation in Virginia).

<sup>49</sup> 47 U.S.C. § 214(a); 47 CFR § 63.71.

<sup>50</sup> 47 U.S.C. § 214; 47 CFR §§ 63.03, 63.04. See also *Wireline Competition Bureau Lists Best Practices for Addressing Universal Service Fund Information in Section 214 Transfer of Control Applications*, Public Notice, DA 22-436 (WCB Apr. 19, 2022).

<sup>51</sup> 47 CFR § 63.24.

ected to receive a seventh year of model-based support were already relieved of their federal high-cost ETC obligation to offer voice telephony in specific census blocks on January 1, 2022.<sup>52</sup>

*Transitioning Legacy Support.* WCB will soon update the list of census blocks where incumbent price cap carriers will continue to receive legacy support through the disaggregated legacy high-cost support mechanism by removing the eligible census blocks that are covered by the winning bids in Attachment A.<sup>53</sup> In the census blocks removed from the list, incumbent price cap carriers will no longer receive legacy support beginning on the first day of the next month.<sup>54</sup>

*Auction Defaults.* On July 26, 2021, the Rural Broadband Auctions Task Force (RBATF), WCB, and OEA sent a letter to certain long-form applicants that identified census blocks where concerns had been raised about whether funding those areas would be the best use of our limited universal service funds.<sup>55</sup> Applicants were reminded that one of the Commission's core Universal Service Fund policy objectives is to avoid funding deployment in areas that already receive voice and broadband service from an unsubsidized provider, and that the Rural Digital Opportunity Fund was intended to focus on areas "wholly unserved by 25/3 Mbps" broadband service.<sup>56</sup> The letter recommended that applicants assess whether existing service in the identified areas would affect their ability to meet all program requirements and deployment milestones, and applicants were informed that if they no longer wished to pursue support for a winning bid they should identify those census block groups and provide a brief explanation of their decision to default on their bid(s).<sup>57</sup>

In response to the letter, some applicants informed the Commission that they wished to default on census blocks identified by the Commission in the letter while retaining support for other census blocks within the same bid. For these applicants, Attachment A authorizes support only for the areas in which the applicant indicated they intend to meet program requirements.<sup>58</sup>

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<sup>52</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 743-45, paras. 133-39. On the first day of the month after an Auction 904 support recipient that is not the incumbent price cap carrier is authorized, the incumbent price cap carrier will be relieved of its federal high-cost ETC obligation to offer voice telephony in those specific census blocks unless it was relieved of that obligation on January 1, 2022. *Id.* at 745, para. 139. *See also December 2014 Connect America Order*, 29 FCC Rcd at 15663-71, paras. 50-70; 47 CFR § 54.201(d)(3). We will remove these census blocks as applicable from the list of census blocks where price cap carriers continue to have the federal high-cost ETC obligation to provide voice service. The "List of Census Blocks Subject to Federal High-Cost Voice Obligations" is available at <https://www.fcc.gov/encyclopedia/price-cap-resources>.

<sup>53</sup> *Connect America Fund et al.*, WC Docket No. 10-90, Report and Order, 34 FCC Rcd 807, 809-12, paras. 9-16 (2019). Incumbent price cap carriers were also given the option of declining legacy support in each state that they serve. *See Wireline Competition Bureau Announces Universal Service Support Amounts Offered to Price Cap Carriers and Fixed Competitive Eligible Telecommunications Carriers after Authorization of Connect America Phase II Auction Support*, Public Notice, 34 FCC Rcd 1296 (WCB 2019).

<sup>54</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 738-40 (stating that price cap carriers will no longer receive legacy support for the census blocks where Auction 904 support is authorized beginning on the first day of the month after the Auction 904 support is authorized for those census blocks).

<sup>55</sup> *See* "Letters to Long-Form Applicants about Identified Census Blocks," <https://www.fcc.gov/auction/904/releases> (Identified Census Blocks Letter).

<sup>56</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 689, para. 5.

<sup>57</sup> *See* 47 CFR § 54.805 (RDOF public interest obligations); *see generally*, 47 U.S.C. § 254(e) (USF support must be used for its intended purpose).

<sup>58</sup> For the reasons articulated in the *Fourth RDOF Authorization Public Notice* regarding defaults on letter-identified census blocks, we find good cause to waive the requirement that a default encompass the entire winning bid, and we authorize support on a per-census-block basis for the census blocks in which applicants listed in Attachment A are eligible. *Rural Digital Opportunity Fund Support Authorized for 2,008 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90, Public Notice, DA 21-1560, at 9 (WCB/OEA Dec. 14, 2021) (*Fourth RDOF Authorization Public Notice*).

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**Auction 904 Information**

General Auction Information, Process, and  
Procedures

**Office of Economics and Analytics,  
Auctions Division**

(717) 338-2868

Post-Auction Rules, Policies, and Regulations

**Office of Economics and Analytics,  
Auctions Division**

(202) 418-0660

**Small Businesses**

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disadvantaged businesses

**Office of Communications Business  
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**Consumer and Governmental Affairs Bureau**

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[fcc504@fcc.gov](mailto:fcc504@fcc.gov)

**FCC Internet Sites**

<http://www.fcc.gov>

<https://www.fcc.gov/auction/904>

This Public Notice contains the following Attachments:

Attachment A: Authorized Long-Form Applicants and Winning Bids

-FCC-

**Rural Digital Opportunity Fund Phase I  
Auction ID: 904  
Authorized Long-Form Applicants and Winning Bids**

**Attachment A**



Date of Report: 01/13/2023

Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Hughes Network Systems, LLC	0017434911	RI-35-12	Rhode Island	589020	153	286	1,476	\$ 825,185.90
Hughes Network Systems, LLC	0017434911	RI-60-12	Rhode Island	589020	3	59	2,114	\$ 399,400.00
Resound Networks, LLC	0024535437	AZ-001-9705014	Arizona	459034	1	10	40	\$ 13,270.90
Resound Networks, LLC	0024535437	AZ-003-0001001	Arizona	459034	1	4	5	\$ 5,138.20
Resound Networks, LLC	0024535437	AZ-003-0001002	Arizona	459034	1	29	212	\$ 160,550.00
Resound Networks, LLC	0024535437	AZ-003-0002011	Arizona	459034	1	52	555	\$ 106,454.80
Resound Networks, LLC	0024535437	AZ-003-0002012	Arizona	459034	1	19	427	\$ 106,967.20
Resound Networks, LLC	0024535437	AZ-003-0002023	Arizona	459034	1	12	43	\$ 14,276.40
Resound Networks, LLC	0024535437	AZ-003-0002024	Arizona	459034	1	7	17	\$ 2,320.40
Resound Networks, LLC	0024535437	AZ-003-0002031	Arizona	459034	1	97	377	\$ 241,291.60
Resound Networks, LLC	0024535437	AZ-003-0003014	Arizona	459034	1	4	14	\$ 1,885.10
Resound Networks, LLC	0024535437	AZ-003-0003021	Arizona	459034	1	47	322	\$ 110,787.70
Resound Networks, LLC	0024535437	AZ-003-0003022	Arizona	459034	1	12	178	\$ 53,122.70
Resound Networks, LLC	0024535437	AZ-003-0003023	Arizona	459034	1	10	183	\$ 13,874.80
Resound Networks, LLC	0024535437	AZ-003-0003024	Arizona	459034	1	20	96	\$ 44,151.80
Resound Networks, LLC	0024535437	AZ-003-0003031	Arizona	459034	1	40	386	\$ 150,006.80
Resound Networks, LLC	0024535437	AZ-003-0003032	Arizona	459034	1	7	101	\$ 4,846.80
Resound Networks, LLC	0024535437	AZ-003-0003033	Arizona	459034	1	26	215	\$ 106,434.00
Resound Networks, LLC	0024535437	AZ-003-0004001	Arizona	459034	1	53	470	\$ 128,696.30
Resound Networks, LLC	0024535437	AZ-003-0004002	Arizona	459034	1	14	163	\$ 8,533.20

**Rural Digital Opportunity Fund Phase I  
 Auction ID: 904  
 Authorized Long-Form Applicants and Winning Bids**

**Attachment A**



Date of Report: 01/13/2023

Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	AZ-003-0005001	Arizona	459034	1	2	5	\$ 6,222.00
Resound Networks, LLC	0024535437	AZ-003-0005003	Arizona	459034	1	30	498	\$ 114,807.90
Resound Networks, LLC	0024535437	AZ-003-0005004	Arizona	459034	1	3	24	\$ 16,835.50
Resound Networks, LLC	0024535437	AZ-003-0006001	Arizona	459034	1	84	560	\$ 207,622.10
Resound Networks, LLC	0024535437	AZ-003-0007002	Arizona	459034	1	7	14	\$ 6,547.00
Resound Networks, LLC	0024535437	AZ-003-0008001	Arizona	459034	1	8	14	\$ 5,275.30
Resound Networks, LLC	0024535437	AZ-003-0010001	Arizona	459034	1	13	83	\$ 54,883.40
Resound Networks, LLC	0024535437	AZ-003-0011002	Arizona	459034	1	20	153	\$ 67,468.00
Resound Networks, LLC	0024535437	AZ-003-0012001	Arizona	459034	1	40	214	\$ 114,360.80
Resound Networks, LLC	0024535437	AZ-003-0013001	Arizona	459034	1	8	168	\$ 8,178.40
Resound Networks, LLC	0024535437	AZ-003-0013002	Arizona	459034	1	4	43	\$ 6,788.10
Resound Networks, LLC	0024535437	AZ-003-0013003	Arizona	459034	1	8	42	\$ 12,107.80
Resound Networks, LLC	0024535437	AZ-003-0013004	Arizona	459034	1	20	139	\$ 26,506.20
Resound Networks, LLC	0024535437	AZ-003-0013005	Arizona	459034	1	25	356	\$ 93,620.40
Resound Networks, LLC	0024535437	AZ-003-0014011	Arizona	459034	1	1	1	\$ 297.90
Resound Networks, LLC	0024535437	AZ-003-0014012	Arizona	459034	1	1	9	\$ 2,372.20
Resound Networks, LLC	0024535437	AZ-003-0014013	Arizona	459034	1	5	9	\$ 6,234.20
Resound Networks, LLC	0024535437	AZ-003-0017021	Arizona	459034	1	11	43	\$ 14,866.40
Resound Networks, LLC	0024535437	AZ-003-0017031	Arizona	459034	1	5	27	\$ 2,376.10
Resound Networks, LLC	0024535437	AZ-003-0018003	Arizona	459034	1	2	15	\$ 1,631.40

**Rural Digital Opportunity Fund Phase I  
Auction ID: 904  
Authorized Long-Form Applicants and Winning Bids**

**Attachment A**



Date of Report: 01/13/2023

Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	AZ-003-0020021	Arizona	459034	1	9	141	\$ 2,102.80
Resound Networks, LLC	0024535437	AZ-003-0020022	Arizona	459034	1	6	107	\$ 5,950.70
Resound Networks, LLC	0024535437	AZ-003-0020023	Arizona	459034	1	26	434	\$ 23,569.40
Resound Networks, LLC	0024535437	AZ-003-0021001	Arizona	459034	1	26	362	\$ 375,016.00
Resound Networks, LLC	0024535437	AZ-003-0021002	Arizona	459034	1	9	88	\$ 7,281.90
Resound Networks, LLC	0024535437	AZ-013-0101011	Arizona	459034	1	18	393	\$ 73,091.00
Resound Networks, LLC	0024535437	AZ-013-0101023	Arizona	459034	1	14	178	\$ 72,492.80
Resound Networks, LLC	0024535437	AZ-013-0304011	Arizona	459034	1	3	18	\$ 4,261.40
Resound Networks, LLC	0024535437	AZ-013-0304012	Arizona	459034	1	10	80	\$ 51,091.60
Resound Networks, LLC	0024535437	AZ-013-0304021	Arizona	459034	1	13	168	\$ 150,912.00
Resound Networks, LLC	0024535437	AZ-013-0304022	Arizona	459034	1	26	272	\$ 123,273.00
Resound Networks, LLC	0024535437	AZ-013-0304023	Arizona	459034	1	13	163	\$ 41,278.50
Resound Networks, LLC	0024535437	AZ-013-0405023	Arizona	459034	1	19	109	\$ 86,337.60
Resound Networks, LLC	0024535437	AZ-013-0405151	Arizona	459034	1	26	150	\$ 198,832.50
Resound Networks, LLC	0024535437	AZ-013-0405152	Arizona	459034	1	50	482	\$ 361,954.00
Resound Networks, LLC	0024535437	AZ-013-0405171	Arizona	459034	1	67	605	\$ 245,580.60
Resound Networks, LLC	0024535437	AZ-013-0405172	Arizona	459034	1	44	422	\$ 253,025.30
Resound Networks, LLC	0024535437	AZ-013-0405181	Arizona	459034	1	59	525	\$ 652,614.00
Resound Networks, LLC	0024535437	AZ-013-0405182	Arizona	459034	1	22	175	\$ 141,060.00
Resound Networks, LLC	0024535437	AZ-013-0506031	Arizona	459034	1	57	336	\$ 127,650.60

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Resound Networks, LLC	0024535437	AZ-013-0506032	Arizona	459034	1	89	867	\$ 130,246.70
Resound Networks, LLC	0024535437	AZ-013-0506033	Arizona	459034	1	20	113	\$ 96,343.40
Resound Networks, LLC	0024535437	AZ-013-0506041	Arizona	459034	1	97	936	\$ 90,344.40
Resound Networks, LLC	0024535437	AZ-013-0506042	Arizona	459034	1	106	542	\$ 147,844.00
Resound Networks, LLC	0024535437	AZ-013-0506051	Arizona	459034	1	48	215	\$ 67,107.80
Resound Networks, LLC	0024535437	AZ-013-0506053	Arizona	459034	1	11	83	\$ 7,295.50
Resound Networks, LLC	0024535437	AZ-013-0506063	Arizona	459034	1	11	112	\$ 6,360.00
Resound Networks, LLC	0024535437	AZ-013-0506071	Arizona	459034	1	46	182	\$ 50,584.10
Resound Networks, LLC	0024535437	AZ-013-0506103	Arizona	459034	1	15	33	\$ 6,679.70
Resound Networks, LLC	0024535437	AZ-013-0506111	Arizona	459034	1	32	176	\$ 32,107.80
Resound Networks, LLC	0024535437	AZ-013-0506112	Arizona	459034	1	49	253	\$ 34,971.50
Resound Networks, LLC	0024535437	AZ-013-0610161	Arizona	459034	1	3	6	\$ 6,039.50
Resound Networks, LLC	0024535437	AZ-013-0610191	Arizona	459034	1	34	228	\$ 51,630.20
Resound Networks, LLC	0024535437	AZ-013-0610192	Arizona	459034	1	18	82	\$ 7,694.40
Resound Networks, LLC	0024535437	AZ-013-0610231	Arizona	459034	1	4	36	\$ 10,631.10
Resound Networks, LLC	0024535437	AZ-013-0610241	Arizona	459034	1	5	40	\$ 2,797.20
Resound Networks, LLC	0024535437	AZ-013-0610311	Arizona	459034	1	5	29	\$ 8,311.60
Resound Networks, LLC	0024535437	AZ-013-0610443	Arizona	459034	1	27	100	\$ 7,899.70
Resound Networks, LLC	0024535437	AZ-013-0822042	Arizona	459034	1	4	10	\$ 3,506.20
Resound Networks, LLC	0024535437	AZ-013-0822061	Arizona	459034	1	5	32	\$ 13,792.90

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Resound Networks, LLC	0024535437	AZ-013-0822071	Arizona	459034	1	12	123	\$ 12,160.00
Resound Networks, LLC	0024535437	AZ-013-1125111	Arizona	459034	1	3	17	\$ 3,058.70
Resound Networks, LLC	0024535437	AZ-013-1166032	Arizona	459034	1	16	158	\$ 4,575.00
Resound Networks, LLC	0024535437	AZ-013-1166082	Arizona	459034	1	3	17	\$ 6,530.90
Resound Networks, LLC	0024535437	AZ-013-1166092	Arizona	459034	1	6	65	\$ 9,629.20
Resound Networks, LLC	0024535437	AZ-013-1166112	Arizona	459034	1	15	78	\$ 6,842.40
Resound Networks, LLC	0024535437	AZ-013-1167331	Arizona	459034	1	6	20	\$ 15,539.40
Resound Networks, LLC	0024535437	AZ-013-6100001	Arizona	459034	1	24	313	\$ 198,634.00
Resound Networks, LLC	0024535437	AZ-013-6100002	Arizona	459034	1	9	51	\$ 53,950.00
Resound Networks, LLC	0024535437	AZ-013-6105004	Arizona	459034	1	12	90	\$ 27,008.70
Resound Networks, LLC	0024535437	AZ-013-6107001	Arizona	459034	1	13	104	\$ 44,546.50
Resound Networks, LLC	0024535437	AZ-013-6107002	Arizona	459034	1	10	28	\$ 98,314.90
Resound Networks, LLC	0024535437	AZ-013-6107004	Arizona	459034	1	10	29	\$ 68,310.90
Resound Networks, LLC	0024535437	AZ-013-6113001	Arizona	459034	1	4	13	\$ 53,063.30
Resound Networks, LLC	0024535437	AZ-013-6123001	Arizona	459034	1	20	78	\$ 68,794.20
Resound Networks, LLC	0024535437	AZ-013-6130001	Arizona	459034	1	10	87	\$ 30,681.70
Resound Networks, LLC	0024535437	AZ-013-6130002	Arizona	459034	1	2	26	\$ 17,582.80
Resound Networks, LLC	0024535437	AZ-013-7233041	Arizona	459034	1	83	504	\$ 149,498.30
Resound Networks, LLC	0024535437	AZ-013-7233051	Arizona	459034	1	40	245	\$ 21,573.00
Resound Networks, LLC	0024535437	AZ-013-7233052	Arizona	459034	1	35	285	\$ 82,288.20

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Resound Networks, LLC	0024535437	AZ-013-7233081	Arizona	459034	1	42	189	\$ 145,598.70
Resound Networks, LLC	0024535437	AZ-013-8176001	Arizona	459034	1	21	112	\$ 17,375.00
Resound Networks, LLC	0024535437	AZ-013-9807001	Arizona	459034	1	2	8	\$ 10,423.70
Resound Networks, LLC	0024535437	AZ-017-9601001	Arizona	459034	1	26	66	\$ 282,356.10
Resound Networks, LLC	0024535437	AZ-017-9604001	Arizona	459034	1	14	94	\$ 94,822.50
Resound Networks, LLC	0024535437	AZ-017-9605001	Arizona	459034	1	21	52	\$ 245,064.30
Resound Networks, LLC	0024535437	AZ-017-9606001	Arizona	459034	1	6	33	\$ 44,001.00
Resound Networks, LLC	0024535437	AZ-017-9617004	Arizona	459034	1	8	20	\$ 13,137.00
Resound Networks, LLC	0024535437	AZ-017-9653001	Arizona	459034	1	39	202	\$ 255,468.00
Resound Networks, LLC	0024535437	AZ-019-0040521	Arizona	459034	1	6	24	\$ 13,557.00
Resound Networks, LLC	0024535437	AZ-019-0040611	Arizona	459034	1	11	91	\$ 23,385.90
Resound Networks, LLC	0024535437	AZ-019-0040732	Arizona	459034	1	6	38	\$ 6,867.60
Resound Networks, LLC	0024535437	AZ-019-0041072	Arizona	459034	1	10	84	\$ 87,017.20
Resound Networks, LLC	0024535437	AZ-019-0041091	Arizona	459034	1	4	7	\$ 23,796.30
Resound Networks, LLC	0024535437	AZ-019-0041093	Arizona	459034	1	23	289	\$ 649,210.00
Resound Networks, LLC	0024535437	AZ-019-0041141	Arizona	459034	1	3	4	\$ 3,872.30
Resound Networks, LLC	0024535437	AZ-019-0043131	Arizona	459034	1	10	87	\$ 3,702.50
Resound Networks, LLC	0024535437	AZ-019-0043133	Arizona	459034	1	14	112	\$ 14,591.20
Resound Networks, LLC	0024535437	AZ-019-0043134	Arizona	459034	1	27	249	\$ 21,500.80
Resound Networks, LLC	0024535437	AZ-019-0043161	Arizona	459034	1	7	29	\$ 33,118.60

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Resound Networks, LLC	0024535437	AZ-019-0043162	Arizona	459034	1	14	155	\$ 80,514.60
Resound Networks, LLC	0024535437	AZ-019-0043163	Arizona	459034	1	75	581	\$ 220,169.00
Resound Networks, LLC	0024535437	AZ-019-0043231	Arizona	459034	1	2	5	\$ 3,952.30
Resound Networks, LLC	0024535437	AZ-019-0043261	Arizona	459034	1	3	5	\$ 1,923.20
Resound Networks, LLC	0024535437	AZ-019-0044191	Arizona	459034	1	1	75	\$ 3,458.50
Resound Networks, LLC	0024535437	AZ-019-0044193	Arizona	459034	1	3	3	\$ 2,595.20
Resound Networks, LLC	0024535437	AZ-019-0044231	Arizona	459034	1	2	2	\$ 8,924.30
Resound Networks, LLC	0024535437	AZ-019-0044241	Arizona	459034	1	33	232	\$ 30,790.40
Resound Networks, LLC	0024535437	AZ-019-0044242	Arizona	459034	1	3	4	\$ 1,873.90
Resound Networks, LLC	0024535437	AZ-019-0044251	Arizona	459034	1	34	222	\$ 98,360.30
Resound Networks, LLC	0024535437	AZ-019-0044252	Arizona	459034	1	3	4	\$ 2,569.30
Resound Networks, LLC	0024535437	AZ-019-4105011	Arizona	459034	1	7	27	\$ 18,113.70
Resound Networks, LLC	0024535437	AZ-019-4105021	Arizona	459034	1	6	13	\$ 4,429.10
Resound Networks, LLC	0024535437	AZ-019-9408003	Arizona	459034	1	4	14	\$ 18,241.40
Resound Networks, LLC	0024535437	AZ-021-0002041	Arizona	459034	1	6	22	\$ 11,552.30
Resound Networks, LLC	0024535437	AZ-021-0002042	Arizona	459034	1	14	56	\$ 2,415.60
Resound Networks, LLC	0024535437	AZ-021-0002061	Arizona	459034	1	3	10	\$ 1,915.10
Resound Networks, LLC	0024535437	AZ-021-0002071	Arizona	459034	1	15	48	\$ 6,246.90
Resound Networks, LLC	0024535437	AZ-021-0002081	Arizona	459034	1	18	175	\$ 170,078.00
Resound Networks, LLC	0024535437	AZ-021-0002092	Arizona	459034	1	1	21	\$ 2,193.60

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Resound Networks, LLC	0024535437	AZ-021-0002141	Arizona	459034	1	1	6	\$ 1,210.70
Resound Networks, LLC	0024535437	AZ-021-0002151	Arizona	459034	1	66	287	\$ 49,966.30
Resound Networks, LLC	0024535437	AZ-021-0003071	Arizona	459034	1	30	82	\$ 26,229.50
Resound Networks, LLC	0024535437	AZ-021-0003102	Arizona	459034	1	11	12	\$ 8,237.80
Resound Networks, LLC	0024535437	AZ-021-0003111	Arizona	459034	1	6	10	\$ 16,990.80
Resound Networks, LLC	0024535437	AZ-021-0003164	Arizona	459034	1	6	7	\$ 1,984.70
Resound Networks, LLC	0024535437	AZ-021-0003191	Arizona	459034	1	10	32	\$ 10,921.00
Resound Networks, LLC	0024535437	AZ-021-0004001	Arizona	459034	1	20	358	\$ 9,508.40
Resound Networks, LLC	0024535437	AZ-021-0004002	Arizona	459034	1	16	226	\$ 26,839.50
Resound Networks, LLC	0024535437	AZ-021-0004003	Arizona	459034	1	23	197	\$ 6,872.50
Resound Networks, LLC	0024535437	AZ-021-0004004	Arizona	459034	1	34	265	\$ 8,140.60
Resound Networks, LLC	0024535437	AZ-021-0007001	Arizona	459034	1	6	39	\$ 3,408.20
Resound Networks, LLC	0024535437	AZ-021-0007002	Arizona	459034	1	16	179	\$ 13,926.80
Resound Networks, LLC	0024535437	AZ-021-0007003	Arizona	459034	1	25	272	\$ 9,711.10
Resound Networks, LLC	0024535437	AZ-021-0008011	Arizona	459034	1	14	57	\$ 21,037.70
Resound Networks, LLC	0024535437	AZ-021-0008013	Arizona	459034	1	27	102	\$ 47,872.30
Resound Networks, LLC	0024535437	AZ-021-0008014	Arizona	459034	1	6	19	\$ 3,745.40
Resound Networks, LLC	0024535437	AZ-021-0008021	Arizona	459034	1	82	429	\$ 171,075.20
Resound Networks, LLC	0024535437	AZ-021-0008022	Arizona	459034	1	85	512	\$ 190,575.20
Resound Networks, LLC	0024535437	AZ-021-0008023	Arizona	459034	1	43	226	\$ 136,353.10

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Resound Networks, LLC	0024535437	AZ-021-0008031	Arizona	459034	1	15	83	\$ 64,012.90
Resound Networks, LLC	0024535437	AZ-021-0008032	Arizona	459034	1	40	227	\$ 14,923.00
Resound Networks, LLC	0024535437	AZ-021-0009011	Arizona	459034	1	4	15	\$ 3,284.00
Resound Networks, LLC	0024535437	AZ-021-0009021	Arizona	459034	1	8	39	\$ 6,787.50
Resound Networks, LLC	0024535437	AZ-021-0010002	Arizona	459034	1	26	95	\$ 17,334.20
Resound Networks, LLC	0024535437	AZ-021-0011004	Arizona	459034	1	26	96	\$ 18,898.30
Resound Networks, LLC	0024535437	AZ-021-0012001	Arizona	459034	1	67	295	\$ 81,171.00
Resound Networks, LLC	0024535437	AZ-021-0012002	Arizona	459034	1	53	258	\$ 73,679.70
Resound Networks, LLC	0024535437	AZ-021-0013031	Arizona	459034	1	21	154	\$ 29,984.20
Resound Networks, LLC	0024535437	AZ-021-0013032	Arizona	459034	1	15	84	\$ 14,068.60
Resound Networks, LLC	0024535437	AZ-021-0013041	Arizona	459034	1	13	90	\$ 4,236.70
Resound Networks, LLC	0024535437	AZ-021-0014053	Arizona	459034	1	16	32	\$ 4,266.50
Resound Networks, LLC	0024535437	AZ-021-0014063	Arizona	459034	1	7	38	\$ 3,164.20
Resound Networks, LLC	0024535437	AZ-021-0014072	Arizona	459034	1	9	53	\$ 9,689.20
Resound Networks, LLC	0024535437	AZ-021-0014082	Arizona	459034	1	10	32	\$ 9,369.10
Resound Networks, LLC	0024535437	AZ-021-0015001	Arizona	459034	1	17	68	\$ 10,953.60
Resound Networks, LLC	0024535437	AZ-021-0016001	Arizona	459034	1	10	65	\$ 2,230.20
Resound Networks, LLC	0024535437	AZ-021-0016002	Arizona	459034	1	17	95	\$ 3,005.10
Resound Networks, LLC	0024535437	AZ-021-0016003	Arizona	459034	1	35	133	\$ 36,698.10
Resound Networks, LLC	0024535437	AZ-021-0016004	Arizona	459034	1	118	576	\$ 134,322.00

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Resound Networks, LLC	0024535437	AZ-021-0017011	Arizona	459034	1	60	255	\$ 37,708.70
Resound Networks, LLC	0024535437	AZ-021-0017022	Arizona	459034	1	3	36	\$ 1,851.50
Resound Networks, LLC	0024535437	AZ-021-0017101	Arizona	459034	1	9	21	\$ 6,325.50
Resound Networks, LLC	0024535437	AZ-021-0017102	Arizona	459034	1	2	38	\$ 19,521.00
Resound Networks, LLC	0024535437	AZ-021-0017111	Arizona	459034	1	5	13	\$ 3,147.90
Resound Networks, LLC	0024535437	AZ-021-0017112	Arizona	459034	1	10	67	\$ 25,046.10
Resound Networks, LLC	0024535437	AZ-021-0019001	Arizona	459034	1	47	147	\$ 38,289.90
Resound Networks, LLC	0024535437	AZ-021-0019002	Arizona	459034	1	25	109	\$ 13,444.90
Resound Networks, LLC	0024535437	AZ-021-0020011	Arizona	459034	1	46	193	\$ 27,693.00
Resound Networks, LLC	0024535437	AZ-021-0020012	Arizona	459034	1	6	27	\$ 1,589.90
Resound Networks, LLC	0024535437	AZ-021-0020021	Arizona	459034	1	26	145	\$ 34,561.60
Resound Networks, LLC	0024535437	AZ-021-0020032	Arizona	459034	1	14	102	\$ 5,838.90
Resound Networks, LLC	0024535437	AZ-021-0021011	Arizona	459034	1	16	76	\$ 5,667.10
Resound Networks, LLC	0024535437	AZ-021-0021012	Arizona	459034	1	5	26	\$ 1,230.30
Resound Networks, LLC	0024535437	AZ-021-0021021	Arizona	459034	1	16	173	\$ 21,224.60
Resound Networks, LLC	0024535437	AZ-021-0021022	Arizona	459034	1	32	147	\$ 55,571.00
Resound Networks, LLC	0024535437	AZ-021-0021032	Arizona	459034	1	22	99	\$ 89,223.50
Resound Networks, LLC	0024535437	AZ-021-0021033	Arizona	459034	1	42	456	\$ 141,976.30
Resound Networks, LLC	0024535437	AZ-021-0022001	Arizona	459034	1	46	380	\$ 108,077.80
Resound Networks, LLC	0024535437	AZ-021-0022002	Arizona	459034	1	47	401	\$ 141,233.50

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Resound Networks, LLC	0024535437	AZ-021-0022003	Arizona	459034	1	5	9	\$ 6,149.30
Resound Networks, LLC	0024535437	AZ-021-0023002	Arizona	459034	1	12	297	\$ 21,308.00
Resound Networks, LLC	0024535437	AZ-021-0023003	Arizona	459034	1	15	447	\$ 123,637.10
Resound Networks, LLC	0024535437	AZ-021-0024001	Arizona	459034	1	20	272	\$ 19,335.50
Resound Networks, LLC	0024535437	AZ-021-0024002	Arizona	459034	1	18	124	\$ 4,023.10
Resound Networks, LLC	0024535437	AZ-021-9413002	Arizona	459034	1	4	8	\$ 13,603.20
Resound Networks, LLC	0024535437	AZ-021-9414001	Arizona	459034	1	93	431	\$ 78,477.20
Resound Networks, LLC	0024535437	AZ-021-9414002	Arizona	459034	1	227	1,152	\$ 137,081.60
Resound Networks, LLC	0024535437	AZ-021-9414004	Arizona	459034	1	120	589	\$ 206,527.50
Resound Networks, LLC	0024535437	AZ-025-0002023	Arizona	459034	1	5	9	\$ 49,517.30
Resound Networks, LLC	0024535437	AZ-025-0002031	Arizona	459034	1	12	76	\$ 63,999.10
Resound Networks, LLC	0024535437	AZ-025-0002032	Arizona	459034	1	8	62	\$ 58,208.00
Resound Networks, LLC	0024535437	AZ-025-0002041	Arizona	459034	1	9	59	\$ 33,940.00
Resound Networks, LLC	0024535437	AZ-025-0002044	Arizona	459034	1	27	275	\$ 145,901.70
Resound Networks, LLC	0024535437	AZ-025-0003001	Arizona	459034	1	6	11	\$ 17,662.00
Resound Networks, LLC	0024535437	AZ-025-0005001	Arizona	459034	1	4	6	\$ 9,470.50
Resound Networks, LLC	0024535437	AZ-025-0005002	Arizona	459034	1	3	7	\$ 8,921.50
Resound Networks, LLC	0024535437	AZ-025-0006071	Arizona	459034	1	7	24	\$ 12,817.20
Resound Networks, LLC	0024535437	AZ-025-0006102	Arizona	459034	1	14	45	\$ 19,011.60
Resound Networks, LLC	0024535437	AZ-025-0007003	Arizona	459034	1	24	226	\$ 93,555.10

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Resound Networks, LLC	0024535437	AZ-025-0012001	Arizona	459034	1	13	16	\$ 47,511.60
Resound Networks, LLC	0024535437	AZ-025-0012002	Arizona	459034	1	76	648	\$ 477,702.00
Resound Networks, LLC	0024535437	AZ-025-0013001	Arizona	459034	1	10	55	\$ 287,460.00
Resound Networks, LLC	0024535437	AZ-025-0014011	Arizona	459034	1	34	460	\$ 191,757.30
Resound Networks, LLC	0024535437	AZ-025-0014021	Arizona	459034	1	20	316	\$ 174,882.60
Resound Networks, LLC	0024535437	AZ-025-0014032	Arizona	459034	1	93	786	\$ 482,556.00
Resound Networks, LLC	0024535437	AZ-025-0016012	Arizona	459034	1	6	33	\$ 23,437.90
Resound Networks, LLC	0024535437	AZ-025-0016033	Arizona	459034	1	16	230	\$ 190,242.90
Resound Networks, LLC	0024535437	AZ-025-0017011	Arizona	459034	1	8	142	\$ 91,324.00
Resound Networks, LLC	0024535437	AZ-025-0017012	Arizona	459034	1	4	14	\$ 17,634.80
Resound Networks, LLC	0024535437	AZ-025-0017021	Arizona	459034	1	4	29	\$ 116,599.90
Resound Networks, LLC	0024535437	AZ-025-0018011	Arizona	459034	1	4	8	\$ 12,392.30
Resound Networks, LLC	0024535437	AZ-025-0018021	Arizona	459034	1	20	79	\$ 316,826.00
Resound Networks, LLC	0024535437	AZ-025-0020012	Arizona	459034	1	3	6	\$ 9,146.90
Resound Networks, LLC	0024535437	AZ-025-0020021	Arizona	459034	1	9	31	\$ 43,754.60
Resound Networks, LLC	0024535437	AZ-027-0009081	Arizona	459034	1	6	13	\$ 4,660.40
Resound Networks, LLC	0024535437	AZ-027-0010013	Arizona	459034	1	2	7	\$ 2,114.50
Resound Networks, LLC	0024535437	AZ-027-0109052	Arizona	459034	1	1	2	\$ 907.60
Resound Networks, LLC	0024535437	AZ-027-0109102	Arizona	459034	1	3	6	\$ 5,234.30
Resound Networks, LLC	0024535437	AZ-027-0109141	Arizona	459034	1	68	592	\$ 95,915.90

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	AZ-027-0109142	Arizona	459034	1	55	228	\$ 43,567.20
Resound Networks, LLC	0024535437	AZ-027-0110001	Arizona	459034	1	17	43	\$ 23,281.50
Resound Networks, LLC	0024535437	AZ-027-0110002	Arizona	459034	1	31	224	\$ 27,979.50
Resound Networks, LLC	0024535437	AZ-027-0110003	Arizona	459034	1	5	52	\$ 5,690.60
Resound Networks, LLC	0024535437	AZ-027-0111061	Arizona	459034	1	8	73	\$ 12,103.90
Resound Networks, LLC	0024535437	AZ-027-0111071	Arizona	459034	1	4	11	\$ 1,005.00
Resound Networks, LLC	0024535437	AZ-027-0111111	Arizona	459034	1	4	33	\$ 10,333.90
Resound Networks, LLC	0024535437	AZ-027-0112011	Arizona	459034	1	29	311	\$ 31,985.00
Resound Networks, LLC	0024535437	AZ-027-0112012	Arizona	459034	1	11	104	\$ 12,968.60
Resound Networks, LLC	0024535437	AZ-027-0112013	Arizona	459034	1	110	548	\$ 200,286.90
Resound Networks, LLC	0024535437	AZ-027-0112014	Arizona	459034	1	15	251	\$ 21,272.90
Resound Networks, LLC	0024535437	AZ-027-0112021	Arizona	459034	1	188	786	\$ 274,012.00
Resound Networks, LLC	0024535437	AZ-027-0115011	Arizona	459034	1	21	50	\$ 19,783.00
Resound Networks, LLC	0024535437	AZ-027-0115012	Arizona	459034	1	11	17	\$ 9,174.90
Resound Networks, LLC	0024535437	AZ-027-0115013	Arizona	459034	1	7	64	\$ 8,514.10
Resound Networks, LLC	0024535437	AZ-027-0115014	Arizona	459034	1	8	86	\$ 2,226.30
Resound Networks, LLC	0024535437	AZ-027-0115041	Arizona	459034	1	2	2	\$ 2,605.90
Resound Networks, LLC	0024535437	AZ-027-0116002	Arizona	459034	1	2	9	\$ 6,543.60
Resound Networks, LLC	0024535437	AZ-027-0116003	Arizona	459034	1	8	18	\$ 12,234.60
Resound Networks, LLC	0024535437	AZ-027-0118001	Arizona	459034	1	7	28	\$ 17,130.80

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Resound Networks, LLC	0024535437	AZ-027-0118002	Arizona	459034	1	64	550	\$ 51,028.70
Resound Networks, LLC	0024535437	AZ-027-0118003	Arizona	459034	1	68	481	\$ 31,288.80
Resound Networks, LLC	0024535437	AZ-027-0121002	Arizona	459034	1	10	68	\$ 67,827.10
Resound Networks, LLC	0024535437	AZ-027-9800041	Arizona	459034	1	3	7	\$ 9,120.70
Resound Networks, LLC	0024535437	AR-001-4802001	Arkansas	409061	1	169	535	\$ 1,386,172.50
Resound Networks, LLC	0024535437	AR-001-4803001	Arkansas	409061	1	11	61	\$ 92,005.40
Resound Networks, LLC	0024535437	AR-001-4804002	Arkansas	409061	1	14	35	\$ 93,126.00
Resound Networks, LLC	0024535437	AR-001-4805002	Arkansas	409061	1	6	42	\$ 51,956.00
Resound Networks, LLC	0024535437	AR-001-4808001	Arkansas	409061	1	103	561	\$ 2,063,347.50
Resound Networks, LLC	0024535437	AR-003-9601001	Arkansas	409061	1	40	167	\$ 251,397.90
Resound Networks, LLC	0024535437	AR-003-9601003	Arkansas	409061	1	30	112	\$ 337,127.80
Resound Networks, LLC	0024535437	AR-003-9604002	Arkansas	409061	1	23	129	\$ 202,960.00
Resound Networks, LLC	0024535437	AR-017-0801001	Arkansas	409061	1	47	181	\$ 1,051,111.80
Resound Networks, LLC	0024535437	AR-017-0801002	Arkansas	409061	1	86	460	\$ 1,197,982.50
Resound Networks, LLC	0024535437	AR-017-0801003	Arkansas	409061	1	38	209	\$ 478,400.00
Resound Networks, LLC	0024535437	AR-017-0802001	Arkansas	409061	1	11	54	\$ 88,147.50
Resound Networks, LLC	0024535437	AR-017-0803002	Arkansas	409061	1	6	45	\$ 69,032.50
Resound Networks, LLC	0024535437	AR-017-0803003	Arkansas	409061	1	25	91	\$ 142,650.00
Resound Networks, LLC	0024535437	AR-017-0804001	Arkansas	409061	1	14	34	\$ 55,490.00
Resound Networks, LLC	0024535437	AR-017-0804003	Arkansas	409061	1	46	263	\$ 247,965.00

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Resound Networks, LLC	0024535437	AR-035-0306001	Arkansas	409061	1	12	43	\$ 54,266.00
Resound Networks, LLC	0024535437	AR-035-0306002	Arkansas	409061	1	13	86	\$ 367,536.00
Resound Networks, LLC	0024535437	AR-035-0306003	Arkansas	409061	1	39	410	\$ 720,690.00
Resound Networks, LLC	0024535437	AR-035-0306004	Arkansas	409061	1	77	377	\$ 1,063,608.00
Resound Networks, LLC	0024535437	AR-035-0307021	Arkansas	409061	1	29	129	\$ 358,074.00
Resound Networks, LLC	0024535437	AR-035-0307031	Arkansas	409061	1	17	63	\$ 112,684.10
Resound Networks, LLC	0024535437	AR-035-0308031	Arkansas	409061	1	9	34	\$ 67,973.80
Resound Networks, LLC	0024535437	AR-035-0308061	Arkansas	409061	1	20	48	\$ 217,110.00
Resound Networks, LLC	0024535437	AR-035-0308071	Arkansas	409061	1	49	213	\$ 950,898.00
Resound Networks, LLC	0024535437	AR-037-9501001	Arkansas	409061	1	80	433	\$ 872,552.50
Resound Networks, LLC	0024535437	AR-037-9502001	Arkansas	409061	1	27	130	\$ 129,448.50
Resound Networks, LLC	0024535437	AR-037-9503001	Arkansas	409061	1	59	231	\$ 1,315,038.00
Resound Networks, LLC	0024535437	AR-037-9503002	Arkansas	409061	1	77	390	\$ 716,497.50
Resound Networks, LLC	0024535437	AR-037-9504001	Arkansas	409061	1	24	213	\$ 235,716.10
Resound Networks, LLC	0024535437	AR-037-9504002	Arkansas	409061	1	14	252	\$ 218,833.60
Resound Networks, LLC	0024535437	AR-037-9504003	Arkansas	409061	1	10	36	\$ 61,343.10
Resound Networks, LLC	0024535437	AR-041-9501002	Arkansas	409061	1	64	346	\$ 752,044.00
Resound Networks, LLC	0024535437	AR-041-9502001	Arkansas	409061	1	54	251	\$ 467,566.00
Resound Networks, LLC	0024535437	AR-041-9502004	Arkansas	409061	1	34	284	\$ 630,864.40
Resound Networks, LLC	0024535437	AR-041-9503001	Arkansas	409061	1	14	48	\$ 117,000.00

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Resound Networks, LLC	0024535437	AR-041-9504001	Arkansas	409061	1	22	100	\$ 259,076.00
Resound Networks, LLC	0024535437	AR-041-9505001	Arkansas	409061	1	12	78	\$ 154,630.00
Resound Networks, LLC	0024535437	AR-041-9505002	Arkansas	409061	1	8	34	\$ 40,134.00
Resound Networks, LLC	0024535437	AR-055-4805002	Arkansas	409061	1	18	173	\$ 86,779.70
Resound Networks, LLC	0024535437	AR-063-4904001	Arkansas	409061	1	60	334	\$ 522,840.00
Resound Networks, LLC	0024535437	AR-063-4904002	Arkansas	409061	1	15	49	\$ 149,436.00
Resound Networks, LLC	0024535437	AR-063-4904003	Arkansas	409061	1	53	437	\$ 1,071,617.10
Resound Networks, LLC	0024535437	AR-067-4801001	Arkansas	409061	1	81	334	\$ 1,697,774.40
Resound Networks, LLC	0024535437	AR-067-4801002	Arkansas	409061	1	5	7	\$ 31,803.80
Resound Networks, LLC	0024535437	AR-067-4802001	Arkansas	409061	1	11	22	\$ 57,113.10
Resound Networks, LLC	0024535437	AR-067-4804001	Arkansas	409061	1	68	310	\$ 1,373,466.00
Resound Networks, LLC	0024535437	AR-067-4804002	Arkansas	409061	1	124	430	\$ 1,953,730.40
Resound Networks, LLC	0024535437	AR-067-4804003	Arkansas	409061	1	93	412	\$ 1,665,209.70
Resound Networks, LLC	0024535437	AR-069-0023001	Arkansas	409061	1	74	510	\$ 746,792.00
Resound Networks, LLC	0024535437	AR-069-0023004	Arkansas	409061	1	33	156	\$ 539,252.10
Resound Networks, LLC	0024535437	AR-069-0025001	Arkansas	409061	1	79	597	\$ 560,366.50
Resound Networks, LLC	0024535437	AR-077-4701001	Arkansas	409061	1	50	208	\$ 729,137.50
Resound Networks, LLC	0024535437	AR-077-4702001	Arkansas	409061	1	24	157	\$ 459,006.30
Resound Networks, LLC	0024535437	AR-077-4702002	Arkansas	409061	1	83	530	\$ 907,187.50
Resound Networks, LLC	0024535437	AR-077-4704001	Arkansas	409061	1	55	333	\$ 528,744.00

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Resound Networks, LLC	0024535437	AR-077-4704002	Arkansas	409061	1	76	572	\$ 893,187.20
Resound Networks, LLC	0024535437	AR-079-9603002	Arkansas	409061	1	37	231	\$ 625,526.00
Resound Networks, LLC	0024535437	AR-079-9606001	Arkansas	409061	1	3	7	\$ 14,268.40
Resound Networks, LLC	0024535437	AR-079-9606002	Arkansas	409061	1	49	231	\$ 383,569.20
Resound Networks, LLC	0024535437	AR-085-0203022	Arkansas	409061	1	27	175	\$ 223,369.60
Resound Networks, LLC	0024535437	AR-085-0204001	Arkansas	409061	1	34	147	\$ 241,908.10
Resound Networks, LLC	0024535437	AR-085-0204003	Arkansas	409061	1	64	269	\$ 987,187.20
Resound Networks, LLC	0024535437	AR-085-0205002	Arkansas	409061	1	16	54	\$ 202,405.10
Resound Networks, LLC	0024535437	AR-085-0205003	Arkansas	409061	1	8	62	\$ 27,817.00
Resound Networks, LLC	0024535437	AR-085-0207002	Arkansas	409061	1	7	23	\$ 70,140.00
Resound Networks, LLC	0024535437	AR-093-0109002	Arkansas	409061	1	9	37	\$ 77,544.00
Resound Networks, LLC	0024535437	AR-093-0111001	Arkansas	409061	1	14	49	\$ 154,524.00
Resound Networks, LLC	0024535437	AR-093-0112001	Arkansas	409061	1	18	50	\$ 296,358.00
Resound Networks, LLC	0024535437	AR-093-0112002	Arkansas	409061	1	43	132	\$ 727,366.00
Resound Networks, LLC	0024535437	AR-095-9502002	Arkansas	409061	1	19	152	\$ 154,566.90
Resound Networks, LLC	0024535437	AR-095-9503001	Arkansas	409061	1	52	411	\$ 652,430.00
Resound Networks, LLC	0024535437	AR-095-9503002	Arkansas	409061	1	123	581	\$ 1,144,508.00
Resound Networks, LLC	0024535437	AR-107-4802001	Arkansas	409061	1	5	72	\$ 114,077.50
Resound Networks, LLC	0024535437	AR-107-4802002	Arkansas	409061	1	33	279	\$ 567,287.50
Resound Networks, LLC	0024535437	AR-107-4802003	Arkansas	409061	1	30	90	\$ 259,790.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	AR-107-4802004	Arkansas	409061	1	59	353	\$ 630,395.00
Resound Networks, LLC	0024535437	AR-107-4802006	Arkansas	409061	1	3	9	\$ 20,082.50
Resound Networks, LLC	0024535437	AR-107-4806001	Arkansas	409061	1	110	431	\$ 1,223,782.50
Resound Networks, LLC	0024535437	AR-111-4906001	Arkansas	409061	1	8	16	\$ 170,507.70
Resound Networks, LLC	0024535437	AR-111-4906002	Arkansas	409061	1	33	85	\$ 787,170.00
Resound Networks, LLC	0024535437	AR-117-4601002	Arkansas	409061	1	77	699	\$ 1,377,232.00
Resound Networks, LLC	0024535437	AR-117-4602001	Arkansas	409061	1	115	504	\$ 1,252,544.00
Resound Networks, LLC	0024535437	AR-117-4603001	Arkansas	409061	1	88	485	\$ 840,798.00
Resound Networks, LLC	0024535437	AR-117-4603003	Arkansas	409061	1	30	183	\$ 207,380.00
Resound Networks, LLC	0024535437	AR-123-9601001	Arkansas	409061	1	53	233	\$ 242,682.00
Resound Networks, LLC	0024535437	AR-123-9601002	Arkansas	409061	1	15	37	\$ 115,494.00
Resound Networks, LLC	0024535437	AR-123-9601003	Arkansas	409061	1	91	396	\$ 735,588.00
Resound Networks, LLC	0024535437	AR-123-9601004	Arkansas	409061	1	13	29	\$ 64,164.00
Resound Networks, LLC	0024535437	AR-123-9602003	Arkansas	409061	1	34	202	\$ 239,072.00
Resound Networks, LLC	0024535437	AR-123-9603002	Arkansas	409061	1	40	379	\$ 478,120.00
Resound Networks, LLC	0024535437	AR-123-9603003	Arkansas	409061	1	68	383	\$ 538,758.00
Resound Networks, LLC	0024535437	AR-145-0701001	Arkansas	409061	1	30	305	\$ 294,972.00
Resound Networks, LLC	0024535437	AR-145-0701002	Arkansas	409061	1	45	327	\$ 836,617.50
Resound Networks, LLC	0024535437	AR-145-0701003	Arkansas	409061	1	43	291	\$ 615,742.80
Resound Networks, LLC	0024535437	AR-145-0702002	Arkansas	409061	1	21	195	\$ 301,044.00

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Resound Networks, LLC	0024535437	AR-145-0703003	Arkansas	409061	1	38	465	\$ 877,962.00
Resound Networks, LLC	0024535437	AR-145-0705001	Arkansas	409061	1	12	215	\$ 251,952.00
Resound Networks, LLC	0024535437	AR-145-0705002	Arkansas	409061	1	11	43	\$ 129,018.00
Resound Networks, LLC	0024535437	AR-145-0705004	Arkansas	409061	1	11	94	\$ 151,122.00
Resound Networks, LLC	0024535437	AR-145-0706001	Arkansas	409061	1	18	140	\$ 652,736.40
Resound Networks, LLC	0024535437	AR-145-0706003	Arkansas	409061	1	19	94	\$ 198,630.00
Resound Networks, LLC	0024535437	AR-145-0710003	Arkansas	409061	1	31	461	\$ 795,060.00
Resound Networks, LLC	0024535437	AR-145-0711001	Arkansas	409061	1	59	480	\$ 2,058,357.30
Resound Networks, LLC	0024535437	AR-145-0711002	Arkansas	409061	1	43	324	\$ 683,316.00
Resound Networks, LLC	0024535437	AR-145-0711004	Arkansas	409061	1	15	87	\$ 176,436.00
Resound Networks, LLC	0024535437	AR-145-0712003	Arkansas	409061	1	18	197	\$ 167,544.00
Resound Networks, LLC	0024535437	AR-147-4901001	Arkansas	409061	1	22	172	\$ 67,098.90
Resound Networks, LLC	0024535437	AR-147-4901002	Arkansas	409061	1	41	263	\$ 966,670.00
Resound Networks, LLC	0024535437	AR-147-4901003	Arkansas	409061	1	8	91	\$ 55,584.10
Resound Networks, LLC	0024535437	AR-147-4901004	Arkansas	409061	1	7	17	\$ 43,062.90
Resound Networks, LLC	0024535437	AR-147-4901005	Arkansas	409061	1	65	438	\$ 890,032.50
Resound Networks, LLC	0024535437	AR-147-4902001	Arkansas	409061	1	49	248	\$ 459,385.00
Resound Networks, LLC	0024535437	AR-147-4902002	Arkansas	409061	1	45	235	\$ 570,435.00
Resound Networks, LLC	0024535437	CO-009-9646001	Colorado	469044	1	15	37	\$ 39,966.00
Resound Networks, LLC	0024535437	CO-009-9646002	Colorado	469044	1	194	432	\$ 1,659,034.00

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Resound Networks, LLC	0024535437	CO-009-9647001	Colorado	469044	1	38	100	\$ 257,390.00
Resound Networks, LLC	0024535437	CO-009-9647002	Colorado	469044	1	31	100	\$ 287,952.00
Resound Networks, LLC	0024535437	CO-011-9667001	Colorado	469044	1	142	349	\$ 974,306.00
Resound Networks, LLC	0024535437	CO-011-9667002	Colorado	469044	1	13	27	\$ 84,866.00
Resound Networks, LLC	0024535437	CO-011-9667003	Colorado	469044	1	10	27	\$ 16,776.00
Resound Networks, LLC	0024535437	CO-011-9667005	Colorado	469044	1	4	9	\$ 8,475.00
Resound Networks, LLC	0024535437	CO-017-9606001	Colorado	469044	1	3	3	\$ 30,600.00
Resound Networks, LLC	0024535437	CO-017-9606003	Colorado	469044	1	12	25	\$ 187,152.00
Resound Networks, LLC	0024535437	CO-025-9696001	Colorado	469044	1	25	62	\$ 163,488.00
Resound Networks, LLC	0024535437	CO-025-9696002	Colorado	469044	1	38	101	\$ 551,676.00
Resound Networks, LLC	0024535437	CO-025-9696003	Colorado	469044	1	14	50	\$ 111,948.00
Resound Networks, LLC	0024535437	CO-025-9696004	Colorado	469044	1	12	24	\$ 73,839.00
Resound Networks, LLC	0024535437	CO-039-9612041	Colorado	469044	1	4	17	\$ 12,272.00
Resound Networks, LLC	0024535437	CO-039-9612042	Colorado	469044	1	6	22	\$ 39,200.00
Resound Networks, LLC	0024535437	CO-039-9612043	Colorado	469044	1	4	13	\$ 19,185.00
Resound Networks, LLC	0024535437	CO-039-9612044	Colorado	469044	1	8	124	\$ 25,528.00
Resound Networks, LLC	0024535437	CO-039-9612051	Colorado	469044	1	27	257	\$ 496,964.00
Resound Networks, LLC	0024535437	CO-039-9612062	Colorado	469044	1	3	7	\$ 20,165.00
Resound Networks, LLC	0024535437	CO-039-9612072	Colorado	469044	1	3	12	\$ 13,160.00
Resound Networks, LLC	0024535437	CO-039-9612081	Colorado	469044	1	7	126	\$ 153,192.00

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Resound Networks, LLC	0024535437	CO-039-9612082	Colorado	469044	1	7	104	\$ 35,102.00
Resound Networks, LLC	0024535437	CO-041-0028004	Colorado	469044	1	1	2	\$ 5,043.90
Resound Networks, LLC	0024535437	CO-041-0039022	Colorado	469044	1	7	13	\$ 2,968.00
Resound Networks, LLC	0024535437	CO-041-0046021	Colorado	469044	1	96	893	\$ 1,292,124.00
Resound Networks, LLC	0024535437	CO-041-0073001	Colorado	469044	1	2	8	\$ 3,890.70
Resound Networks, LLC	0024535437	CO-041-0076011	Colorado	469044	1	5	5	\$ 3,087.70
Resound Networks, LLC	0024535437	CO-041-0076022	Colorado	469044	1	8	58	\$ 3,042.20
Resound Networks, LLC	0024535437	CO-055-9606001	Colorado	469044	1	13	20	\$ 95,335.00
Resound Networks, LLC	0024535437	CO-055-9606002	Colorado	469044	1	4	16	\$ 55,200.00
Resound Networks, LLC	0024535437	CO-055-9606003	Colorado	469044	1	1	3	\$ 34,160.00
Resound Networks, LLC	0024535437	CO-055-9606004	Colorado	469044	1	6	12	\$ 50,495.00
Resound Networks, LLC	0024535437	CO-061-9601001	Colorado	469044	1	83	245	\$ 888,682.00
Resound Networks, LLC	0024535437	CO-063-9621003	Colorado	469044	1	1	1	\$ 10,680.00
Resound Networks, LLC	0024535437	CO-063-9622001	Colorado	469044	1	8	13	\$ 132,600.00
Resound Networks, LLC	0024535437	CO-063-9622002	Colorado	469044	1	7	18	\$ 161,228.00
Resound Networks, LLC	0024535437	CO-071-0008001	Colorado	469044	1	56	219	\$ 807,100.00
Resound Networks, LLC	0024535437	CO-071-0008003	Colorado	469044	1	27	64	\$ 109,106.00
Resound Networks, LLC	0024535437	CO-075-9659001	Colorado	469044	1	65	159	\$ 602,552.00
Resound Networks, LLC	0024535437	CO-075-9660001	Colorado	469044	1	158	433	\$ 1,117,510.00
Resound Networks, LLC	0024535437	CO-075-9661001	Colorado	469044	1	7	25	\$ 34,424.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	CO-075-9661005	Colorado	469044	1	10	23	\$ 14,634.00
Resound Networks, LLC	0024535437	CO-075-9662001	Colorado	469044	1	6	28	\$ 73,016.00
Resound Networks, LLC	0024535437	CO-075-9663001	Colorado	469044	1	12	37	\$ 66,024.00
Resound Networks, LLC	0024535437	CO-075-9664001	Colorado	469044	1	30	102	\$ 380,020.00
Resound Networks, LLC	0024535437	CO-075-9664002	Colorado	469044	1	28	77	\$ 272,432.00
Resound Networks, LLC	0024535437	CO-087-0001001	Colorado	469044	1	37	107	\$ 275,852.00
Resound Networks, LLC	0024535437	CO-087-0001002	Colorado	469044	1	53	205	\$ 580,592.00
Resound Networks, LLC	0024535437	CO-087-0001003	Colorado	469044	1	14	150	\$ 20,112.00
Resound Networks, LLC	0024535437	CO-087-0002001	Colorado	469044	1	6	31	\$ 61,672.00
Resound Networks, LLC	0024535437	CO-087-0002003	Colorado	469044	1	13	28	\$ 82,956.00
Resound Networks, LLC	0024535437	CO-087-0003001	Colorado	469044	1	4	12	\$ 15,478.00
Resound Networks, LLC	0024535437	CO-087-0006001	Colorado	469044	1	25	83	\$ 88,024.00
Resound Networks, LLC	0024535437	CO-087-0007001	Colorado	469044	1	2	8	\$ 16,390.00
Resound Networks, LLC	0024535437	CO-087-0007005	Colorado	469044	1	4	12	\$ 15,540.00
Resound Networks, LLC	0024535437	CO-087-0008001	Colorado	469044	1	59	173	\$ 461,908.00
Resound Networks, LLC	0024535437	CO-087-0008002	Colorado	469044	1	68	324	\$ 276,448.00
Resound Networks, LLC	0024535437	CO-089-9680001	Colorado	469044	1	27	63	\$ 95,390.00
Resound Networks, LLC	0024535437	CO-089-9681001	Colorado	469044	1	4	6	\$ 16,065.00
Resound Networks, LLC	0024535437	CO-089-9682001	Colorado	469044	1	23	40	\$ 53,528.00
Resound Networks, LLC	0024535437	CO-089-9682002	Colorado	469044	1	39	78	\$ 168,904.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	CO-089-9683001	Colorado	469044	1	8	21	\$ 31,308.00
Resound Networks, LLC	0024535437	CO-089-9683002	Colorado	469044	1	11	20	\$ 24,122.00
Resound Networks, LLC	0024535437	CO-089-9683003	Colorado	469044	1	5	19	\$ 12,462.00
Resound Networks, LLC	0024535437	CO-089-9683004	Colorado	469044	1	2	3	\$ 9,765.00
Resound Networks, LLC	0024535437	CO-089-9684001	Colorado	469044	1	76	164	\$ 515,266.00
Resound Networks, LLC	0024535437	CO-089-9685001	Colorado	469044	1	45	87	\$ 203,912.00
Resound Networks, LLC	0024535437	CO-099-0001001	Colorado	469044	1	73	220	\$ 506,396.00
Resound Networks, LLC	0024535437	CO-099-0001002	Colorado	469044	1	26	82	\$ 115,688.00
Resound Networks, LLC	0024535437	CO-099-0006001	Colorado	469044	1	131	275	\$ 1,015,738.00
Resound Networks, LLC	0024535437	CO-099-0006002	Colorado	469044	1	10	25	\$ 24,888.00
Resound Networks, LLC	0024535437	CO-099-0007001	Colorado	469044	1	118	329	\$ 961,052.00
Resound Networks, LLC	0024535437	CO-099-0007002	Colorado	469044	1	31	79	\$ 175,134.00
Resound Networks, LLC	0024535437	CO-101-0028015	Colorado	469044	1	1	3	\$ 5,265.00
Resound Networks, LLC	0024535437	CO-101-0028061	Colorado	469044	1	5	19	\$ 43,494.00
Resound Networks, LLC	0024535437	CO-101-0028062	Colorado	469044	1	3	5	\$ 19,410.00
Resound Networks, LLC	0024535437	CO-101-0028063	Colorado	469044	1	2	3	\$ 9,620.00
Resound Networks, LLC	0024535437	CO-101-0028073	Colorado	469044	1	2	3	\$ 11,670.00
Resound Networks, LLC	0024535437	CO-101-0029012	Colorado	469044	1	5	9	\$ 12,508.00
Resound Networks, LLC	0024535437	CO-101-0029031	Colorado	469044	1	2	9	\$ 12,790.00
Resound Networks, LLC	0024535437	CO-101-0029032	Colorado	469044	1	3	30	\$ 17,125.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	CO-101-0029062	Colorado	469044	1	7	30	\$ 59,928.00
Resound Networks, LLC	0024535437	CO-101-0029142	Colorado	469044	1	4	6	\$ 14,775.00
Resound Networks, LLC	0024535437	CO-101-0029171	Colorado	469044	1	3	5	\$ 9,554.00
Resound Networks, LLC	0024535437	CO-101-0029181	Colorado	469044	1	17	33	\$ 81,896.00
Resound Networks, LLC	0024535437	CO-101-0029182	Colorado	469044	1	4	7	\$ 13,935.00
Resound Networks, LLC	0024535437	CO-101-0030011	Colorado	469044	1	19	96	\$ 15,706.00
Resound Networks, LLC	0024535437	CO-101-0031032	Colorado	469044	1	2	2	\$ 4,193.60
Resound Networks, LLC	0024535437	CO-101-0031061	Colorado	469044	1	10	56	\$ 57,592.00
Resound Networks, LLC	0024535437	CO-101-0032001	Colorado	469044	1	22	148	\$ 77,792.00
Resound Networks, LLC	0024535437	CO-101-0032002	Colorado	469044	1	41	236	\$ 510,846.00
Resound Networks, LLC	0024535437	CO-101-0032003	Colorado	469044	1	20	62	\$ 62,442.00
Resound Networks, LLC	0024535437	CO-101-0035001	Colorado	469044	1	3	6	\$ 10,432.50
Resound Networks, LLC	0024535437	CO-101-0035002	Colorado	469044	1	3	8	\$ 7,160.00
Resound Networks, LLC	0024535437	CO-101-0036001	Colorado	469044	1	19	38	\$ 29,756.00
Resound Networks, LLC	0024535437	CO-101-0036002	Colorado	469044	1	44	162	\$ 473,060.00
Resound Networks, LLC	0024535437	CO-101-9801001	Colorado	469044	1	1	3	\$ 16,020.00
Resound Networks, LLC	0024535437	CO-115-9683001	Colorado	469044	1	71	137	\$ 622,992.00
Resound Networks, LLC	0024535437	CO-115-9683002	Colorado	469044	1	3	5	\$ 15,742.00
Resound Networks, LLC	0024535437	CO-115-9683003	Colorado	469044	1	42	123	\$ 290,726.00
Resound Networks, LLC	0024535437	CO-121-9241001	Colorado	469044	1	158	355	\$ 1,271,624.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	CO-121-9241002	Colorado	469044	1	48	119	\$ 603,594.00
Resound Networks, LLC	0024535437	CO-121-9242001	Colorado	469044	1	160	516	\$ 1,878,170.00
Resound Networks, LLC	0024535437	CO-121-9242002	Colorado	469044	1	25	75	\$ 80,704.00
Resound Networks, LLC	0024535437	CO-121-9242003	Colorado	469044	1	8	63	\$ 30,576.00
Resound Networks, LLC	0024535437	CO-123-0007012	Colorado	469044	1	2	3	\$ 2,960.80
Resound Networks, LLC	0024535437	CO-123-0007051	Colorado	469044	1	9	26	\$ 107,755.00
Resound Networks, LLC	0024535437	CO-123-0007052	Colorado	469044	1	10	23	\$ 28,265.00
Resound Networks, LLC	0024535437	CO-123-0014042	Colorado	469044	1	4	7	\$ 38,115.00
Resound Networks, LLC	0024535437	CO-123-0014061	Colorado	469044	1	1	32	\$ 4,136.30
Resound Networks, LLC	0024535437	CO-123-0015001	Colorado	469044	1	4	7	\$ 2,901.70
Resound Networks, LLC	0024535437	CO-123-0015004	Colorado	469044	1	8	10	\$ 27,420.00
Resound Networks, LLC	0024535437	CO-123-0016001	Colorado	469044	1	4	4	\$ 18,745.00
Resound Networks, LLC	0024535437	CO-123-0016003	Colorado	469044	1	10	27	\$ 29,690.00
Resound Networks, LLC	0024535437	CO-123-0017001	Colorado	469044	1	2	2	\$ 1,008.80
Resound Networks, LLC	0024535437	CO-123-0017002	Colorado	469044	1	4	5	\$ 2,358.80
Resound Networks, LLC	0024535437	CO-123-0017003	Colorado	469044	1	6	10	\$ 35,090.00
Resound Networks, LLC	0024535437	CO-123-0017004	Colorado	469044	1	4	5	\$ 10,120.00
Resound Networks, LLC	0024535437	CO-123-0018001	Colorado	469044	1	14	46	\$ 154,125.00
Resound Networks, LLC	0024535437	CO-123-0019021	Colorado	469044	1	17	44	\$ 190,045.00
Resound Networks, LLC	0024535437	CO-123-0019053	Colorado	469044	1	2	7	\$ 5,265.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	CO-123-0019081	Colorado	469044	1	6	10	\$ 14,575.00
Resound Networks, LLC	0024535437	CO-123-0019071	Colorado	469044	1	4	16	\$ 16,975.00
Resound Networks, LLC	0024535437	CO-123-0019081	Colorado	469044	1	5	9	\$ 8,725.00
Resound Networks, LLC	0024535437	CO-123-0020051	Colorado	469044	1	4	13	\$ 21,205.00
Resound Networks, LLC	0024535437	CO-123-0020073	Colorado	469044	1	1	1	\$ 8,840.00
Resound Networks, LLC	0024535437	CO-123-0020091	Colorado	469044	1	12	29	\$ 66,024.00
Resound Networks, LLC	0024535437	CO-123-0020101	Colorado	469044	1	21	39	\$ 19,886.80
Resound Networks, LLC	0024535437	CO-123-0020111	Colorado	469044	1	2	2	\$ 2,393.40
Resound Networks, LLC	0024535437	CO-123-0020121	Colorado	469044	1	1	4	\$ 2,132.30
Resound Networks, LLC	0024535437	CO-123-0020193	Colorado	469044	1	3	7	\$ 1,892.90
Resound Networks, LLC	0024535437	CO-123-0020211	Colorado	469044	1	4	13	\$ 17,110.00
Resound Networks, LLC	0024535437	CO-123-0021013	Colorado	469044	1	2	2	\$ 7,210.00
Resound Networks, LLC	0024535437	CO-123-0021014	Colorado	469044	1	9	14	\$ 61,475.00
Resound Networks, LLC	0024535437	CO-123-0021021	Colorado	469044	1	1	1	\$ 4,690.00
Resound Networks, LLC	0024535437	CO-123-0021032	Colorado	469044	1	8	12	\$ 34,365.00
Resound Networks, LLC	0024535437	CO-123-0021033	Colorado	469044	1	7	8	\$ 4,298.20
Resound Networks, LLC	0024535437	CO-123-0021034	Colorado	469044	1	3	6	\$ 10,850.00
Resound Networks, LLC	0024535437	CO-123-0022031	Colorado	469044	1	8	14	\$ 21,030.00
Resound Networks, LLC	0024535437	CO-123-0022071	Colorado	469044	1	1	1	\$ 2,076.90
Resound Networks, LLC	0024535437	CO-123-0022081	Colorado	469044	1	10	35	\$ 39,330.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	CO-123-0022082	Colorado	469044	1	5	9	\$ 1,815.80
Resound Networks, LLC	0024535437	CO-123-0022091	Colorado	469044	1	4	7	\$ 6,905.00
Resound Networks, LLC	0024535437	CO-123-0023002	Colorado	469044	1	5	42	\$ 88,032.60
Resound Networks, LLC	0024535437	CO-123-0023004	Colorado	469044	1	9	86	\$ 73,022.00
Resound Networks, LLC	0024535437	CO-123-0023005	Colorado	469044	1	13	102	\$ 124,828.00
Resound Networks, LLC	0024535437	CO-123-0025011	Colorado	469044	1	11	42	\$ 262,400.50
Resound Networks, LLC	0024535437	CO-123-0025012	Colorado	469044	1	23	91	\$ 298,560.00
Resound Networks, LLC	0024535437	CO-123-0025021	Colorado	469044	1	5	8	\$ 32,410.00
Resound Networks, LLC	0024535437	CO-123-0025022	Colorado	469044	1	11	39	\$ 220,328.00
Resound Networks, LLC	0024535437	CO-123-0025023	Colorado	469044	1	4	4	\$ 35,295.00
Resound Networks, LLC	0024535437	CO-125-9631001	Colorado	469044	1	128	320	\$ 1,128,998.00
Resound Networks, LLC	0024535437	CO-125-9631002	Colorado	469044	1	60	214	\$ 663,284.00
Resound Networks, LLC	0024535437	CO-125-9631003	Colorado	469044	1	5	17	\$ 18,005.00
Resound Networks, LLC	0024535437	CO-125-9631004	Colorado	469044	1	7	11	\$ 32,290.00
Resound Networks, LLC	0024535437	CO-125-9632001	Colorado	469044	1	110	204	\$ 767,724.00
Resound Networks, LLC	0024535437	CO-125-9632002	Colorado	469044	1	62	193	\$ 826,308.00
Resound Networks, LLC	0024535437	CO-125-9632003	Colorado	469044	1	63	239	\$ 150,382.00
Resound Networks, LLC	0024535437	CO-125-9632004	Colorado	469044	1	21	67	\$ 43,311.80
Resound Networks, LLC	0024535437	CO-125-9632005	Colorado	469044	1	27	61	\$ 35,686.00
Resound Networks, LLC	0024535437	KS-005-0816003	Kansas	419052	1	28	130	\$ 613,460.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	KS-005-0816004	Kansas	419052	1	12	36	\$ 176,530.00
Resound Networks, LLC	0024535437	KS-005-0817002	Kansas	419052	1	20	122	\$ 378,123.10
Resound Networks, LLC	0024535437	KS-005-0818001	Kansas	419052	1	10	43	\$ 147,670.00
Resound Networks, LLC	0024535437	KS-005-0818002	Kansas	419052	1	6	50	\$ 55,235.00
Resound Networks, LLC	0024535437	KS-007-9681001	Kansas	419052	1	38	92	\$ 298,358.40
Resound Networks, LLC	0024535437	KS-007-9681002	Kansas	419052	1	6	23	\$ 14,528.00
Resound Networks, LLC	0024535437	KS-007-9681003	Kansas	419052	1	13	36	\$ 62,466.00
Resound Networks, LLC	0024535437	KS-007-9681004	Kansas	419052	1	25	83	\$ 121,370.00
Resound Networks, LLC	0024535437	KS-007-9682001	Kansas	419052	1	23	51	\$ 369,915.70
Resound Networks, LLC	0024535437	KS-007-9682002	Kansas	419052	1	14	28	\$ 200,895.20
Resound Networks, LLC	0024535437	KS-009-9718004	Kansas	419052	1	5	17	\$ 16,780.00
Resound Networks, LLC	0024535437	KS-011-9557002	Kansas	419052	1	10	26	\$ 337,386.00
Resound Networks, LLC	0024535437	KS-013-4808003	Kansas	419052	1	9	51	\$ 115,002.00
Resound Networks, LLC	0024535437	KS-013-4808004	Kansas	419052	1	3	16	\$ 42,462.00
Resound Networks, LLC	0024535437	KS-015-0202011	Kansas	419052	1	11	47	\$ 51,845.00
Resound Networks, LLC	0024535437	KS-015-0202013	Kansas	419052	1	30	91	\$ 310,690.00
Resound Networks, LLC	0024535437	KS-015-0202031	Kansas	419052	1	6	45	\$ 24,775.00
Resound Networks, LLC	0024535437	KS-015-0202032	Kansas	419052	1	12	38	\$ 52,695.00
Resound Networks, LLC	0024535437	KS-015-0202033	Kansas	419052	1	30	81	\$ 44,280.00
Resound Networks, LLC	0024535437	KS-015-0202034	Kansas	419052	1	11	101	\$ 66,580.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	KS-015-0206005	Kansas	419052	1	3	12	\$ 19,860.00
Resound Networks, LLC	0024535437	KS-015-0209013	Kansas	419052	1	6	24	\$ 75,770.00
Resound Networks, LLC	0024535437	KS-015-0209031	Kansas	419052	1	14	34	\$ 112,315.00
Resound Networks, LLC	0024535437	KS-015-0209032	Kansas	419052	1	19	84	\$ 28,465.00
Resound Networks, LLC	0024535437	KS-017-9606002	Kansas	419052	1	73	337	\$ 97,644.00
Resound Networks, LLC	0024535437	KS-017-9606003	Kansas	419052	1	87	364	\$ 144,016.00
Resound Networks, LLC	0024535437	KS-019-9646003	Kansas	419052	1	24	95	\$ 336,852.00
Resound Networks, LLC	0024535437	KS-019-9646004	Kansas	419052	1	22	143	\$ 441,012.00
Resound Networks, LLC	0024535437	KS-019-9646005	Kansas	419052	1	52	165	\$ 767,046.00
Resound Networks, LLC	0024535437	KS-019-9646006	Kansas	419052	1	57	230	\$ 1,686,648.00
Resound Networks, LLC	0024535437	KS-021-9581003	Kansas	419052	1	11	33	\$ 118,455.00
Resound Networks, LLC	0024535437	KS-023-9502002	Kansas	419052	1	63	315	\$ 288,768.00
Resound Networks, LLC	0024535437	KS-023-9502003	Kansas	419052	1	78	383	\$ 238,176.00
Resound Networks, LLC	0024535437	KS-025-9671001	Kansas	419052	1	88	176	\$ 507,500.00
Resound Networks, LLC	0024535437	KS-025-9671002	Kansas	419052	1	6	6	\$ 75,805.00
Resound Networks, LLC	0024535437	KS-027-4581002	Kansas	419052	1	36	84	\$ 404,283.00
Resound Networks, LLC	0024535437	KS-027-4581004	Kansas	419052	1	4	9	\$ 59,586.00
Resound Networks, LLC	0024535437	KS-027-4582001	Kansas	419052	1	2	34	\$ 23,775.00
Resound Networks, LLC	0024535437	KS-027-4582002	Kansas	419052	1	6	47	\$ 30,231.00
Resound Networks, LLC	0024535437	KS-027-4582004	Kansas	419052	1	8	17	\$ 37,623.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	KS-033-9676001	Kansas	419052	1	10	44	\$ 162,379.70
Resound Networks, LLC	0024535437	KS-033-9676002	Kansas	419052	1	6	11	\$ 124,574.50
Resound Networks, LLC	0024535437	KS-035-4935003	Kansas	419052	1	4	64	\$ 47,988.00
Resound Networks, LLC	0024535437	KS-035-4938001	Kansas	419052	1	3	38	\$ 28,842.00
Resound Networks, LLC	0024535437	KS-035-4939001	Kansas	419052	1	9	29	\$ 42,126.00
Resound Networks, LLC	0024535437	KS-037-9566004	Kansas	419052	1	8	21	\$ 122,304.00
Resound Networks, LLC	0024535437	KS-037-9567003	Kansas	419052	1	9	44	\$ 110,012.30
Resound Networks, LLC	0024535437	KS-037-9569001	Kansas	419052	1	41	192	\$ 407,484.00
Resound Networks, LLC	0024535437	KS-037-9570001	Kansas	419052	1	11	26	\$ 60,336.00
Resound Networks, LLC	0024535437	KS-037-9572001	Kansas	419052	1	10	53	\$ 118,728.00
Resound Networks, LLC	0024535437	KS-037-9576002	Kansas	419052	1	46	328	\$ 178,880.00
Resound Networks, LLC	0024535437	KS-039-9512002	Kansas	419052	1	21	90	\$ 42,642.00
Resound Networks, LLC	0024535437	KS-039-9512003	Kansas	419052	1	37	195	\$ 101,784.00
Resound Networks, LLC	0024535437	KS-041-0841001	Kansas	419052	1	73	328	\$ 228,571.00
Resound Networks, LLC	0024535437	KS-041-0841002	Kansas	419052	1	24	89	\$ 93,408.00
Resound Networks, LLC	0024535437	KS-041-0841004	Kansas	419052	1	32	256	\$ 104,346.00
Resound Networks, LLC	0024535437	KS-041-0842002	Kansas	419052	1	35	159	\$ 80,459.00
Resound Networks, LLC	0024535437	KS-041-0842003	Kansas	419052	1	38	160	\$ 82,116.00
Resound Networks, LLC	0024535437	KS-041-0843001	Kansas	419052	1	31	157	\$ 107,963.10
Resound Networks, LLC	0024535437	KS-041-0843002	Kansas	419052	1	23	84	\$ 109,530.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	KS-041-0844001	Kansas	419052	1	10	44	\$ 69,078.00
Resound Networks, LLC	0024535437	KS-041-0844004	Kansas	419052	1	9	59	\$ 56,543.50
Resound Networks, LLC	0024535437	KS-041-0845001	Kansas	419052	1	58	181	\$ 225,796.00
Resound Networks, LLC	0024535437	KS-041-0845002	Kansas	419052	1	37	82	\$ 102,826.00
Resound Networks, LLC	0024535437	KS-041-0846002	Kansas	419052	1	3	8	\$ 7,970.00
Resound Networks, LLC	0024535437	KS-055-9601001	Kansas	419052	1	16	33	\$ 380,460.00
Resound Networks, LLC	0024535437	KS-057-9616001	Kansas	419052	1	71	150	\$ 158,257.00
Resound Networks, LLC	0024535437	KS-057-9616002	Kansas	419052	1	49	202	\$ 164,845.90
Resound Networks, LLC	0024535437	KS-057-9617001	Kansas	419052	1	38	80	\$ 81,446.30
Resound Networks, LLC	0024535437	KS-057-9617002	Kansas	419052	1	178	362	\$ 425,103.90
Resound Networks, LLC	0024535437	KS-057-9618001	Kansas	419052	1	21	57	\$ 49,980.00
Resound Networks, LLC	0024535437	KS-057-9618005	Kansas	419052	1	15	49	\$ 20,364.60
Resound Networks, LLC	0024535437	KS-057-9619001	Kansas	419052	1	5	13	\$ 2,964.50
Resound Networks, LLC	0024535437	KS-057-9619002	Kansas	419052	1	18	48	\$ 22,973.80
Resound Networks, LLC	0024535437	KS-057-9620003	Kansas	419052	1	12	57	\$ 44,373.00
Resound Networks, LLC	0024535437	KS-057-9620004	Kansas	419052	1	8	45	\$ 12,169.00
Resound Networks, LLC	0024535437	KS-057-9621021	Kansas	419052	1	4	14	\$ 6,950.00
Resound Networks, LLC	0024535437	KS-057-9621022	Kansas	419052	1	17	118	\$ 40,578.00
Resound Networks, LLC	0024535437	KS-061-0007001	Kansas	419052	1	97	344	\$ 480,069.00
Resound Networks, LLC	0024535437	KS-061-0008001	Kansas	419052	1	7	23	\$ 31,510.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	KS-061-0008002	Kansas	419052	1	26	127	\$ 299,880.80
Resound Networks, LLC	0024535437	KS-063-9552001	Kansas	419052	1	27	43	\$ 347,868.00
Resound Networks, LLC	0024535437	KS-071-9581002	Kansas	419052	1	37	49	\$ 619,585.00
Resound Networks, LLC	0024535437	KS-077-9616003	Kansas	419052	1	3	18	\$ 7,586.00
Resound Networks, LLC	0024535437	KS-077-9618001	Kansas	419052	1	19	73	\$ 37,282.00
Resound Networks, LLC	0024535437	KS-077-9618002	Kansas	419052	1	11	42	\$ 22,076.00
Resound Networks, LLC	0024535437	KS-079-0301004	Kansas	419052	1	7	26	\$ 48,948.00
Resound Networks, LLC	0024535437	KS-081-4631001	Kansas	419052	1	8	12	\$ 179,946.00
Resound Networks, LLC	0024535437	KS-083-4611001	Kansas	419052	1	163	263	\$ 1,516,712.40
Resound Networks, LLC	0024535437	KS-085-0828001	Kansas	419052	1	31	81	\$ 318,171.00
Resound Networks, LLC	0024535437	KS-085-0828002	Kansas	419052	1	45	123	\$ 609,003.00
Resound Networks, LLC	0024535437	KS-099-9501002	Kansas	419052	1	35	127	\$ 191,652.00
Resound Networks, LLC	0024535437	KS-099-9504001	Kansas	419052	1	16	28	\$ 61,592.00
Resound Networks, LLC	0024535437	KS-099-9505003	Kansas	419052	1	14	32	\$ 160,312.00
Resound Networks, LLC	0024535437	KS-099-9505004	Kansas	419052	1	9	31	\$ 21,480.00
Resound Networks, LLC	0024535437	KS-099-9506003	Kansas	419052	1	9	16	\$ 115,828.00
Resound Networks, LLC	0024535437	KS-109-9546002	Kansas	419052	1	54	147	\$ 389,472.00
Resound Networks, LLC	0024535437	KS-109-9546003	Kansas	419052	1	43	64	\$ 593,560.00
Resound Networks, LLC	0024535437	KS-111-0006001	Kansas	419052	1	6	16	\$ 144,670.50
Resound Networks, LLC	0024535437	KS-113-7882001	Kansas	419052	1	5	7	\$ 22,548.80

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Resound Networks, LLC	0024535437	KS-113-7882002	Kansas	419052	1	5	16	\$ 21,954.00
Resound Networks, LLC	0024535437	KS-115-4897003	Kansas	419052	1	3	3	\$ 27,456.00
Resound Networks, LLC	0024535437	KS-115-4898003	Kansas	419052	1	68	255	\$ 306,720.00
Resound Networks, LLC	0024535437	KS-117-0701823	Kansas	419052	1	26	89	\$ 96,402.00
Resound Networks, LLC	0024535437	KS-119-9666001	Kansas	419052	1	200	397	\$ 591,405.20
Resound Networks, LLC	0024535437	KS-119-9666002	Kansas	419052	1	43	140	\$ 23,510.40
Resound Networks, LLC	0024535437	KS-119-9666003	Kansas	419052	1	116	225	\$ 256,312.30
Resound Networks, LLC	0024535437	KS-119-9667001	Kansas	419052	1	66	194	\$ 46,666.40
Resound Networks, LLC	0024535437	KS-125-9501003	Kansas	419052	1	8	18	\$ 119,010.00
Resound Networks, LLC	0024535437	KS-125-9502001	Kansas	419052	1	7	10	\$ 44,478.00
Resound Networks, LLC	0024535437	KS-125-9502003	Kansas	419052	1	2	16	\$ 53,022.00
Resound Networks, LLC	0024535437	KS-125-9507002	Kansas	419052	1	4	7	\$ 53,616.00
Resound Networks, LLC	0024535437	KS-125-9507005	Kansas	419052	1	6	11	\$ 33,498.00
Resound Networks, LLC	0024535437	KS-125-9508001	Kansas	419052	1	10	43	\$ 98,640.00
Resound Networks, LLC	0024535437	KS-125-9508002	Kansas	419052	1	8	36	\$ 29,262.30
Resound Networks, LLC	0024535437	KS-125-9508005	Kansas	419052	1	4	6	\$ 35,766.00
Resound Networks, LLC	0024535437	KS-125-9509002	Kansas	419052	1	14	75	\$ 165,271.90
Resound Networks, LLC	0024535437	KS-127-9636001	Kansas	419052	1	17	34	\$ 71,080.00
Resound Networks, LLC	0024535437	KS-127-9636002	Kansas	419052	1	5	12	\$ 19,771.00
Resound Networks, LLC	0024535437	KS-127-9636004	Kansas	419052	1	10	19	\$ 24,020.00

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Resound Networks, LLC	0024535437	KS-127-9636005	Kansas	419052	1	4	10	\$ 18,156.00
Resound Networks, LLC	0024535437	KS-149-0001002	Kansas	419052	1	19	74	\$ 48,007.20
Resound Networks, LLC	0024535437	KS-149-0004003	Kansas	419052	1	8	62	\$ 22,973.80
Resound Networks, LLC	0024535437	KS-151-9687002	Kansas	419052	1	2	10	\$ 10,897.50
Resound Networks, LLC	0024535437	KS-151-9688001	Kansas	419052	1	5	17	\$ 8,665.00
Resound Networks, LLC	0024535437	KS-155-0008003	Kansas	419052	1	3	5	\$ 19,596.00
Resound Networks, LLC	0024535437	KS-155-0011003	Kansas	419052	1	5	13	\$ 5,707.00
Resound Networks, LLC	0024535437	KS-161-0002004	Kansas	419052	1	3	5	\$ 25,820.00
Resound Networks, LLC	0024535437	KS-161-0006001	Kansas	419052	1	2	5	\$ 18,366.00
Resound Networks, LLC	0024535437	KS-161-0009001	Kansas	419052	1	7	52	\$ 42,517.50
Resound Networks, LLC	0024535437	KS-161-0009002	Kansas	419052	1	3	55	\$ 56,088.00
Resound Networks, LLC	0024535437	KS-161-0009003	Kansas	419052	1	19	122	\$ 85,768.40
Resound Networks, LLC	0024535437	KS-161-0009004	Kansas	419052	1	26	202	\$ 91,162.50
Resound Networks, LLC	0024535437	KS-161-0010021	Kansas	419052	1	3	37	\$ 21,669.40
Resound Networks, LLC	0024535437	KS-169-0011004	Kansas	419052	1	27	117	\$ 292,578.00
Resound Networks, LLC	0024535437	KS-173-0054001	Kansas	419052	1	4	9	\$ 23,484.60
Resound Networks, LLC	0024535437	KS-173-0056002	Kansas	419052	1	4	21	\$ 21,414.00
Resound Networks, LLC	0024535437	KS-173-0058004	Kansas	419052	1	5	12	\$ 30,777.20
Resound Networks, LLC	0024535437	KS-173-0066002	Kansas	419052	1	3	9	\$ 39,180.00
Resound Networks, LLC	0024535437	KS-173-0081002	Kansas	419052	1	25	57	\$ 125,009.10

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Resound Networks, LLC	0024535437	KS-173-0092002	Kansas	419052	1	3	5	\$ 33,446.20
Resound Networks, LLC	0024535437	KS-173-0097001	Kansas	419052	1	27	281	\$ 109,990.00
Resound Networks, LLC	0024535437	KS-173-0097002	Kansas	419052	1	10	105	\$ 42,928.00
Resound Networks, LLC	0024535437	KS-173-0097003	Kansas	419052	1	9	103	\$ 74,352.00
Resound Networks, LLC	0024535437	KS-173-0099002	Kansas	419052	1	4	15	\$ 20,116.00
Resound Networks, LLC	0024535437	KS-173-0099005	Kansas	419052	1	11	39	\$ 71,256.00
Resound Networks, LLC	0024535437	KS-173-0099007	Kansas	419052	1	3	17	\$ 18,728.00
Resound Networks, LLC	0024535437	KS-173-0100011	Kansas	419052	1	4	9	\$ 18,126.00
Resound Networks, LLC	0024535437	KS-173-0100041	Kansas	419052	1	6	28	\$ 50,562.00
Resound Networks, LLC	0024535437	KS-173-0101131	Kansas	419052	1	2	4	\$ 23,244.00
Resound Networks, LLC	0024535437	KS-173-0101132	Kansas	419052	1	18	72	\$ 78,084.00
Resound Networks, LLC	0024535437	KS-173-0101161	Kansas	419052	1	37	148	\$ 317,378.20
Resound Networks, LLC	0024535437	KS-173-0102005	Kansas	419052	1	26	170	\$ 136,062.00
Resound Networks, LLC	0024535437	KS-173-0103003	Kansas	419052	1	7	34	\$ 25,572.00
Resound Networks, LLC	0024535437	KS-173-0103004	Kansas	419052	1	8	46	\$ 51,360.00
Resound Networks, LLC	0024535437	KS-173-0105001	Kansas	419052	1	20	101	\$ 66,666.00
Resound Networks, LLC	0024535437	KS-175-9656001	Kansas	419052	1	48	112	\$ 148,205.40
Resound Networks, LLC	0024535437	KS-175-9656002	Kansas	419052	1	66	333	\$ 203,172.20
Resound Networks, LLC	0024535437	KS-175-9656003	Kansas	419052	1	73	208	\$ 121,004.70
Resound Networks, LLC	0024535437	KS-175-9657001	Kansas	419052	1	10	26	\$ 30,543.70

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	KS-175-9659004	Kansas	419052	1	6	17	\$ 5,848.20
Resound Networks, LLC	0024535437	KS-175-9660003	Kansas	419052	1	4	12	\$ 24,006.00
Resound Networks, LLC	0024535437	KS-181-4536001	Kansas	419052	1	153	319	\$ 1,606,361.10
Resound Networks, LLC	0024535437	KS-181-4536002	Kansas	419052	1	40	73	\$ 413,440.80
Resound Networks, LLC	0024535437	KS-181-4537001	Kansas	419052	1	24	60	\$ 173,135.00
Resound Networks, LLC	0024535437	KS-181-4537002	Kansas	419052	1	16	52	\$ 121,526.20
Resound Networks, LLC	0024535437	KS-189-9651001	Kansas	419052	1	23	32	\$ 155,330.00
Resound Networks, LLC	0024535437	KS-191-9621003	Kansas	419052	1	3	5	\$ 11,145.00
Resound Networks, LLC	0024535437	KS-191-9624001	Kansas	419052	1	28	156	\$ 33,730.90
Resound Networks, LLC	0024535437	KS-191-9624003	Kansas	419052	1	10	53	\$ 10,407.50
Resound Networks, LLC	0024535437	KS-191-9624004	Kansas	419052	1	27	175	\$ 16,041.30
Resound Networks, LLC	0024535437	KS-191-9625001	Kansas	419052	1	30	134	\$ 87,676.00
Resound Networks, LLC	0024535437	KS-191-9625002	Kansas	419052	1	20	188	\$ 18,018.00
Resound Networks, LLC	0024535437	KS-191-9625004	Kansas	419052	1	24	103	\$ 32,349.00
Resound Networks, LLC	0024535437	KS-191-9625005	Kansas	419052	1	34	129	\$ 121,526.80
Resound Networks, LLC	0024535437	KS-193-9531001	Kansas	419052	1	7	18	\$ 37,515.00
Resound Networks, LLC	0024535437	KS-193-9531001	Kansas	419052	1	5	11	\$ 28,828.00
Resound Networks, LLC	0024535437	KS-193-9531002	Kansas	419052	1	9	17	\$ 82,068.00
Resound Networks, LLC	0024535437	KS-193-9531003	Kansas	419052	1	5	11	\$ 21,364.00
Resound Networks, LLC	0024535437	KS-193-9531005	Kansas	419052	1	4	4	\$ 35,320.00

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Resound Networks, LLC	0024535437	KS-193-9534001	Kansas	419052	1	156	319	\$ 1,848,944.00
Resound Networks, LLC	0024535437	KS-193-9534002	Kansas	419052	1	35	70	\$ 500,224.00
Resound Networks, LLC	0024535437	KS-197-4831001	Kansas	419052	1	84	329	\$ 308,589.00
Resound Networks, LLC	0024535437	KS-197-4831003	Kansas	419052	1	38	109	\$ 118,472.20
Resound Networks, LLC	0024535437	KS-197-4831004	Kansas	419052	1	19	51	\$ 56,653.00
Resound Networks, LLC	0024535437	KS-197-4831005	Kansas	419052	1	22	90	\$ 216,354.60
Resound Networks, LLC	0024535437	KS-197-4832001	Kansas	419052	1	51	284	\$ 1,197,270.00
Resound Networks, LLC	0024535437	KS-197-4832002	Kansas	419052	1	10	17	\$ 104,676.00
Resound Networks, LLC	0024535437	KS-203-9576001	Kansas	419052	1	38	45	\$ 116,498.00
Resound Networks, LLC	0024535437	NM-001-0047152	New Mexico	499033	1	19	159	\$ 347,406.00
Resound Networks, LLC	0024535437	NM-001-9406001	New Mexico	499033	1	22	158	\$ 738,660.00
Resound Networks, LLC	0024535437	NM-005-0006001	New Mexico	499033	1	8	15	\$ 33,348.00
Resound Networks, LLC	0024535437	NM-005-0011011	New Mexico	499033	1	14	27	\$ 7,731.30
Resound Networks, LLC	0024535437	NM-005-0011012	New Mexico	499033	1	11	48	\$ 4,447.20
Resound Networks, LLC	0024535437	NM-005-0011014	New Mexico	499033	1	2	5	\$ 23,826.00
Resound Networks, LLC	0024535437	NM-005-0011021	New Mexico	499033	1	63	308	\$ 1,025,563.50
Resound Networks, LLC	0024535437	NM-005-0011022	New Mexico	499033	1	25	72	\$ 190,098.00
Resound Networks, LLC	0024535437	NM-005-0011023	New Mexico	499033	1	17	46	\$ 22,645.40
Resound Networks, LLC	0024535437	NM-005-0012001	New Mexico	499033	1	18	129	\$ 10,447.70
Resound Networks, LLC	0024535437	NM-005-0012002	New Mexico	499033	1	25	139	\$ 576,704.20

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Resound Networks, LLC	0024535437	NM-005-0013002	New Mexico	499033	1	7	19	\$ 5,585.00
Resound Networks, LLC	0024535437	NM-007-9507001	New Mexico	499033	1	52	249	\$ 2,500,500.00
Resound Networks, LLC	0024535437	NM-007-9507002	New Mexico	499033	1	95	570	\$ 375,016.00
Resound Networks, LLC	0024535437	NM-009-0006022	New Mexico	499033	1	1	2	\$ 3,282.30
Resound Networks, LLC	0024535437	NM-009-0006023	New Mexico	499033	1	3	20	\$ 17,696.70
Resound Networks, LLC	0024535437	NM-009-0006031	New Mexico	499033	1	12	77	\$ 31,045.50
Resound Networks, LLC	0024535437	NM-009-0006032	New Mexico	499033	1	12	42	\$ 35,830.80
Resound Networks, LLC	0024535437	NM-013-0001021	New Mexico	499033	1	1	15	\$ 6,630.00
Resound Networks, LLC	0024535437	NM-013-0002012	New Mexico	499033	1	4	13	\$ 7,590.00
Resound Networks, LLC	0024535437	NM-013-0002014	New Mexico	499033	1	2	3	\$ 4,684.50
Resound Networks, LLC	0024535437	NM-013-0002022	New Mexico	499033	1	2	2	\$ 8,856.00
Resound Networks, LLC	0024535437	NM-013-0005002	New Mexico	499033	1	1	1	\$ 3,240.00
Resound Networks, LLC	0024535437	NM-013-0005003	New Mexico	499033	1	1	2	\$ 2,646.00
Resound Networks, LLC	0024535437	NM-013-0007001	New Mexico	499033	1	1	5	\$ 3,510.00
Resound Networks, LLC	0024535437	NM-013-0009002	New Mexico	499033	1	4	5	\$ 9,340.00
Resound Networks, LLC	0024535437	NM-013-0010002	New Mexico	499033	1	4	5	\$ 18,167.50
Resound Networks, LLC	0024535437	NM-013-0011021	New Mexico	499033	1	9	94	\$ 38,940.00
Resound Networks, LLC	0024535437	NM-013-0011032	New Mexico	499033	1	10	86	\$ 103,728.00
Resound Networks, LLC	0024535437	NM-013-0011043	New Mexico	499033	1	7	66	\$ 50,268.00
Resound Networks, LLC	0024535437	NM-013-0012011	New Mexico	499033	1	4	14	\$ 15,936.00

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Resound Networks, LLC	0024535437	NM-013-0012012	New Mexico	499033	1	5	17	\$ 49,674.00
Resound Networks, LLC	0024535437	NM-013-0012013	New Mexico	499033	1	6	75	\$ 35,742.00
Resound Networks, LLC	0024535437	NM-013-0012014	New Mexico	499033	1	5	11	\$ 52,437.00
Resound Networks, LLC	0024535437	NM-013-0012031	New Mexico	499033	1	1	1	\$ 2,952.00
Resound Networks, LLC	0024535437	NM-013-0012042	New Mexico	499033	1	19	86	\$ 434,142.00
Resound Networks, LLC	0024535437	NM-013-0012043	New Mexico	499033	1	2	3	\$ 3,894.00
Resound Networks, LLC	0024535437	NM-013-0013031	New Mexico	499033	1	22	102	\$ 118,602.00
Resound Networks, LLC	0024535437	NM-013-0013032	New Mexico	499033	1	3	18	\$ 17,832.00
Resound Networks, LLC	0024535437	NM-013-0013034	New Mexico	499033	1	1	2	\$ 9,024.00
Resound Networks, LLC	0024535437	NM-013-0013042	New Mexico	499033	1	3	15	\$ 11,904.00
Resound Networks, LLC	0024535437	NM-013-0013043	New Mexico	499033	1	1	2	\$ 5,754.00
Resound Networks, LLC	0024535437	NM-013-0013051	New Mexico	499033	1	4	10	\$ 11,814.50
Resound Networks, LLC	0024535437	NM-013-0013052	New Mexico	499033	1	21	170	\$ 359,106.00
Resound Networks, LLC	0024535437	NM-013-0013053	New Mexico	499033	1	3	3	\$ 15,822.00
Resound Networks, LLC	0024535437	NM-013-0013061	New Mexico	499033	1	1	5	\$ 10,854.00
Resound Networks, LLC	0024535437	NM-013-0013072	New Mexico	499033	1	17	66	\$ 64,212.00
Resound Networks, LLC	0024535437	NM-013-0013073	New Mexico	499033	1	2	5	\$ 7,662.00
Resound Networks, LLC	0024535437	NM-013-0013074	New Mexico	499033	1	5	51	\$ 561,204.00
Resound Networks, LLC	0024535437	NM-013-0014001	New Mexico	499033	1	31	237	\$ 319,326.00
Resound Networks, LLC	0024535437	NM-013-0014002	New Mexico	499033	1	49	224	\$ 501,096.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	NM-013-0014003	New Mexico	499033	1	8	37	\$ 325,878.00
Resound Networks, LLC	0024535437	NM-013-0014004	New Mexico	499033	1	16	70	\$ 107,652.00
Resound Networks, LLC	0024535437	NM-013-0015001	New Mexico	499033	1	9	54	\$ 30,402.00
Resound Networks, LLC	0024535437	NM-013-0015002	New Mexico	499033	1	4	19	\$ 32,952.00
Resound Networks, LLC	0024535437	NM-013-0015003	New Mexico	499033	1	31	323	\$ 1,405,098.00
Resound Networks, LLC	0024535437	NM-013-0015004	New Mexico	499033	1	4	15	\$ 54,066.00
Resound Networks, LLC	0024535437	NM-013-0016001	New Mexico	499033	1	34	217	\$ 4,984.10
Resound Networks, LLC	0024535437	NM-013-0016002	New Mexico	499033	1	19	52	\$ 262,014.00
Resound Networks, LLC	0024535437	NM-013-0017011	New Mexico	499033	1	13	62	\$ 394,500.00
Resound Networks, LLC	0024535437	NM-013-0017021	New Mexico	499033	1	72	474	\$ 14,768.50
Resound Networks, LLC	0024535437	NM-013-0017031	New Mexico	499033	1	15	128	\$ 5,567.70
Resound Networks, LLC	0024535437	NM-013-0017051	New Mexico	499033	1	1	7	\$ 6,936.00
Resound Networks, LLC	0024535437	NM-013-0017071	New Mexico	499033	1	5	32	\$ 634.60
Resound Networks, LLC	0024535437	NM-013-0018012	New Mexico	499033	1	7	91	\$ 958.60
Resound Networks, LLC	0024535437	NM-013-0018013	New Mexico	499033	1	8	63	\$ 614.10
Resound Networks, LLC	0024535437	NM-013-0018014	New Mexico	499033	1	3	8	\$ 5,154.00
Resound Networks, LLC	0024535437	NM-013-0018021	New Mexico	499033	1	46	330	\$ 16,958.60
Resound Networks, LLC	0024535437	NM-013-0018022	New Mexico	499033	1	7	57	\$ 29,484.00
Resound Networks, LLC	0024535437	NM-013-0018041	New Mexico	499033	1	32	101	\$ 2,314.20
Resound Networks, LLC	0024535437	NM-013-0018042	New Mexico	499033	1	16	119	\$ 843.20

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	NM-013-0018043	New Mexico	499033	1	3	28	\$ 161.70
Resound Networks, LLC	0024535437	NM-013-0018061	New Mexico	499033	1	4	29	\$ 60,642.00
Resound Networks, LLC	0024535437	NM-013-0019001	New Mexico	499033	1	1	2	\$ 20,034.00
Resound Networks, LLC	0024535437	NM-015-0004011	New Mexico	499033	1	2	17	\$ 16,710.00
Resound Networks, LLC	0024535437	NM-015-0004012	New Mexico	499033	1	4	5	\$ 2,243.50
Resound Networks, LLC	0024535437	NM-015-0006003	New Mexico	499033	1	9	54	\$ 58,443.00
Resound Networks, LLC	0024535437	NM-015-0007001	New Mexico	499033	1	2	3	\$ 942.90
Resound Networks, LLC	0024535437	NM-015-0007002	New Mexico	499033	1	7	35	\$ 184,458.00
Resound Networks, LLC	0024535437	NM-015-0007003	New Mexico	499033	1	6	16	\$ 11,931.90
Resound Networks, LLC	0024535437	NM-015-0007004	New Mexico	499033	1	25	151	\$ 38,010.30
Resound Networks, LLC	0024535437	NM-015-0008001	New Mexico	499033	1	22	114	\$ 20,868.40
Resound Networks, LLC	0024535437	NM-015-0009001	New Mexico	499033	1	14	93	\$ 518,015.70
Resound Networks, LLC	0024535437	NM-015-0009002	New Mexico	499033	1	40	105	\$ 31,867.90
Resound Networks, LLC	0024535437	NM-015-0009003	New Mexico	499033	1	12	79	\$ 9,207.10
Resound Networks, LLC	0024535437	NM-015-0010001	New Mexico	499033	1	15	38	\$ 6,049.80
Resound Networks, LLC	0024535437	NM-015-0011002	New Mexico	499033	1	11	56	\$ 8,015.20
Resound Networks, LLC	0024535437	NM-025-0011003	New Mexico	499033	1	6	37	\$ 41,838.00
Resound Networks, LLC	0024535437	NM-025-0011005	New Mexico	499033	1	4	7	\$ 53,760.00
Resound Networks, LLC	0024535437	NM-029-0001001	New Mexico	499033	1	66	228	\$ 516,906.00
Resound Networks, LLC	0024535437	NM-029-0002002	New Mexico	499033	1	4	9	\$ 31,836.60

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	NM-029-0004001	New Mexico	499033	1	34	70	\$ 399,296.50
Resound Networks, LLC	0024535437	NM-029-0004002	New Mexico	499033	1	17	64	\$ 340,566.60
Resound Networks, LLC	0024535437	NM-029-0004003	New Mexico	499033	1	106	422	\$ 2,065,804.50
Resound Networks, LLC	0024535437	NM-029-0004004	New Mexico	499033	1	8	40	\$ 70,536.70
Resound Networks, LLC	0024535437	NM-029-0005001	New Mexico	499033	1	81	349	\$ 1,248,135.80
Resound Networks, LLC	0024535437	NM-029-0005002	New Mexico	499033	1	76	178	\$ 924,569.50
Resound Networks, LLC	0024535437	NM-029-0005003	New Mexico	499033	1	50	229	\$ 1,394,809.20
Resound Networks, LLC	0024535437	NM-029-0006001	New Mexico	499033	1	4	8	\$ 17,250.00
Resound Networks, LLC	0024535437	NM-029-0006002	New Mexico	499033	1	1	5	\$ 4,153.30
Resound Networks, LLC	0024535437	NM-033-9552005	New Mexico	499033	1	24	105	\$ 485,388.00
Resound Networks, LLC	0024535437	NM-037-9586011	New Mexico	499033	1	36	154	\$ 259,639.30
Resound Networks, LLC	0024535437	NM-037-9586012	New Mexico	499033	1	4	25	\$ 18,486.50
Resound Networks, LLC	0024535437	NM-037-9586013	New Mexico	499033	1	17	81	\$ 43,723.90
Resound Networks, LLC	0024535437	NM-037-9586021	New Mexico	499033	1	46	249	\$ 492,407.60
Resound Networks, LLC	0024535437	NM-037-9586023	New Mexico	499033	1	47	173	\$ 103,210.60
Resound Networks, LLC	0024535437	NM-037-9589002	New Mexico	499033	1	21	113	\$ 511,584.00
Resound Networks, LLC	0024535437	NM-037-9589003	New Mexico	499033	1	17	65	\$ 464,772.00
Resound Networks, LLC	0024535437	NM-041-0001004	New Mexico	499033	1	11	28	\$ 5,733.70
Resound Networks, LLC	0024535437	NM-041-0003004	New Mexico	499033	1	3	14	\$ 5,730.30
Resound Networks, LLC	0024535437	NM-041-0004011	New Mexico	499033	1	35	90	\$ 125,705.20

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Resound Networks, LLC	0024535437	NM-041-0004012	New Mexico	499033	1	29	135	\$ 41,413.50
Resound Networks, LLC	0024535437	NM-041-0004013	New Mexico	499033	1	51	334	\$ 214,796.00
Resound Networks, LLC	0024535437	NM-041-0004022	New Mexico	499033	1	35	190	\$ 60,772.20
Resound Networks, LLC	0024535437	NM-041-0004023	New Mexico	499033	1	10	38	\$ 21,516.50
Resound Networks, LLC	0024535437	NM-047-9572001	New Mexico	499033	1	18	95	\$ 77,364.00
Resound Networks, LLC	0024535437	NM-047-9573003	New Mexico	499033	1	19	135	\$ 61,140.00
Resound Networks, LLC	0024535437	NM-047-9574001	New Mexico	499033	1	11	115	\$ 118,285.50
Resound Networks, LLC	0024535437	NM-047-9574003	New Mexico	499033	1	8	75	\$ 24,450.00
Resound Networks, LLC	0024535437	NM-047-9574004	New Mexico	499033	1	7	26	\$ 25,416.00
Resound Networks, LLC	0024535437	NM-047-9575001	New Mexico	499033	1	18	110	\$ 989,856.00
Resound Networks, LLC	0024535437	NM-047-9578001	New Mexico	499033	1	5	49	\$ 42,414.00
Resound Networks, LLC	0024535437	NM-047-9578002	New Mexico	499033	1	5	33	\$ 73,440.00
Resound Networks, LLC	0024535437	NM-049-0103101	New Mexico	499033	1	83	628	\$ 1,770,030.00
Resound Networks, LLC	0024535437	NM-049-0103111	New Mexico	499033	1	34	217	\$ 237,234.00
Resound Networks, LLC	0024535437	NM-049-0103121	New Mexico	499033	1	5	26	\$ 56,640.00
Resound Networks, LLC	0024535437	NM-051-9624011	New Mexico	499033	1	73	366	\$ 1,571,955.10
Resound Networks, LLC	0024535437	NM-051-9624012	New Mexico	499033	1	12	26	\$ 34,152.00
Resound Networks, LLC	0024535437	NM-051-9624021	New Mexico	499033	1	38	127	\$ 769,770.00
Resound Networks, LLC	0024535437	NM-051-9624022	New Mexico	499033	1	37	161	\$ 579,420.00
Resound Networks, LLC	0024535437	NM-053-9781001	New Mexico	499033	1	123	707	\$ 2,513,544.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	NM-053-9781002	New Mexico	499033	1	180	652	\$ 2,344,050.00
Resound Networks, LLC	0024535437	NM-053-9782001	New Mexico	499033	1	29	178	\$ 1,218,414.00
Resound Networks, LLC	0024535437	NM-053-9783011	New Mexico	499033	1	19	66	\$ 97,104.00
Resound Networks, LLC	0024535437	NM-053-9783012	New Mexico	499033	1	8	36	\$ 56,586.00
Resound Networks, LLC	0024535437	NM-053-9783031	New Mexico	499033	1	25	203	\$ 224,531.00
Resound Networks, LLC	0024535437	NM-053-9783032	New Mexico	499033	1	36	191	\$ 347,562.00
Resound Networks, LLC	0024535437	NM-057-9632011	New Mexico	499033	1	62	233	\$ 493,956.00
Resound Networks, LLC	0024535437	NM-057-9632012	New Mexico	499033	1	13	54	\$ 273,102.00
Resound Networks, LLC	0024535437	NM-057-9632021	New Mexico	499033	1	8	26	\$ 71,442.00
Resound Networks, LLC	0024535437	NM-057-9632022	New Mexico	499033	1	57	375	\$ 814,158.00
Resound Networks, LLC	0024535437	NM-057-9636001	New Mexico	499033	1	41	178	\$ 894,576.00
Resound Networks, LLC	0024535437	NM-057-9636002	New Mexico	499033	1	77	366	\$ 2,063,298.00
Resound Networks, LLC	0024535437	NM-057-9636003	New Mexico	499033	1	26	92	\$ 303,264.00
Resound Networks, LLC	0024535437	NM-057-9636004	New Mexico	499033	1	91	456	\$ 1,539,030.00
Resound Networks, LLC	0024535437	NM-057-9636005	New Mexico	499033	1	120	470	\$ 4,133,658.00
Resound Networks, LLC	0024535437	NM-057-9637001	New Mexico	499033	1	42	117	\$ 758,646.00
Resound Networks, LLC	0024535437	NM-057-9637002	New Mexico	499033	1	174	649	\$ 4,371,708.00
Resound Networks, LLC	0024535437	NM-059-9502003	New Mexico	499033	1	1	4	\$ 30,600.00
Resound Networks, LLC	0024535437	NM-061-9403001	New Mexico	499033	1	23	159	\$ 237,024.00
Resound Networks, LLC	0024535437	NM-061-9701023	New Mexico	499033	1	3	13	\$ 5,070.00

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Applicant Name	FRN	Winning Bid Name	Winning Bid State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	NM-061-9701025	New Mexico	499033	1	3	21	\$ 13,248.00
Resound Networks, LLC	0024535437	NM-061-9703011	New Mexico	499033	1	2	8	\$ 16,236.00
Resound Networks, LLC	0024535437	NM-061-9703012	New Mexico	499033	1	2	48	\$ 25,896.00
Resound Networks, LLC	0024535437	NM-061-9703021	New Mexico	499033	1	5	49	\$ 156,408.00
Resound Networks, LLC	0024535437	NM-061-9703022	New Mexico	499033	1	3	13	\$ 198,900.00
Resound Networks, LLC	0024535437	NM-061-9703031	New Mexico	499033	1	4	13	\$ 15,228.00
Resound Networks, LLC	0024535437	NM-061-9703033	New Mexico	499033	1	7	29	\$ 7,440.00
Resound Networks, LLC	0024535437	NM-061-9703034	New Mexico	499033	1	5	16	\$ 15,282.00
Resound Networks, LLC	0024535437	NM-061-9704042	New Mexico	499033	1	1	14	\$ 12,619.60
Resound Networks, LLC	0024535437	NM-061-9704051	New Mexico	499033	1	10	64	\$ 196,086.00
Resound Networks, LLC	0024535437	NM-061-9707001	New Mexico	499033	1	4	7	\$ 4,038.00
Resound Networks, LLC	0024535437	NM-061-9707002	New Mexico	499033	1	3	6	\$ 6,050.00
Resound Networks, LLC	0024535437	NM-061-9707003	New Mexico	499033	1	3	38	\$ 6,990.00
Resound Networks, LLC	0024535437	NM-061-9707004	New Mexico	499033	1	2	6	\$ 22,332.00
Resound Networks, LLC	0024535437	NM-061-9708002	New Mexico	499033	1	3	12	\$ 12,438.00
Resound Networks, LLC	0024535437	NM-061-9709011	New Mexico	499033	1	2	2	\$ 5,778.00
Resound Networks, LLC	0024535437	NM-061-9709014	New Mexico	499033	1	2	31	\$ 8,164.90
Resound Networks, LLC	0024535437	NM-061-9709021	New Mexico	499033	1	27	152	\$ 74,682.00
Resound Networks, LLC	0024535437	NM-061-9711001	New Mexico	499033	1	59	287	\$ 2,212,410.00
Resound Networks, LLC	0024535437	NM-061-9714002	New Mexico	499033	1	8	75	\$ 480,372.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	OK-007-9517001	Oklahoma	439089	1	6	7	\$ 34,800.00
Resound Networks, LLC	0024535437	OK-007-9517002	Oklahoma	439089	1	15	16	\$ 81,500.00
Resound Networks, LLC	0024535437	OK-009-9661002	Oklahoma	439089	1	10	31	\$ 28,325.00
Resound Networks, LLC	0024535437	OK-009-9662001	Oklahoma	439089	1	9	46	\$ 48,130.00
Resound Networks, LLC	0024535437	OK-009-9662002	Oklahoma	439089	1	29	124	\$ 87,338.30
Resound Networks, LLC	0024535437	OK-009-9662003	Oklahoma	439089	1	5	37	\$ 17,476.30
Resound Networks, LLC	0024535437	OK-009-9665001	Oklahoma	439089	1	9	16	\$ 183,980.00
Resound Networks, LLC	0024535437	OK-009-9668001	Oklahoma	439089	1	18	33	\$ 235,650.00
Resound Networks, LLC	0024535437	OK-013-7956001	Oklahoma	439089	1	45	195	\$ 292,714.00
Resound Networks, LLC	0024535437	OK-013-7956002	Oklahoma	439089	1	30	156	\$ 359,948.00
Resound Networks, LLC	0024535437	OK-013-7957001	Oklahoma	439089	1	50	168	\$ 380,938.00
Resound Networks, LLC	0024535437	OK-013-7957003	Oklahoma	439089	1	11	14	\$ 89,345.00
Resound Networks, LLC	0024535437	OK-013-7960011	Oklahoma	439089	1	12	20	\$ 29,635.00
Resound Networks, LLC	0024535437	OK-013-7960012	Oklahoma	439089	1	17	46	\$ 77,960.00
Resound Networks, LLC	0024535437	OK-013-7960022	Oklahoma	439089	1	5	22	\$ 30,285.00
Resound Networks, LLC	0024535437	OK-015-1619001	Oklahoma	439089	1	3	6	\$ 44,105.00
Resound Networks, LLC	0024535437	OK-015-1619002	Oklahoma	439089	1	35	232	\$ 44,875.00
Resound Networks, LLC	0024535437	OK-015-1620001	Oklahoma	439089	1	52	222	\$ 287,122.00
Resound Networks, LLC	0024535437	OK-015-1621001	Oklahoma	439089	1	15	101	\$ 174,005.00
Resound Networks, LLC	0024535437	OK-015-1621002	Oklahoma	439089	1	26	97	\$ 249,170.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	OK-015-1621003	Oklahoma	439089	1	14	137	\$ 112,515.00
Resound Networks, LLC	0024535437	OK-015-1621006	Oklahoma	439089	1	14	108	\$ 22,350.00
Resound Networks, LLC	0024535437	OK-015-1621007	Oklahoma	439089	1	21	185	\$ 198,860.00
Resound Networks, LLC	0024535437	OK-015-1623002	Oklahoma	439089	1	52	184	\$ 279,040.00
Resound Networks, LLC	0024535437	OK-017-3002011	Oklahoma	439089	1	9	113	\$ 32,565.00
Resound Networks, LLC	0024535437	OK-017-3002012	Oklahoma	439089	1	2	28	\$ 4,712.00
Resound Networks, LLC	0024535437	OK-017-3002014	Oklahoma	439089	1	9	114	\$ 14,145.00
Resound Networks, LLC	0024535437	OK-017-3002021	Oklahoma	439089	1	3	42	\$ 3,138.90
Resound Networks, LLC	0024535437	OK-017-3008014	Oklahoma	439089	1	10	137	\$ 109,434.00
Resound Networks, LLC	0024535437	OK-017-3013002	Oklahoma	439089	1	9	84	\$ 55,980.00
Resound Networks, LLC	0024535437	OK-023-9669002	Oklahoma	439089	1	9	42	\$ 17,052.00
Resound Networks, LLC	0024535437	OK-023-9669003	Oklahoma	439089	1	27	221	\$ 108,174.00
Resound Networks, LLC	0024535437	OK-023-9670002	Oklahoma	439089	1	5	24	\$ 13,650.00
Resound Networks, LLC	0024535437	OK-023-9671001	Oklahoma	439089	1	8	118	\$ 42,351.00
Resound Networks, LLC	0024535437	OK-023-9671002	Oklahoma	439089	1	30	170	\$ 33,780.00
Resound Networks, LLC	0024535437	OK-023-9671003	Oklahoma	439089	1	32	287	\$ 68,067.00
Resound Networks, LLC	0024535437	OK-023-9671004	Oklahoma	439089	1	16	131	\$ 21,018.00
Resound Networks, LLC	0024535437	OK-023-9672001	Oklahoma	439089	1	39	215	\$ 79,129.90
Resound Networks, LLC	0024535437	OK-023-9672002	Oklahoma	439089	1	10	75	\$ 21,834.00
Resound Networks, LLC	0024535437	OK-023-9672003	Oklahoma	439089	1	47	242	\$ 61,242.00

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Resound Networks, LLC	0024535437	OK-023-9673003	Oklahoma	439089	1	47	320	\$ 97,710.00
Resound Networks, LLC	0024535437	OK-031-0004032	Oklahoma	439089	1	6	26	\$ 3,904.00
Resound Networks, LLC	0024535437	OK-031-0020042	Oklahoma	439089	1	7	9	\$ 12,429.00
Resound Networks, LLC	0024535437	OK-031-0023012	Oklahoma	439089	1	18	208	\$ 105,910.00
Resound Networks, LLC	0024535437	OK-031-0023014	Oklahoma	439089	1	25	222	\$ 52,995.00
Resound Networks, LLC	0024535437	OK-031-0023021	Oklahoma	439089	1	9	35	\$ 34,998.00
Resound Networks, LLC	0024535437	OK-031-0023022	Oklahoma	439089	1	15	49	\$ 58,629.00
Resound Networks, LLC	0024535437	OK-031-0023023	Oklahoma	439089	1	3	3	\$ 3,207.00
Resound Networks, LLC	0024535437	OK-031-0024012	Oklahoma	439089	1	2	28	\$ 21,922.00
Resound Networks, LLC	0024535437	OK-031-0024041	Oklahoma	439089	1	7	12	\$ 13,708.00
Resound Networks, LLC	0024535437	OK-033-8711002	Oklahoma	439089	1	2	11	\$ 1,311.80
Resound Networks, LLC	0024535437	OK-033-8711003	Oklahoma	439089	1	11	32	\$ 6,248.80
Resound Networks, LLC	0024535437	OK-033-8711004	Oklahoma	439089	1	7	32	\$ 7,820.90
Resound Networks, LLC	0024535437	OK-033-8712002	Oklahoma	439089	1	2	3	\$ 6,855.00
Resound Networks, LLC	0024535437	OK-035-3731001	Oklahoma	439089	1	37	101	\$ 593,736.00
Resound Networks, LLC	0024535437	OK-035-3731002	Oklahoma	439089	1	9	22	\$ 123,075.00
Resound Networks, LLC	0024535437	OK-035-3732001	Oklahoma	439089	1	35	83	\$ 391,182.00
Resound Networks, LLC	0024535437	OK-035-3732002	Oklahoma	439089	1	18	139	\$ 210,141.00
Resound Networks, LLC	0024535437	OK-035-3734003	Oklahoma	439089	1	11	39	\$ 23,810.00
Resound Networks, LLC	0024535437	OK-035-3735001	Oklahoma	439089	1	12	38	\$ 73,890.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	OK-035-3735002	Oklahoma	439089	1	27	79	\$ 32,964.00
Resound Networks, LLC	0024535437	OK-039-9604005	Oklahoma	439089	1	8	57	\$ 69,502.00
Resound Networks, LLC	0024535437	OK-039-9604006	Oklahoma	439089	1	27	119	\$ 65,370.00
Resound Networks, LLC	0024535437	OK-039-9606001	Oklahoma	439089	1	3	3	\$ 24,030.00
Resound Networks, LLC	0024535437	OK-039-9610001	Oklahoma	439089	1	81	351	\$ 442,646.00
Resound Networks, LLC	0024535437	OK-039-9610002	Oklahoma	439089	1	5	7	\$ 37,380.00
Resound Networks, LLC	0024535437	OK-045-9528001	Oklahoma	439089	1	3	7	\$ 37,380.00
Resound Networks, LLC	0024535437	OK-047-0002002	Oklahoma	439089	1	4	17	\$ 18,018.00
Resound Networks, LLC	0024535437	OK-047-0011001	Oklahoma	439089	1	46	251	\$ 260,244.00
Resound Networks, LLC	0024535437	OK-047-0011002	Oklahoma	439089	1	1	20	\$ 22,195.00
Resound Networks, LLC	0024535437	OK-047-0012002	Oklahoma	439089	1	24	150	\$ 174,954.00
Resound Networks, LLC	0024535437	OK-047-0012003	Oklahoma	439089	1	38	525	\$ 138,888.00
Resound Networks, LLC	0024535437	OK-047-0015001	Oklahoma	439089	1	27	124	\$ 101,820.00
Resound Networks, LLC	0024535437	OK-047-0015006	Oklahoma	439089	1	29	111	\$ 65,409.00
Resound Networks, LLC	0024535437	OK-047-0016011	Oklahoma	439089	1	16	135	\$ 63,702.00
Resound Networks, LLC	0024535437	OK-049-6811001	Oklahoma	439089	1	47	224	\$ 569,271.00
Resound Networks, LLC	0024535437	OK-049-6811002	Oklahoma	439089	1	40	294	\$ 154,482.00
Resound Networks, LLC	0024535437	OK-049-6811003	Oklahoma	439089	1	61	331	\$ 61,965.00
Resound Networks, LLC	0024535437	OK-049-6812001	Oklahoma	439089	1	31	169	\$ 599,697.00
Resound Networks, LLC	0024535437	OK-049-6812003	Oklahoma	439089	1	13	24	\$ 69,744.00

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Resound Networks, LLC	0024535437	OK-049-6814001	Oklahoma	439089	1	7	8	\$ 51,035.00
Resound Networks, LLC	0024535437	OK-049-6816001	Oklahoma	439089	1	12	28	\$ 101,679.00
Resound Networks, LLC	0024535437	OK-049-6816002	Oklahoma	439089	1	17	34	\$ 107,640.00
Resound Networks, LLC	0024535437	OK-049-6817001	Oklahoma	439089	1	17	33	\$ 188,610.00
Resound Networks, LLC	0024535437	OK-049-6817002	Oklahoma	439089	1	19	51	\$ 218,283.00
Resound Networks, LLC	0024535437	OK-049-6819002	Oklahoma	439089	1	5	6	\$ 65,245.00
Resound Networks, LLC	0024535437	OK-051-0009013	Oklahoma	439089	1	21	105	\$ 19,890.00
Resound Networks, LLC	0024535437	OK-051-0009023	Oklahoma	439089	1	18	176	\$ 11,959.00
Resound Networks, LLC	0024535437	OK-051-0009031	Oklahoma	439089	1	16	358	\$ 15,572.00
Resound Networks, LLC	0024535437	OK-051-0009032	Oklahoma	439089	1	12	149	\$ 15,629.80
Resound Networks, LLC	0024535437	OK-051-0009034	Oklahoma	439089	1	7	134	\$ 16,817.00
Resound Networks, LLC	0024535437	OK-053-9565003	Oklahoma	439089	1	59	214	\$ 287,060.00
Resound Networks, LLC	0024535437	OK-055-9671002	Oklahoma	439089	1	102	401	\$ 78,950.00
Resound Networks, LLC	0024535437	OK-065-9682001	Oklahoma	439089	1	26	78	\$ 23,933.00
Resound Networks, LLC	0024535437	OK-065-9682002	Oklahoma	439089	1	19	107	\$ 31,367.00
Resound Networks, LLC	0024535437	OK-065-9683001	Oklahoma	439089	1	80	329	\$ 95,401.00
Resound Networks, LLC	0024535437	OK-065-9683002	Oklahoma	439089	1	86	361	\$ 80,897.00
Resound Networks, LLC	0024535437	OK-065-9685001	Oklahoma	439089	1	8	20	\$ 6,726.90
Resound Networks, LLC	0024535437	OK-065-9687002	Oklahoma	439089	1	15	33	\$ 11,000.00
Resound Networks, LLC	0024535437	OK-071-0006001	Oklahoma	439089	1	18	102	\$ 104,725.00

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Resound Networks, LLC	0024535437	OK-071-00106002	Oklahoma	439089	1	28	251	\$ 198,290.00
Resound Networks, LLC	0024535437	OK-071-0011002	Oklahoma	439089	1	17	70	\$ 107,285.00
Resound Networks, LLC	0024535437	OK-071-0012001	Oklahoma	439089	1	20	111	\$ 258,290.00
Resound Networks, LLC	0024535437	OK-071-0012002	Oklahoma	439089	1	41	181	\$ 79,135.00
Resound Networks, LLC	0024535437	OK-071-0012003	Oklahoma	439089	1	14	43	\$ 17,025.00
Resound Networks, LLC	0024535437	OK-071-0012004	Oklahoma	439089	1	50	246	\$ 51,531.00
Resound Networks, LLC	0024535437	OK-071-0013011	Oklahoma	439089	1	21	189	\$ 29,024.40
Resound Networks, LLC	0024535437	OK-071-0013012	Oklahoma	439089	1	20	85	\$ 24,600.00
Resound Networks, LLC	0024535437	OK-071-0013013	Oklahoma	439089	1	50	308	\$ 45,069.70
Resound Networks, LLC	0024535437	OK-071-0013021	Oklahoma	439089	1	65	342	\$ 68,133.40
Resound Networks, LLC	0024535437	OK-071-0013023	Oklahoma	439089	1	30	156	\$ 64,286.20
Resound Networks, LLC	0024535437	OK-075-9636001	Oklahoma	439089	1	11	51	\$ 12,844.00
Resound Networks, LLC	0024535437	OK-075-9637001	Oklahoma	439089	1	6	8	\$ 23,688.00
Resound Networks, LLC	0024535437	OK-075-9642001	Oklahoma	439089	1	44	219	\$ 85,963.00
Resound Networks, LLC	0024535437	OK-075-9642002	Oklahoma	439089	1	33	105	\$ 106,122.00
Resound Networks, LLC	0024535437	OK-075-9642003	Oklahoma	439089	1	9	14	\$ 5,124.00
Resound Networks, LLC	0024535437	OK-087-4002011	Oklahoma	439089	1	49	307	\$ 844,647.00
Resound Networks, LLC	0024535437	OK-087-4002012	Oklahoma	439089	1	4	13	\$ 43,356.00
Resound Networks, LLC	0024535437	OK-087-4002013	Oklahoma	439089	1	7	63	\$ 119,919.00
Resound Networks, LLC	0024535437	OK-087-4003005	Oklahoma	439089	1	4	23	\$ 11,616.00

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Resound Networks, LLC	0024535437	OK-087-4004001	Oklahoma	439089	1	48	291	\$ 608,148.00
Resound Networks, LLC	0024535437	OK-093-9553001	Oklahoma	439089	1	29	400	\$ 10,408.50
Resound Networks, LLC	0024535437	OK-093-9553002	Oklahoma	439089	1	82	425	\$ 16,689.00
Resound Networks, LLC	0024535437	OK-093-9553003	Oklahoma	439089	1	34	138	\$ 2,610.00
Resound Networks, LLC	0024535437	OK-103-9566001	Oklahoma	439089	1	46	156	\$ 68,017.70
Resound Networks, LLC	0024535437	OK-103-9566002	Oklahoma	439089	1	25	278	\$ 41,515.70
Resound Networks, LLC	0024535437	OK-103-9570001	Oklahoma	439089	1	4	23	\$ 4,749.00
Resound Networks, LLC	0024535437	OK-103-9571001	Oklahoma	439089	1	37	172	\$ 82,135.00
Resound Networks, LLC	0024535437	OK-103-9571002	Oklahoma	439089	1	32	102	\$ 53,841.00
Resound Networks, LLC	0024535437	OK-103-9571003	Oklahoma	439089	1	12	54	\$ 17,894.00
Resound Networks, LLC	0024535437	OK-105-1721001	Oklahoma	439089	1	11	56	\$ 331,675.00
Resound Networks, LLC	0024535437	OK-105-1722001	Oklahoma	439089	1	16	31	\$ 380,290.00
Resound Networks, LLC	0024535437	OK-105-1722002	Oklahoma	439089	1	28	127	\$ 123,423.00
Resound Networks, LLC	0024535437	OK-105-1723002	Oklahoma	439089	1	33	122	\$ 814,610.30
Resound Networks, LLC	0024535437	OK-105-1724001	Oklahoma	439089	1	4	19	\$ 18,924.00
Resound Networks, LLC	0024535437	OK-105-1724004	Oklahoma	439089	1	6	18	\$ 30,885.00
Resound Networks, LLC	0024535437	OK-129-9600002	Oklahoma	439089	1	34	65	\$ 231,428.00
Resound Networks, LLC	0024535437	OK-129-9600003	Oklahoma	439089	1	17	32	\$ 348,515.00
Resound Networks, LLC	0024535437	OK-137-0001021	Oklahoma	439089	1	15	26	\$ 13,716.00
Resound Networks, LLC	0024535437	OK-137-0006003	Oklahoma	439089	1	9	16	\$ 23,223.00

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Resound Networks, LLC	0024535437	OK-137-0009021	Oklahoma	439089	1	22	95	\$ 235,437.00
Resound Networks, LLC	0024535437	OK-137-0009022	Oklahoma	439089	1	24	88	\$ 56,730.00
Resound Networks, LLC	0024535437	OK-149-9649001	Oklahoma	439089	1	63	211	\$ 292,866.00
Resound Networks, LLC	0024535437	OK-149-9649002	Oklahoma	439089	1	61	165	\$ 362,664.00
Resound Networks, LLC	0024535437	OK-149-9649003	Oklahoma	439089	1	16	76	\$ 86,474.00
Resound Networks, LLC	0024535437	OK-149-9650001	Oklahoma	439089	1	32	111	\$ 102,778.00
Resound Networks, LLC	0024535437	OK-149-9650002	Oklahoma	439089	1	44	168	\$ 166,428.00
Resound Networks, LLC	0024535437	OK-149-9651002	Oklahoma	439089	1	9	19	\$ 28,409.10
Resound Networks, LLC	0024535437	OK-149-9654001	Oklahoma	439089	1	6	64	\$ 53,325.00
Resound Networks, LLC	0024535437	OK-149-9654002	Oklahoma	439089	1	10	25	\$ 73,628.00
Resound Networks, LLC	0024535437	OK-151-9543003	Oklahoma	439089	1	2	37	\$ 9,849.00
Resound Networks, LLC	0024535437	OK-153-9532001	Oklahoma	439089	1	5	41	\$ 60,420.00
Resound Networks, LLC	0024535437	OK-153-9532003	Oklahoma	439089	1	7	26	\$ 50,415.00
Resound Networks, LLC	0024535437	OK-153-9533001	Oklahoma	439089	1	40	179	\$ 11,432.00
Resound Networks, LLC	0024535437	OK-153-9533004	Oklahoma	439089	1	19	94	\$ 2,550.70
Resound Networks, LLC	0024535437	OK-153-9534004	Oklahoma	439089	1	9	59	\$ 2,628.50
Resound Networks, LLC	0024535437	TX-003-9501001	Texas	449107	1	3	7	\$ 8,780.10
Resound Networks, LLC	0024535437	TX-003-9504001	Texas	449107	1	3	21	\$ 6,103.40
Resound Networks, LLC	0024535437	TX-009-0201002	Texas	449107	1	20	306	\$ 64,140.00
Resound Networks, LLC	0024535437	TX-009-0202001	Texas	449107	1	2	2	\$ 20,545.00

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Resound Networks, LLC	0024535437	TX-011-9501001	Texas	449107	1	30	90	\$ 6,189.00
Resound Networks, LLC	0024535437	TX-011-9501003	Texas	449107	1	9	25	\$ 772.20
Resound Networks, LLC	0024535437	TX-015-7601001	Texas	449107	1	5	8	\$ 21,432.00
Resound Networks, LLC	0024535437	TX-015-7601002	Texas	449107	1	8	18	\$ 5,773.00
Resound Networks, LLC	0024535437	TX-015-7602002	Texas	449107	1	22	115	\$ 62,982.00
Resound Networks, LLC	0024535437	TX-015-7602003	Texas	449107	1	9	102	\$ 35,742.00
Resound Networks, LLC	0024535437	TX-015-7603002	Texas	449107	1	9	19	\$ 40,242.00
Resound Networks, LLC	0024535437	TX-015-7603003	Texas	449107	1	11	78	\$ 69,848.00
Resound Networks, LLC	0024535437	TX-025-9502013	Texas	449107	1	13	49	\$ 61,370.00
Resound Networks, LLC	0024535437	TX-025-9502022	Texas	449107	1	6	20	\$ 71,545.00
Resound Networks, LLC	0024535437	TX-027-0209001	Texas	449107	1	3	27	\$ 4,229.00
Resound Networks, LLC	0024535437	TX-027-0213031	Texas	449107	1	1	17	\$ 58,470.00
Resound Networks, LLC	0024535437	TX-027-0214001	Texas	449107	1	8	72	\$ 18,190.00
Resound Networks, LLC	0024535437	TX-027-0215003	Texas	449107	1	15	131	\$ 145,746.00
Resound Networks, LLC	0024535437	TX-027-0216021	Texas	449107	1	6	111	\$ 61,914.00
Resound Networks, LLC	0024535437	TX-027-0217002	Texas	449107	1	4	14	\$ 17,482.50
Resound Networks, LLC	0024535437	TX-027-0218001	Texas	449107	1	3	12	\$ 44,838.00
Resound Networks, LLC	0024535437	TX-027-0218002	Texas	449107	1	6	15	\$ 55,632.00
Resound Networks, LLC	0024535437	TX-027-0220001	Texas	449107	1	3	7	\$ 23,262.00
Resound Networks, LLC	0024535437	TX-027-0233001	Texas	449107	1	26	352	\$ 307,894.00

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Resound Networks, LLC	0024535437	TX-027-0233002	Texas	449107	1	5	29	\$ 18,240.00
Resound Networks, LLC	0024535437	TX-027-0233003	Texas	449107	1	5	19	\$ 7,952.00
Resound Networks, LLC	0024535437	TX-027-0234042	Texas	449107	1	29	153	\$ 435,183.30
Resound Networks, LLC	0024535437	TX-027-9800011	Texas	449107	1	5	14	\$ 66,276.00
Resound Networks, LLC	0024535437	TX-031-9501003	Texas	449107	1	5	15	\$ 3,063.00
Resound Networks, LLC	0024535437	TX-031-9502004	Texas	449107	1	34	669	\$ 298,197.00
Resound Networks, LLC	0024535437	TX-033-9501001	Texas	449107	1	43	102	\$ 704,848.00
Resound Networks, LLC	0024535437	TX-039-6602001	Texas	449107	1	17	43	\$ 74,160.00
Resound Networks, LLC	0024535437	TX-039-6602002	Texas	449107	1	3	10	\$ 5,770.00
Resound Networks, LLC	0024535437	TX-039-6605002	Texas	449107	1	1	1	\$ 6,690.00
Resound Networks, LLC	0024535437	TX-039-6606013	Texas	449107	1	1	5	\$ 6,490.40
Resound Networks, LLC	0024535437	TX-039-6606021	Texas	449107	1	15	60	\$ 6,417.50
Resound Networks, LLC	0024535437	TX-039-6606022	Texas	449107	1	1	4	\$ 3,614.80
Resound Networks, LLC	0024535437	TX-039-6607012	Texas	449107	1	1	4	\$ 5,868.00
Resound Networks, LLC	0024535437	TX-039-6607021	Texas	449107	1	1	17	\$ 44,105.00
Resound Networks, LLC	0024535437	TX-039-6607023	Texas	449107	1	6	14	\$ 11,135.00
Resound Networks, LLC	0024535437	TX-039-6609003	Texas	449107	1	16	58	\$ 56,380.80
Resound Networks, LLC	0024535437	TX-039-6609004	Texas	449107	1	5	16	\$ 15,115.00
Resound Networks, LLC	0024535437	TX-039-6610001	Texas	449107	1	6	20	\$ 17,075.00
Resound Networks, LLC	0024535437	TX-039-6610003	Texas	449107	1	1	1	\$ 6,480.00

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Resound Networks, LLC	0024535437	TX-039-6615011	Texas	449107	1	4	54	\$ 8,810.00
Resound Networks, LLC	0024535437	TX-039-6615013	Texas	449107	1	4	13	\$ 7,425.00
Resound Networks, LLC	0024535437	TX-039-6616012	Texas	449107	1	4	8	\$ 5,503.50
Resound Networks, LLC	0024535437	TX-039-6616021	Texas	449107	1	9	28	\$ 24,780.00
Resound Networks, LLC	0024535437	TX-039-6617001	Texas	449107	1	17	146	\$ 264,790.40
Resound Networks, LLC	0024535437	TX-039-6617002	Texas	449107	1	12	58	\$ 408,825.00
Resound Networks, LLC	0024535437	TX-039-6618001	Texas	449107	1	40	358	\$ 324,060.00
Resound Networks, LLC	0024535437	TX-039-6618002	Texas	449107	1	23	220	\$ 214,950.40
Resound Networks, LLC	0024535437	TX-039-6619001	Texas	449107	1	59	787	\$ 836,889.50
Resound Networks, LLC	0024535437	TX-039-6619002	Texas	449107	1	63	575	\$ 400,221.00
Resound Networks, LLC	0024535437	TX-039-6619003	Texas	449107	1	11	65	\$ 92,511.00
Resound Networks, LLC	0024535437	TX-039-6619004	Texas	449107	1	5	61	\$ 60,860.40
Resound Networks, LLC	0024535437	TX-039-6620003	Texas	449107	1	10	64	\$ 60,704.00
Resound Networks, LLC	0024535437	TX-039-6620004	Texas	449107	1	15	152	\$ 626,465.00
Resound Networks, LLC	0024535437	TX-039-6620005	Texas	449107	1	14	130	\$ 261,777.60
Resound Networks, LLC	0024535437	TX-039-6621001	Texas	449107	1	55	547	\$ 626,894.80
Resound Networks, LLC	0024535437	TX-039-6621002	Texas	449107	1	12	83	\$ 90,350.40
Resound Networks, LLC	0024535437	TX-039-6622001	Texas	449107	1	7	25	\$ 148,745.00
Resound Networks, LLC	0024535437	TX-039-6624003	Texas	449107	1	8	88	\$ 89,493.60
Resound Networks, LLC	0024535437	TX-039-6624004	Texas	449107	1	3	4	\$ 9,905.00

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Resound Networks, LLC	0024535437	TX-039-6625001	Texas	449107	1	7	40	\$ 132,800.00
Resound Networks, LLC	0024535437	TX-039-6626003	Texas	449107	1	1	2	\$ 4,793.60
Resound Networks, LLC	0024535437	TX-039-6626004	Texas	449107	1	2	16	\$ 8,410.00
Resound Networks, LLC	0024535437	TX-039-6627001	Texas	449107	1	12	60	\$ 138,915.00
Resound Networks, LLC	0024535437	TX-039-6627002	Texas	449107	1	19	57	\$ 117,618.00
Resound Networks, LLC	0024535437	TX-039-6628003	Texas	449107	1	2	6	\$ 4,309.20
Resound Networks, LLC	0024535437	TX-039-6628005	Texas	449107	1	4	5	\$ 15,567.00
Resound Networks, LLC	0024535437	TX-039-6631001	Texas	449107	1	6	13	\$ 15,260.00
Resound Networks, LLC	0024535437	TX-039-6631003	Texas	449107	1	5	44	\$ 39,466.00
Resound Networks, LLC	0024535437	TX-039-6631004	Texas	449107	1	2	4	\$ 20,565.00
Resound Networks, LLC	0024535437	TX-039-6639002	Texas	449107	1	4	15	\$ 8,535.00
Resound Networks, LLC	0024535437	TX-039-6640001	Texas	449107	1	2	4	\$ 3,270.40
Resound Networks, LLC	0024535437	TX-039-6640002	Texas	449107	1	6	81	\$ 67,210.00
Resound Networks, LLC	0024535437	TX-039-6641004	Texas	449107	1	5	13	\$ 103,770.00
Resound Networks, LLC	0024535437	TX-039-6641005	Texas	449107	1	16	317	\$ 287,016.80
Resound Networks, LLC	0024535437	TX-039-6642001	Texas	449107	1	9	41	\$ 45,615.00
Resound Networks, LLC	0024535437	TX-039-6642002	Texas	449107	1	4	20	\$ 15,506.70
Resound Networks, LLC	0024535437	TX-039-6642003	Texas	449107	1	6	135	\$ 18,510.00
Resound Networks, LLC	0024535437	TX-039-6644002	Texas	449107	1	21	109	\$ 76,176.80

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	TX-039-6645011	Texas	449107	1	6	44	\$ 35,855.00
Resound Networks, LLC	0024535437	TX-039-6645012	Texas	449107	1	9	99	\$ 73,390.80
Resound Networks, LLC	0024535437	TX-041-0001014	Texas	449107	1	7	9	\$ 8,792.00
Resound Networks, LLC	0024535437	TX-041-0001021	Texas	449107	1	4	16	\$ 7,435.60
Resound Networks, LLC	0024535437	TX-043-9503001	Texas	449107	1	10	42	\$ 142,524.00
Resound Networks, LLC	0024535437	TX-043-9503002	Texas	449107	1	4	14	\$ 9,144.00
Resound Networks, LLC	0024535437	TX-043-9505002	Texas	449107	1	39	200	\$ 198,114.00
Resound Networks, LLC	0024535437	TX-043-9505003	Texas	449107	1	29	182	\$ 412,252.00
Resound Networks, LLC	0024535437	TX-043-9505004	Texas	449107	1	14	55	\$ 623,856.00
Resound Networks, LLC	0024535437	TX-051-9701001	Texas	449107	1	18	431	\$ 683,050.00
Resound Networks, LLC	0024535437	TX-051-9702001	Texas	449107	1	21	196	\$ 368,248.00
Resound Networks, LLC	0024535437	TX-051-9702002	Texas	449107	1	4	86	\$ 81,118.00
Resound Networks, LLC	0024535437	TX-051-9702003	Texas	449107	1	6	14	\$ 19,566.00
Resound Networks, LLC	0024535437	TX-051-9705002	Texas	449107	1	69	721	\$ 213,472.00
Resound Networks, LLC	0024535437	TX-051-9705003	Texas	449107	1	3	41	\$ 46,548.00
Resound Networks, LLC	0024535437	TX-053-9601002	Texas	449107	1	24	187	\$ 106,550.00
Resound Networks, LLC	0024535437	TX-053-9601003	Texas	449107	1	22	406	\$ 120,026.00
Resound Networks, LLC	0024535437	TX-053-9602001	Texas	449107	1	25	253	\$ 153,038.00
Resound Networks, LLC	0024535437	TX-053-9602002	Texas	449107	1	10	117	\$ 108,896.00
Resound Networks, LLC	0024535437	TX-053-9603001	Texas	449107	1	3	21	\$ 10,031.00

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Resound Networks, LLC	0024535437	TX-053-9604001	Texas	449107	1	19	153	\$ 37,069.00
Resound Networks, LLC	0024535437	TX-053-9604002	Texas	449107	1	18	111	\$ 39,516.00
Resound Networks, LLC	0024535437	TX-053-9604003	Texas	449107	1	39	579	\$ 267,825.00
Resound Networks, LLC	0024535437	TX-053-9605004	Texas	449107	1	6	33	\$ 4,679.00
Resound Networks, LLC	0024535437	TX-053-9606001	Texas	449107	1	27	272	\$ 113,952.00
Resound Networks, LLC	0024535437	TX-053-9607002	Texas	449107	1	2	17	\$ 4,633.00
Resound Networks, LLC	0024535437	TX-053-9607003	Texas	449107	1	5	29	\$ 20,925.00
Resound Networks, LLC	0024535437	TX-053-9608001	Texas	449107	1	27	161	\$ 167,037.00
Resound Networks, LLC	0024535437	TX-053-9608002	Texas	449107	1	21	149	\$ 23,782.00
Resound Networks, LLC	0024535437	TX-053-9608003	Texas	449107	1	10	78	\$ 19,590.00
Resound Networks, LLC	0024535437	TX-057-0003001	Texas	449107	1	5	227	\$ 25,817.10
Resound Networks, LLC	0024535437	TX-057-0004001	Texas	449107	1	13	75	\$ 1,454.20
Resound Networks, LLC	0024535437	TX-057-0004002	Texas	449107	1	25	325	\$ 12,126.40
Resound Networks, LLC	0024535437	TX-057-0004003	Texas	449107	1	21	349	\$ 24,992.30
Resound Networks, LLC	0024535437	TX-057-0004004	Texas	449107	1	9	86	\$ 3,583.40
Resound Networks, LLC	0024535437	TX-057-0005001	Texas	449107	1	10	51	\$ 15,700.70
Resound Networks, LLC	0024535437	TX-057-0005002	Texas	449107	1	25	307	\$ 76,983.90
Resound Networks, LLC	0024535437	TX-059-0301011	Texas	449107	1	6	65	\$ 16,917.70
Resound Networks, LLC	0024535437	TX-059-0302001	Texas	449107	1	5	54	\$ 18,207.00
Resound Networks, LLC	0024535437	TX-065-9501001	Texas	449107	1	3	3	\$ 18,663.00

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Resound Networks, LLC	0024535437	TX-069-9501002	Texas	449107	1	19	34	\$ 7,373.60
Resound Networks, LLC	0024535437	TX-069-9502002	Texas	449107	1	5	25	\$ 1,181.50
Resound Networks, LLC	0024535437	TX-069-9503001	Texas	449107	1	137	305	\$ 49,898.40
Resound Networks, LLC	0024535437	TX-071-7101001	Texas	449107	1	11	32	\$ 83,679.00
Resound Networks, LLC	0024535437	TX-071-7101003	Texas	449107	1	6	11	\$ 12,178.00
Resound Networks, LLC	0024535437	TX-071-7102004	Texas	449107	1	7	20	\$ 28,620.00
Resound Networks, LLC	0024535437	TX-071-7103001	Texas	449107	1	5	20	\$ 63,450.00
Resound Networks, LLC	0024535437	TX-071-7103002	Texas	449107	1	6	66	\$ 164,658.00
Resound Networks, LLC	0024535437	TX-071-7103003	Texas	449107	1	2	5	\$ 40,050.00
Resound Networks, LLC	0024535437	TX-071-7104014	Texas	449107	1	3	12	\$ 11,174.20
Resound Networks, LLC	0024535437	TX-071-7105002	Texas	449107	1	23	115	\$ 366,513.00
Resound Networks, LLC	0024535437	TX-071-7105003	Texas	449107	1	1	6	\$ 35,253.00
Resound Networks, LLC	0024535437	TX-075-9501001	Texas	449107	1	78	202	\$ 158,725.80
Resound Networks, LLC	0024535437	TX-075-9502002	Texas	449107	1	2	9	\$ 5,637.40
Resound Networks, LLC	0024535437	TX-079-9501001	Texas	449107	1	31	57	\$ 354,948.30
Resound Networks, LLC	0024535437	TX-079-9501002	Texas	449107	1	41	108	\$ 77,517.50
Resound Networks, LLC	0024535437	TX-081-9502001	Texas	449107	1	5	6	\$ 6,864.00
Resound Networks, LLC	0024535437	TX-083-9503001	Texas	449107	1	16	96	\$ 40,311.00
Resound Networks, LLC	0024535437	TX-083-9503002	Texas	449107	1	18	48	\$ 17,676.00
Resound Networks, LLC	0024535437	TX-083-9503004	Texas	449107	1	11	32	\$ 17,568.00

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Resound Networks, LLC	0024535437	TX-083-9503006	Texas	449107	1	3	14	\$ 5,199.00
Resound Networks, LLC	0024535437	TX-087-9503001	Texas	449107	1	52	138	\$ 855,220.00
Resound Networks, LLC	0024535437	TX-087-9503002	Texas	449107	1	3	13	\$ 34,143.20
Resound Networks, LLC	0024535437	TX-087-9503004	Texas	449107	1	4	8	\$ 3,924.00
Resound Networks, LLC	0024535437	TX-089-7501003	Texas	449107	1	44	169	\$ 106,037.20
Resound Networks, LLC	0024535437	TX-089-7502001	Texas	449107	1	53	421	\$ 98,401.90
Resound Networks, LLC	0024535437	TX-089-7502002	Texas	449107	1	79	446	\$ 481,017.00
Resound Networks, LLC	0024535437	TX-089-7504002	Texas	449107	1	33	292	\$ 305,538.00
Resound Networks, LLC	0024535437	TX-089-7504003	Texas	449107	1	45	331	\$ 204,017.00
Resound Networks, LLC	0024535437	TX-089-7504004	Texas	449107	1	6	15	\$ 19,406.00
Resound Networks, LLC	0024535437	TX-089-7505001	Texas	449107	1	2	7	\$ 4,054.70
Resound Networks, LLC	0024535437	TX-091-3106031	Texas	449107	1	2	10	\$ 17,199.90
Resound Networks, LLC	0024535437	TX-091-3106032	Texas	449107	1	4	91	\$ 107,352.00
Resound Networks, LLC	0024535437	TX-095-9503003	Texas	449107	1	27	121	\$ 86,796.00
Resound Networks, LLC	0024535437	TX-103-9501001	Texas	449107	1	26	179	\$ 921,517.10
Resound Networks, LLC	0024535437	TX-103-9501003	Texas	449107	1	20	102	\$ 142,782.00
Resound Networks, LLC	0024535437	TX-103-9501005	Texas	449107	1	8	43	\$ 16,932.00
Resound Networks, LLC	0024535437	TX-105-9501001	Texas	449107	1	55	281	\$ 2,511,060.00
Resound Networks, LLC	0024535437	TX-105-9501002	Texas	449107	1	11	71	\$ 7,093.60
Resound Networks, LLC	0024535437	TX-105-9501003	Texas	449107	1	12	183	\$ 21,696.80

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Resound Networks, LLC	0024535437	TX-105-9501004	Texas	449107	1	17	203	\$ 14,133.20
Resound Networks, LLC	0024535437	TX-105-9501005	Texas	449107	1	3	11	\$ 673.20
Resound Networks, LLC	0024535437	TX-107-9501001	Texas	449107	1	37	119	\$ 10,943.80
Resound Networks, LLC	0024535437	TX-107-9501002	Texas	449107	1	9	35	\$ 708.90
Resound Networks, LLC	0024535437	TX-107-9501003	Texas	449107	1	11	73	\$ 319.80
Resound Networks, LLC	0024535437	TX-107-9502002	Texas	449107	1	19	62	\$ 996.30
Resound Networks, LLC	0024535437	TX-109-9503001	Texas	449107	1	31	54	\$ 862,284.00
Resound Networks, LLC	0024535437	TX-109-9503003	Texas	449107	1	1	3	\$ 24,030.00
Resound Networks, LLC	0024535437	TX-109-9503004	Texas	449107	1	3	3	\$ 44,778.00
Resound Networks, LLC	0024535437	TX-111-9503003	Texas	449107	1	4	7	\$ 284.60
Resound Networks, LLC	0024535437	TX-115-9504013	Texas	449107	1	2	4	\$ 5,416.80
Resound Networks, LLC	0024535437	TX-115-9504021	Texas	449107	1	4	16	\$ 7,927.20
Resound Networks, LLC	0024535437	TX-115-9506001	Texas	449107	1	2	20	\$ 2,853.60
Resound Networks, LLC	0024535437	TX-115-9506002	Texas	449107	1	1	2	\$ 1,440.00
Resound Networks, LLC	0024535437	TX-117-9506001	Texas	449107	1	21	41	\$ 8,427.50
Resound Networks, LLC	0024535437	TX-117-9506002	Texas	449107	1	10	24	\$ 2,546.20
Resound Networks, LLC	0024535437	TX-117-9506003	Texas	449107	1	39	183	\$ 11,447.00
Resound Networks, LLC	0024535437	TX-123-9701003	Texas	449107	1	7	33	\$ 32,115.00
Resound Networks, LLC	0024535437	TX-123-9702001	Texas	449107	1	27	101	\$ 53,005.00
Resound Networks, LLC	0024535437	TX-123-9703002	Texas	449107	1	4	18	\$ 28,554.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	TX-123-9703004	Texas	449107	1	47	367	\$ 392,300.00
Resound Networks, LLC	0024535437	TX-123-9704001	Texas	449107	1	2	2	\$ 11,922.00
Resound Networks, LLC	0024535437	TX-123-9704002	Texas	449107	1	76	671	\$ 407,982.00
Resound Networks, LLC	0024535437	TX-127-9502001	Texas	449107	1	46	235	\$ 1,816,608.00
Resound Networks, LLC	0024535437	TX-127-9504001	Texas	449107	1	80	249	\$ 1,520,682.00
Resound Networks, LLC	0024535437	TX-129-9502001	Texas	449107	1	34	133	\$ 63,705.60
Resound Networks, LLC	0024535437	TX-129-9502002	Texas	449107	1	21	80	\$ 42,558.60
Resound Networks, LLC	0024535437	TX-129-9503001	Texas	449107	1	159	427	\$ 1,803,175.50
Resound Networks, LLC	0024535437	TX-129-9503002	Texas	449107	1	90	227	\$ 814,680.30
Resound Networks, LLC	0024535437	TX-131-9502001	Texas	449107	1	54	262	\$ 882,615.00
Resound Networks, LLC	0024535437	TX-131-9502002	Texas	449107	1	29	323	\$ 291,335.00
Resound Networks, LLC	0024535437	TX-131-9505001	Texas	449107	1	9	30	\$ 348,520.00
Resound Networks, LLC	0024535437	TX-131-9505002	Texas	449107	1	6	6	\$ 57,655.00
Resound Networks, LLC	0024535437	TX-135-0022002	Texas	449107	1	38	283	\$ 10,009.60
Resound Networks, LLC	0024535437	TX-135-0023003	Texas	449107	1	8	27	\$ 51,657.70
Resound Networks, LLC	0024535437	TX-135-0025011	Texas	449107	1	3	14	\$ 9,114.00
Resound Networks, LLC	0024535437	TX-135-0025031	Texas	449107	1	1	2	\$ 1,039.00
Resound Networks, LLC	0024535437	TX-135-0027001	Texas	449107	1	9	193	\$ 19,992.00
Resound Networks, LLC	0024535437	TX-135-0027002	Texas	449107	1	29	354	\$ 134,326.80
Resound Networks, LLC	0024535437	TX-135-0027003	Texas	449107	1	18	306	\$ 136,245.90

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Resound Networks, LLC	0024535437	TX-135-0027004	Texas	449107	1	50	227	\$ 100,901.50
Resound Networks, LLC	0024535437	TX-135-0027005	Texas	449107	1	11	132	\$ 40,715.10
Resound Networks, LLC	0024535437	TX-135-0027006	Texas	449107	1	21	183	\$ 64,499.80
Resound Networks, LLC	0024535437	TX-135-0028011	Texas	449107	1	14	236	\$ 88,344.20
Resound Networks, LLC	0024535437	TX-135-0028012	Texas	449107	1	21	201	\$ 79,686.00
Resound Networks, LLC	0024535437	TX-135-0028021	Texas	449107	1	12	85	\$ 38,013.90
Resound Networks, LLC	0024535437	TX-135-0028022	Texas	449107	1	18	264	\$ 60,009.40
Resound Networks, LLC	0024535437	TX-135-0028023	Texas	449107	1	36	412	\$ 137,462.10
Resound Networks, LLC	0024535437	TX-135-0028024	Texas	449107	1	17	136	\$ 69,626.30
Resound Networks, LLC	0024535437	TX-135-0030001	Texas	449107	1	29	422	\$ 10,667.60
Resound Networks, LLC	0024535437	TX-135-0030002	Texas	449107	1	31	468	\$ 9,283.80
Resound Networks, LLC	0024535437	TX-135-0030003	Texas	449107	1	6	14	\$ 18,576.00
Resound Networks, LLC	0024535437	TX-137-9503002	Texas	449107	1	34	109	\$ 518,650.20
Resound Networks, LLC	0024535437	TX-141-0014001	Texas	449107	1	4	18	\$ 27,936.00
Resound Networks, LLC	0024535437	TX-141-0101011	Texas	449107	1	1	40	\$ 206,142.00
Resound Networks, LLC	0024535437	TX-141-0102032	Texas	449107	1	3	6	\$ 26,652.00
Resound Networks, LLC	0024535437	TX-141-0102071	Texas	449107	1	4	15	\$ 110,304.00
Resound Networks, LLC	0024535437	TX-141-0102122	Texas	449107	1	2	11	\$ 122,652.00
Resound Networks, LLC	0024535437	TX-141-0102221	Texas	449107	1	6	29	\$ 117,930.00
Resound Networks, LLC	0024535437	TX-141-0103331	Texas	449107	1	2	16	\$ 40,326.00

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Resound Networks, LLC	0024535437	TX-141-0103411	Texas	449107	1	8	24	\$ 64,350.00
Resound Networks, LLC	0024535437	TX-141-0104051	Texas	449107	1	2	27	\$ 10,893.80
Resound Networks, LLC	0024535437	TX-141-0105021	Texas	449107	1	7	41	\$ 340,150.00
Resound Networks, LLC	0024535437	TX-141-0105022	Texas	449107	1	6	24	\$ 22,992.00
Resound Networks, LLC	0024535437	TX-141-0105042	Texas	449107	1	6	37	\$ 90,470.40
Resound Networks, LLC	0024535437	TX-141-0105053	Texas	449107	1	19	87	\$ 161,892.00
Resound Networks, LLC	0024535437	TX-147-9507011	Texas	449107	1	5	16	\$ 19,716.00
Resound Networks, LLC	0024535437	TX-149-9702001	Texas	449107	1	1	12	\$ 24,480.00
Resound Networks, LLC	0024535437	TX-149-9703007	Texas	449107	1	2	3	\$ 13,800.00
Resound Networks, LLC	0024535437	TX-149-9705001	Texas	449107	1	50	262	\$ 345,798.00
Resound Networks, LLC	0024535437	TX-149-9705002	Texas	449107	1	5	31	\$ 43,294.00
Resound Networks, LLC	0024535437	TX-149-9705003	Texas	449107	1	53	220	\$ 75,246.00
Resound Networks, LLC	0024535437	TX-149-9707001	Texas	449107	1	5	77	\$ 85,512.00
Resound Networks, LLC	0024535437	TX-149-9707002	Texas	449107	1	3	13	\$ 20,733.00
Resound Networks, LLC	0024535437	TX-151-9503001	Texas	449107	1	45	101	\$ 98,397.60
Resound Networks, LLC	0024535437	TX-151-9503002	Texas	449107	1	178	561	\$ 576,150.30
Resound Networks, LLC	0024535437	TX-151-9504001	Texas	449107	1	170	493	\$ 574,554.20
Resound Networks, LLC	0024535437	TX-151-9504002	Texas	449107	1	30	89	\$ 51,783.30
Resound Networks, LLC	0024535437	TX-151-9504003	Texas	449107	1	24	117	\$ 24,651.00
Resound Networks, LLC	0024535437	TX-153-9505002	Texas	449107	1	15	75	\$ 1,941.40

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Resound Networks, LLC	0024535437	TX-153-9506002	Texas	449107	1	3	8	\$ 1,535.20
Resound Networks, LLC	0024535437	TX-153-9506003	Texas	449107	1	2	2	\$ 413.30
Resound Networks, LLC	0024535437	TX-153-9506004	Texas	449107	1	2	6	\$ 663.40
Resound Networks, LLC	0024535437	TX-153-9506005	Texas	449107	1	148	313	\$ 56,601.80
Resound Networks, LLC	0024535437	TX-157-6703002	Texas	449107	1	2	16	\$ 14,022.00
Resound Networks, LLC	0024535437	TX-157-6705002	Texas	449107	1	4	8	\$ 12,096.00
Resound Networks, LLC	0024535437	TX-157-6706021	Texas	449107	1	2	5	\$ 12,635.00
Resound Networks, LLC	0024535437	TX-157-6707001	Texas	449107	1	2	3	\$ 10,314.00
Resound Networks, LLC	0024535437	TX-157-6707002	Texas	449107	1	31	123	\$ 25,146.40
Resound Networks, LLC	0024535437	TX-157-6708001	Texas	449107	1	4	44	\$ 4,266.30
Resound Networks, LLC	0024535437	TX-157-6708002	Texas	449107	1	41	342	\$ 25,517.70
Resound Networks, LLC	0024535437	TX-157-6708003	Texas	449107	1	5	33	\$ 1,818.70
Resound Networks, LLC	0024535437	TX-157-6709021	Texas	449107	1	2	8	\$ 43,188.00
Resound Networks, LLC	0024535437	TX-157-6709022	Texas	449107	1	2	34	\$ 7,921.40
Resound Networks, LLC	0024535437	TX-157-6718002	Texas	449107	1	5	16	\$ 5,850.90
Resound Networks, LLC	0024535437	TX-157-6719002	Texas	449107	1	1	15	\$ 5,533.00
Resound Networks, LLC	0024535437	TX-157-6720011	Texas	449107	1	2	8	\$ 4,269.10
Resound Networks, LLC	0024535437	TX-157-6721001	Texas	449107	1	1	4	\$ 4,365.00
Resound Networks, LLC	0024535437	TX-157-6728001	Texas	449107	1	4	24	\$ 20,370.90
Resound Networks, LLC	0024535437	TX-157-6729001	Texas	449107	1	6	17	\$ 24,354.70

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	TX-157-6730022	Texas	449107	1	3	10	\$ 17,962.50
Resound Networks, LLC	0024535437	TX-157-6731021	Texas	449107	1	3	8	\$ 3,578.30
Resound Networks, LLC	0024535437	TX-157-6732001	Texas	449107	1	4	9	\$ 49,860.00
Resound Networks, LLC	0024535437	TX-157-6732002	Texas	449107	1	8	17	\$ 27,171.70
Resound Networks, LLC	0024535437	TX-157-6733001	Texas	449107	1	5	13	\$ 11,748.00
Resound Networks, LLC	0024535437	TX-157-6733002	Texas	449107	1	15	85	\$ 325,938.00
Resound Networks, LLC	0024535437	TX-157-6734001	Texas	449107	1	10	17	\$ 40,568.20
Resound Networks, LLC	0024535437	TX-157-6734002	Texas	449107	1	4	15	\$ 33,726.00
Resound Networks, LLC	0024535437	TX-157-6735001	Texas	449107	1	1	1	\$ 2,539.20
Resound Networks, LLC	0024535437	TX-157-6736001	Texas	449107	1	2	9	\$ 64,380.00
Resound Networks, LLC	0024535437	TX-157-6737001	Texas	449107	1	3	21	\$ 16,033.50
Resound Networks, LLC	0024535437	TX-157-6738002	Texas	449107	1	1	13	\$ 33,246.00
Resound Networks, LLC	0024535437	TX-157-6744003	Texas	449107	1	3	13	\$ 34,671.00
Resound Networks, LLC	0024535437	TX-157-6745011	Texas	449107	1	4	36	\$ 2,806.90
Resound Networks, LLC	0024535437	TX-157-6745021	Texas	449107	1	30	334	\$ 103,365.20
Resound Networks, LLC	0024535437	TX-157-6746021	Texas	449107	1	11	182	\$ 140,226.00
Resound Networks, LLC	0024535437	TX-157-6747003	Texas	449107	1	2	4	\$ 10,164.00
Resound Networks, LLC	0024535437	TX-157-6754001	Texas	449107	1	16	49	\$ 74,610.00
Resound Networks, LLC	0024535437	TX-157-6754002	Texas	449107	1	12	25	\$ 30,132.40
Resound Networks, LLC	0024535437	TX-157-6755001	Texas	449107	1	32	225	\$ 540,675.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	TX-157-6755002	Texas	449107	1	6	13	\$ 14,886.00
Resound Networks, LLC	0024535437	TX-157-6756002	Texas	449107	1	19	127	\$ 53,771.00
Resound Networks, LLC	0024535437	TX-157-6757002	Texas	449107	1	20	306	\$ 131,478.00
Resound Networks, LLC	0024535437	TX-157-6757003	Texas	449107	1	2	3	\$ 9,924.00
Resound Networks, LLC	0024535437	TX-157-6758001	Texas	449107	1	5	12	\$ 12,978.00
Resound Networks, LLC	0024535437	TX-157-6758002	Texas	449107	1	12	23	\$ 97,938.00
Resound Networks, LLC	0024535437	TX-163-9502002	Texas	449107	1	8	16	\$ 252,720.00
Resound Networks, LLC	0024535437	TX-163-9502003	Texas	449107	1	3	7	\$ 108,540.00
Resound Networks, LLC	0024535437	TX-165-9501001	Texas	449107	1	13	30	\$ 114,712.50
Resound Networks, LLC	0024535437	TX-165-9501002	Texas	449107	1	1	1	\$ 5,607.00
Resound Networks, LLC	0024535437	TX-165-9502001	Texas	449107	1	50	256	\$ 635,705.70
Resound Networks, LLC	0024535437	TX-165-9502002	Texas	449107	1	26	79	\$ 283,086.30
Resound Networks, LLC	0024535437	TX-165-9502003	Texas	449107	1	13	31	\$ 126,537.60
Resound Networks, LLC	0024535437	TX-167-7204001	Texas	449107	1	2	9	\$ 114,648.00
Resound Networks, LLC	0024535437	TX-167-7206001	Texas	449107	1	10	23	\$ 13,698.80
Resound Networks, LLC	0024535437	TX-167-7207003	Texas	449107	1	9	26	\$ 5,932.80
Resound Networks, LLC	0024535437	TX-167-7210001	Texas	449107	1	5	40	\$ 5,941.80
Resound Networks, LLC	0024535437	TX-167-7217006	Texas	449107	1	3	12	\$ 45,378.00
Resound Networks, LLC	0024535437	TX-167-7218003	Texas	449107	1	4	12	\$ 21,768.00
Resound Networks, LLC	0024535437	TX-167-7219001	Texas	449107	1	15	51	\$ 46,435.80

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Resound Networks, LLC	0024535437	TX-167-7226001	Texas	449107	1	4	14	\$ 22,925.80
Resound Networks, LLC	0024535437	TX-167-7234004	Texas	449107	1	9	118	\$ 68,124.00
Resound Networks, LLC	0024535437	TX-167-7235021	Texas	449107	1	5	81	\$ 85,140.00
Resound Networks, LLC	0024535437	TX-167-7235022	Texas	449107	1	3	23	\$ 11,938.60
Resound Networks, LLC	0024535437	TX-167-7235024	Texas	449107	1	9	158	\$ 133,776.00
Resound Networks, LLC	0024535437	TX-167-7236003	Texas	449107	1	6	30	\$ 39,270.00
Resound Networks, LLC	0024535437	TX-167-7238001	Texas	449107	1	3	22	\$ 36,738.00
Resound Networks, LLC	0024535437	TX-167-7238002	Texas	449107	1	5	33	\$ 67,566.00
Resound Networks, LLC	0024535437	TX-167-7239002	Texas	449107	1	93	536	\$ 43,065.00
Resound Networks, LLC	0024535437	TX-167-7239003	Texas	449107	1	20	240	\$ 20,997.90
Resound Networks, LLC	0024535437	TX-167-7239004	Texas	449107	1	18	680	\$ 30,567.60
Resound Networks, LLC	0024535437	TX-167-7240001	Texas	449107	1	21	61	\$ 151,698.00
Resound Networks, LLC	0024535437	TX-167-7240002	Texas	449107	1	13	36	\$ 48,856.20
Resound Networks, LLC	0024535437	TX-167-7259001	Texas	449107	1	2	3	\$ 5,433.00
Resound Networks, LLC	0024535437	TX-167-7261001	Texas	449107	1	3	17	\$ 34,620.00
Resound Networks, LLC	0024535437	TX-167-7262001	Texas	449107	1	10	27	\$ 105,501.30
Resound Networks, LLC	0024535437	TX-169-9501001	Texas	449107	1	53	114	\$ 639,924.00
Resound Networks, LLC	0024535437	TX-169-9501002	Texas	449107	1	3	8	\$ 34,020.00
Resound Networks, LLC	0024535437	TX-169-9501003	Texas	449107	1	3	5	\$ 7,876.50
Resound Networks, LLC	0024535437	TX-169-9501004	Texas	449107	1	3	6	\$ 28,635.00

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Resound Networks, LLC	0024535437	TX-189-9501005	Texas	449107	1	1	1	\$ 7,650.00
Resound Networks, LLC	0024535437	TX-175-9601001	Texas	449107	1	36	756	\$ 549,318.00
Resound Networks, LLC	0024535437	TX-175-9601002	Texas	449107	1	15	148	\$ 102,448.50
Resound Networks, LLC	0024535437	TX-175-9602001	Texas	449107	1	9	122	\$ 75,677.70
Resound Networks, LLC	0024535437	TX-175-9602002	Texas	449107	1	22	230	\$ 657,094.20
Resound Networks, LLC	0024535437	TX-177-0001002	Texas	449107	1	2	3	\$ 2,385.00
Resound Networks, LLC	0024535437	TX-177-0005002	Texas	449107	1	1	1	\$ 15,300.00
Resound Networks, LLC	0024535437	TX-177-0006002	Texas	449107	1	5	15	\$ 184,836.00
Resound Networks, LLC	0024535437	TX-179-9501001	Texas	449107	1	29	53	\$ 270,234.30
Resound Networks, LLC	0024535437	TX-179-9501003	Texas	449107	1	8	12	\$ 44,520.00
Resound Networks, LLC	0024535437	TX-179-9501004	Texas	449107	1	57	131	\$ 251,491.80
Resound Networks, LLC	0024535437	TX-185-1804001	Texas	449107	1	4	58	\$ 21,754.00
Resound Networks, LLC	0024535437	TX-189-9501001	Texas	449107	1	2	4	\$ 385.20
Resound Networks, LLC	0024535437	TX-189-9505003	Texas	449107	1	1	1	\$ 6,295.00
Resound Networks, LLC	0024535437	TX-189-9506002	Texas	449107	1	59	168	\$ 16,414.80
Resound Networks, LLC	0024535437	TX-189-9507001	Texas	449107	1	38	147	\$ 27,450.00
Resound Networks, LLC	0024535437	TX-189-9507002	Texas	449107	1	16	48	\$ 2,769.40
Resound Networks, LLC	0024535437	TX-189-9507003	Texas	449107	1	22	68	\$ 4,118.20
Resound Networks, LLC	0024535437	TX-189-9508002	Texas	449107	1	43	90	\$ 13,816.10
Resound Networks, LLC	0024535437	TX-189-9509001	Texas	449107	1	1	4	\$ 521.60

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Resound Networks, LLC	0024535437	TX-189-9509002	Texas	449107	1	16	34	\$ 2,538.70
Resound Networks, LLC	0024535437	TX-189-9509003	Texas	449107	1	16	44	\$ 20,003.60
Resound Networks, LLC	0024535437	TX-191-9505001	Texas	449107	1	61	153	\$ 82,822.50
Resound Networks, LLC	0024535437	TX-191-9505002	Texas	449107	1	21	89	\$ 24,945.00
Resound Networks, LLC	0024535437	TX-191-9505003	Texas	449107	1	66	161	\$ 152,270.70
Resound Networks, LLC	0024535437	TX-195-9501001	Texas	449107	1	89	299	\$ 920,788.00
Resound Networks, LLC	0024535437	TX-195-9501002	Texas	449107	1	17	121	\$ 18,387.00
Resound Networks, LLC	0024535437	TX-195-9503001	Texas	449107	1	92	212	\$ 302,767.00
Resound Networks, LLC	0024535437	TX-197-9501001	Texas	449107	1	7	146	\$ 120,396.00
Resound Networks, LLC	0024535437	TX-197-9501002	Texas	449107	1	71	355	\$ 115,794.00
Resound Networks, LLC	0024535437	TX-197-9501003	Texas	449107	1	65	538	\$ 157,470.00
Resound Networks, LLC	0024535437	TX-197-9501004	Texas	449107	1	59	254	\$ 91,959.00
Resound Networks, LLC	0024535437	TX-197-9501005	Texas	449107	1	51	230	\$ 117,570.00
Resound Networks, LLC	0024535437	TX-205-9502004	Texas	449107	1	37	163	\$ 25,801.20
Resound Networks, LLC	0024535437	TX-207-9503001	Texas	449107	1	23	57	\$ 77,306.90
Resound Networks, LLC	0024535437	TX-207-9504002	Texas	449107	1	29	60	\$ 89,277.10
Resound Networks, LLC	0024535437	TX-209-0108032	Texas	449107	1	31	729	\$ 359,482.00
Resound Networks, LLC	0024535437	TX-209-0108042	Texas	449107	1	4	27	\$ 7,078.00
Resound Networks, LLC	0024535437	TX-209-0108071	Texas	449107	1	9	368	\$ 187,878.00
Resound Networks, LLC	0024535437	TX-209-0108072	Texas	449107	1	23	413	\$ 283,980.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	TX-209-0108081	Texas	449107	1	18	274	\$ 155,634.00
Resound Networks, LLC	0024535437	TX-209-0108083	Texas	449107	1	17	697	\$ 262,844.00
Resound Networks, LLC	0024535437	TX-209-0108091	Texas	449107	1	2	7	\$ 25,962.00
Resound Networks, LLC	0024535437	TX-211-9503001	Texas	449107	1	105	438	\$ 1,311,542.40
Resound Networks, LLC	0024535437	TX-211-9503002	Texas	449107	1	32	160	\$ 23,282.00
Resound Networks, LLC	0024535437	TX-211-9503003	Texas	449107	1	22	99	\$ 16,801.00
Resound Networks, LLC	0024535437	TX-211-9503004	Texas	449107	1	15	86	\$ 18,027.70
Resound Networks, LLC	0024535437	TX-215-0243011	Texas	449107	1	24	108	\$ 485,100.00
Resound Networks, LLC	0024535437	TX-219-9501001	Texas	449107	1	66	139	\$ 93,485.00
Resound Networks, LLC	0024535437	TX-219-9502001	Texas	449107	1	5	12	\$ 7,881.00
Resound Networks, LLC	0024535437	TX-219-9502002	Texas	449107	1	7	44	\$ 84,036.00
Resound Networks, LLC	0024535437	TX-219-9502003	Texas	449107	1	16	32	\$ 259,860.00
Resound Networks, LLC	0024535437	TX-219-9502004	Texas	449107	1	10	37	\$ 62,697.00
Resound Networks, LLC	0024535437	TX-219-9505002	Texas	449107	1	2	11	\$ 7,185.80
Resound Networks, LLC	0024535437	TX-219-9506001	Texas	449107	1	6	13	\$ 64,472.00
Resound Networks, LLC	0024535437	TX-219-9507001	Texas	449107	1	1	1	\$ 7,740.00
Resound Networks, LLC	0024535437	TX-223-9506001	Texas	449107	1	1	6	\$ 3,396.00
Resound Networks, LLC	0024535437	TX-223-9508002	Texas	449107	1	6	89	\$ 17,747.00
Resound Networks, LLC	0024535437	TX-227-9501001	Texas	449107	1	4	42	\$ 2,181.40
Resound Networks, LLC	0024535437	TX-227-9501002	Texas	449107	1	7	58	\$ 40,976.50

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	TX-227-9501003	Texas	449107	1	6	14	\$ 32,076.00
Resound Networks, LLC	0024535437	TX-227-9509001	Texas	449107	1	13	218	\$ 30,860.50
Resound Networks, LLC	0024535437	TX-227-9509002	Texas	449107	1	2	37	\$ 3,594.00
Resound Networks, LLC	0024535437	TX-229-9503001	Texas	449107	1	7	13	\$ 146,076.00
Resound Networks, LLC	0024535437	TX-229-9503002	Texas	449107	1	31	71	\$ 675,014.50
Resound Networks, LLC	0024535437	TX-231-9614003	Texas	449107	1	10	17	\$ 38,508.00
Resound Networks, LLC	0024535437	TX-233-9505002	Texas	449107	1	42	94	\$ 311,131.80
Resound Networks, LLC	0024535437	TX-233-9505004	Texas	449107	1	6	7	\$ 279.50
Resound Networks, LLC	0024535437	TX-233-9506003	Texas	449107	1	1	1	\$ 4,179.00
Resound Networks, LLC	0024535437	TX-235-9501002	Texas	449107	1	11	26	\$ 28,536.00
Resound Networks, LLC	0024535437	TX-239-9501003	Texas	449107	1	92	567	\$ 85,340.10
Resound Networks, LLC	0024535437	TX-239-9502001	Texas	449107	1	3	33	\$ 13,435.00
Resound Networks, LLC	0024535437	TX-239-9502002	Texas	449107	1	8	108	\$ 9,402.30
Resound Networks, LLC	0024535437	TX-239-9502003	Texas	449107	1	45	503	\$ 206,210.00
Resound Networks, LLC	0024535437	TX-239-9503001	Texas	449107	1	9	28	\$ 21,187.60
Resound Networks, LLC	0024535437	TX-239-9503002	Texas	449107	1	11	107	\$ 29,469.00
Resound Networks, LLC	0024535437	TX-239-9503003	Texas	449107	1	83	397	\$ 130,334.00
Resound Networks, LLC	0024535437	TX-239-9503004	Texas	449107	1	3	19	\$ 2,288.20
Resound Networks, LLC	0024535437	TX-245-0069001	Texas	449107	1	2	4	\$ 25,410.00
Resound Networks, LLC	0024535437	TX-245-0071001	Texas	449107	1	3	7	\$ 18,702.00

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Resound Networks, LLC	0024535437	TX-245-0112011	Texas	449107	1	6	40	\$ 65,806.80
Resound Networks, LLC	0024535437	TX-245-0114002	Texas	449107	1	6	10	\$ 36,954.00
Resound Networks, LLC	0024535437	TX-245-0114004	Texas	449107	1	7	23	\$ 229,326.00
Resound Networks, LLC	0024535437	TX-245-0114005	Texas	449107	1	6	11	\$ 20,043.00
Resound Networks, LLC	0024535437	TX-245-0116002	Texas	449107	1	4	40	\$ 28,668.00
Resound Networks, LLC	0024535437	TX-247-9504002	Texas	449107	1	11	32	\$ 417,024.00
Resound Networks, LLC	0024535437	TX-253-0201011	Texas	449107	1	26	207	\$ 106,243.20
Resound Networks, LLC	0024535437	TX-253-0201012	Texas	449107	1	12	158	\$ 46,908.20
Resound Networks, LLC	0024535437	TX-253-0202001	Texas	449107	1	6	19	\$ 21,180.00
Resound Networks, LLC	0024535437	TX-253-0202002	Texas	449107	1	20	123	\$ 154,401.60
Resound Networks, LLC	0024535437	TX-253-0202003	Texas	449107	1	6	44	\$ 92,820.00
Resound Networks, LLC	0024535437	TX-253-0203001	Texas	449107	1	101	280	\$ 172,351.00
Resound Networks, LLC	0024535437	TX-253-0204001	Texas	449107	1	8	15	\$ 45,846.00
Resound Networks, LLC	0024535437	TX-253-0204002	Texas	449107	1	1	2	\$ 25,008.00
Resound Networks, LLC	0024535437	TX-253-0204003	Texas	449107	1	73	198	\$ 168,339.60
Resound Networks, LLC	0024535437	TX-253-0205001	Texas	449107	1	17	39	\$ 229,005.90
Resound Networks, LLC	0024535437	TX-253-0205002	Texas	449107	1	30	162	\$ 94,717.00
Resound Networks, LLC	0024535437	TX-253-0205003	Texas	449107	1	1	13	\$ 3,263.80
Resound Networks, LLC	0024535437	TX-253-0205004	Texas	449107	1	92	406	\$ 290,754.60
Resound Networks, LLC	0024535437	TX-259-9703012	Texas	449107	1	4	6	\$ 1,223.00

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Resound Networks, LLC	0024535437	TX-259-9703022	Texas	449107	1	1	2	\$ 2,065.00
Resound Networks, LLC	0024535437	TX-259-9703023	Texas	449107	1	3	12	\$ 5,923.00
Resound Networks, LLC	0024535437	TX-263-9501001	Texas	449107	1	12	28	\$ 60,675.00
Resound Networks, LLC	0024535437	TX-271-9501001	Texas	449107	1	67	364	\$ 1,313,112.00
Resound Networks, LLC	0024535437	TX-271-9501002	Texas	449107	1	51	154	\$ 294,858.00
Resound Networks, LLC	0024535437	TX-271-9501003	Texas	449107	1	39	143	\$ 214,791.80
Resound Networks, LLC	0024535437	TX-279-9502002	Texas	449107	1	3	4	\$ 8,752.00
Resound Networks, LLC	0024535437	TX-279-9503001	Texas	449107	1	45	97	\$ 55,955.80
Resound Networks, LLC	0024535437	TX-279-9505001	Texas	449107	1	26	38	\$ 42,991.20
Resound Networks, LLC	0024535437	TX-279-9506001	Texas	449107	1	52	88	\$ 69,217.40
Resound Networks, LLC	0024535437	TX-279-9506002	Texas	449107	1	3	13	\$ 970.50
Resound Networks, LLC	0024535437	TX-279-9506003	Texas	449107	1	2	17	\$ 900.70
Resound Networks, LLC	0024535437	TX-281-9501003	Texas	449107	1	37	201	\$ 60,402.60
Resound Networks, LLC	0024535437	TX-281-9503011	Texas	449107	1	8	88	\$ 28,098.00
Resound Networks, LLC	0024535437	TX-281-9503012	Texas	449107	1	4	5	\$ 8,220.60
Resound Networks, LLC	0024535437	TX-281-9503013	Texas	449107	1	17	99	\$ 17,521.20
Resound Networks, LLC	0024535437	TX-281-9503021	Texas	449107	1	10	148	\$ 75,393.00
Resound Networks, LLC	0024535437	TX-281-9503022	Texas	449107	1	11	145	\$ 29,237.40
Resound Networks, LLC	0024535437	TX-283-9503002	Texas	449107	1	84	364	\$ 470,184.00
Resound Networks, LLC	0024535437	TX-285-0001001	Texas	449107	1	34	305	\$ 132,624.60

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Resound Networks, LLC	0024535437	TX-285-0001002	Texas	449107	1	56	448	\$ 205,275.00
Resound Networks, LLC	0024535437	TX-285-0001003	Texas	449107	1	2	29	\$ 6,091.90
Resound Networks, LLC	0024535437	TX-285-0002001	Texas	449107	1	8	42	\$ 10,542.80
Resound Networks, LLC	0024535437	TX-285-0002003	Texas	449107	1	11	124	\$ 20,400.10
Resound Networks, LLC	0024535437	TX-285-0003001	Texas	449107	1	14	71	\$ 31,726.60
Resound Networks, LLC	0024535437	TX-285-0005002	Texas	449107	1	19	143	\$ 121,399.70
Resound Networks, LLC	0024535437	TX-287-0004004	Texas	449107	1	3	25	\$ 4,879.00
Resound Networks, LLC	0024535437	TX-295-9502001	Texas	449107	1	56	114	\$ 452,285.40
Resound Networks, LLC	0024535437	TX-295-9503001	Texas	449107	1	127	227	\$ 933,399.60
Resound Networks, LLC	0024535437	TX-299-9701001	Texas	449107	1	44	376	\$ 157,375.00
Resound Networks, LLC	0024535437	TX-299-9702002	Texas	449107	1	10	52	\$ 11,133.00
Resound Networks, LLC	0024535437	TX-299-9702003	Texas	449107	1	6	64	\$ 5,934.10
Resound Networks, LLC	0024535437	TX-299-9703001	Texas	449107	1	8	81	\$ 6,075.00
Resound Networks, LLC	0024535437	TX-299-9704001	Texas	449107	1	17	60	\$ 26,730.00
Resound Networks, LLC	0024535437	TX-299-9704002	Texas	449107	1	37	226	\$ 56,088.00
Resound Networks, LLC	0024535437	TX-299-9704003	Texas	449107	1	5	14	\$ 2,139.70
Resound Networks, LLC	0024535437	TX-299-9705002	Texas	449107	1	3	5	\$ 1,074.00
Resound Networks, LLC	0024535437	TX-299-9705004	Texas	449107	1	10	62	\$ 6,163.00
Resound Networks, LLC	0024535437	TX-299-9706001	Texas	449107	1	10	23	\$ 7,660.00
Resound Networks, LLC	0024535437	TX-299-9706002	Texas	449107	1	5	35	\$ 4,016.00

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Resound Networks, LLC	0024535437	TX-301-9501001	Texas	449107	1	5	7	\$ 110,448.00
Resound Networks, LLC	0024535437	TX-303-0002012	Texas	449107	1	3	5	\$ 30,426.00
Resound Networks, LLC	0024535437	TX-303-0017063	Texas	449107	1	1	6	\$ 6,864.00
Resound Networks, LLC	0024535437	TX-303-0102001	Texas	449107	1	1	8	\$ 25,130.00
Resound Networks, LLC	0024535437	TX-303-0102003	Texas	449107	1	24	73	\$ 52,248.80
Resound Networks, LLC	0024535437	TX-303-0103011	Texas	449107	1	6	9	\$ 36,084.00
Resound Networks, LLC	0024535437	TX-303-0103012	Texas	449107	1	3	11	\$ 78,884.00
Resound Networks, LLC	0024535437	TX-303-0104061	Texas	449107	1	1	6	\$ 9,951.00
Resound Networks, LLC	0024535437	TX-303-0105081	Texas	449107	1	2	5	\$ 4,610.40
Resound Networks, LLC	0024535437	TX-303-0107002	Texas	449107	1	4	25	\$ 10,789.60
Resound Networks, LLC	0024535437	TX-305-9504001	Texas	449107	1	1	3	\$ 22,950.00
Resound Networks, LLC	0024535437	TX-307-9503001	Texas	449107	1	7	14	\$ 1,219.80
Resound Networks, LLC	0024535437	TX-307-9503002	Texas	449107	1	10	23	\$ 1,038.00
Resound Networks, LLC	0024535437	TX-307-9503003	Texas	449107	1	5	28	\$ 1,346.00
Resound Networks, LLC	0024535437	TX-307-9503005	Texas	449107	1	10	31	\$ 2,338.00
Resound Networks, LLC	0024535437	TX-307-9503006	Texas	449107	1	11	31	\$ 2,291.00
Resound Networks, LLC	0024535437	TX-313-0001001	Texas	449107	1	12	249	\$ 68,518.90
Resound Networks, LLC	0024535437	TX-317-9501001	Texas	449107	1	2	3	\$ 48,060.00
Resound Networks, LLC	0024535437	TX-317-9502001	Texas	449107	1	5	15	\$ 186,714.00
Resound Networks, LLC	0024535437	TX-321-7301001	Texas	449107	1	2	2	\$ 976.40

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Resound Networks, LLC	0024535437	TX-321-7302011	Texas	449107	1	6	55	\$ 18,300.20
Resound Networks, LLC	0024535437	TX-321-7302013	Texas	449107	1	53	435	\$ 134,812.60
Resound Networks, LLC	0024535437	TX-321-7302021	Texas	449107	1	44	322	\$ 92,475.70
Resound Networks, LLC	0024535437	TX-321-7303031	Texas	449107	1	41	310	\$ 66,028.90
Resound Networks, LLC	0024535437	TX-321-7304001	Texas	449107	1	13	90	\$ 12,769.80
Resound Networks, LLC	0024535437	TX-321-7305011	Texas	449107	1	62	620	\$ 135,191.00
Resound Networks, LLC	0024535437	TX-321-7305012	Texas	449107	1	57	779	\$ 239,656.00
Resound Networks, LLC	0024535437	TX-321-7305013	Texas	449107	1	44	1,166	\$ 229,068.00
Resound Networks, LLC	0024535437	TX-321-7305014	Texas	449107	1	30	459	\$ 48,952.80
Resound Networks, LLC	0024535437	TX-321-7306001	Texas	449107	1	55	289	\$ 131,369.10
Resound Networks, LLC	0024535437	TX-321-7307001	Texas	449107	1	76	509	\$ 153,165.00
Resound Networks, LLC	0024535437	TX-321-7307002	Texas	449107	1	44	246	\$ 102,222.00
Resound Networks, LLC	0024535437	TX-321-7307003	Texas	449107	1	12	70	\$ 26,141.90
Resound Networks, LLC	0024535437	TX-323-9502011	Texas	449107	1	40	135	\$ 1,296,036.00
Resound Networks, LLC	0024535437	TX-323-9502012	Texas	449107	1	6	13	\$ 129,828.00
Resound Networks, LLC	0024535437	TX-323-9507001	Texas	449107	1	40	176	\$ 872,208.00
Resound Networks, LLC	0024535437	TX-323-9507003	Texas	449107	1	7	18	\$ 145,374.00
Resound Networks, LLC	0024535437	TX-329-0101121	Texas	449107	1	1	10	\$ 1,965.00
Resound Networks, LLC	0024535437	TX-329-0101122	Texas	449107	1	3	13	\$ 2,079.00
Resound Networks, LLC	0024535437	TX-329-0101131	Texas	449107	1	25	212	\$ 43,379.20

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Resound Networks, LLC	0024535437	TX-329-0101134	Texas	449107	1	16	248	\$ 176,472.50
Resound Networks, LLC	0024535437	TX-329-0101135	Texas	449107	1	28	188	\$ 124,650.20
Resound Networks, LLC	0024535437	TX-329-0101141	Texas	449107	1	4	14	\$ 16,964.00
Resound Networks, LLC	0024535437	TX-329-0101142	Texas	449107	1	22	239	\$ 20,827.00
Resound Networks, LLC	0024535437	TX-329-0101143	Texas	449107	1	2	3	\$ 9,288.00
Resound Networks, LLC	0024535437	TX-335-9502002	Texas	449107	1	2	8	\$ 2,664.00
Resound Networks, LLC	0024535437	TX-341-9502001	Texas	449107	1	8	88	\$ 989.10
Resound Networks, LLC	0024535437	TX-341-9503004	Texas	449107	1	2	3	\$ 1,759.50
Resound Networks, LLC	0024535437	TX-353-9505001	Texas	449107	1	22	63	\$ 13,339.00
Resound Networks, LLC	0024535437	TX-353-9505002	Texas	449107	1	16	116	\$ 11,410.00
Resound Networks, LLC	0024535437	TX-357-9501001	Texas	449107	1	74	267	\$ 971,655.30
Resound Networks, LLC	0024535437	TX-357-9501002	Texas	449107	1	94	259	\$ 895,863.10
Resound Networks, LLC	0024535437	TX-359-9501001	Texas	449107	1	10	39	\$ 1,025.80
Resound Networks, LLC	0024535437	TX-359-9501002	Texas	449107	1	27	109	\$ 14,433.30
Resound Networks, LLC	0024535437	TX-369-9502002	Texas	449107	1	3	12	\$ 655.10
Resound Networks, LLC	0024535437	TX-369-9502003	Texas	449107	1	8	17	\$ 199.20
Resound Networks, LLC	0024535437	TX-369-9503001	Texas	449107	1	20	52	\$ 5,009.30
Resound Networks, LLC	0024535437	TX-371-9501001	Texas	449107	1	23	88	\$ 741,420.00
Resound Networks, LLC	0024535437	TX-371-9501003	Texas	449107	1	43	235	\$ 226,814.00
Resound Networks, LLC	0024535437	TX-371-9503001	Texas	449107	1	4	6	\$ 6,264.00

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Resound Networks, LLC	0024535437	TX-371-9503003	Texas	449107	1	4	8	\$ 16,632.00
Resound Networks, LLC	0024535437	TX-371-9504001	Texas	449107	1	5	6	\$ 10,860.00
Resound Networks, LLC	0024535437	TX-371-9505001	Texas	449107	1	33	262	\$ 94,384.80
Resound Networks, LLC	0024535437	TX-371-9505002	Texas	449107	1	8	21	\$ 40,392.00
Resound Networks, LLC	0024535437	TX-371-9505003	Texas	449107	1	46	190	\$ 114,999.30
Resound Networks, LLC	0024535437	TX-375-0134001	Texas	449107	1	3	21	\$ 784.00
Resound Networks, LLC	0024535437	TX-375-0143001	Texas	449107	1	61	540	\$ 36,737.20
Resound Networks, LLC	0024535437	TX-375-0143002	Texas	449107	1	36	271	\$ 14,892.10
Resound Networks, LLC	0024535437	TX-375-0143003	Texas	449107	1	40	371	\$ 6,952.70
Resound Networks, LLC	0024535437	TX-375-0144011	Texas	449107	1	2	9	\$ 511.70
Resound Networks, LLC	0024535437	TX-375-0145001	Texas	449107	1	1	1	\$ 3,937.50
Resound Networks, LLC	0024535437	TX-375-0154001	Texas	449107	1	2	5	\$ 3,984.00
Resound Networks, LLC	0024535437	TX-377-9501001	Texas	449107	1	25	64	\$ 27,364.00
Resound Networks, LLC	0024535437	TX-377-9501002	Texas	449107	1	30	105	\$ 208,682.00
Resound Networks, LLC	0024535437	TX-381-0217033	Texas	449107	1	7	209	\$ 3,304.10
Resound Networks, LLC	0024535437	TX-381-0219001	Texas	449107	1	10	45	\$ 5,473.70
Resound Networks, LLC	0024535437	TX-381-0219003	Texas	449107	1	4	69	\$ 1,801.60
Resound Networks, LLC	0024535437	TX-383-9501004	Texas	449107	1	3	12	\$ 11,202.00
Resound Networks, LLC	0024535437	TX-389-9501001	Texas	449107	1	23	51	\$ 596,784.00
Resound Networks, LLC	0024535437	TX-389-9505001	Texas	449107	1	46	121	\$ 1,024,140.00

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Resound Networks, LLC	0024535437	TX-391-9502001	Texas	449107	1	28	247	\$ 250,440.00
Resound Networks, LLC	0024535437	TX-391-9504002	Texas	449107	1	112	630	\$ 441,982.00
Resound Networks, LLC	0024535437	TX-393-9501001	Texas	449107	1	45	93	\$ 397,528.00
Resound Networks, LLC	0024535437	TX-395-9603003	Texas	449107	1	29	200	\$ 200,622.00
Resound Networks, LLC	0024535437	TX-395-9604001	Texas	449107	1	41	288	\$ 360,418.00
Resound Networks, LLC	0024535437	TX-415-9501001	Texas	449107	1	85	227	\$ 263,092.20
Resound Networks, LLC	0024535437	TX-415-9501003	Texas	449107	1	6	9	\$ 21,660.00
Resound Networks, LLC	0024535437	TX-415-9502001	Texas	449107	1	159	551	\$ 497,883.50
Resound Networks, LLC	0024535437	TX-415-9506001	Texas	449107	1	73	198	\$ 259,357.70
Resound Networks, LLC	0024535437	TX-415-9506002	Texas	449107	1	60	227	\$ 150,890.50
Resound Networks, LLC	0024535437	TX-415-9506004	Texas	449107	1	2	2	\$ 16,668.00
Resound Networks, LLC	0024535437	TX-417-9503001	Texas	449107	1	14	71	\$ 25,654.30
Resound Networks, LLC	0024535437	TX-417-9503002	Texas	449107	1	7	69	\$ 119,731.60
Resound Networks, LLC	0024535437	TX-417-9503003	Texas	449107	1	16	43	\$ 29,703.00
Resound Networks, LLC	0024535437	TX-417-9503004	Texas	449107	1	130	356	\$ 493,843.60
Resound Networks, LLC	0024535437	TX-421-9502002	Texas	449107	1	32	126	\$ 2,103.70
Resound Networks, LLC	0024535437	TX-427-9501041	Texas	449107	1	9	97	\$ 66,474.00
Resound Networks, LLC	0024535437	TX-427-9501081	Texas	449107	1	2	2	\$ 18,672.00
Resound Networks, LLC	0024535437	TX-427-9501082	Texas	449107	1	12	42	\$ 106,095.00
Resound Networks, LLC	0024535437	TX-427-9502021	Texas	449107	1	16	111	\$ 313,854.00

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Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	TX-427-9502022	Texas	449107	1	11	45	\$ 489,726.00
Resound Networks, LLC	0024535437	TX-427-9504021	Texas	449107	1	6	19	\$ 92,253.00
Resound Networks, LLC	0024535437	TX-427-9504022	Texas	449107	1	2	3	\$ 26,316.00
Resound Networks, LLC	0024535437	TX-433-9503002	Texas	449107	1	26	53	\$ 744,978.00
Resound Networks, LLC	0024535437	TX-437-9502001	Texas	449107	1	4	7	\$ 151.50
Resound Networks, LLC	0024535437	TX-437-9502002	Texas	449107	1	10	26	\$ 15,714.60
Resound Networks, LLC	0024535437	TX-437-9503002	Texas	449107	1	4	6	\$ 2,601.90
Resound Networks, LLC	0024535437	TX-437-9503004	Texas	449107	1	4	14	\$ 1,363.20
Resound Networks, LLC	0024535437	TX-437-9504001	Texas	449107	1	14	18	\$ 4,272.50
Resound Networks, LLC	0024535437	TX-441-0132001	Texas	449107	1	8	34	\$ 10,063.00
Resound Networks, LLC	0024535437	TX-441-0133002	Texas	449107	1	4	7	\$ 2,443.10
Resound Networks, LLC	0024535437	TX-441-0133003	Texas	449107	1	1	1	\$ 10,776.00
Resound Networks, LLC	0024535437	TX-441-0134024	Texas	449107	1	12	125	\$ 34,112.20
Resound Networks, LLC	0024535437	TX-441-0134041	Texas	449107	1	4	10	\$ 11,538.00
Resound Networks, LLC	0024535437	TX-441-0135001	Texas	449107	1	3	8	\$ 4,177.10
Resound Networks, LLC	0024535437	TX-441-9800001	Texas	449107	1	2	2	\$ 6,252.90
Resound Networks, LLC	0024535437	TX-445-9501001	Texas	449107	1	4	19	\$ 11,708.00
Resound Networks, LLC	0024535437	TX-445-9501002	Texas	449107	1	5	13	\$ 10,270.40
Resound Networks, LLC	0024535437	TX-445-9501003	Texas	449107	1	4	6	\$ 5,133.00
Resound Networks, LLC	0024535437	TX-445-9503003	Texas	449107	1	1	2	\$ 745.60

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Resound Networks, LLC	0024535437	TX-445-9504007	Texas	449107	1	2	8	\$ 4,603.20
Resound Networks, LLC	0024535437	TX-447-9503001	Texas	449107	1	14	37	\$ 38,339.80
Resound Networks, LLC	0024535437	TX-451-0017021	Texas	449107	1	1	9	\$ 5,813.40
Resound Networks, LLC	0024535437	TX-451-0017042	Texas	449107	1	23	230	\$ 302,979.60
Resound Networks, LLC	0024535437	TX-451-0017081	Texas	449107	1	6	13	\$ 29,148.90
Resound Networks, LLC	0024535437	TX-461-9501001	Texas	449107	1	90	424	\$ 118,693.80
Resound Networks, LLC	0024535437	TX-461-9502001	Texas	449107	1	41	230	\$ 45,398.20
Resound Networks, LLC	0024535437	TX-461-9502002	Texas	449107	1	72	346	\$ 18,614.40
Resound Networks, LLC	0024535437	TX-463-9501001	Texas	449107	1	56	189	\$ 1,835,718.00
Resound Networks, LLC	0024535437	TX-463-9501002	Texas	449107	1	13	66	\$ 61,734.00
Resound Networks, LLC	0024535437	TX-463-9501003	Texas	449107	1	39	198	\$ 149,118.00
Resound Networks, LLC	0024535437	TX-463-9502001	Texas	449107	1	49	196	\$ 1,009,608.00
Resound Networks, LLC	0024535437	TX-463-9502002	Texas	449107	1	11	80	\$ 289,626.00
Resound Networks, LLC	0024535437	TX-463-9502003	Texas	449107	1	15	36	\$ 387,744.00
Resound Networks, LLC	0024535437	TX-463-9502004	Texas	449107	1	2	3	\$ 42,276.00
Resound Networks, LLC	0024535437	TX-463-9502005	Texas	449107	1	12	44	\$ 412,362.00
Resound Networks, LLC	0024535437	TX-463-9502006	Texas	449107	1	3	9	\$ 126,798.00
Resound Networks, LLC	0024535437	TX-465-9505003	Texas	449107	1	32	139	\$ 769,188.00
Resound Networks, LLC	0024535437	TX-465-9508001	Texas	449107	1	24	128	\$ 505,068.00
Resound Networks, LLC	0024535437	TX-465-9508002	Texas	449107	1	42	278	\$ 1,584,066.00

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Resound Networks, LLC	0024535437	TX-465-9508003	Texas	449107	1	2	2	\$ 20,238.00
Resound Networks, LLC	0024535437	TX-469-0007001	Texas	449107	1	8	64	\$ 8,597.10
Resound Networks, LLC	0024535437	TX-469-0007003	Texas	449107	1	42	354	\$ 36,003.10
Resound Networks, LLC	0024535437	TX-469-0008001	Texas	449107	1	49	479	\$ 71,879.20
Resound Networks, LLC	0024535437	TX-469-0008002	Texas	449107	1	33	220	\$ 77,764.20
Resound Networks, LLC	0024535437	TX-469-0013001	Texas	449107	1	34	290	\$ 213,233.00
Resound Networks, LLC	0024535437	TX-469-0013002	Texas	449107	1	42	158	\$ 144,973.00
Resound Networks, LLC	0024535437	TX-469-0014002	Texas	449107	1	11	118	\$ 14,400.00
Resound Networks, LLC	0024535437	TX-469-0014003	Texas	449107	1	3	6	\$ 2,493.00
Resound Networks, LLC	0024535437	TX-469-0014004	Texas	449107	1	4	4	\$ 2,605.00
Resound Networks, LLC	0024535437	TX-469-0016061	Texas	449107	1	50	704	\$ 130,901.60
Resound Networks, LLC	0024535437	TX-469-0017001	Texas	449107	1	27	130	\$ 19,252.00
Resound Networks, LLC	0024535437	TX-469-0017002	Texas	449107	1	37	263	\$ 84,878.30
Resound Networks, LLC	0024535437	TX-469-0017003	Texas	449107	1	32	307	\$ 35,094.00
Resound Networks, LLC	0024535437	TX-469-0017004	Texas	449107	1	16	257	\$ 20,811.00
Resound Networks, LLC	0024535437	TX-473-6801001	Texas	449107	1	8	116	\$ 9,124.00
Resound Networks, LLC	0024535437	TX-473-6802002	Texas	449107	1	3	6	\$ 15,728.00
Resound Networks, LLC	0024535437	TX-473-6802003	Texas	449107	1	7	24	\$ 19,631.00
Resound Networks, LLC	0024535437	TX-473-6802004	Texas	449107	1	6	24	\$ 7,523.00
Resound Networks, LLC	0024535437	TX-473-6803001	Texas	449107	1	11	52	\$ 17,952.00

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Resound Networks, LLC	0024535437	TX-473-6803003	Texas	449107	1	8	22	\$ 19,146.00
Resound Networks, LLC	0024535437	TX-473-6803004	Texas	449107	1	6	13	\$ 3,135.00
Resound Networks, LLC	0024535437	TX-473-6805001	Texas	449107	1	17	86	\$ 61,662.00
Resound Networks, LLC	0024535437	TX-473-6806001	Texas	449107	1	28	277	\$ 48,962.10
Resound Networks, LLC	0024535437	TX-473-6806002	Texas	449107	1	21	282	\$ 23,422.00
Resound Networks, LLC	0024535437	TX-473-6806003	Texas	449107	1	10	99	\$ 6,338.00
Resound Networks, LLC	0024535437	TX-475-9501001	Texas	449107	1	4	21	\$ 97,026.00
Resound Networks, LLC	0024535437	TX-475-9501002	Texas	449107	1	5	17	\$ 52,284.00
Resound Networks, LLC	0024535437	TX-475-9501003	Texas	449107	1	3	8	\$ 7,956.00
Resound Networks, LLC	0024535437	TX-475-9502002	Texas	449107	1	1	17	\$ 21,651.80
Resound Networks, LLC	0024535437	TX-479-0017101	Texas	449107	1	24	162	\$ 1,417,782.00
Resound Networks, LLC	0024535437	TX-479-0017111	Texas	449107	1	3	15	\$ 43,230.00
Resound Networks, LLC	0024535437	TX-479-0017142	Texas	449107	1	1	3	\$ 33,594.00
Resound Networks, LLC	0024535437	TX-479-0018101	Texas	449107	1	4	56	\$ 504,834.00
Resound Networks, LLC	0024535437	TX-479-0018131	Texas	449107	1	10	140	\$ 272,796.00
Resound Networks, LLC	0024535437	TX-479-0018142	Texas	449107	1	4	30	\$ 84,164.00
Resound Networks, LLC	0024535437	TX-479-0018151	Texas	449107	1	6	15	\$ 210,654.00
Resound Networks, LLC	0024535437	TX-479-0018172	Texas	449107	1	2	10	\$ 49,914.00
Resound Networks, LLC	0024535437	TX-479-0018181	Texas	449107	1	1	15	\$ 153,480.00
Resound Networks, LLC	0024535437	TX-481-7401002	Texas	449107	1	38	313	\$ 29,220.40

**Rural Digital Opportunity Fund Phase I  
Auction ID: 904  
Authorized Long-Form Applicants and Winning Bids**

**Attachment A**



Date of Report: 01/13/2023

Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	TX-481-7401003	Texas	449107	1	2	2	\$ 8,280.00
Resound Networks, LLC	0024535437	TX-481-7401004	Texas	449107	1	52	328	\$ 102,039.90
Resound Networks, LLC	0024535437	TX-481-7401005	Texas	449107	1	35	76	\$ 50,900.50
Resound Networks, LLC	0024535437	TX-481-7402001	Texas	449107	1	25	115	\$ 17,182.30
Resound Networks, LLC	0024535437	TX-481-7402002	Texas	449107	1	4	10	\$ 1,571.00
Resound Networks, LLC	0024535437	TX-481-7403002	Texas	449107	1	7	12	\$ 5,511.40
Resound Networks, LLC	0024535437	TX-481-7404002	Texas	449107	1	18	82	\$ 11,997.00
Resound Networks, LLC	0024535437	TX-481-7405001	Texas	449107	1	16	159	\$ 19,765.50
Resound Networks, LLC	0024535437	TX-481-7406001	Texas	449107	1	40	293	\$ 61,559.60
Resound Networks, LLC	0024535437	TX-481-7406002	Texas	449107	1	37	332	\$ 14,464.80
Resound Networks, LLC	0024535437	TX-481-7406003	Texas	449107	1	67	476	\$ 113,546.50
Resound Networks, LLC	0024535437	TX-481-7407001	Texas	449107	1	44	147	\$ 55,724.50
Resound Networks, LLC	0024535437	TX-481-7408003	Texas	449107	1	18	76	\$ 35,371.30
Resound Networks, LLC	0024535437	TX-481-7409001	Texas	449107	1	64	457	\$ 856,609.60
Resound Networks, LLC	0024535437	TX-481-7409002	Texas	449107	1	5	27	\$ 22,140.00
Resound Networks, LLC	0024535437	TX-481-7410004	Texas	449107	1	46	234	\$ 114,454.70
Resound Networks, LLC	0024535437	TX-481-7411001	Texas	449107	1	60	301	\$ 228,917.00
Resound Networks, LLC	0024535437	TX-481-7411002	Texas	449107	1	21	85	\$ 53,306.00
Resound Networks, LLC	0024535437	TX-483-9501002	Texas	449107	1	13	36	\$ 164,824.00
Resound Networks, LLC	0024535437	TX-483-9503001	Texas	449107	1	40	99	\$ 396,894.60

**Rural Digital Opportunity Fund Phase I  
Auction ID: 904  
Authorized Long-Form Applicants and Winning Bids**

**Attachment A**



Date of Report: 01/13/2023

Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	TX-483-9503002	Texas	449107	1	4	25	\$ 6,240.00
Resound Networks, LLC	0024535437	TX-483-9503003	Texas	449107	1	2	9	\$ 7,158.00
Resound Networks, LLC	0024535437	TX-485-0115003	Texas	449107	1	4	7	\$ 43,725.00
Resound Networks, LLC	0024535437	TX-485-0129001	Texas	449107	1	4	51	\$ 19,968.00
Resound Networks, LLC	0024535437	TX-485-0131001	Texas	449107	1	17	83	\$ 23,693.60
Resound Networks, LLC	0024535437	TX-485-0131003	Texas	449107	1	2	16	\$ 4,215.00
Resound Networks, LLC	0024535437	TX-485-0135021	Texas	449107	1	3	8	\$ 46,008.00
Resound Networks, LLC	0024535437	TX-485-0138001	Texas	449107	1	31	184	\$ 144,124.00
Resound Networks, LLC	0024535437	TX-485-0138003	Texas	449107	1	25	105	\$ 66,600.80
Resound Networks, LLC	0024535437	TX-491-0201102	Texas	449107	1	3	14	\$ 31,464.00
Resound Networks, LLC	0024535437	TX-491-0201121	Texas	449107	1	3	31	\$ 19,756.00
Resound Networks, LLC	0024535437	TX-491-0202011	Texas	449107	1	5	58	\$ 116,536.50
Resound Networks, LLC	0024535437	TX-491-0202012	Texas	449107	1	10	222	\$ 212,544.00
Resound Networks, LLC	0024535437	TX-491-0202021	Texas	449107	1	5	84	\$ 61,950.00
Resound Networks, LLC	0024535437	TX-491-0202022	Texas	449107	1	1	9	\$ 7,958.00
Resound Networks, LLC	0024535437	TX-491-0202023	Texas	449107	1	34	340	\$ 371,512.00
Resound Networks, LLC	0024535437	TX-491-0202041	Texas	449107	1	13	299	\$ 169,852.00
Resound Networks, LLC	0024535437	TX-491-0202042	Texas	449107	1	12	147	\$ 37,348.00
Resound Networks, LLC	0024535437	TX-491-0202043	Texas	449107	1	3	44	\$ 16,778.00
Resound Networks, LLC	0024535437	TX-491-0202044	Texas	449107	1	24	233	\$ 120,672.00

**Rural Digital Opportunity Fund Phase I  
Auction ID: 904  
Authorized Long-Form Applicants and Winning Bids**

**Attachment A**



Date of Report: 01/13/2023

Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	TX-491-0203011	Texas	449107	1	12	200	\$ 53,132.00
Resound Networks, LLC	0024535437	TX-491-0203012	Texas	449107	1	34	495	\$ 171,638.00
Resound Networks, LLC	0024535437	TX-491-0203013	Texas	449107	1	9	73	\$ 31,898.00
Resound Networks, LLC	0024535437	TX-491-0203021	Texas	449107	1	6	57	\$ 39,294.00
Resound Networks, LLC	0024535437	TX-491-0203141	Texas	449107	1	7	38	\$ 28,370.00
Resound Networks, LLC	0024535437	TX-491-0206042	Texas	449107	1	2	9	\$ 61,260.00
Resound Networks, LLC	0024535437	TX-491-0208031	Texas	449107	1	6	13	\$ 8,234.00
Resound Networks, LLC	0024535437	TX-491-0208032	Texas	449107	1	2	25	\$ 7,982.00
Resound Networks, LLC	0024535437	TX-491-0208053	Texas	449107	1	4	14	\$ 6,094.00
Resound Networks, LLC	0024535437	TX-491-0209003	Texas	449107	1	5	23	\$ 122,766.00
Resound Networks, LLC	0024535437	TX-491-0213001	Texas	449107	1	17	104	\$ 12,064.90
Resound Networks, LLC	0024535437	TX-491-0215042	Texas	449107	1	2	4	\$ 24,636.00
Resound Networks, LLC	0024535437	TX-491-0216012	Texas	449107	1	2	11	\$ 20,406.00
Resound Networks, LLC	0024535437	TX-491-0216021	Texas	449107	1	10	61	\$ 7,818.00
Resound Networks, LLC	0024535437	TX-495-9502002	Texas	449107	1	6	15	\$ 12,246.00
Resound Networks, LLC	0024535437	TX-495-9502003	Texas	449107	1	14	36	\$ 15,600.00
Resound Networks, LLC	0024535437	TX-495-9503002	Texas	449107	1	4	10	\$ 3,891.00
Resound Networks, LLC	0024535437	TX-495-9504001	Texas	449107	1	15	81	\$ 317,586.00
Resound Networks, LLC	0024535437	TX-495-9504002	Texas	449107	1	27	93	\$ 89,694.00
Resound Networks, LLC	0024535437	TX-501-9501001	Texas	449107	1	87	181	\$ 630,084.00

**Rural Digital Opportunity Fund Phase I  
Auction ID: 904  
Authorized Long-Form Applicants and Winning Bids**

**Attachment A**



Date of Report: 01/13/2023

Applicant Name	FRN	Winning Bid Name	State	Study Area Code	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Resound Networks, LLC	0024535437	TX-501-9502005	Texas	449107	1	28	63	\$ 251,601.00
Resound Networks, LLC	0024535437	TX-507-9501001	Texas	449107	1	48	285	\$ 1,090,956.00
Resound Networks, LLC	0024535437	TX-507-9502001	Texas	449107	1	158	699	\$ 1,180,182.00
Resound Networks, LLC	0024535437	TX-507-9503011	Texas	449107	1	16	39	\$ 467,790.00



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
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DA 23-34

Released: January 13, 2023

## COMMENT DUE DATES SET FOR FURTHER NOTICE ON AFFORDABLE CONNECTIVITY PROGRAM TRANSPARENCY DATA COLLECTION

WC Docket No. 21-450

**Comments Due: February 13, 2023**

**Reply Comments Due: February 27, 2023**

By this Public Notice, the Wireline Competition Bureau announces that comments in response to the Fourth Report and Order and Further Notice of Proposed Rulemaking (*Further Notice*) on the Affordable Connectivity Program (ACP) Transparency Data Collection are due no later than February 13, 2023, and reply comments are due no later than February 27, 2023.<sup>1</sup>

The *Further Notice* seeks comment on the statutory requirement to revise the ACP Transparency Data Collection rules the Commission adopts to verify the accuracy of the data submitted, and on collecting additional information. On January 13, 2023, the Federal Register published a summary of the *Further Notice*, establishing February 13, 2023, as the comment deadline and February 27, 2023, as the reply comment deadline.<sup>2</sup> The *Further Notice* and the *Federal Register Notice* contain complete filing instructions.<sup>3</sup>

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

For further information, please contact Eric Wu, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418-1543 or [Eric.Wu@fcc.gov](mailto:Eric.Wu@fcc.gov).

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<sup>1</sup> *Affordable Connectivity Program*, WC Docket No. 21-450, Fourth Report and Order and Further Notice of Proposed Rulemaking, FCC 22-87 (Nov. 15, 2022) (*Further Notice*).

<sup>2</sup> Federal Communications Commission, Further Notice of Proposed Rulemaking, 88 Fed. Reg. 2305 (Jan. 13, 2023) (*Federal Register Notice*).

<sup>3</sup> See *Further Notice* at para. 125; *Federal Register Notice* at 2305.

# **SIXTH REPORT ON OWNERSHIP OF BROADCAST STATIONS**

**FCC Form 323 and Form 323-E Ownership Data as of  
October 1, 2021**

**DA 23-35**

Media Bureau and Office of Economics and Analytics  
JANUARY 2023



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This report is available for download from the Commission's website at <https://www.fcc.gov/media>.

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Table I. 1-4. 2021. Noncommercial AM Radio

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## I. INTRODUCTION

The Federal Communications Commission's (Commission's) biennial commercial and noncommercial broadcast ownership reporting forms—FCC Form 323 and Form 323-E, respectively—are designed to obtain detailed ownership information from the broadcast industry. This report, which presents data on ownership interests in commercial and noncommercial broadcast stations as of October 1, 2021 by gender, race, and ethnicity,<sup>1</sup> is the latest in a series of such publicly released tabulations. On November 14, 2012, the Media Bureau released the first electronic analysis of commercial broadcast ownership data submitted pursuant to the revised biennial reporting requirements for 2009 and 2011.<sup>2</sup> Subsequent reports contained analyses of the commercial broadcast ownership data submitted during the 2013, 2015, 2017, and 2019 filing cycles.<sup>3</sup> Accordingly, this report presents a tabulation of the seventh data collection using the current version of Form 323 and the third data collection using the current version of Form 323-E.<sup>4</sup> Like the prior reports, the data contained in these reports are “snapshots” of the status of minority and female ownership in the broadcast industry taken every two years. The collection, tabulation, and release of these data are useful to the public, Congress, and the Commission because they provide an insight into the ownership of broadcast stations, both commercial and noncommercial, over time, that could be relevant to the Commission's policymaking as well as used by interested parties.<sup>5</sup>

This report covers commercial and noncommercial stations in five broadcast services—full power television, Class A television, low power television, AM radio, and FM radio. As of October 1, 2021,

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<sup>1</sup> The Media Bureau's previous Report presented data on commercial broadcast stations as reported in the 2019 filing cycle. See Fifth Report on Ownership of Broadcast Stations, FCC Form 323 and Form 323-E Ownership Data as of October 1, 2019 (MB, OEA 2021), <https://docs.fcc.gov/public/attachments/DA-21-1101A1.pdf> (*Fifth 323 and 323-E Report*).

<sup>2</sup> See *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, Report on Ownership of Commercial Broadcast Stations, 27 FCC Rcd 13814, 13815, para. 2 (2012).

<sup>3</sup> See *Fifth 323 and 323-E Report*; Fourth Report on Ownership of Broadcast Stations, FCC Form 323 and Form 323-E Ownership Data as of October 1, 2017 (MB 2020), <https://www.fcc.gov/document/fcc-form-323-and-323-e-ownership-report-data-october-1-2017>; Third Report on Ownership of Commercial Broadcast Stations, FCC Form 323 Ownership Data as of October 1, 2015 (MB 2017), <https://www.fcc.gov/document/form-323-ownership-report-data-october-1-2015>; *2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, Report on Ownership of Commercial Broadcast Stations, 29 FCC Rcd 7835, 7836, para. 2 (2014).

<sup>4</sup> In 2009, the Commission made significant revisions to the ownership reporting form for commercial broadcast stations to improve the accuracy and reliability of collected biennial ownership data and allow that data to be searched, aggregated, and cross-referenced electronically. See, e.g., *Promoting Diversification of Ownership in the Broadcasting Services et al.*, Report and Order, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 398, 400-01, paras. 4-6 (2016) (*2016 323 and 323-E Order*). In 2016, the Commission revised the ownership reporting form for noncommercial broadcast stations, Form 323-E, to align the reporting requirements for noncommercial stations more closely with those for commercial stations. See *id.* at 420-28, paras. 43-55; see also *Promoting Diversification of Ownership in the Broadcasting Services et al.*, Order on Reconsideration, 32 FCC Rcd 3440 (2017) (*2017 323-E Order on Reconsideration*) (further revising noncommercial filing requirements). Pursuant to the *2016 323 and 323-E Order*, noncommercial stations are now required to submit biennial ownership reports on the same schedule applicable to commercial stations, including the October 1 “as of” date. See *2016 323 and 323-E Order*, 31 FCC Rcd at 432-33, paras. 64-67. Such filings were submitted by noncommercial licensees for the first time as part of the 2017 biennial filing cycle. See *id.* at 429, 432, paras. 58, 66; *Promoting Diversification of Ownership in the Broadcasting Services*, Order, 31 FCC Rcd 13263, 13263-64, paras. 1-2 (MB 2016) (suspending rolling filing deadlines for noncommercial stations and instead requiring all such stations to file on or before December 1, 2017).

<sup>5</sup> The information in this report meets the Commission's information quality guidelines. See *Implementation of Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Pursuant to Section 515 of Public Law No. 105-554*, Information Quality Guidelines, 17 FCC Rcd 19890 (2002).

there were approximately 1,760 licensed full power television stations, 380 licensed Class A television stations, 1,740 licensed low power television stations, 4,520 licensed AM radio stations, and 10,890 licensed FM radio stations.

This report focuses on two aspects of the recently collected ownership data—“attributable” ownership interests and “majority” ownership interests—using the lenses of gender, race, and ethnicity.<sup>6</sup> First, the report analyzes the reported information concerning attributable interest holders, consistent with the Commission’s broadcast ownership attribution rules.<sup>7</sup> Those rules represent the Commission’s best judgment concerning when an interest is sufficient to confer on the owner a potential degree of influence over a licensee that should be cognizable for purposes of applying the Commission’s broadcast ownership rules. As a general matter, the Commission for decades has deemed officers and directors of licensee entities, as well as holders of 5% or more voting interests, to be attributable owners.<sup>8</sup> Within this rubric, the report considers the gender, race, and ethnicity of attributable ownership interest holders. In graphs and tables reporting attributable ownership interests, the gender, race, and ethnicity categories are not mutually exclusive. Each station may appear in multiple gender, race, and ethnicity categories because many stations have attributable interest holders who belong to different gender, racial, or ethnic groups. For example, a station with both male and female attributable interest holders would be counted in both the male and female categories.

Second, the report adapts a measure the Commission often employs in ownership analyses generally, the majority ownership interest. In those other contexts, the Commission pays heed to whether a station’s attributable ownership ranks include a party that holds more than 50% of a station’s voting interests, because of the degree of influence that entity likely would have over station operations and decision-making.<sup>9</sup> Along the same lines, this report considers whether a person or group of people sharing the same gender, race or ethnicity characteristics collectively hold more than 50% of the voting interests in a licensee. For example, a station’s majority ownership interest in gender would be female if a single woman or a group of women held more than 50% of the voting interests in the licensee. A station’s majority interest in race and ethnicity is determined in the same way. Notably, some stations do not have a discernable majority interest on the basis of gender, race, or ethnicity.<sup>10</sup> Such stations are classified as having “No Majority Interest.”

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<sup>6</sup> Following government standards, the report employs two gender classifications (male and female), six racial classifications (American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, Two or more races, and White), and two ethnic classifications (Hispanic/Latino and not Hispanic/Latino). The gender, race, and ethnicity categories identified in Forms 323 and 323-E follow the guidance provided by the Office of Management and Budget. *See* Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, Notice of Decision, 62 Fed. Reg. 58,782 (Oct. 30, 1997). *See* Appendix A for the definitions of each racial and ethnic classification.

<sup>7</sup> *See* the notes to 47 CFR § 73.3555.

<sup>8</sup> For details, see Section II.A.

<sup>9</sup> *See, e.g., Instructions for Ownership Report for Commercial Broadcast Stations*, FCC Form 323, OMB Approval No. 3060-0010, at 6 (<https://www.fcc.gov/sites/default/files/323.pdf>) (FCC Sept. 2022) (most recent approval of decades-old form).

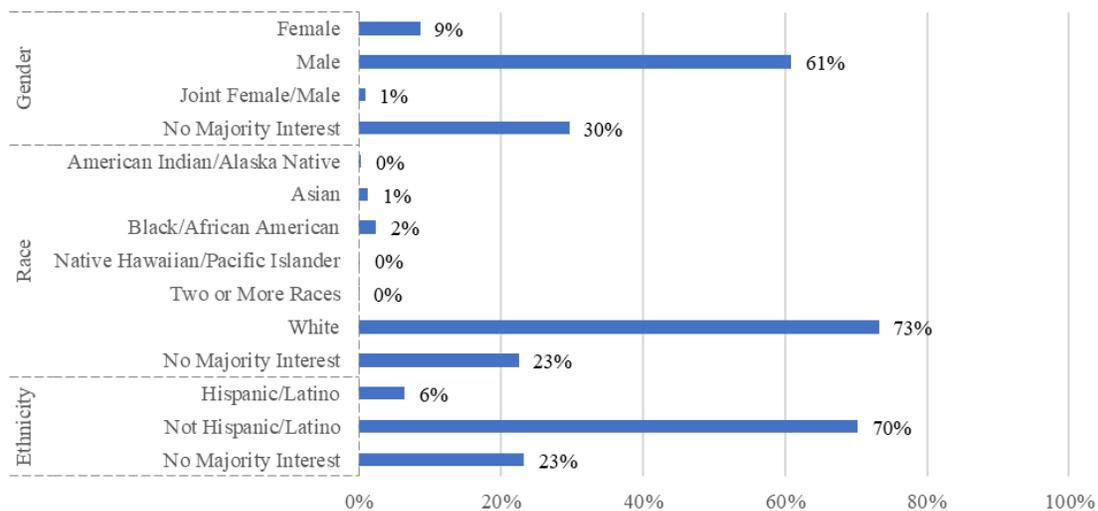
<sup>10</sup> The next section presents more detail about the two measures of ownership used in this report, attributable ownership interest and majority ownership interest. In addition, the following section discusses the reasons why a station may have no discernable majority ownership interest in one of the demographic categories.

### Overview of 2021 Broadcast Station Ownership Data

The shares of stations held by the various classifications reported below are calculated on the basis of the number of stations filing usable data, not on the basis of the total number of licensed stations.<sup>11</sup>

Figure 1 below summarizes the majority ownership interest of all commercial broadcast stations in gender, race, and ethnicity. Women held a majority ownership interest in 9% of commercial broadcast stations, while men held a majority ownership interest in 61% of commercial broadcast stations. White persons held a majority ownership interest in 73% of commercial broadcast stations, while persons belonging to racial minority groups held a majority ownership interest in 4% of commercial broadcast stations. Finally, Hispanic/Latino persons held a majority ownership interest in 6% of commercial broadcast stations while non-Hispanic/Latino persons held a majority ownership interest in 70% of commercial broadcast stations.

Figure 1: Majority Ownership Interest by Gender, Race, and Ethnicity  
Share of All Commercial Broadcast Stations



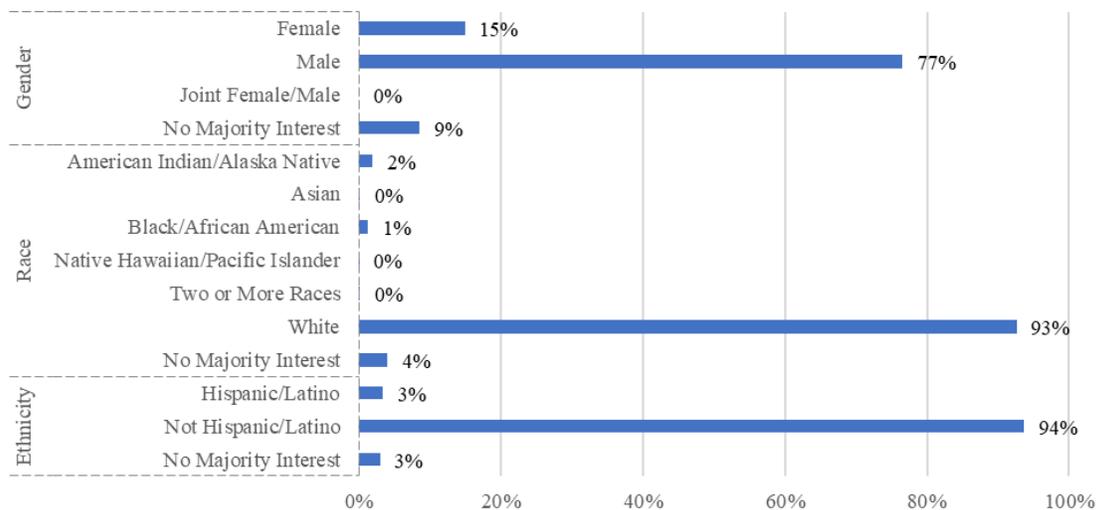
Notes: The graph reports the share of stations for which an individual or a group of individuals of the same race, ethnicity, or gender hold voting interests that exceed 50%. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants). Reported share is based only on stations that filed usable data. Due to rounding, the sum of all categories within gender, race, and ethnicity may not exactly equal 100%.

Figure 2 below summarizes the majority ownership interest of all noncommercial broadcast stations by gender, race, and ethnicity. Women held a majority ownership interest in 15% of noncommercial broadcast stations, while men held a majority ownership interest in 77% of noncommercial broadcast stations. White persons held a majority ownership interest in 93% of noncommercial broadcast stations, while persons belonging to racial minority groups held a majority ownership interest in 3% of noncommercial broadcast stations. Finally, Hispanic/Latino persons held a majority ownership interest in

<sup>11</sup> Information regarding the usable reports for each respective service is contained in the relevant tables below. Recognizing that there are certain limited instances where a non-profit entity holds a commercial license—and therefore parts of Form 323 may be inapplicable to the entity's structure—the Commission permits such an entity to file Form 323-E instead of Form 323. See *2016 323 and 323-E Order*, 31 FCC Rcd at 423-24, para. 48 n.175. All stations that filed Form 323-E are treated as noncommercial for purposes of this report.

3% of noncommercial broadcast stations, while non-Hispanic/Latino persons held a majority ownership interest in 94% of noncommercial broadcast stations.

Figure 2: Majority Ownership Interest by Gender, Race, and Ethnicity  
Share of All Noncommercial Broadcast Stations



Notes: The graph reports the share of stations for which an individual or a group of individuals of the same race, ethnicity, or gender hold voting interests that exceed 50%. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants). Reported share is based only on stations that filed usable data. Due to rounding, the sum of all categories within gender, race, and ethnicity may not exactly equal 100%.

For reference, we also present demographic information for the U.S. population. In 2021, the U.S. population was almost evenly split between men and women. About 80% of the U.S. population identified as not Hispanic/Latino while about 20% identified as Hispanic/Latino. By race, 61% of the U.S. population identified as White, about 12% identified as Black or African American, and about 6% identified as Asian. About 1% of the U.S. population identified as American Indian or Alaska Native and a smaller share identified as Native Hawaiian or Other Pacific Islander. About 13% of the U.S. population identified as belonging to two or more racial groups and about 7% belonged to some other racial group. In total, just over 40% of the U.S. population identified as belonging to a racial or ethnic minority group whereas the share of the U.S. population identifying as White, not Hispanic/Latino was about 60%.<sup>12</sup>

The remainder of the report contains: (1) a discussion of the ownership measures used in this report to summarize station ownership filings; (2) a comparison of certain 2021 and 2019 data for commercial and noncommercial broadcast stations—full power television, Class A television, low-power television (LPTV), AM radio, and FM radio; and (3) more detailed information about station ownership in the

<sup>12</sup> U.S. Census Bureau, 2021 American Community Survey 1-Year Estimates, *ACS Demographic and Housing Estimates*, <https://data.census.gov/table?g=0100000US&tid=ACSDP1Y2021.DP05> (last visited Nov. 23, 2022).

attached tables and appendices, as well as in accompanying spreadsheets released in conjunction with this report.<sup>13</sup>

## II. MEASURES OF OWNERSHIP

### A. Attributable Ownership Interest

As noted above, a station's ownership report must identify all of its attributable interest holders.<sup>14</sup> The attribution rules represent the Commission's best judgment concerning when an interest is sufficient to confer on the owner a potential degree of influence over a licensee that should be cognizable for purposes of applying the Commission's broadcast ownership rules.

With regard to corporations, individuals holding voting stock interests in a broadcast licensee of 5% or greater are considered attributable interest holders.<sup>15</sup> Further, individuals holding particular positions within a broadcast licensee entity also are attributable interest holders, regardless of their shares of voting stock. For example, officers and directors of broadcast licensee entities are attributable based on their corporate positions, as are members of limited liability companies and partners in a limited or general partnership, respectively.<sup>16</sup> Consistent with the Commission's rules, these individuals are deemed to have a role in the ownership and control of the broadcast licensee. Further, these individuals may exercise control of a licensee in cases where no single individual holds a majority of the voting interests in that licensee and therefore are more likely to exercise such control where no attributable voting interests are identified. This, however, cannot be inferred from the Form 323/323-E data alone, as the specific facts of each case would be required to determine actual control.

In graphs and tables reporting attributable ownership interests, the gender, race, and ethnicity categories are not mutually exclusive. Each station may appear in multiple gender, race, and ethnicity categories because many stations have attributable interest holders who belong to different gender, racial, or ethnic groups. For example, a station with both male and female attributable interest holders would be counted in both the male and female categories.

### B. Majority Ownership Interest

The report also uses the concept of majority ownership interest to summarize station ownership. As stated above, a station has a majority ownership interest in gender, race, or ethnicity if a single individual or a group of individuals belonging to the same gender, racial, or ethnic group hold more than 50% of the voting interests in the licensee. For example, if a single woman or a group of women hold more than 50% of voting interests in a licensee, the station's majority ownership interest in gender is female. The majority ownership interests in race and ethnicity are determined in the same way.

If there is no gender, racial, or ethnic group whose members hold more than 50% of voting interests, the station is classified as having "No Majority Interest." Our classification of a licensee in this report as having "No Majority Interest" does not necessarily mean that no classification of persons by gender, race, or ethnicity has a majority interest in the station, only that these facts could not be determined from the

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<sup>13</sup> The accompanying spreadsheets present ownership characteristics for each broadcast station, identified by its Facility ID number. These spreadsheets also provide the current call sign for each broadcast station. The spreadsheets are available at <https://www.fcc.gov/biennial-forms-323-and-323-e-broadcast-ownership-data-and-reports>.

<sup>14</sup> See the notes to 47 CFR § 73.3555.

<sup>15</sup> Ownership of less than 5% of the outstanding voting stock of a corporation, however, is not attributable. See 47 CFR § 73.3555, Note 2a.

<sup>16</sup> See 47 CFR § 73.3555, Note 2g. The relevant question on Form 323/323-E identifies the following additional categories of positional interests: General Partner; Limited Partner; LC/LLC/PLLC Member/Owner/Stockholder; Attributable Creditor; and Attributable Investor. The question also provides an "Other" option for users to specify an attribution category not contained in our list. All stations reporting persons identified by any one of these categories are included in Tables 1 and 2.

reported Form 323/323-E data in the absence of additional information. Stations may be classified as having no majority interest because some of a licensee's voting stock are not reported on Form 323 or Form 323-E. This occurs because the Commission does not attribute ownership of a licensee corporation to anyone who holds less than 5% of the outstanding voting interest of that corporation.<sup>17</sup> Particularly where the licensee is a public, widely held entity, it is common for large portions of a licensee's voting stock not to be reported on Form 323/323-E. In some cases, no attributable voting stock may be reported.

### C. Caveats and Clarifications

This report provides detailed information by gender, race, and ethnicity about the ownership of commercial and noncommercial television, radio, Class A television, and LPTV stations. As with previous reports, however, this report tallies and presents the data as provided to the Commission by filers. Therefore, its results ultimately rely on the accuracy and completeness of those filings.

Users of the information in this report should also bear in mind that while "control" of a licensee in the usual parlance of the Commission's cases, rules, and procedures refers to actual control of the licensee, either in terms of *de jure* or *de facto* control by an identifiable individual or group, the tabulation of interests in this report focuses on individuals or groups that share self-identified traits, irrespective of whether the person or group has *de jure* or *de facto* control. Because the Commission reports interests here that are held collectively by certain classes of individuals who may have no connection with one another beyond their shared classification by gender, race, or ethnicity, the fact that a particular class of individuals may have a majority of the voting stock, membership, or partnership interests in a licensee does not necessarily indicate actual control of the licensee by that class of individuals. Rather, absent a single majority interest holder, control of these stations would be determined on a *de facto* basis, which requires access to facts not reported on Form 323. Accordingly, this report refers to these collective interests as "majority" interests, rather than "controlling" interests. Similarly, where no majority interest is reported, a *de facto* control analysis would be required to determine actual control. However, when a single individual, of whatever classification, holds a majority voting interest in a licensee, this would indicate *de jure* control by that individual and is considered a controlling interest.

Some parties have suggested that, due to dissimilarities between the governance of commercial and noncommercial stations, the concept of "ownership" for noncommercial stations may be less obvious than in the context of commercial stations.<sup>18</sup> Nonetheless, for both Form 323 (commercial) and Form 323-E (noncommercial) purposes, the concept of ownership relies on the attribution standards set forth in Section 73.3555 of the Commission's rules, which generally do not depend on equity interests but instead "seek to identify those interests . . . that confer . . . a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions."<sup>19</sup> The Commission's attribution standards apply to both commercial and noncommercial stations, because the Commission has concluded that individuals and entities captured by these standards have the potential to exert influence over the licensee, regardless of whether the station at issue is commercial or noncommercial.<sup>20</sup> Officers and directors therefore are attributable owners of the noncommercial licensees they serve, and such individuals historically have been reported as attributable interest holders on both commercial and noncommercial broadcast ownership reports.<sup>21</sup>

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<sup>17</sup> See 47 CFR § 73.3555, Note 2a.

<sup>18</sup> 2016 323 and 323-E Order, 31 FCC Rcd at 422, para. 46.

<sup>19</sup> *Id.* at 422-23, para. 47 (quoting *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559, 12560, para. 1 (1999)).

<sup>20</sup> *Id.* at 423-24, para. 48.

<sup>21</sup> *Id.* at 422-23, paras. 47 ("Officers and directors of NCE stations already are defined as attributable interest holders in NCE stations and they already are reported on Form 323-E.").

### III. SUMMARY OF RESULTS

This section presents a summary of FCC Form 323 and Form 323-E data by category of ownership (attributable ownership interest and majority ownership interest) and by gender, race, and ethnicity.<sup>22</sup> Results are reported by service. For clarity and to provide context, we present 2021 figures against the backdrop of 2019 figures. The following summary uses data from the 2021 Form 323 and Form 323-E biennial reports, representing information current as of October 1, 2021, and the 2019 Form 323 and Form 323-E biennial reports, representing information current as of October 1, 2019. The share of stations held by individuals in the various classifications reported below are calculated on the basis of the number of stations filing usable data, not on the basis of the total number of licensed stations. Stations that did not file an ownership report are not included in the majority ownership interest or the attributable ownership interest calculations. In addition, some stations submitted one or more ownership reports, but their filings were incomplete. While these stations are not included in the majority ownership interest calculations, attributable interest holders disclosed on reports for these stations are included in the attributable ownership interest calculations.

The first figure for each service reports the share of stations with at least one attributable interest holder who belongs to each gender, race, or ethnicity classification. Each station may appear in more than one gender, race, or ethnicity classification.

The second figure for each service reports the share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold, either individually or collectively, a majority of the voting interests in the licensee, that is, their voting interests exceed 50%. When a station is identified as having no majority interest, that does not necessarily mean that no particular classification of persons has a majority interest in the station, only that this cannot be determined from the reported Form 323 or Form 323-E data as submitted. In the second figure, each station appears in only one gender, race, and ethnicity classification. *Joint female/male* is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a female and a male each own 100% of the station as joint tenants).

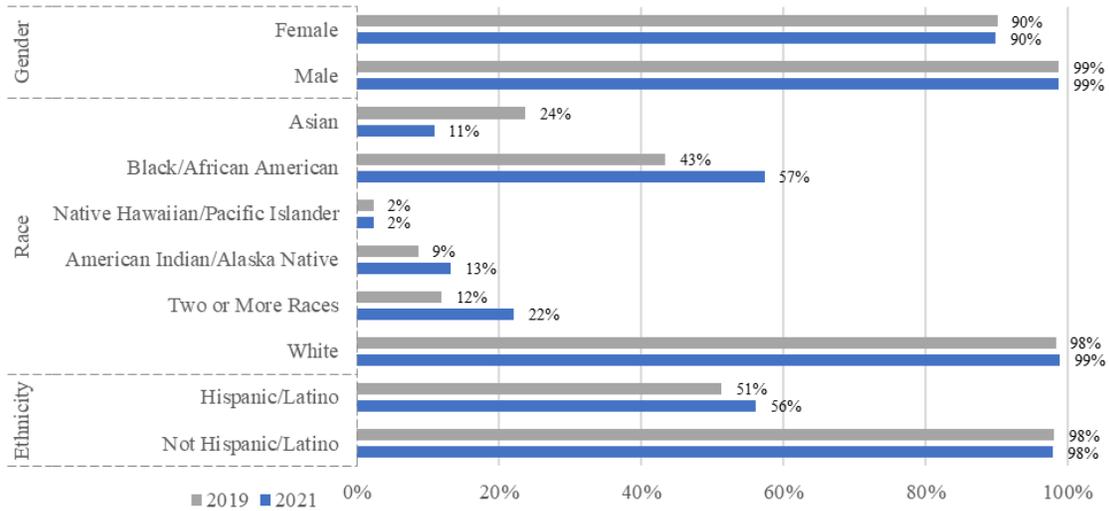
The information summarized graphically is provided in Appendix B in a series of tables presenting the sources of ownership attribution. Detailed information, including market size data, is contained in the tables in Appendix B and in the accompanying Excel spreadsheets released in conjunction with this report.

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<sup>22</sup> Previous versions of this report, including the report presenting data for the 2019 filing cycle, can be found at <https://www.fcc.gov/biennial-forms-323-and-323-e-broadcast-ownership-data-and-reports>. We note that a number of possible factors could account for shifts or changes in data from 2019 to 2021, including intervening station transfers or assignments; other changes in a licensee's ownership between 2019 and 2021; differences between the actual entities that filed reports in the 2019 window versus the 2021 window; diversification of ownership within a licensee or respondent that results in fewer findings of a majority control group consisting primarily of one gender, racial, or ethnic group; or transfers or assignments of licenses from entities with defined control groups to entities with no identifiable control group, among others.

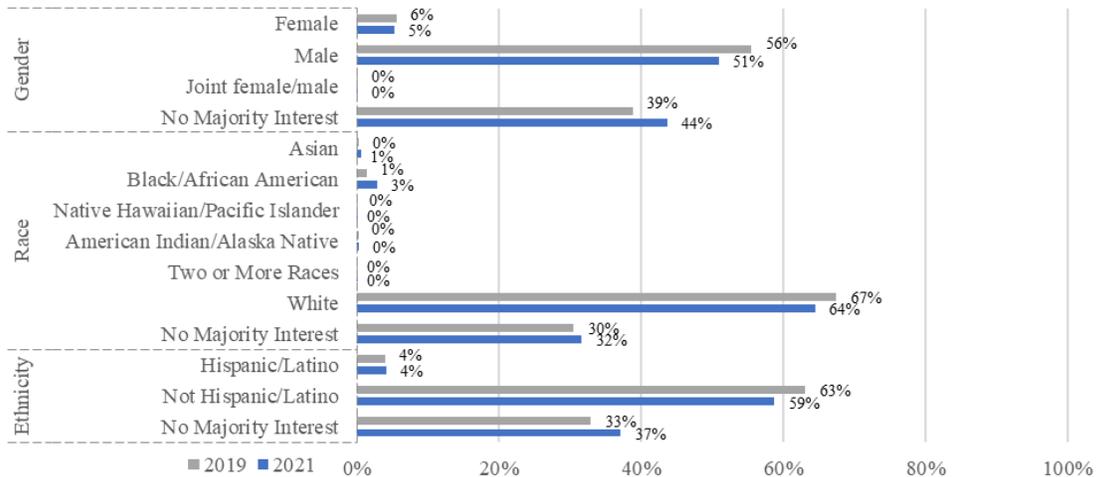
**A. Full Power Commercial Television**

Figure A1: Attributable Ownership Interest by Gender, Race, and Ethnicity  
Share of Full Power Commercial TV Stations  
2019 and 2021



Notes: The graph reports share of stations with at least one attributable interest holder who belongs to each gender, race, or ethnicity category. Each station may appear in multiple gender, race, and ethnicity categories. The categories are not mutually exclusive. Reported share is based only on stations that filed usable data.

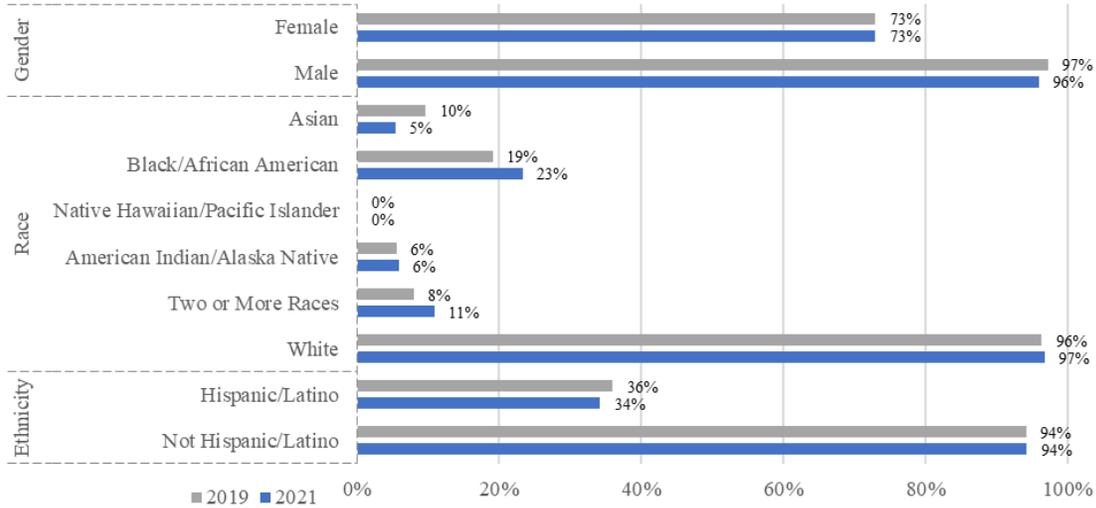
Figure A2: Majority Ownership Interest by Gender, Race, and Ethnicity  
Share of Full Power Commercial TV Stations  
2019 and 2021



Notes: The graph reports the share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants). Reported share is based only on stations that filed usable data.

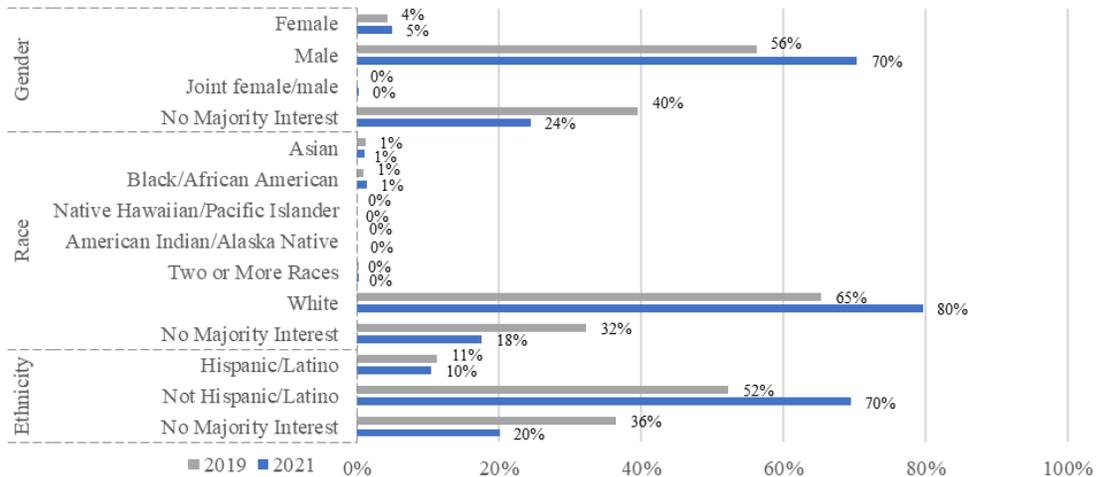
**B. Class A Television**

Figure B1: Attributable Ownership Interest by Gender, Race, and Ethnicity  
Share of Class A TV Stations  
2019 and 2021



Notes: The graph reports the share of stations with at least one attributable interest holder who belongs to each gender, race, or ethnicity category. Each station may appear in multiple gender, race, or ethnicity categories. The categories are not mutually exclusive. Reported share is based only on stations that filed usable data.

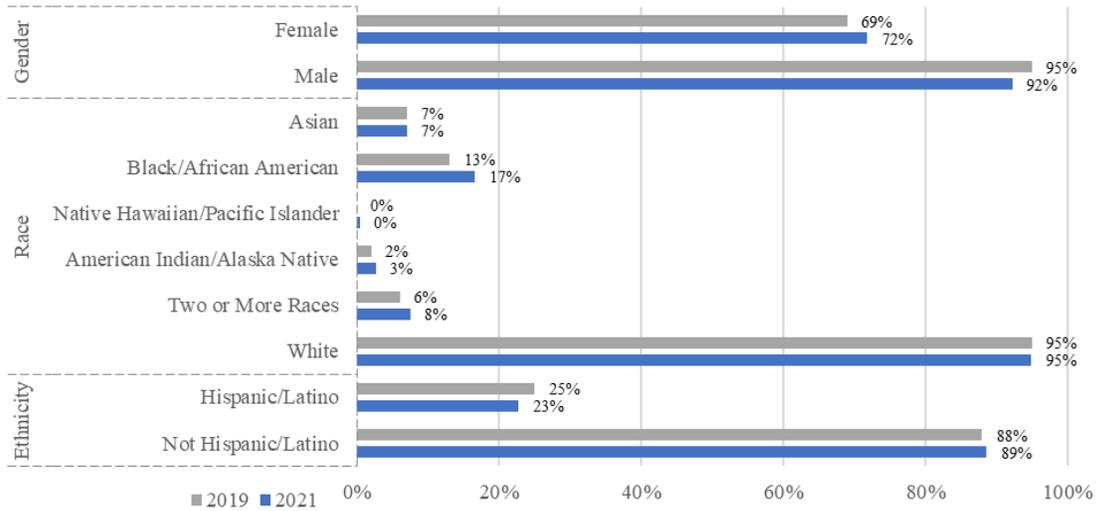
Figure B2: Majority Ownership Interest by Gender, Race, and Ethnicity  
Share of Class A TV Stations  
2019 and 2021



Notes: The graph reports the share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants). Reported share is based only on stations that filed usable data.

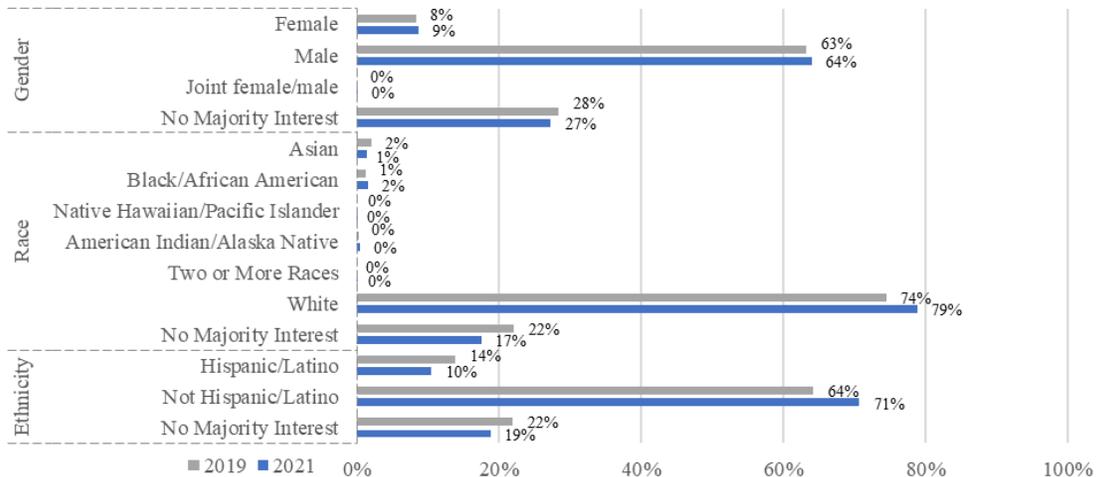
C. Low Power Television

Figure C1: Attributable Ownership Interest by Gender, Race, and Ethnicity  
Share of Low Power Commercial TV Stations  
2019 and 2021



Notes: The graph reports the share of stations with at least one attributable interest holder who belongs to each gender, race, or ethnicity category. Each station may appear in multiple gender, race, or ethnicity categories. The categories are not mutually exclusive. Reported share is based only on stations that filed usable data.

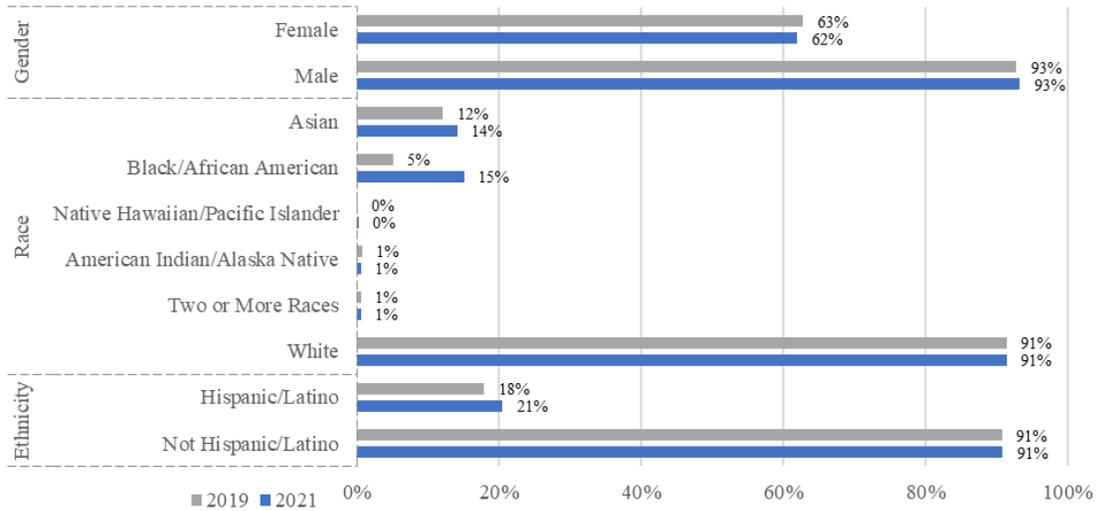
Figure C2: Majority Ownership Interest by Gender, Race, and Ethnicity  
Share of Low Power Commercial TV Stations  
2019 and 2021



Notes: The graph reports the share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants). Reported share is based only on stations that filed usable data.

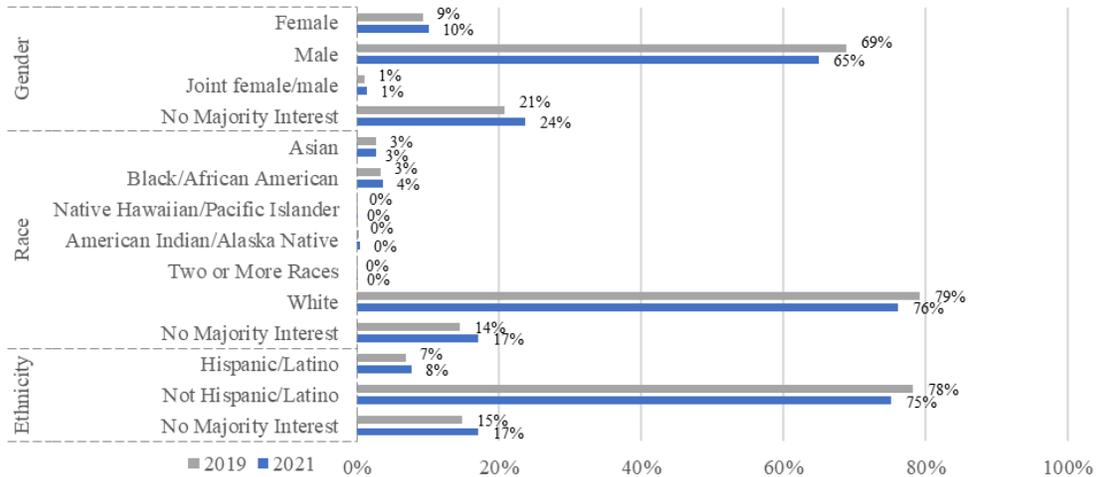
**D. Commercial AM Radio**

Figure D1: Attributable Ownership Interest by Gender, Race, and Ethnicity  
Share of AM Radio Stations  
2019 and 2021



Notes: The graph reports the share of stations with at least one attributable interest holder who belongs to each gender, race, or ethnicity category. Each station may appear in multiple gender, race, or ethnicity categories. The categories are not mutually exclusive. Reported share is based only on stations that filed usable data.

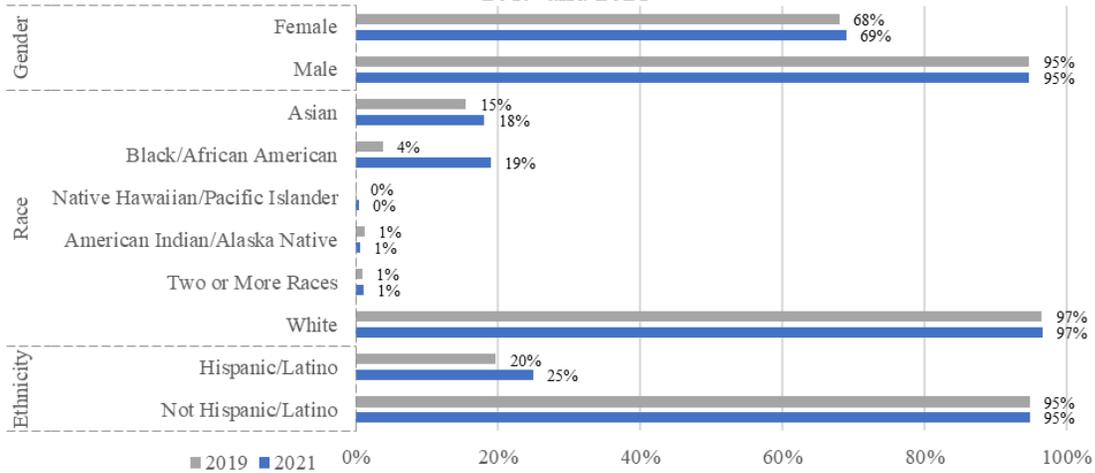
Figure D2: Majority Ownership Interest by Gender, Race, and Ethnicity  
Share of AM Radio Stations  
2019 and 2021



Notes: The graph reports the share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants). Reported share is based only on stations that filed usable data.

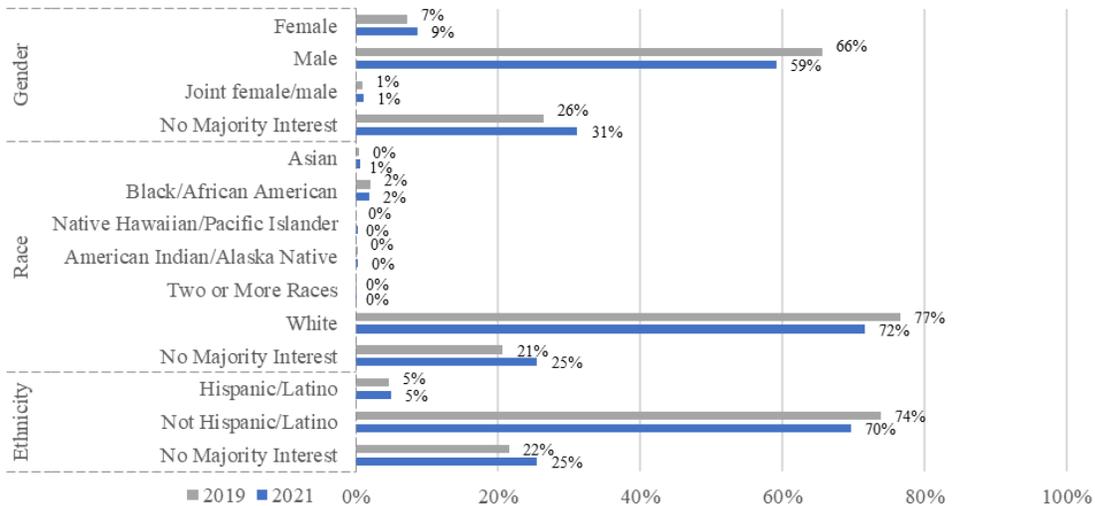
**E. Commercial FM Radio**

Figure E1: Attributable Ownership Interest by Gender, Race, and Ethnicity  
Share of Commercial FM Radio Stations  
2019 and 2021



Notes: The graph reports the share of stations with at least one attributable interest holder who belongs to each gender, race, or ethnicity category. Each station may appear in multiple gender, race, or ethnicity categories. The categories are not mutually exclusive. Reported share is based only on stations that filed usable data.

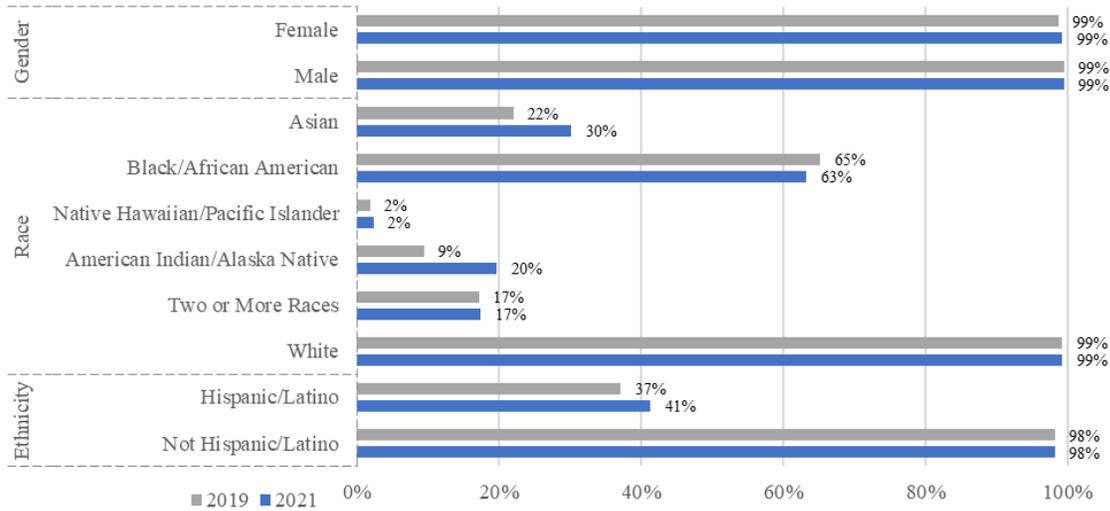
Figure E2: Majority Ownership Interest by Gender, Race, and Ethnicity  
Share of Commercial FM Radio Stations  
2019 and 2021



Notes: The graph reports the share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants). Reported share is based only on stations that filed usable data.

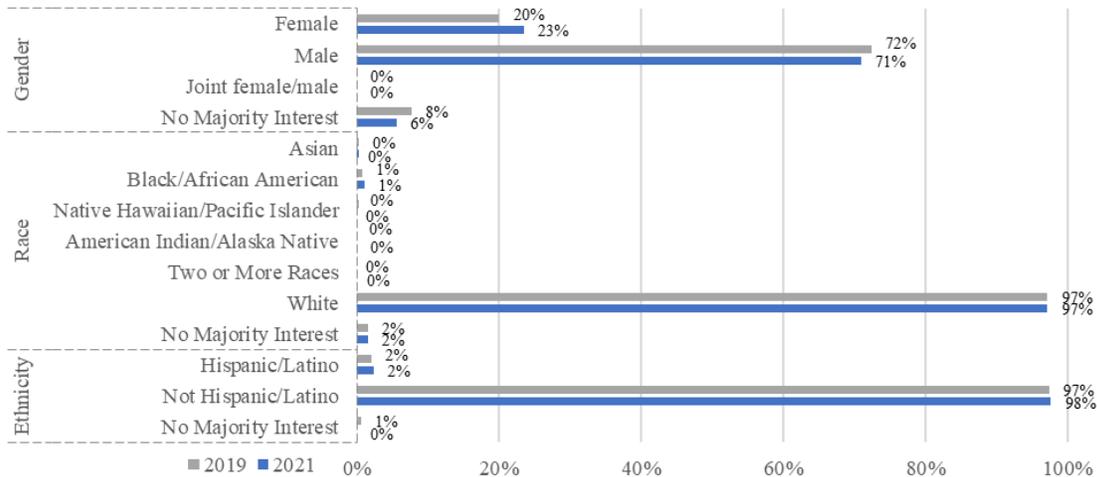
**F. Full Power Noncommercial Television**

Figure F1: Attributable Ownership Interest by Gender, Race, and Ethnicity  
Share of Full Power Noncommercial TV Stations  
2019 and 2021



Notes: The graph reports the share of stations with at least one attributable interest holder who belongs to each gender, race, or ethnicity category. Each station may appear in multiple gender, race, and ethnicity categories. The categories are not mutually exclusive. Reported share is based only on stations that filed usable data.

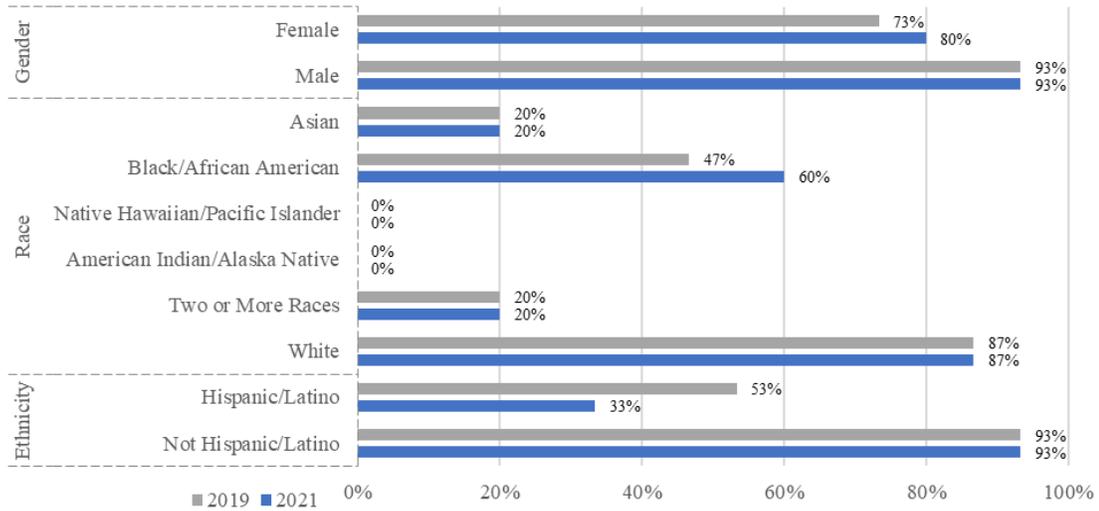
Figure F2: Majority Ownership Interest by Gender, Race, and Ethnicity  
Share of Full Power Noncommercial TV Stations  
2019 and 2021



Notes: The graph reports the share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants). Reported share is based only on stations that filed usable data.

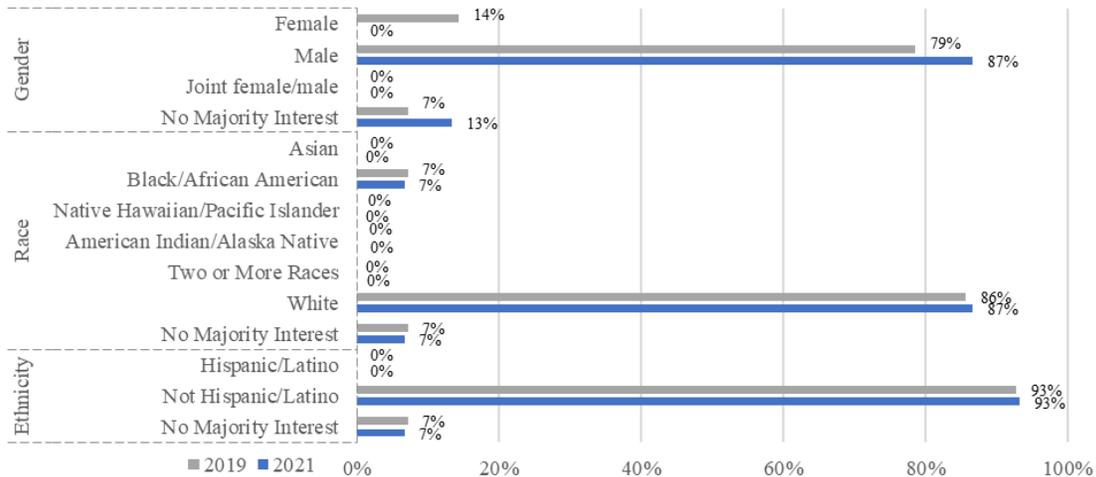
**G. Class A Noncommercial Television**

Figure G1: Attributable Ownership Interest by Gender, Race, and Ethnicity  
Share of Class A Noncommercial TV Stations  
2019 and 2021



Notes: The graph reports the share of stations with at least one attributable interest holder who belongs to each gender, race, or ethnicity category. Each station may appear in multiple gender, race, or ethnicity categories. The categories are not mutually exclusive. Reported share is based only on stations that filed usable data.

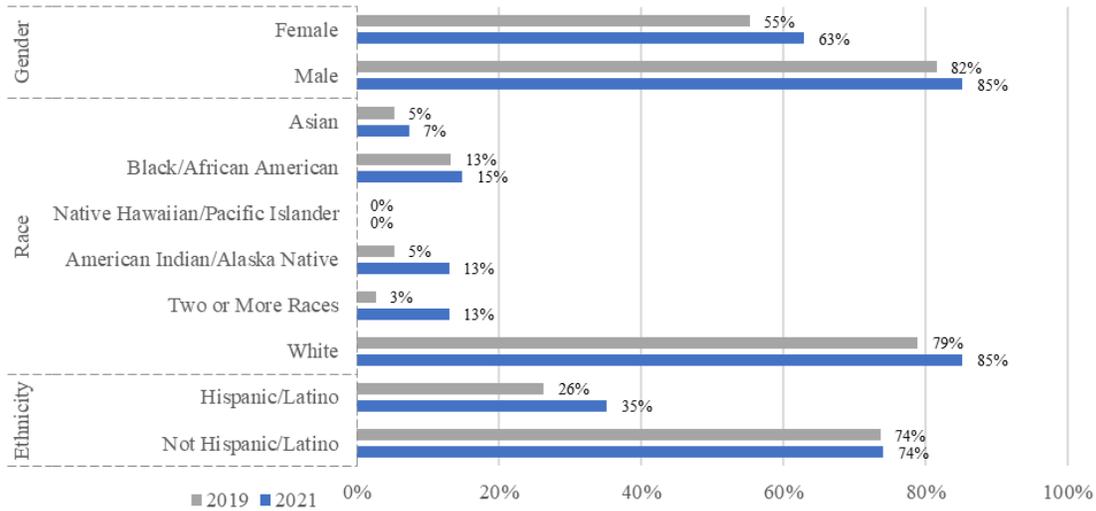
Figure G2: Majority Ownership Interest by Gender, Race, and Ethnicity  
Share of Class A Noncommercial TV Stations  
2019 and 2021



Notes: The graph reports the share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants). Reported share is based only on stations that filed usable data.

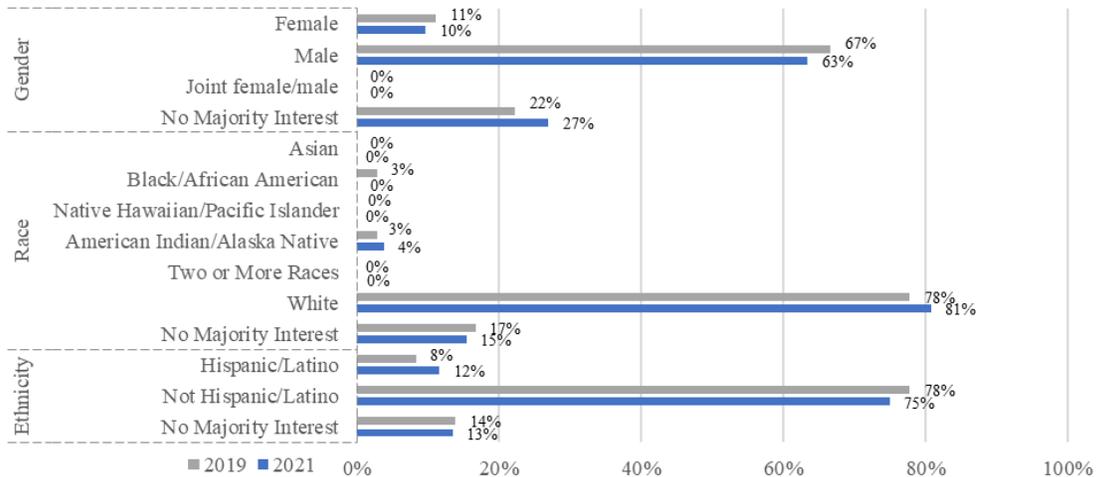
**H. Low Power Noncommercial Television**

Figure H1: Attributable Ownership Interest by Gender, Race, and Ethnicity Share of Low Power Noncommercial TV Stations 2019 and 2021



Notes: The graph reports the share of stations with at least one attributable interest holder who belongs to each gender, race, or ethnicity category. Each station may appear in multiple gender, race, or ethnicity categories. The categories are not mutually exclusive. Reported share is based only on stations that filed usable data.

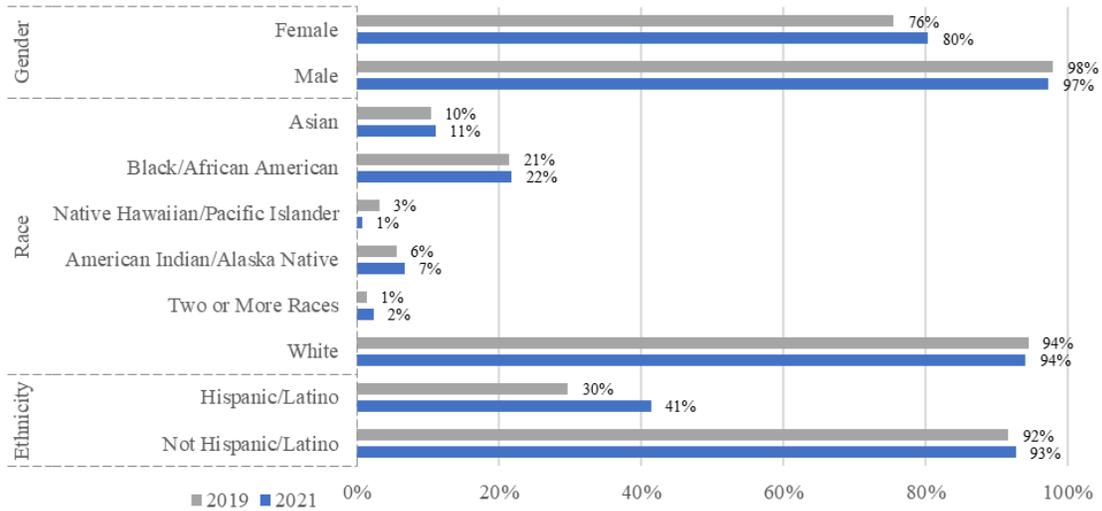
Figure H2: Majority Ownership Interest by Gender, Race, and Ethnicity Share of Low Power Noncommercial TV Stations 2019 and 2021



Notes: The graph reports the share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants). Reported share is based only on stations that filed usable data.

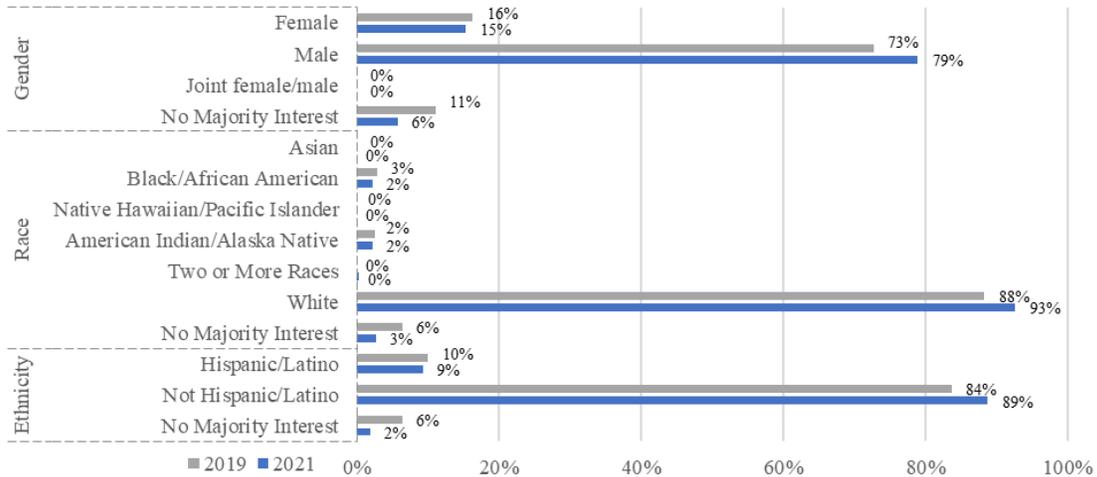
**I. Noncommercial AM Radio**

Figure I1: Attributable Ownership Interest by Gender, Race, and Ethnicity  
Share of Noncommercial AM Radio Stations  
2019 and 2021



Notes: The graph reports the share of stations with at least one attributable interest holder who belongs to each gender, race, or ethnicity category. Each station may appear in multiple gender, race, and ethnicity categories. The categories are not mutually exclusive. Reported share is based only on stations that filed usable data.

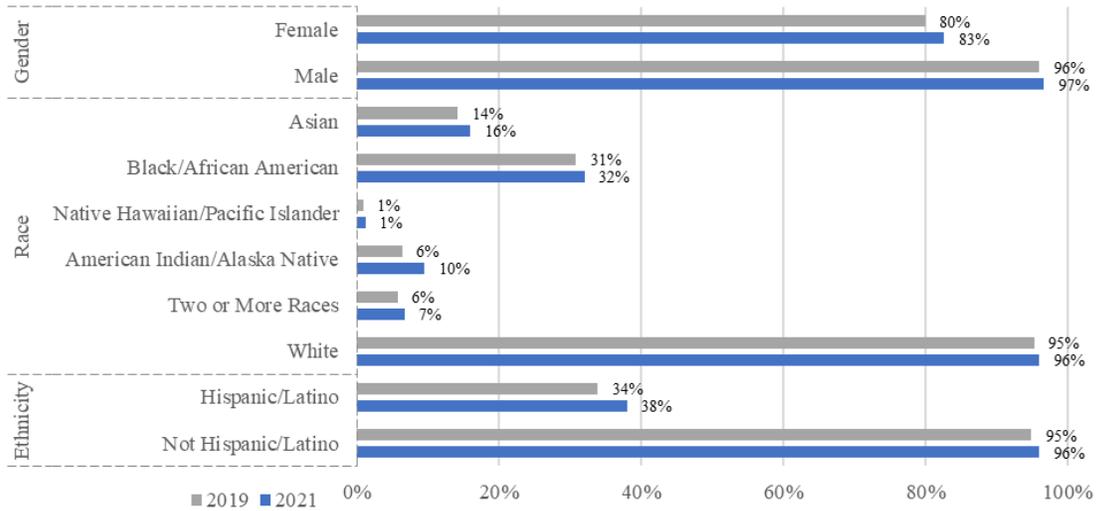
Figure I2: Majority Ownership Interest by Gender, Race, and Ethnicity  
Share of Noncommercial AM Radio Stations  
2019 and 2021



Notes: The graph reports the share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the

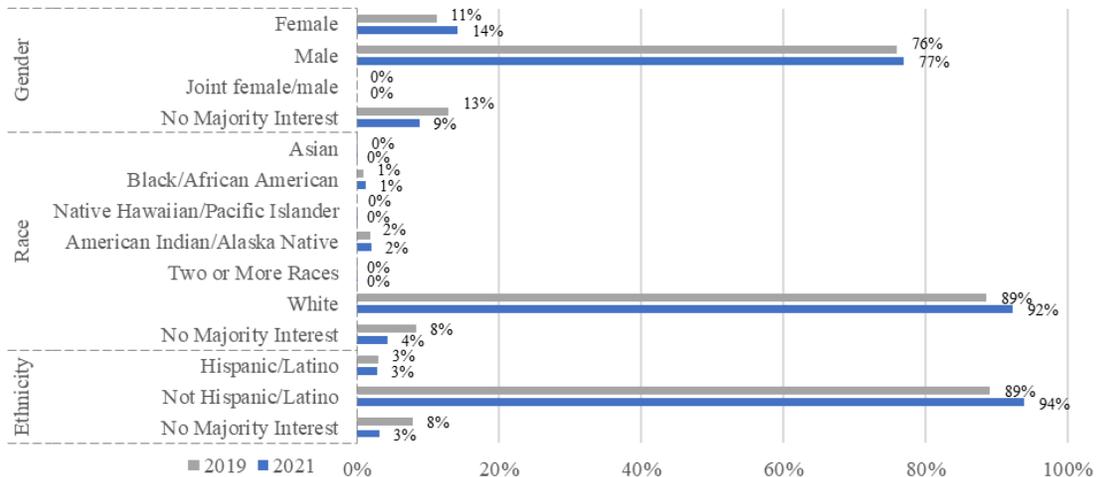
**J. Noncommercial FM Radio**

Figure J1: Attributable Ownership Interest by Gender, Race, and Ethnicity  
Share of Noncommercial FM Radio Stations  
2019 and 2021



Notes: The graph reports the share of stations with at least one attributable interest holder who belongs to each gender, race, or ethnicity category. Each station may appear in multiple gender, race, or ethnicity categories. The categories are not mutually exclusive. Reported share is based only on stations that filed usable data.

Figure J2: Majority Ownership Interest by Gender, Race, and Ethnicity  
Share of Noncommercial FM Radio Stations  
2019 and 2021



Notes: The graph reports the share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants). Reported share is based only on stations that filed usable data.

## APPENDIX A

### Explanatory Notes

#### Licensing and Management System

The 2021 filing cycle marks the third time Form 323 and 323-E broadcast ownership data were submitted via the Commission's Licensing and Management System (LMS).<sup>1</sup> The 2021 biennial ownership data analyzed in the report were pulled from LMS on October 7, 2022. The Media Bureau compiled the 2021 biennial ownership filings using both algorithmic analysis and manual adjustments to improve the accuracy of the reported ownership status and trends.

The public can search and retrieve ownership reports submitted in LMS based on multiple criteria, including call sign, facility ID number, service, station location (city and state), and/or FCC Registration Number (FRN), among other things.<sup>2</sup> For each report listed, the LMS search results screen indicates whether that report was submitted for a licensee/permittee or for a parent entity. This allows users to quickly identify filings that contain relevant information.<sup>3</sup> In addition, the data contained in each Form 323 and 323-E ownership report are publicly available and may be downloaded from the Commission's website then aggregated, cross-referenced, and searched electronically by interested parties.<sup>4</sup>

#### Insufficient and Missing Data

*Insufficient data to identify:* For stations classified as insufficient data, the computer code was unable to process the voting interests submitted to the Commission in these stations' biennial filings. For the first four reports, stations classified as insufficient data for purposes of determining voting interests were also classified as insufficient data for counting attributable individuals. Subsequent reports, including the current report, include individuals with attributable interests for all stations that submitted one or more 323/323-E filings, even if filings for those stations were incomplete. This approach allows us to include attributable interest holders for more stations but, for stations with incomplete filings, the set of attributable interest holders reported may be incomplete.

*Not filed:* This category includes situations where (a) the station's licensee did not file a biennial 323 or 323-E form, or (b) the Commission's LMS was unable to accept the licensee's filing as a result of the licensee failing to file a fee, or (c) the licensee's filing could not be processed at all by the computer code.

#### Ethnicity and Race Definitions

*Ethnicity Definition:*

- *Hispanic or Latino:* A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish Culture or origin, regardless of race.<sup>5</sup>

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<sup>1</sup> See *2016 323 and 323-E Order*, 31 FCC Rcd at 438 n.279. Previously, reports were submitted via the Commission's Consolidated Database System (CDBS).

<sup>2</sup> The specialized ownership report search is available via the LMS Search webpage, <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicSearchLanding.html>.

<sup>3</sup> *Id.*

<sup>4</sup> The relevant data tables are available via the LMS Public Database Files webpage, <https://enterpriseefiling.fcc.gov/dataentry/public/tv/lmsDatabase.html>.

<sup>5</sup> Office of Management and Budget, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, Notice of Decision, 62 Fed. Reg. 58782, 58789 (Oct. 30, 1997) (OMB Standards Notice).

*Race Definitions:*

- *American Indian or Alaska Native:* A person having origins in any of the original peoples of North America and South America including Central America, and who maintains tribal affiliation or community attachment.
- *Asian:* A person having origins in any of the original peoples of the Far East, Southeast Asia, or Indian Subcontinent including Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- *Black or African American:* A person having origins in any of the black racial groups of Africa.
- *Native Hawaiian or Other Pacific Islander:* A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- *Two or more races:* A person having origins in two or more races.
- *White:* A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.<sup>6</sup>

**Manual Adjustments to Data**

The computer code was unable to process a number of biennial submissions due to filing errors. Commission staff manually examined a number of filings, based on the data contained in the Form 323 submissions, together with other available information (such as communications with licensees or their counsel, as well as analysis of additional reports and applications filed by stations), and reassigned the stations to the appropriate category for the purposes of this report.

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<sup>6</sup> OMB Standards Notice, 62 Fed. Reg. at 58789.

## APPENDIX B

### Tables

In this Appendix, we report four tables for each of the ten categories of broadcast stations: (A) Full Power Commercial Television, (B) Class A Television, (C) Low Power Television, (D) Commercial AM Radio, (E) Commercial FM Radio, (F) Full Power Noncommercial Television, (G) Class A Noncommercial Television, (H) Low Power Noncommercial Television, (I) Noncommercial AM Radio, and (J) Noncommercial FM Radio.

Tables 1 and 2 summarize station ownership by the gender, race, and ethnicity of stations' attributable interest holders. Tables 3 and 4 report the majority ownership interest of all stations by gender, race, and ethnicity. Each table reports measures nationally and by market size. The share of stations held by individuals in the various classifications reported below are calculated on the basis of the number of stations filing usable data, not on the basis of the total number of licensed stations. Stations that did not file an ownership report are classified as "Not Filed" in all tables and are not included in the majority ownership interest or the attributable ownership interest calculations. In addition, some stations submitted one or more ownership reports, but their filings were incomplete. These stations are classified as "insufficient data" in Tables 3 and 4, and while these stations are not included in the majority ownership interest calculations, attributable interest holders disclosed on reports for these stations are included in the attributable ownership interest calculations.

**Table 1** reports the number and share of stations with at least one attributable interest holder who belongs to each gender, race, or ethnicity classification. This table also reports the number and share of stations that have at least one attributable interest holder who belongs to a racial and/or ethnic minority group. Each station may appear in more than one gender, race, and ethnicity classification in this table. The gender, race, and ethnicity categories are not mutually exclusive in this table.

**Table 2** reports the number and share of stations that have at least one attributable interest holder who belongs to each race and gender (e.g., Black/African American male, Asian female, etc.) and ethnicity and gender (e.g., Hispanic/Latino female, not Hispanic/Latino male, etc.) classification. The table also reports the number and share of stations that have at least one attributable interest holder who belongs to a racial and/or ethnic minority group and gender classification (i.e., racial and/or ethnic minority male and racial and/or ethnic minority female). Each station may appear in more than one race and gender, ethnicity and gender, and racial/ethnic minority and gender classification in this table. The race and gender, ethnicity and gender, and racial/ethnic minority and gender categories are not mutually exclusive in this table.

Tables 1 and 2 report the presence of attributable interest holders in a licensee who belong to different gender, race, and ethnicity classifications. These tables, however, do not offer information on the voting interests held by members of each group. In addition, a station must only have one attributable interest holder in a gender, race, or ethnicity classification to be counted in that category. For instance, a station with ten attributable interest holders who are white and one attributable interest holder who is Asian would be classified in the same way as a station with ten attributable interest holders who are Asian and one attributable interest holder who is white. Both stations would be classified as having at least one attributable interest holder who is Asian and at least one attributable interest holder who is white.

**Table 3** reports the number and share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold, either individually or collectively, a majority of the voting interests in the licensee; that is, their voting interests exceed 50%. The table also reports the number and share of stations for which members of a racial or ethnic minority group hold a majority of voting interests in the licensee. When a station is identified as having no majority interest, that does not necessarily mean that no particular classification of persons has a majority interest in the station, only that this cannot be determined from the reported Form 323 or Form 323-E data as submitted. Each station appears in only one gender, race, and ethnicity classification in this table. The gender, race, and ethnicity categories are mutually exclusive in this table.

*Joint female/male* is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50%. For example, a station where a woman and a man each own 100% of the station as joint tenants would be classified as having a joint female/male majority interest in gender.

**Table 4** reports the number and share of stations by majority ownership interest in race and gender and ethnicity and gender categories. The table also reports the number and share of stations with a majority interest held by a racial and/or ethnic minority group and gender classification (i.e., racial and/or ethnic minority male, racial and/or ethnic minority female, racial and/or ethnic minority combination). Each station appears in only one race and gender, ethnicity and gender, and racial/ethnic minority and gender classification in this table. The race and gender, ethnicity and gender, and racial/ethnic minority and gender categories are mutually exclusive in this table.

*Combination* includes situations in which the aggregate votes of the female attributable owner(s) and the aggregate votes of the male attributable owner(s) of the same race or ethnicity both separately exceed 50%. For example, a station in which a woman and man, both Hispanic/Latino, each own 100% as joint tenants would be classified as Hispanic/Latino combination. Combination also includes situations in which the aggregate votes of neither gender exceed 50%, but the aggregate votes of the female attributable owner(s) and the aggregate votes of the male attributable owner(s) of the same ethnicity or race together exceed 50%. For example, a station in which Asian women hold 40% of the vote and Asian men hold 40% of the vote would be classified as Asian combination.

Some stations that are classified as combination stations are classified as having no majority interest in gender in Table 3. For example, a station in which Hispanic/Latino women hold 45% of the vote, Hispanic/Latino men hold 45% of the vote, and 10% of the vote is unattributed would be classified as Hispanic/Latino combination and no majority interest in gender. However, some combination stations have a majority interest in gender. For example, a station in which Hispanic/Latino women hold 45% of the vote, Hispanic/Latino men hold 45% of the vote, and not Hispanic/Latino women hold 10% of the vote would be classified as Hispanic/Latino combination in Table 4 but female majority interest in gender in Table 3.

**TABLE A**

**1 - 4**

**2021**

**Full Power Commercial Television**

Table A(1) Attributable Ownership Interest by Gender, Race, and Ethnicity Stations with One or More Attributable Persons Full Power Commercial Television Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	1,227	89.9%	494	91.3%	336	94.9%	397	84.5%
Male	1,349	98.8%	540	99.8%	351	99.2%	458	97.4%
<b>Race</b>								
Asian	148	10.8%	120	22.2%	22	6.2%	6	1.3%
Black/African American	783	57.4%	314	58.0%	229	64.7%	240	51.1%
Native Hawaiian/Pacific Islander	32	2.3%	29	5.4%	1	0.3%	2	0.4%
American Indian/Alaska Native	180	13.2%	118	21.8%	39	11.0%	23	4.9%
Two or More Races	301	22.1%	92	17.0%	85	24.0%	124	26.4%
White	1,350	98.9%	536	99.1%	350	98.9%	464	98.7%
<b>Ethnicity</b>								
Hispanic/Latino	766	56.1%	354	65.4%	185	52.3%	227	48.3%
Not Hispanic/Latino	1,337	97.9%	536	99.1%	354	100.0%	447	95.1%
<b>Any racial or ethnic minority</b>								
	1,023	74.9%	446	82.4%	269	76.0%	308	65.5%
<b>Total stations</b>								
	1,365	100%	541	100%	354	100%	470	100%
<b>Stations not filed</b>								
	0	---	0	---	0	---	0	---
<b>All licensed stations</b>								
	1,365	---	541	---	354	---	470	---

Notes: The table reports the number and share of stations that have at least one person, by gender, race, or ethnicity, with an attributable interest, nationally and by DMA rank. Each station may appear in multiple gender, race, and ethnicity categories.

Table A(2) Attributable Ownership Interest by Race and Gender and by Ethnicity and Gender Stations with One or More Attributable Persons Full Power Commercial Television Stations – 2021									
	Gender	No. of Stations and % of Total							
		Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	133	9.7%	113	20.9%	16	4.5%	4	0.9%
	Male	145	10.6%	118	21.8%	22	6.2%	5	1.1%
Black/African American	Female	547	40.1%	204	37.7%	154	43.5%	189	40.2%
	Male	781	57.2%	312	57.7%	229	64.7%	240	51.1%
Native Hawaiian/ Pacific Islander	Female	32	2.3%	29	5.4%	1	0.3%	2	0.4%
	Male	1	0.1%	0	0.0%	0	0.0%	1	0.2%
American Indian/ Alaska Native	Female	78	5.7%	59	10.9%	13	3.7%	6	1.3%
	Male	114	8.4%	71	13.1%	26	7.3%	17	3.6%
Two or More Races	Female	100	7.3%	58	10.7%	24	6.8%	18	3.8%
	Male	299	21.9%	92	17.0%	85	24.0%	122	26.0%
White	Female	1,169	85.6%	484	89.5%	316	89.3%	369	78.5%
	Male	1,334	97.7%	535	98.9%	346	97.7%	453	96.4%
<b>Ethnicity</b>									
Hispanic/Latino	Female	497	36.4%	240	44.4%	117	33.1%	140	29.8%
	Male	647	47.4%	286	52.9%	152	42.9%	209	44.5%
Not Hispanic/Latino	Female	1,155	84.6%	448	82.8%	327	92.4%	380	80.9%
	Male	1,323	96.9%	535	98.9%	351	99.2%	437	93.0%
<b>Any racial or ethnic minority</b>									
	Female	812	59.5%	366	67.7%	212	59.9%	234	49.8%
	Male	940	68.9%	403	74.5%	245	69.2%	292	62.1%
Total stations	---	1,365	100%	541	100%	354	100%	470	100%
Stations not filed	---	0	---	0	---	0	---	0	---
All licensed stations	---	1,365	---	541	---	354	---	470	---

Notes: The table reports the number and share of stations that have at least one person, by race and gender or by ethnicity and gender, with an attributable interest, nationally and by DMA rank. Each station may appear in multiple race/gender and ethnicity/gender categories.

Table A(3) Majority Ownership Interest by Gender, Race, and Ethnicity Voting Interest Exceeds 50% Individually or Collectively Full Power Commercial Television Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen DMA 1-50		Nielsen DMA 51- 100		Nielsen DMA 101+	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	72	5.3%	10	1.8%	18	5.1%	44	9.4%
Male	695	50.9%	292	54.0%	168	47.5%	235	50.0%
Joint female/male	2	0.1%	1	0.2%	0	0.0%	1	0.2%
No majority interest	596	43.7%	238	44.0%	168	47.5%	190	40.4%
<b>Race</b>								
Asian	8	0.6%	1	0.2%	4	1.1%	3	0.6%
Black/African American	39	2.9%	6	1.1%	14	4.0%	19	4.0%
Native Hawaiian/Pacific Islander	1	0.1%	0	0.0%	0	0.0%	1	0.2%
American Indian/Alaska Native	4	0.3%	2	0.4%	2	0.6%	0	0.0%
Two or More Races	1	0.1%	1	0.2%	0	0.0%	0	0.0%
White	880	64.5%	395	73.0%	199	56.2%	286	60.9%
No majority interest	432	31.6%	136	25.1%	135	38.1%	161	34.3%
<b>Ethnicity</b>								
Hispanic/Latino	56	4.1%	17	3.1%	6	1.7%	33	7.0%
Not Hispanic/Latino	802	58.8%	338	62.5%	198	55.9%	266	56.6%
No majority interest	507	37.1%	186	34.4%	150	42.4%	171	36.4%
<b>Racial or ethnic minority group holds majority ownership interest</b>								
	109	8.0%	27	5.0%	26	7.3%	56	11.9%
<b>Total stations</b>								
Total stations	1,365	100%	541	100%	354	100%	470	100%
Insufficient data	0	---	0	---	0	---	0	---
Stations not filed	0	---	0	---	0	---	0	---
All licensed stations	1,365	---	541	---	354	---	470	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%, nationally and by DMA rank. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants).

	Gender of majority interest group	No. of Stations and % of Total							
		Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	1	0.1%	0	0.0%	0	0.0%	1	0.2%
	Male	7	0.5%	1	0.2%	4	1.1%	2	0.4%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Black/African American	Female	1	0.1%	0	0.0%	0	0.0%	1	0.2%
	Male	34	2.5%	5	0.9%	13	3.7%	16	3.4%
	Combination	4	0.3%	1	0.2%	1	0.3%	2	0.4%
Native Hawaiian/ Pacific Islander	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	1	0.1%	0	0.0%	0	0.0%	1	0.2%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/ Alaska Native	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	4	0.3%	2	0.4%	2	0.6%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Two or More Races	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	1	0.1%	1	0.2%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
White	Female	69	5.1%	10	1.8%	17	4.8%	42	8.9%
	Male	644	47.2%	281	51.9%	149	42.1%	214	45.5%
	Combination	167	12.2%	104	19.2%	33	9.3%	30	6.4%
No majority interest	All Stations	432	31.6%	136	25.1%	135	38.1%	161	34.3%
<b>Ethnicity</b>									
Hispanic/Latino	Female	5	0.4%	1	0.2%	0	0.0%	4	0.9%
	Male	49	3.6%	15	2.8%	6	1.7%	28	6.0%
	Combination	2	0.1%	1	0.2%	0	0.0%	1	0.2%
Not Hispanic/ Latino	Female	67	4.9%	9	1.7%	18	5.1%	40	8.5%
	Male	645	47.3%	276	51.0%	162	45.8%	207	44.0%
	Combination	90	6.6%	53	9.8%	18	5.1%	19	4.0%
No majority interest	All Stations	507	37.1%	186	34.4%	150	42.4%	171	36.4%
Any Racial or Ethnic Minority Group	Female	7	0.5%	1	0.2%	0	0.0%	6	1.3%
	Male	96	7.0%	24	4.4%	25	7.1%	47	10.0%
	Combination	6	0.4%	2	0.4%	1	0.3%	3	0.6%
Total stations	---	1,365	100%	541	100%	354	100%	470	100%
Insufficient data	---	0	---	0	---	0	---	0	---
Stations not filed	---	0	---	0	---	0	---	0	---
All licensed stations	---	1,365	---	541	---	354	---	470	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same race and gender or the same ethnicity and gender hold voting interests that exceed 50%, nationally and by DMA rank. A station is classified as a combination if individuals of the same race or ethnicity hold voting interests that exceed 50%, but no gender group within the race or ethnicity group holds voting interests that exceed 50% (e.g., a station where Hispanic/Latino women hold 30% of voting shares and Hispanic/Latino men hold 25% of voting shares). Each station appears in only one race/gender and ethnicity/gender category.

**TABLE B**  
**1 - 4**  
**2021**  
**Class A Television**

Table B(1) Attributable Ownership Interest by Gender, Race, and Ethnicity Stations with One or More Attributable Persons Class A Television Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	269	72.9%	125	70.2%	53	58.9%	91	90.1%
Male	354	95.9%	170	95.5%	89	98.9%	95	94.1%
<b>Race</b>								
Asian	20	5.4%	17	9.6%	3	3.3%	0	0.0%
Black/African American	86	23.3%	43	24.2%	16	17.8%	27	26.7%
Native Hawaiian/Pacific Islander	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/Alaska Native	22	6.0%	13	7.3%	4	4.4%	5	5.0%
Two or More Races	40	10.8%	16	9.0%	7	7.8%	17	16.8%
White	357	96.7%	168	94.4%	88	97.8%	101	100.0%
<b>Ethnicity</b>								
Hispanic/Latino	126	34.1%	65	36.5%	19	21.1%	42	41.6%
Not Hispanic/Latino	348	94.3%	167	93.8%	86	95.6%	95	94.1%
<b>Any racial or ethnic minority</b>								
	155	42.0%	76	42.7%	25	27.8%	54	53.5%
<b>Total stations</b>								
	369	100%	178	100%	90	100%	101	100%
<b>Stations not filed</b>								
	0	---	0	---	0	---	0	---
<b>All licensed stations</b>								
	369	---	178	---	90	---	101	---

Notes: The table reports the number and share of stations that have at least one person, by gender, race, or ethnicity, with an attributable interest, nationally and by DMA rank. Each station may appear in multiple gender, race, and ethnicity categories.

Table B(2) Attributable Ownership Interest by Race and Gender and by Ethnicity and Gender Stations with One or More Attributable Persons Class A Television Stations – 2021									
	Gender	No. of Stations and % of Total							
		Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	18	4.9%	16	9.0%	2	2.2%	0	0.0%
	Male	20	5.4%	17	9.6%	3	3.3%	0	0.0%
Black/African American	Female	64	17.3%	34	19.1%	12	13.3%	18	17.8%
	Male	84	22.8%	42	23.6%	15	16.7%	27	26.7%
Native Hawaiian/ Pacific Islander	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/ Alaska Native	Female	14	3.8%	12	6.7%	2	2.2%	0	0.0%
	Male	8	2.2%	1	0.6%	2	2.2%	5	5.0%
Two or More Races	Female	12	3.3%	2	1.1%	2	2.2%	8	7.9%
	Male	36	9.8%	15	8.4%	7	7.8%	14	13.9%
White	Female	263	71.3%	120	67.4%	52	57.8%	91	90.1%
	Male	347	94.0%	165	92.7%	87	96.7%	95	94.1%
<b>Ethnicity</b>									
Hispanic/Latino	Female	82	22.2%	37	20.8%	13	14.4%	32	31.7%
	Male	116	31.4%	59	33.1%	18	20.0%	39	38.6%
Not Hispanic/Latino	Female	229	62.1%	109	61.2%	47	52.2%	73	72.3%
	Male	342	92.7%	164	92.1%	86	95.6%	92	91.1%
Any racial or ethnic minority	Female	116	31.4%	59	33.1%	18	20.0%	39	38.6%
	Male	145	39.3%	72	40.4%	25	27.8%	48	47.5%
Total stations	---	369	100%	178	100%	90	100%	101	100%
Stations not filed	---	0	---	0	---	0	---	0	---
All licensed stations	---	369	---	178	---	90	---	101	---

Notes: The table reports the number and share of stations that have at least one person, by race and gender or by ethnicity and gender, with an attributable interest, nationally and by DMA rank. Each station may appear in multiple race/gender and ethnicity/gender categories.

Table B(3) Majority Ownership Interest by Gender, Race, and Ethnicity Voting Interest Exceeds 50% Individually or Collectively Class A Television Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	18	4.9%	9	5.1%	2	2.2%	7	7.1%
Male	256	70.3%	124	70.5%	62	69.7%	70	70.7%
Joint female/male	1	0.3%	1	0.6%	0	0.0%	0	0.0%
No majority interest	89	24.5%	42	23.9%	25	28.1%	22	22.2%
<b>Race</b>								
Asian	4	1.1%	4	2.3%	0	0.0%	0	0.0%
Black/African American	5	1.4%	2	1.1%	3	3.4%	0	0.0%
Native Hawaiian/Pacific Islander	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/Alaska Native	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Two or More Races	1	0.3%	1	0.6%	0	0.0%	0	0.0%
White	290	79.7%	133	75.6%	71	79.8%	86	86.9%
No majority interest	64	17.6%	36	20.5%	15	16.9%	13	13.1%
<b>Ethnicity</b>								
Hispanic/Latino	38	10.4%	14	8.0%	7	7.9%	17	17.2%
Not Hispanic/Latino	253	69.5%	124	70.5%	65	73.0%	64	64.6%
No majority interest	73	20.1%	38	21.6%	17	19.1%	18	18.2%
<b>Racial or ethnic minority group holds majority ownership interest</b>								
	48	13.2%	21	11.9%	10	11.2%	17	17.2%
<b>Total stations</b>								
Total stations	364	100%	176	100%	89	100%	99	100%
Insufficient data	5	---	2	---	1	---	2	---
Stations not filed	0	---	0	---	0	---	0	---
All licensed stations	369	---	178	---	90	---	101	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%, nationally and by DMA rank. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants).

	Gender of majority interest group	No. of Stations and % of Total							
		Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	3	0.8%	3	1.7%	0	0.0%	0	0.0%
	Male	1	0.3%	1	0.6%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Black/African American	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	4	1.1%	2	1.1%	2	2.2%	0	0.0%
	Combination	1	0.3%	0	0.0%	1	1.1%	0	0.0%
Native Hawaiian/ Pacific Islander	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/ Alaska Native	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Two or More Races	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	1	0.3%	1	0.6%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
White	Female	14	3.8%	6	3.4%	1	1.1%	7	7.1%
	Male	250	68.7%	120	68.2%	60	67.4%	70	70.7%
	Combination	26	7.1%	7	4.0%	10	11.2%	9	9.1%
No majority interest	All Stations	64	17.6%	36	20.5%	15	16.9%	13	13.1%
<b>Ethnicity</b>									
Hispanic/Latino	Female	6	1.6%	2	1.1%	0	0.0%	4	4.0%
	Male	31	8.5%	11	6.3%	7	7.9%	13	13.1%
	Combination	1	0.3%	1	0.6%	0	0.0%	0	0.0%
Not Hispanic/ Latino	Female	11	3.0%	7	4.0%	1	1.1%	3	3.0%
	Male	222	61.0%	112	63.6%	55	61.8%	55	55.6%
	Combination	20	5.5%	5	2.8%	9	10.1%	6	6.1%
No majority interest	All Stations	73	20.1%	38	21.6%	17	19.1%	18	18.2%
Any Racial or Ethnic Minority Group	Female	9	2.5%	5	2.8%	0	0.0%	4	4.0%
	Male	37	10.2%	15	8.5%	9	10.1%	13	13.1%
	Combination	2	0.5%	1	0.6%	1	1.1%	0	0.0%
Total stations	---	364	100%	176	100%	89	100%	99	100%
Insufficient data	---	5	---	2	---	1	---	2	---
Stations not filed	---	0	---	0	---	0	---	0	---
All licensed stations	---	369	---	178	---	90	---	101	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same race and gender or the same ethnicity and gender hold voting interests that exceed 50%, nationally and by DMA rank. A station is classified as a combination if individuals of the same race or ethnicity hold voting interests that exceed 50%, but no gender group within the race or ethnicity group holds voting interests that exceed 50% (e.g., a station where Hispanic/Latino women hold 30% of voting shares and Hispanic/Latino men hold 25% of voting shares). Each station appears in only one race/gender and ethnicity/gender category.

**TABLE C**

**1 - 4**

**2021**

**Low Power Television**

Table C(1) Attributable Ownership Interest by Gender, Race, and Ethnicity Stations with One or More Attributable Persons Low Power Commercial Television Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen DMA 1-50		Nielsen DMA 51- 100		Nielsen DMA 101+	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	1,166	71.9%	428	70.7%	188	69.6%	550	73.6%
Male	1,497	92.3%	562	92.9%	257	95.2%	678	90.8%
<b>Race</b>								
Asian	114	7.0%	63	10.4%	21	7.8%	30	4.0%
Black/African American	270	16.6%	69	11.4%	48	17.8%	153	20.5%
Native Hawaiian/Pacific Islander	6	0.4%	5	0.8%	0	0.0%	1	0.1%
American Indian/Alaska Native	42	2.6%	23	3.8%	6	2.2%	13	1.7%
Two or More Races	123	7.6%	19	3.1%	15	5.6%	89	11.9%
White	1,541	95.0%	570	94.2%	263	97.4%	708	94.8%
<b>Ethnicity</b>								
Hispanic/Latino	369	22.7%	117	19.3%	49	18.1%	203	27.2%
Not Hispanic/Latino	1,439	88.7%	546	90.2%	251	93.0%	642	85.9%
<b>Any racial or ethnic minority</b>								
	572	35.3%	197	32.6%	79	29.3%	296	39.6%
<b>Total stations</b>								
	1,623	100%	606	100%	270	100%	747	100%
Stations not filed	64	---	22	---	9	---	33	---
All licensed stations	1,687	---	628	---	279	---	780	---

Notes: The table reports the number and share of stations that have at least one person, by gender, race, or ethnicity, with an attributable interest, nationally and by DMA rank. Each station may appear in multiple gender, race, and ethnicity categories.

Table C(2) Attributable Ownership Interest by Race and Gender and by Ethnicity and Gender Stations with One or More Attributable Persons Low Power Commercial Television Stations – 2021									
	Gender	No. of Stations and % of Total							
		Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	65	4.0%	35	5.8%	16	5.9%	14	1.9%
	Male	75	4.6%	43	7.1%	9	3.3%	23	3.1%
Black/African American	Female	173	10.7%	34	5.6%	28	10.4%	111	14.9%
	Male	237	14.6%	59	9.8%	42	15.6%	136	18.2%
Native Hawaiian/ Pacific Islander	Female	6	0.4%	5	0.8%	0	0.0%	1	0.1%
	Male	1	0.1%	0	0.0%	0	0.0%	1	0.1%
American Indian/ Alaska Native	Female	19	1.2%	14	2.3%	3	1.1%	2	0.3%
	Male	26	1.6%	12	2.0%	3	1.1%	11	1.5%
Two or More Races	Female	34	2.1%	9	1.5%	2	0.7%	23	3.1%
	Male	110	6.8%	18	3.0%	15	5.6%	77	10.3%
White	Female	1,119	69.0%	408	67.4%	184	68.1%	527	70.5%
	Male	1,460	90.0%	544	89.9%	253	93.7%	663	88.8%
<b>Ethnicity</b>									
Hispanic/Latino	Female	207	12.8%	62	10.2%	28	10.4%	117	15.7%
	Male	320	19.7%	100	16.5%	41	15.2%	179	24.0%
Not Hispanic/Latino	Female	1,081	66.6%	393	65.0%	179	66.3%	509	68.1%
	Male	1,375	84.8%	522	86.3%	244	90.4%	609	81.5%
<b>Any racial or ethnic minority</b>									
	Female	343	21.1%	110	18.2%	53	19.6%	180	24.1%
	Male	493	30.4%	167	27.6%	69	25.6%	257	34.4%
Total stations	---	1,623	100%	606	100%	270	100%	747	100%
Stations not filed	---	64	---	22	---	9	---	33	---
All licensed stations	---	1,687	---	628	---	279	---	780	---

Notes: The table reports the number and share of stations that have at least one person, by race and gender or by ethnicity and gender, with an attributable interest, nationally and by DMA rank. Each station may appear in multiple race/gender and ethnicity/gender categories.

Table C(3) Majority Ownership Interest by Gender, Race, and Ethnicity Voting Interest Exceeds 50% Individually or Collectively Low Power Commercial Television Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	137	8.7%	51	8.6%	17	6.4%	69	9.6%
Male	1,008	64.0%	426	72.0%	159	59.6%	423	59.1%
Joint female/male	1	0.1%	1	0.2%	0	0.0%	0	0.0%
No majority interest	429	27.2%	114	19.3%	91	34.1%	224	31.3%
<b>Race</b>								
Asian	23	1.5%	12	2.0%	0	0.0%	11	1.5%
Black/African American	25	1.6%	11	1.9%	4	1.5%	10	1.4%
Native Hawaiian/Pacific Islander	1	0.1%	0	0.0%	0	0.0%	1	0.1%
American Indian/Alaska Native	7	0.4%	6	1.0%	1	0.4%	0	0.0%
Two or More Races	2	0.1%	1	0.2%	0	0.0%	1	0.1%
White	1,242	78.9%	494	83.4%	197	73.8%	551	77.0%
No majority interest	275	17.5%	68	11.5%	65	24.3%	142	19.8%
<b>Ethnicity</b>								
Hispanic/Latino	165	10.5%	55	9.3%	18	6.7%	92	12.8%
Not Hispanic/Latino	1,114	70.7%	458	77.4%	184	68.9%	472	65.9%
No majority interest	296	18.8%	79	13.3%	65	24.3%	152	21.2%
<b>Racial or ethnic minority group holds majority ownership interest</b>								
	222	14.1%	84	14.2%	23	8.6%	115	16.1%
<b>Total stations</b>								
Total stations	1,575	100%	592	100%	267	100%	716	100%
Insufficient data	48	---	14	---	3	---	31	---
Stations not filed	64	---	22	---	9	---	33	---
All licensed stations	1,687	---	628	---	279	---	780	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%, nationally and by DMA rank. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants).

	Gender of majority interest group	No. of Stations and % of Total							
		Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	14	0.9%	5	0.8%	0	0.0%	9	1.3%
	Male	8	0.5%	6	1.0%	0	0.0%	2	0.3%
	Combination	1	0.1%	1	0.2%	0	0.0%	0	0.0%
Black/African American	Female	7	0.4%	4	0.7%	2	0.7%	1	0.1%
	Male	17	1.1%	7	1.2%	2	0.7%	8	1.1%
	Combination	1	0.1%	0	0.0%	0	0.0%	1	0.1%
Native Hawaiian/ Pacific Islander	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	1	0.1%	0	0.0%	0	0.0%	1	0.1%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/ Alaska Native	Female	4	0.3%	4	0.7%	0	0.0%	0	0.0%
	Male	3	0.2%	2	0.3%	1	0.4%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Two or More Races	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	2	0.1%	1	0.2%	0	0.0%	1	0.1%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
White	Female	112	7.1%	38	6.4%	15	5.6%	59	8.2%
	Male	969	61.5%	408	68.9%	155	58.1%	406	56.7%
	Combination	161	10.2%	48	8.1%	27	10.1%	86	12.0%
No majority interest	All Stations	275	17.5%	68	11.5%	65	24.3%	142	19.8%
<b>Ethnicity</b>									
Hispanic/Latino	Female	43	2.7%	13	2.2%	5	1.9%	25	3.5%
	Male	109	6.9%	35	5.9%	12	4.5%	62	8.7%
	Combination	13	0.8%	7	1.2%	1	0.4%	5	0.7%
Not Hispanic/ Latino	Female	94	6.0%	38	6.4%	12	4.5%	44	6.1%
	Male	870	55.2%	372	62.8%	146	54.7%	352	49.2%
	Combination	150	9.5%	48	8.1%	26	9.7%	76	10.6%
No majority interest	All Stations	296	18.8%	79	13.3%	65	24.3%	152	21.2%
Any Racial or Ethnic Minority Group	Female	68	4.3%	26	4.4%	7	2.6%	35	4.9%
	Male	139	8.8%	50	8.4%	15	5.6%	74	10.3%
	Combination	15	1.0%	8	1.4%	1	0.4%	6	0.8%
Total stations	---	1,575	100%	592	100%	267	100%	716	100%
Insufficient data	---	48	---	14	---	3	---	31	---
Stations not filed	---	64	---	22	---	9	---	33	---
All licensed stations	---	1,687	---	628	---	279	---	780	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same race and gender or the same ethnicity and gender hold voting interests that exceed 50%, nationally and by DMA rank. A station is classified as a combination if individuals of the same race or ethnicity hold voting interests that exceed 50%, but no gender group within the race or ethnicity group holds voting interests that exceed 50% (e.g., a station where Hispanic/Latino women hold 30% of voting shares and Hispanic/Latino men hold 25% of voting shares). Each station appears in only one race/gender and ethnicity/gender category.

**TABLE D**

**1 - 4**

**2021**

**Commercial AM Radio**

Table D(1) Attributable Ownership Interest by Gender, Race, and Ethnicity Stations with One or More Attributable Persons AM Radio Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Nielsen Audio Metro 101+		Outside Metro	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	2,494	62.0%	1009	66.9%	525	62.1%	960	57.6%
Male	3,752	93.3%	1,427	94.6%	803	95.0%	1,522	91.4%
<b>Race</b>								
Asian	567	14.1%	326	21.6%	162	19.2%	79	4.7%
Black/African American	605	15.0%	343	22.7%	151	17.9%	111	6.7%
Native Hawaiian/Pacific Islander	8	0.2%	1	0.1%	1	0.1%	6	0.4%
American Indian/Alaska Native	24	0.6%	5	0.3%	8	0.9%	11	0.7%
Two or More Races	26	0.6%	9	0.6%	4	0.5%	13	0.8%
White	3,678	91.5%	1,340	88.8%	779	92.2%	1,559	93.6%
<b>Ethnicity</b>								
Hispanic/Latino	825	20.5%	501	33.2%	202	23.9%	122	7.3%
Not Hispanic/Latino	3,654	90.9%	1,290	85.5%	791	93.6%	1,573	94.4%
<b>Any racial or ethnic minority</b>								
	1,236	30.7%	770	51.0%	267	31.6%	199	11.9%
<b>Total stations</b>								
	4,022	100%	1,510	100%	845	100%	1,667	100%
<b>Stations not filed</b>								
	125	---	42	---	28	---	55	---
<b>All licensed stations</b>								
	4,147	---	1,552	---	873	---	1,722	---

Notes: The table reports the number and share of stations that have at least one person, by gender, race, or ethnicity, with an attributable interest, nationally and by metro rank. Each station may appear in multiple gender, race, and ethnicity categories.

Table D(2) Attributable Ownership Interest by Race and Gender and by Ethnicity and Gender Stations with One or More Attributable Persons AM Radio Stations – 2021									
	Gender	No. of Stations and % of Total							
		Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	354	8.8%	225	14.9%	87	10.3%	42	2.5%
	Male	273	6.8%	152	10.1%	77	9.1%	44	2.6%
Black/African American	Female	443	11.0%	276	18.3%	112	13.3%	55	3.3%
	Male	252	6.3%	128	8.5%	57	6.7%	67	4.0%
Native Hawaiian/ Pacific Islander	Female	8	0.2%	1	0.1%	1	0.1%	6	0.4%
	Male	3	0.1%	0	0.0%	0	0.0%	3	0.2%
American Indian/ Alaska Native	Female	6	0.1%	3	0.2%	0	0.0%	3	0.2%
	Male	22	0.5%	4	0.3%	8	0.9%	10	0.6%
Two or More Races	Female	22	0.5%	6	0.4%	4	0.5%	12	0.7%
	Male	5	0.1%	4	0.3%	0	0.0%	1	0.1%
White	Female	2,314	57.6%	893	59.2%	499	59.1%	922	55.3%
	Male	3,533	87.9%	1,294	85.8%	762	90.2%	1,477	88.7%
<b>Ethnicity</b>									
Hispanic/Latino	Female	467	11.6%	299	19.8%	104	12.3%	64	3.8%
	Male	535	13.3%	343	22.7%	115	13.6%	77	4.6%
Not Hispanic/Latino	Female	2,321	57.7%	882	58.4%	508	60.1%	931	55.9%
	Male	3,497	87.0%	1,237	82.0%	771	91.2%	1,489	89.4%
<b>Any racial or ethnic minority</b>									
	Female	751	18.7%	504	33.4%	140	16.6%	107	6.4%
	Male	796	19.8%	502	33.3%	163	19.3%	131	7.9%
Total stations	---	4,022	100%	1,510	100%	845	100%	1,667	100%
Stations not filed	---	125	---	42	---	28	---	55	---
All licensed stations	---	4,147	---	1,552	---	873	---	1,722	---

Notes: The table reports the number and share of stations that have at least one person, by race and gender or by ethnicity and gender, with an attributable interest, nationally and by metro rank. Each station may appear in multiple race/gender and ethnicity/gender categories.

Table D(3) Majority Ownership Interest by Gender, Race, and Ethnicity Voting Interest Exceeds 50% Individually or Collectively AM Radio Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	385	10.0%	132	9.1%	73	9.1%	180	11.4%
Male	2,496	65.0%	935	64.2%	480	60.0%	1,081	68.3%
Joint female/male	51	1.3%	24	1.6%	3	0.4%	24	1.5%
No majority interest	908	23.6%	366	25.1%	244	30.5%	298	18.8%
<b>Race</b>								
Asian	104	2.7%	84	5.8%	8	1.0%	12	0.8%
Black/African American	138	3.6%	76	5.2%	29	3.6%	33	2.1%
Native Hawaiian/Pacific Islander	4	0.1%	0	0.0%	1	0.1%	3	0.2%
American Indian/Alaska Native	14	0.4%	3	0.2%	5	0.6%	6	0.4%
Two or More Races	2	0.1%	1	0.1%	0	0.0%	1	0.1%
White	2,924	76.1%	1,008	69.2%	539	67.4%	1,377	87.0%
No majority interest	654	17.0%	285	19.6%	218	27.3%	151	9.5%
<b>Ethnicity</b>								
Hispanic/Latino	296	7.7%	222	15.2%	35	4.4%	39	2.5%
Not Hispanic/Latino	2,889	75.2%	945	64.9%	548	68.5%	1,396	88.2%
No majority interest	655	17.1%	290	19.9%	217	27.1%	148	9.3%
<b>Racial or ethnic minority group holds majority ownership interest</b>								
	553	14.4%	383	26.3%	78	9.8%	92	5.8%
<b>Total stations</b>								
	3,840	100%	1,457	100%	800	100%	1,583	100%
Insufficient data	182	---	53	---	45	---	84	---
Stations not filed	125	---	42	---	28	---	55	---
All licensed stations	4,147	---	1,552	---	873	---	1,722	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%, nationally and by metro rank. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants).

	Gender of majority interest group	No. of Stations and % of Total							
		Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	25	0.7%	20	1.4%	0	0.0%	5	0.3%
	Male	73	1.9%	58	4.0%	8	1.0%	7	0.4%
	Combination	6	0.2%	6	0.4%	0	0.0%	0	0.0%
Black/African American	Female	23	0.6%	13	0.9%	5	0.6%	5	0.3%
	Male	104	2.7%	56	3.8%	22	2.8%	26	1.6%
	Combination	11	0.3%	7	0.5%	2	0.3%	2	0.1%
Native Hawaiian/ Pacific Islander	Female	3	0.1%	0	0.0%	1	0.1%	2	0.1%
	Male	1	0.0%	0	0.0%	0	0.0%	1	0.1%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/ Alaska Native	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	14	0.4%	3	0.2%	5	0.6%	6	0.4%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Two or More Races	Female	1	0.0%	0	0.0%	0	0.0%	1	0.1%
	Male	1	0.0%	1	0.1%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
White	Female	332	8.6%	99	6.8%	66	8.3%	167	10.5%
	Male	2294	59.7%	814	55.9%	440	55.0%	1040	65.7%
	Combination	298	7.8%	95	6.5%	33	4.1%	170	10.7%
No majority interest	All Stations	654	17.0%	285	19.6%	218	27.3%	151	9.5%
<b>Ethnicity</b>									
Hispanic/Latino	Female	43	1.1%	31	2.1%	4	0.5%	8	0.5%
	Male	198	5.2%	148	10.2%	29	3.6%	21	1.3%
	Combination	55	1.4%	43	3.0%	2	0.3%	10	0.6%
Not Hispanic/ Latino	Female	341	8.9%	100	6.9%	69	8.6%	172	10.9%
	Male	2289	59.6%	780	53.5%	450	56.3%	1059	66.9%
	Combination	259	6.7%	65	4.5%	29	3.6%	165	10.4%
No majority interest	All Stations	655	17.1%	290	19.9%	217	27.1%	148	9.3%
Any Racial or Ethnic Minority Group	Female	94	2.4%	64	4.4%	10	1.3%	20	1.3%
	Male	387	10.1%	263	18.1%	64	8.0%	60	3.8%
	Combination	72	1.9%	56	3.8%	4	0.5%	12	0.8%
Total stations	---	3,840	100%	1,457	100%	800	100%	1,583	100%
Insufficient data	---	182	---	53	---	45	---	84	---
Stations not filed	---	125	---	42	---	28	---	55	---
All licensed stations	---	4,147	---	1,552	---	873	---	1,722	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same race and gender or the same ethnicity and gender hold voting interests that exceed 50%, nationally and by DMA rank. A station is classified as a combination if individuals of the same race or ethnicity hold voting interests that exceed 50%, but no gender group within the race or ethnicity group holds voting interests that exceed 50% (e.g., a station where Hispanic/Latino women hold 30% of voting shares and Hispanic/Latino men hold 25% of voting shares). Each station appears in only one race/gender and ethnicity/gender category.

**TABLE E**

**1 - 4**

**2021**

**Commercial FM Radio**

Table E(1) Attributable Ownership Interest by Gender, Race, and Ethnicity Stations with One or More Attributable Persons FM Radio Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	4,464	69.0%	1,478	82.2%	1,186	71.9%	1,800	59.6%
Male	6,130	94.8%	1,759	97.8%	1,582	95.9%	2,789	92.4%
<b>Race</b>								
Asian	1,167	18.0%	570	31.7%	435	26.4%	162	5.4%
Black/African American	1,226	19.0%	732	40.7%	331	20.1%	163	5.4%
Native Hawaiian/Pacific Islander	22	0.3%	1	0.1%	4	0.2%	17	0.6%
American Indian/Alaska Native	39	0.6%	7	0.4%	6	0.4%	26	0.9%
Two or More Races	65	1.0%	17	0.9%	16	1.0%	32	1.1%
White	6,251	96.6%	1,768	98.3%	1,591	96.4%	2,892	95.8%
<b>Ethnicity</b>								
Hispanic/Latino	1,612	24.9%	816	45.4%	535	32.4%	261	8.6%
Not Hispanic/Latino	6,136	94.9%	1,697	94.4%	1,581	95.8%	2,858	94.6%
<b>Any racial or ethnic minority</b>								
	2,168	33.5%	1,160	64.5%	600	36.4%	408	13.5%
<b>Total stations</b>								
	6,469	100%	1,798	100%	1,651	100%	3,020	100%
Stations not filed	67	---	5	---	12	---	50	---
All licensed stations	6,536	---	1,803	---	1,663	---	3,070	---

Notes: The table reports the number and share of stations that have at least one person, by gender, race, or ethnicity, with an attributable interest, nationally and by metro rank. Each station may appear in multiple gender, race, and ethnicity categories.

Table E(2) Attributable Ownership Interest by Race and Gender and by Ethnicity and Gender Stations with One or More Attributable Persons FM Radio Stations – 2021									
	Gender	No. of Stations and % of Total							
		Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	676	10.5%	371	20.6%	230	13.9%	75	2.5%
	Male	518	8.0%	211	11.7%	207	12.5%	100	3.3%
Black/African American	Female	962	14.9%	634	35.3%	250	15.2%	78	2.6%
	Male	385	6.0%	195	10.8%	92	5.6%	98	3.2%
Native Hawaiian/ Pacific Islander	Female	16	0.2%	1	0.1%	4	0.2%	11	0.4%
	Male	10	0.2%	0	0.0%	0	0.0%	10	0.3%
American Indian/ Alaska Native	Female	11	0.2%	0	0.0%	2	0.1%	9	0.3%
	Male	37	0.6%	7	0.4%	5	0.3%	25	0.8%
Two or More Races	Female	60	0.9%	17	0.9%	14	0.8%	29	1.0%
	Male	5	0.1%	0	0.0%	2	0.1%	3	0.1%
White	Female	4,300	66.5%	1,416	78.8%	1,160	70.3%	1,724	57.1%
	Male	6,012	92.9%	1,735	96.5%	1,549	93.9%	2,728	90.3%
<b>Ethnicity</b>									
Hispanic/Latino	Female	926	14.3%	514	28.6%	279	16.9%	133	4.4%
	Male	955	14.8%	475	26.4%	293	17.8%	187	6.2%
Not Hispanic/Latino	Female	4,224	65.3%	1,347	74.9%	1,147	69.5%	1,730	57.3%
	Male	5,900	91.2%	1,666	92.7%	1,536	93.1%	2,698	89.3%
Any racial or ethnic minority	Female	1,365	21.1%	825	45.9%	321	19.5%	219	7.3%
	Male	1,186	18.3%	575	32.0%	327	19.8%	284	9.4%
Total stations	---	6,469	100%	1,798	100%	1,651	100%	3,020	100%
Stations not filed	---	67	---	5	---	12	---	50	---
All licensed stations	---	6,536	---	1,803	---	1,663	---	3,070	---

Notes: The table reports the number and share of stations that have at least one person, by race and gender or by ethnicity and gender, with an attributable interest, nationally and by metro rank. Each station may appear in multiple race/gender and ethnicity/gender categories.

Table E(3) Majority Ownership Interest by Gender, Race, and Ethnicity Voting Interest Exceeds 50% Individually or Collectively FM Radio Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	535	8.7%	68	3.9%	126	8.0%	341	11.9%
Male	3,650	59.1%	878	50.7%	808	51.2%	1,964	68.7%
Joint female/male	64	1.0%	17	1.0%	5	0.3%	42	1.5%
No majority interest	1,922	31.1%	770	44.4%	640	40.5%	512	17.9%
<b>Race</b>								
Asian	34	0.6%	9	0.5%	4	0.3%	21	0.7%
Black/African American	111	1.8%	55	3.2%	25	1.6%	31	1.1%
Native Hawaiian/Pacific Islander	11	0.2%	0	0.0%	4	0.3%	7	0.2%
American Indian/Alaska Native	19	0.3%	4	0.2%	3	0.2%	12	0.4%
Two or More Races	4	0.1%	0	0.0%	2	0.1%	2	0.1%
Joint NHPI/White	2	0.0%	0	0.0%	0	0.0%	2	0.1%
White	4,419	71.6%	943	54.4%	950	60.2%	2,526	88.4%
No majority interest	1,571	25.5%	722	41.7%	591	37.4%	258	9.0%
<b>Ethnicity</b>								
Hispanic/Latino	305	4.9%	137	7.9%	57	3.6%	111	3.9%
Not Hispanic/Latino	4,296	69.6%	875	50.5%	929	58.8%	2,492	87.2%
No majority interest	1,570	25.4%	721	41.6%	593	37.6%	256	9.0%
<b>Racial or ethnic minority group holds majority ownership interest</b>								
	481	7.8%	205	11.8%	92	5.8%	184	6.4%
<b>Total stations</b>								
Total stations	6,171	100%	1,733	100%	1,579	100%	2,859	100%
Insufficient data	298	---	65	---	72	---	161	---
Stations not filed	67	---	5	---	12	---	50	---
All licensed stations	6,536	---	1,803	---	1,663	---	3,070	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%, nationally and by metro rank. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants). Similarly, joint NHPI/White is defined as a situation in which the aggregate votes of the Native Hawaiian/Pacific Islander attributable owners and the aggregate votes of the white attributable owners both separately exceed 50%.

	Gender of majority interest group	No. of Stations and % of Total							
		Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	13	0.2%	1	0.1%	0	0.0%	12	0.4%
	Male	14	0.2%	3	0.2%	4	0.3%	7	0.2%
	Combination	7	0.1%	5	0.3%	0	0.0%	2	0.1%
Black/African American	Female	8	0.1%	2	0.1%	1	0.1%	5	0.2%
	Male	100	1.6%	51	2.9%	24	1.5%	25	0.9%
	Combination	3	0.0%	2	0.1%	0	0.0%	1	0.0%
Native Hawaiian/ Pacific Islander	Female	8	0.1%	0	0.0%	4	0.3%	4	0.1%
	Male	3	0.0%	0	0.0%	0	0.0%	3	0.1%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/ Alaska Native	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	19	0.3%	4	0.2%	3	0.2%	12	0.4%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Two or More Races	Female	1	0.0%	0	0.0%	1	0.1%	0	0.0%
	Male	3	0.0%	0	0.0%	1	0.1%	2	0.1%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
White	Female	503	8.2%	64	3.7%	119	7.5%	320	11.2%
	Male	3,503	56.8%	817	47.1%	775	49.1%	1,911	66.8%
	Combination	413	6.7%	62	3.6%	56	3.5%	295	10.3%
Joint NHPI/White	Combination	2	0.0%	0	0.0%	0	0.0%	2	0.1%
No majority interest	All Stations	1,571	25.5%	722	41.7%	591	37.4%	258	9.0%
<b>Ethnicity</b>									
Hispanic/Latino	Female	41	0.7%	6	0.3%	8	0.5%	27	0.9%
	Male	232	3.8%	117	6.8%	45	2.8%	70	2.4%
	Combination	32	0.5%	14	0.8%	4	0.3%	14	0.5%
Not Hispanic/ Latino	Female	493	8.0%	61	3.5%	118	7.5%	314	11.0%
	Male	3,412	55.3%	759	43.8%	762	48.3%	1,891	66.1%
	Combination	391	6.3%	55	3.2%	49	3.1%	287	10.0%
No majority interest	All Stations	1,570	25.4%	721	41.6%	593	37.6%	256	9.0%
Any Racial or Ethnic Minority Group	Female	71	1.2%	9	0.5%	14	0.9%	48	1.7%
	Male	368	6.0%	175	10.1%	74	4.7%	119	4.2%
	Combination <sup>29</sup>	42	0.7%	21	1.2%	4	0.3%	17	0.6%
Total stations	---	6,171	100%	1,733	100%	1,579	100%	2,859	100%
Insufficient data	---	298	---	65	---	72	---	161	---
Stations not filed	---	67	---	5	---	12	---	50	---
All licensed stations	---	6,536	---	1,803	---	1,663	---	3,070	---

<sup>29</sup> This total includes one station for which (1) more than 50% of the votes are held by Hispanic or Latino women and (2) more than 50% of the votes are held by a combination of Black or African American men and Black or African American women.

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same race and gender or the same ethnicity and gender hold voting interests that exceed 50%, nationally and by metro rank. A station is classified as a combination if individuals of the same race or ethnicity hold voting interests that exceed 50%, but no gender group within the race or ethnicity group holds voting interests that exceed 50% (e.g., a station where Hispanic/Latino women hold 30% of voting shares and Hispanic/Latino men hold 25% of voting shares). Each station appears in only one race/gender and ethnicity/gender category. Joint NHPI/White is defined as a situation in which the aggregate votes of the Native Hawaiian/Pacific Islander attributable owners and the aggregate votes of the white attributable owners both separately exceed 50%.

**TABLE F**

**1 - 4**

**2021**

**Full Power Noncommercial Television**

Table F(1) Attributable Ownership Interest by Gender, Race, and Ethnicity Stations with One or More Attributable Persons Full Power Noncommercial Television Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	389	99.2%	148	98.0%	103	100.0%	138	100.0%
Male	390	99.5%	149	98.7%	103	100.0%	138	100.0%
<b>Race</b>								
Asian	118	30.1%	72	47.7%	23	22.3%	23	16.7%
Black/African American	248	63.3%	112	74.2%	66	64.1%	70	50.7%
Native Hawaiian/Pacific Islander	9	2.3%	3	2.0%	3	2.9%	3	2.2%
American Indian/Alaska Native	77	19.6%	23	15.2%	12	11.7%	42	30.4%
Two or More Races	68	17.3%	20	13.2%	17	16.5%	31	22.5%
White	389	99.2%	149	98.7%	103	100.0%	137	99.3%
<b>Ethnicity</b>								
Hispanic/Latino	162	41.3%	77	51.0%	30	29.1%	55	39.9%
Not Hispanic/Latino	385	98.2%	151	100.0%	103	100.0%	131	94.9%
<b>Any racial or ethnic minority</b>								
	348	88.8%	133	88.1%	85	82.5%	130	94.2%
<b>Total stations</b>								
	392	100%	151	100%	103	100%	138	100%
Stations not filed	0	---	0	---	0	---	0	---
All licensed stations	392	---	151	---	103	---	138	---

Notes: The table reports the number and share of stations that have at least one person, by gender, race, or ethnicity, with an attributable interest, nationally and by DMA rank. Each station may appear in multiple gender, race, and ethnicity categories.

Table F(2)									
Attributable Ownership Interest by Race and Gender and by Ethnicity and Gender									
Stations with One or More Attributable Persons									
Full Power Noncommercial Television Stations – 2021									
	Gender	No. of Stations and % of Total							
		Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	61	15.6%	42	27.8%	10	9.7%	9	6.5%
	Male	84	21.4%	48	31.8%	18	17.5%	18	13.0%
Black/African American	Female	191	48.7%	93	61.6%	41	39.8%	57	41.3%
	Male	165	42.1%	82	54.3%	42	40.8%	41	29.7%
Native Hawaiian/ Pacific Islander	Female	5	1.3%	0	0.0%	3	2.9%	2	1.4%
	Male	5	1.3%	3	2.0%	0	0.0%	2	1.4%
American Indian/ Alaska Native	Female	39	9.9%	19	12.6%	4	3.9%	16	11.6%
	Male	44	11.2%	6	4.0%	8	7.8%	30	21.7%
Two or More Races	Female	43	11.0%	11	7.3%	15	14.6%	17	12.3%
	Male	41	10.5%	9	6.0%	6	5.8%	26	18.8%
White	Female	384	98.0%	146	96.7%	101	98.1%	137	99.3%
	Male	386	98.5%	147	97.4%	103	100.0%	136	98.6%
<b>Ethnicity</b>									
Hispanic/Latino	Female	117	29.8%	56	37.1%	19	18.4%	42	30.4%
	Male	101	25.8%	54	35.8%	17	16.5%	30	21.7%
Not Hispanic/Latino	Female	381	97.2%	148	98.0%	102	99.0%	131	94.9%
	Male	382	97.4%	148	98.0%	103	100.0%	131	94.9%
Any racial or ethnic minority	Female	289	73.7%	124	82.1%	67	65.0%	98	71.0%
	Male	261	66.6%	106	70.2%	54	52.4%	101	73.2%
Total stations	---	392	100%	151	100%	103	100%	138	100%
Stations not filed	---	0	---	0	---	0	---	0	---
All licensed stations	---	392	---	151	---	103	---	138	---

Notes: The table reports the number and share of stations that have at least one person, by race and gender or by ethnicity and gender, with an attributable interest, nationally and by DMA rank. Each station may appear in multiple race/gender and ethnicity/gender categories.

Table F(3) Majority Ownership Interest by Gender, Race, and Ethnicity Voting Interest Exceeds 50% Individually or Collectively Full Power Noncommercial Television Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	92	23.5%	36	23.8%	18	17.5%	38	27.5%
Male	278	70.9%	109	72.2%	75	72.8%	94	68.1%
Joint female/male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
No majority interest	22	5.6%	6	4.0%	10	9.7%	6	4.3%
<b>Race</b>								
Asian	1	0.3%	1	0.7%	0	0.0%	0	0.0%
Black/African American	4	1.0%	3	2.0%	0	0.0%	1	0.7%
Native Hawaiian/Pacific Islander	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/Alaska Native	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Two or More Races	0	0.0%	0	0.0%	0	0.0%	0	0.0%
White	381	97.2%	145	96.0%	99	96.1%	137	99.3%
No majority interest	6	1.5%	2	1.3%	4	3.9%	0	0.0%
<b>Ethnicity</b>								
Hispanic/Latino	9	2.3%	1	0.7%	1	1.0%	7	5.1%
Not Hispanic/Latino	383	97.7%	150	99.3%	102	99.0%	131	94.9%
No majority interest	0	0.0%	0	0.0%	0	0.0%	0	0.0%
<b>Racial or ethnic minority group holds majority ownership interest</b>								
	14	3.6%	5	3.3%	1	1.0%	8	5.8%
<b>Total stations</b>								
Total stations	392	100%	151	100%	103	100%	138	100%
Insufficient data	0	---	0	---	0	---	0	---
Stations not filed	0	---	0	---	0	---	0	---
All licensed stations	392	---	151	---	103	---	138	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%, nationally and by DMA rank. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants).

	Gender of majority interest group	No. of Stations and % of Total							
		Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	1	0.3%	1	0.7%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Black/African American	Female	1	0.3%	1	0.7%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	3	0.8%	2	1.3%	0	0.0%	1	0.7%
Native Hawaiian/ Pacific Islander	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/ Alaska Native	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Two or More Races	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
White	Female	36	9.2%	9	6.0%	9	8.7%	18	13.0%
	Male	171	43.6%	68	45.0%	53	51.5%	50	36.2%
	Combination	174	44.4%	68	45.0%	37	35.9%	69	50.0%
No majority interest	All Stations	6	1.5%	2	1.3%	4	3.9%	0	0.0%
<b>Ethnicity</b>									
Hispanic/Latino	Female	3	0.8%	1	0.7%	1	1.0%	1	0.7%
	Male	5	1.3%	0	0.0%	0	0.0%	5	3.6%
	Combination	1	0.3%	0	0.0%	0	0.0%	1	0.7%
Not Hispanic/ Latino	Female	61	15.6%	23	15.2%	13	12.6%	25	18.1%
	Male	255	65.1%	100	66.2%	72	69.9%	83	60.1%
	Combination	67	17.1%	27	17.9%	17	16.5%	23	16.7%
No majority interest	All Stations	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Any Racial or Ethnic Minority Group	Female	5	1.3%	3	2.0%	1	1.0%	1	0.7%
	Male	5	1.3%	0	0.0%	0	0.0%	5	3.6%
	Combination	4	1.0%	2	1.3%	0	0.0%	2	1.4%
Total stations	---	392	100%	151	100%	103	100%	138	100%
Insufficient data	---	0	---	0	---	0	---	0	---
Stations not filed	---	0	---	0	---	0	---	0	---
All licensed stations	---	392	---	151	---	103	---	138	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same race and gender or the same ethnicity and gender hold voting interests that exceed 50%, nationally and by DMA rank. A station is classified as a combination if individuals of the same race or ethnicity hold voting interests that exceed 50%, but no gender group within the race or ethnicity group holds voting interests that exceed 50% (e.g., a station where Hispanic/Latino women hold 30% of voting shares and Hispanic/Latino men hold 25% of voting shares). Each station appears in only one race/gender and ethnicity/gender category.

**TABLE G**

**1 - 4**

**2021**

**Class A Noncommercial Television**

Table G(1) Attributable Ownership Interest by Gender, Race, and Ethnicity Stations with One or More Attributable Persons Class A Noncommercial Television Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	12	80.0%	9	81.8%	1	100.0%	2	66.7%
Male	14	93.3%	11	100.0%	1	100.0%	2	66.7%
<b>Race</b>								
Asian	3	20.0%	3	27.3%	0	0.0%	0	0.0%
Black/African American	9	60.0%	9	81.8%	0	0.0%	0	0.0%
Native Hawaiian/Pacific Islander	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/Alaska Native	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Two or More Races	3	20.0%	3	27.3%	0	0.0%	0	0.0%
White	13	86.7%	10	90.9%	1	100.0%	2	66.7%
<b>Ethnicity</b>								
Hispanic/Latino	5	33.3%	5	45.5%	0	0.0%	0	0.0%
Not Hispanic/Latino	14	93.3%	11	100.0%	1	100.0%	2	66.7%
<b>Any racial or ethnic minority</b>								
Any racial or ethnic minority	10	66.7%	10	90.9%	0	0.0%	0	0.0%
<b>Total stations</b>								
Total stations	15	100%	11	100%	1	100%	3	100%
Stations not filed	0	---	0	---	0	---	0	---
All licensed stations	15	---	11	---	1	---	3	---

Notes: The table reports the number and share of stations that have at least one person, by gender, race, or ethnicity, with an attributable interest, nationally and by DMA rank. Each station may appear in multiple gender, race, and ethnicity categories.

	Gender	No. of Stations and % of Total							
		Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	1	6.7%	1	9.1%	0	0.0%	0	0.0%
	Male	3	20.0%	3	27.3%	0	0.0%	0	0.0%
Black/African American	Female	7	46.7%	7	63.6%	0	0.0%	0	0.0%
	Male	9	60.0%	9	81.8%	0	0.0%	0	0.0%
Native Hawaiian/ Pacific Islander	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/ Alaska Native	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Two or More Races	Female	2	13.3%	2	18.2%	0	0.0%	0	0.0%
	Male	1	6.7%	1	9.1%	0	0.0%	0	0.0%
White	Female	11	73.3%	8	72.7%	1	100.0%	2	66.7%
	Male	13	86.7%	10	90.9%	1	100.0%	2	66.7%
<b>Ethnicity</b>									
Hispanic/Latino	Female	2	13.3%	2	18.2%	0	0.0%	0	0.0%
	Male	5	33.3%	5	45.5%	0	0.0%	0	0.0%
Not Hispanic/Latino	Female	12	80.0%	9	81.8%	1	100.0%	2	66.7%
	Male	14	93.3%	11	100.0%	1	100.0%	2	66.7%
Any racial or ethnic minority	Female	7	46.7%	7	63.6%	0	0.0%	0	0.0%
	Male	10	66.7%	10	90.9%	0	0.0%	0	0.0%
Total stations	---	15	100%	11	100%	1	100%	3	100%
Stations not filed	---	0	---	0	---	0	---	0	---
All licensed stations	---	15	---	11	---	1	---	3	---

Notes: The table reports the number and share of stations that have at least one person, by race and gender or by ethnicity and gender, with an attributable interest, nationally and by DMA rank. Each station may appear in multiple race/gender and ethnicity/gender categories.

Table G(3) Majority Ownership Interest by Gender, Race, and Ethnicity Voting Interest Exceeds 50% Individually or Collectively Class A Noncommercial Television Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Male	13	86.7%	10	90.9%	1	100.0%	2	66.7%
Joint female/male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
No majority interest	2	13.3%	1	9.1%	0	0.0%	1	33.3%
<b>Race</b>								
Asian	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Black/African American	1	6.7%	1	9.1%	0	0.0%	0	0.0%
Native Hawaiian/Pacific Islander	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/Alaska Native	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Two or More Races	0	0.0%	0	0.0%	0	0.0%	0	0.0%
White	13	86.7%	10	90.9%	1	100.0%	2	66.7%
No majority interest	1	6.7%	0	0.0%	0	0.0%	1	33.3%
<b>Ethnicity</b>								
Hispanic/Latino	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Not Hispanic/Latino	14	93.3%	11	100.0%	1	100.0%	2	66.7%
No majority interest	1	6.7%	0	0.0%	0	0.0%	1	33.3%
Racial or ethnic minority group holds majority ownership interest	1	6.7%	1	9.1%	0	0.0%	0	0.0%
Total stations	15	100%	11	100%	1	100%	3	100%
Insufficient data	0	---	0	---	0	---	0	---
Stations not filed	0	---	0	---	0	---	0	---
All licensed stations	15	---	11	---	1	---	3	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%, nationally and by DMA rank. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants).

Table G(4) Majority Ownership Interest by Race by Gender and Ethnicity by Gender Voting Interest Exceeds 50% Individually or Collectively Class A Noncommercial Television Stations – 2021									
	Gender of majority interest group	No. of Stations and % of Total							
		Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Black/African American	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	1	6.7%	1	9.1%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Native Hawaiian/ Pacific Islander	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/ Alaska Native	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Two or More Races	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
White	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	8	53.3%	5	45.5%	1	100.0%	2	66.7%
	Combination	5	33.3%	5	45.5%	0	0.0%	0	0.0%
No majority interest	All Stations	1	6.7%	0	0.0%	0	0.0%	1	33.3%
<b>Ethnicity</b>									
Hispanic/Latino	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Not Hispanic/ Latino	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	10	66.7%	7	63.6%	1	100.0%	2	66.7%
	Combination	4	26.7%	4	36.4%	0	0.0%	0	0.0%
No majority interest	All Stations	1	6.7%	0	0.0%	0	0.0%	1	33.3%
Any Racial or Ethnic Minority Group	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	1	6.7%	1	9.1%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Total stations	---	15	100%	11	100%	1	100%	3	100%
Insufficient data	---	0	---	0	---	0	---	0	---
Stations not filed	---	0	---	0	---	0	---	0	---
All licensed stations	---	15	---	11	---	1	---	3	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same race and gender or the same ethnicity and gender hold voting interests that exceed 50%, nationally and by DMA rank. A station is classified as a combination if individuals of the same race or ethnicity hold voting interests that exceed 50%, but no gender group within the race or ethnicity group holds voting interests that exceed 50% (e.g., a station where Hispanic/Latino women hold 30% of voting shares and Hispanic/Latino men hold 25% of voting shares). Each station appears in only one race/gender and ethnicity/gender category.

**TABLE H**

**1- 4**

**2021**

**Low Power Noncommercial Television**

Table H(1) Attributable Ownership Interest by Gender, Race, and Ethnicity Stations with One or More Attributable Persons Low Power Noncommercial Television Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	34	63.0%	16	80.0%	2	40.0%	16	55.2%
Male	46	85.2%	18	90.0%	4	80.0%	24	82.8%
<b>Race</b>								
Asian	4	7.4%	2	10.0%	0	0.0%	2	6.9%
Black/African American	8	14.8%	4	20.0%	2	40.0%	2	6.9%
Native Hawaiian/Pacific Islander	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/Alaska Native	7	13.0%	3	15.0%	1	20.0%	3	10.3%
Two or More Races	7	13.0%	2	10.0%	0	0.0%	5	17.2%
White	46	85.2%	18	90.0%	4	80.0%	24	82.8%
<b>Ethnicity</b>								
Hispanic/Latino	19	35.2%	9	45.0%	0	0.0%	10	34.5%
Not Hispanic/Latino	40	74.1%	15	75.0%	4	80.0%	21	72.4%
<b>Any racial or ethnic minority</b>								
	25	46.3%	12	60.0%	2	40.0%	11	37.9%
<b>Total stations</b>								
Total stations	54	100%	20	100%	5	100%	29	100%
Stations not filed	0	---	0	---	0	---	0	---
All licensed stations	54	---	20	---	5	---	29	---

Notes: The table reports the number and share of stations that have at least one person, by gender, race, or ethnicity, with an attributable interest, nationally and by DMA rank. Each station may appear in multiple gender, race, and ethnicity categories.

Table H(2) Attributable Ownership Interest by Race and Gender and by Ethnicity and Gender Stations with One or More Attributable Persons Low Power Noncommercial Television Stations – 2021									
	Gender	No. of Stations and % of Total							
		Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	1	1.9%	0	0.0%	0	0.0%	1	3.4%
	Male	3	5.6%	2	10.0%	0	0.0%	1	3.4%
Black/African American	Female	4	7.4%	1	5.0%	1	20.0%	2	6.9%
	Male	7	13.0%	4	20.0%	2	40.0%	1	3.4%
Native Hawaiian/ Pacific Islander	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/ Alaska Native	Female	6	11.1%	3	15.0%	0	0.0%	3	10.3%
	Male	5	9.3%	2	10.0%	1	20.0%	2	6.9%
Two or More Races	Female	3	5.6%	2	10.0%	0	0.0%	1	3.4%
	Male	4	7.4%	0	0.0%	0	0.0%	4	13.8%
White	Female	32	59.3%	16	80.0%	2	40.0%	14	48.3%
	Male	46	85.2%	18	90.0%	4	80.0%	24	82.8%
<b>Ethnicity</b>									
Hispanic/Latino	Female	15	27.8%	9	45.0%	0	0.0%	6	20.7%
	Male	17	31.5%	9	45.0%	0	0.0%	8	27.6%
Not Hispanic/Latino	Female	29	53.7%	13	65.0%	2	40.0%	14	48.3%
	Male	40	74.1%	15	75.0%	4	80.0%	21	72.4%
Any racial or ethnic minority	Female	21	38.9%	11	55.0%	1	20.0%	9	31.0%
	Male	24	44.4%	11	55.0%	2	40.0%	11	37.9%
Total stations	---	54	100%	20	100%	5	100%	29	100%
Stations not filed	---	0	---	0	---	0	---	0	---
All licensed stations	---	54	---	20	---	5	---	29	---

Notes: The table reports the number and share of stations that have at least one person, by race and gender or by ethnicity and gender, with an attributable interest, nationally and by DMA rank. Each station may appear in multiple race/gender and ethnicity/gender categories.

Table H(3) Majority Ownership Interest by Gender, Race, and Ethnicity Voting Interest Exceeds 50% Individually or Collectively Low Power Noncommercial Television Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen DMA 1-50		Nielsen DMA 51- 100		Nielsen DMA 101+	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	5	9.6%	2	10.0%	0	0.0%	3	10.7%
Male	33	63.5%	11	55.0%	3	75.0%	19	67.9%
Joint female/male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
No majority interest	14	26.9%	7	35.0%	1	25.0%	6	21.4%
<b>Race</b>								
Asian	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Black/African American	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Native Hawaiian/Pacific Islander	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/Alaska Native	2	3.8%	0	0.0%	0	0.0%	2	7.1%
Two or More Races	0	0.0%	0	0.0%	0	0.0%	0	0.0%
White	42	80.8%	17	85.0%	3	75.0%	22	78.6%
No majority interest	8	15.4%	3	15.0%	1	25.0%	4	14.3%
<b>Ethnicity</b>								
Hispanic/Latino	6	11.5%	3	15.0%	0	0.0%	3	10.7%
Not Hispanic/Latino	39	75.0%	15	75.0%	3	75.0%	21	75.0%
No majority interest	7	13.5%	2	10.0%	1	25.0%	4	14.3%
<b>Racial or ethnic minority group holds majority ownership interest</b>								
	8	15.4%	3	15.0%	0	0.0%	5	17.9%
<b>Total stations</b>								
Total stations	52	100%	20	100%	4	100%	28	100%
Insufficient data	2	---	0	---	1	---	1	---
Stations not filed	0	---	0	---	0	---	0	---
All licensed stations	54	---	20	---	5	---	29	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%, nationally and by DMA rank. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants).

	Gender of majority interest group	No. of Stations and % of Total							
		Nationally		Nielsen DMA 1-50		Nielsen DMA 51-100		Nielsen DMA 101+	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Black/African American	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Native Hawaiian/ Pacific Islander	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/ Alaska Native	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	2	3.8%	0	0.0%	0	0.0%	2	7.1%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Two or More Races	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
White	Female	4	7.7%	2	10.0%	0	0.0%	2	7.1%
	Male	28	53.8%	10	50.0%	2	50.0%	16	57.1%
	Combination	10	19.2%	5	25.0%	1	25.0%	4	14.3%
No majority interest	All Stations	8	15.4%	3	15.0%	1	25.0%	4	14.3%
<b>Ethnicity</b>									
Hispanic/Latino	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	3	5.8%	2	10.0%	0	0.0%	1	3.6%
	Combination	3	5.8%	1	5.0%	0	0.0%	2	7.1%
Not Hispanic/ Latino	Female	4	7.7%	2	10.0%	0	0.0%	2	7.1%
	Male	27	51.9%	7	35.0%	3	75.0%	17	60.7%
	Combination	8	15.4%	6	30.0%	0	0.0%	2	7.1%
No majority interest	All Stations	7	13.5%	2	10.0%	1	25.0%	4	14.3%
Any Racial or Ethnic Minority Group	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	5	9.6%	2	10.0%	0	0.0%	3	10.7%
	Combination	3	5.8%	1	5.0%	0	0.0%	2	7.1%
Total stations	---	52	100%	20	100%	4	100%	28	100%
Insufficient data	---	2	---	0	---	1	---	1	---
Stations not filed	---	0	---	0	---	0	---	0	---
All licensed stations	---	54	---	20	---	5	---	29	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same race and gender or the same ethnicity and gender hold voting interests that exceed 50%, nationally and by DMA rank. A station is classified as a combination if individuals of the same race or ethnicity hold voting interests that exceed 50%, but no gender group within the race or ethnicity group holds voting interests that exceed 50% (e.g., a station where Hispanic/Latino women hold 30% of voting shares and Hispanic/Latino men hold 25% of voting shares). Each station appears in only one race/gender and ethnicity/gender category.

**TABLE I**

**1 - 4**

**2021**

**Noncommercial AM Radio**

Table I(1) Attributable Ownership Interest by Gender, Race, and Ethnicity Stations with One or More Attributable Persons Noncommercial AM Radio Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	299	80.4%	156	81.7%	61	81.3%	82	77.4%
Male	362	97.3%	190	99.5%	73	97.3%	99	93.4%
<b>Race</b>								
Asian	41	11.0%	21	11.0%	7	9.3%	13	12.3%
Black/African American	81	21.8%	42	22.0%	15	20.0%	24	22.6%
Native Hawaiian/Pacific Islander	3	0.8%	1	0.5%	0	0.0%	2	1.9%
American Indian/Alaska Native	25	6.7%	4	2.1%	4	5.3%	17	16.0%
Two or More Races	9	2.4%	2	1.0%	3	4.0%	4	3.8%
White	350	94.1%	185	96.9%	71	94.7%	94	88.7%
<b>Ethnicity</b>								
Hispanic/Latino	154	41.4%	97	50.8%	26	34.7%	31	29.2%
Not Hispanic/Latino	345	92.7%	175	91.6%	70	93.3%	100	94.3%
<b>Any racial or ethnic minority</b>								
	213	57.3%	126	66.0%	35	46.7%	52	49.1%
<b>Total stations</b>								
	372	100%	191	100%	75	100%	106	100%
<b>Stations not filed</b>								
	0	---	0	---	0	---	0	---
<b>All licensed stations</b>								
	372	---	191	---	75	---	106	---

Notes: The table reports the number and share of stations that have at least one person, by gender, race, or ethnicity, with an attributable interest, nationally and by metro rank. Each station may appear in multiple gender, race, and ethnicity categories.

	Gender	No. of Stations and % of Total							
		Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	21	5.6%	8	4.2%	5	6.7%	8	7.5%
	Male	28	7.5%	19	9.9%	4	5.3%	5	4.7%
Black/African American	Female	36	9.7%	20	10.5%	7	9.3%	9	8.5%
	Male	67	18.0%	36	18.8%	11	14.7%	20	18.9%
Native Hawaiian/ Pacific Islander	Female	2	0.5%	0	0.0%	0	0.0%	2	1.9%
	Male	2	0.5%	1	0.5%	0	0.0%	1	0.9%
American Indian/ Alaska Native	Female	12	3.2%	0	0.0%	3	4.0%	9	8.5%
	Male	20	5.4%	4	2.1%	1	1.3%	15	14.2%
Two or More Races	Female	4	1.1%	1	0.5%	1	1.3%	2	1.9%
	Male	7	1.9%	2	1.0%	3	4.0%	2	1.9%
White	Female	283	76.1%	151	79.1%	59	78.7%	73	68.9%
	Male	347	93.3%	184	96.3%	70	93.3%	93	87.7%
<b>Ethnicity</b>									
Hispanic/Latino	Female	59	15.9%	36	18.8%	11	14.7%	12	11.3%
	Male	143	38.4%	93	48.7%	23	30.7%	27	25.5%
Not Hispanic/Latino	Female	266	71.5%	129	67.5%	58	77.3%	79	74.5%
	Male	342	91.9%	174	91.1%	69	92.0%	99	93.4%
Any racial or ethnic minority	Female	99	26.6%	53	27.7%	16	21.3%	30	28.3%
	Male	202	54.3%	124	64.9%	31	41.3%	47	44.3%
Total stations	---	372	100%	191	100%	75	100%	106	100%
Stations not filed	---	0	---	0	---	0	---	0	---
All licensed stations	---	372	---	191	---	75	---	106	---

Notes: The table reports the number and share of stations that have at least one person, by race and gender or by ethnicity and gender, with an attributable interest, nationally and by Metro rank. Each station may appear in multiple race/gender and ethnicity/gender categories.

Table I(3) Majority Ownership Interest by Gender, Race, and Ethnicity Voting Interest Exceeds 50% Individually or Collectively Noncommercial AM Radio Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	56	15.3%	26	13.6%	14	19.4%	16	15.5%
Male	289	79.0%	162	84.8%	51	70.8%	76	73.8%
Joint female/male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
No majority interest	21	5.7%	3	1.6%	7	9.7%	11	10.7%
<b>Race</b>								
Asian	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Black/African American	8	2.2%	6	3.1%	0	0.0%	2	1.9%
Native Hawaiian/Pacific Islander	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/Alaska Native	8	2.2%	0	0.0%	1	1.4%	7	6.8%
Two or More Races	1	0.3%	0	0.0%	1	1.4%	0	0.0%
White	339	92.6%	185	96.9%	68	94.4%	86	83.5%
No majority interest	10	2.7%	0	0.0%	2	2.8%	8	7.8%
<b>Ethnicity</b>								
Hispanic/Latino	34	9.3%	28	14.7%	5	6.9%	1	1.0%
Not Hispanic/Latino	325	88.8%	163	85.3%	65	90.3%	97	94.2%
No majority interest	7	1.9%	0	0.0%	2	2.8%	5	4.9%
<b>Racial or ethnic minority group holds majority ownership interest</b>								
	51	13.9%	34	17.8%	7	9.7%	10	9.7%
<b>Total stations</b>								
Total stations	366	100%	191	100%	72	100%	103	100%
Insufficient data	6	---	0	---	3	---	3	---
Stations not filed	0	---	0	---	0	---	0	---
All licensed stations	372	---	191	---	75	---	106	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%, nationally and by metro rank. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants).

	Gender of majority interest group	No. of Stations and % of Total							
		Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Black/African American	Female	2	0.5%	2	1.0%	0	0.0%	0	0.0%
	Male	5	1.4%	4	2.1%	0	0.0%	1	1.0%
	Combination	1	0.3%	0	0.0%	0	0.0%	1	1.0%
Native Hawaiian/ Pacific Islander	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
American Indian/ Alaska Native	Female	4	1.1%	0	0.0%	0	0.0%	4	3.9%
	Male	3	0.8%	0	0.0%	1	1.4%	2	1.9%
	Combination	1	0.3%	0	0.0%	0	0.0%	1	1.0%
Two or More Races	Female	1	0.3%	0	0.0%	1	1.4%	0	0.0%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
White	Female	37	10.1%	18	9.4%	9	12.5%	10	9.7%
	Male	256	69.9%	151	79.1%	46	63.9%	59	57.3%
	Combination	46	12.6%	16	8.4%	13	18.1%	17	16.5%
No majority interest	All Stations	10	2.7%	0	0.0%	2	2.8%	8	7.8%
<b>Ethnicity</b>									
Hispanic/Latino	Female	4	1.1%	4	2.1%	0	0.0%	0	0.0%
	Male	17	4.6%	13	6.8%	4	5.6%	0	0.0%
	Combination	13	3.6%	11	5.8%	1	1.4%	1	1.0%
Not Hispanic/ Latino	Female	45	12.3%	18	9.4%	12	16.7%	15	14.6%
	Male	242	66.1%	133	69.6%	45	62.5%	64	62.1%
	Combination	38	10.4%	12	6.3%	8	11.1%	18	17.5%
No majority interest	All Stations	7	1.9%	0	0.0%	2	2.8%	5	4.9%
Any Racial or Ethnic Minority Group	Female	11	3.0%	6	3.1%	1	1.4%	4	3.9%
	Male	25	6.8%	17	8.9%	5	6.9%	3	2.9%
	Combination	15	4.1%	11	5.8%	1	1.4%	3	2.9%
Total stations	---	366	100%	191	100%	72	100%	103	100%
Insufficient data	---	6	---	0	---	3	---	3	---
Stations not filed	---	0	---	0	---	0	---	0	---
All licensed stations	---	372	---	191	---	75	---	106	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same race and gender or the same ethnicity and gender hold voting interests that exceed 50%, nationally and by metro rank. A station is classified as a combination if individuals of the same race or ethnicity hold voting interests that exceed 50%, but no gender group within the race or ethnicity group holds voting interests that exceed 50% (e.g., a station where Hispanic/Latino women hold 30% of voting shares and Hispanic/Latino men hold 25% of voting shares). Each station appears in only one race/gender and ethnicity/gender category.

**TABLE J**

**1 - 4**

**2021**

**Noncommercial FM Radio**

Table J(1) Attributable Ownership Interest by Gender, Race, and Ethnicity Stations with One or More Attributable Persons Noncommercial FM Radio Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	3,504	82.7%	999	85.8%	807	84.9%	1,698	79.9%
Male	4,097	96.7%	1,118	96.0%	923	97.2%	2,056	96.8%
<b>Race</b>								
Asian	676	15.9%	252	21.6%	142	14.9%	282	13.3%
Black/African American	1,356	32.0%	498	42.7%	331	34.8%	527	24.8%
Native Hawaiian/Pacific Islander	50	1.2%	11	0.9%	3	0.3%	36	1.7%
American Indian/Alaska Native	403	9.5%	66	5.7%	57	6.0%	280	13.2%
Two or More Races	286	6.7%	87	7.5%	62	6.5%	137	6.5%
White	4,071	96.0%	1,116	95.8%	919	96.7%	2,036	95.9%
<b>Ethnicity</b>								
Hispanic/Latino	1,611	38.0%	542	46.5%	364	38.3%	705	33.2%
Not Hispanic/Latino	4,070	96.0%	1,106	94.9%	920	96.8%	2,044	96.2%
<b>Any racial or ethnic minority</b>								
	2,522	59.5%	781	67.0%	573	60.3%	1,168	55.0%
<b>Total stations</b>								
	4,239	100%	1,165	100%	950	100%	2,124	100%
Stations not filed	118	---	42	---	21	---	55	---
All licensed stations	4,357	---	1,207	---	971	---	2,179	---

Notes: The table reports the number and share of stations that have at least one person, by gender, race, or ethnicity, with an attributable interest, nationally and by metro rank. Each station may appear in multiple gender, race, and ethnicity categories.

	Gender	No. of Stations and % of Total							
		Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	387	9.1%	138	11.8%	82	8.6%	167	7.9%
	Male	468	11.0%	196	16.8%	92	9.7%	180	8.5%
Black/African American	Female	852	20.1%	333	28.6%	226	23.8%	293	13.8%
	Male	1,089	25.7%	409	35.1%	257	27.1%	423	19.9%
Native Hawaiian/ Pacific Islander	Female	29	0.7%	2	0.2%	1	0.1%	26	1.2%
	Male	26	0.6%	10	0.9%	2	0.2%	14	0.7%
American Indian/ Alaska Native	Female	242	5.7%	34	2.9%	23	2.4%	185	8.7%
	Male	261	6.2%	46	3.9%	38	4.0%	177	8.3%
Two or More Races	Female	181	4.3%	61	5.2%	37	3.9%	83	3.9%
	Male	157	3.7%	48	4.1%	35	3.7%	74	3.5%
White	Female	3,390	80.0%	970	83.3%	798	84.0%	1,622	76.4%
	Male	4,006	94.5%	1,096	94.1%	912	96.0%	1,998	94.1%
<b>Ethnicity</b>									
Hispanic/Latino	Female	684	16.1%	245	21.0%	145	15.3%	294	13.8%
	Male	1,342	31.7%	458	39.3%	297	31.3%	587	27.6%
Not Hispanic/Latino	Female	3,416	80.6%	977	83.9%	794	83.6%	1,645	77.4%
	Male	4,005	94.5%	1,088	93.4%	914	96.2%	2,003	94.3%
<b>Any racial or ethnic minority</b>									
	Female	1,510	35.6%	486	41.7%	321	33.8%	703	33.1%
	Male	2,213	52.2%	710	60.9%	497	52.3%	1,006	47.4%
Total stations	---	4,239	100%	1,165	100%	950	100%	2,124	100%
Stations not filed	---	118	---	42	---	21	---	55	---
All licensed stations	---	4,357	---	1,207	---	971	---	2,179	---

Notes: The table reports the number and share of stations that have at least one person, by race and gender or by ethnicity and gender, with an attributable interest, nationally and by Metro rank. Each station may appear in multiple race/gender and ethnicity/gender categories.

Table J(3) Majority Ownership Interest by Gender, Race, and Ethnicity Voting Interest Exceeds 50% Individually or Collectively Noncommercial FM Radio Stations – 2021								
	No. of Stations and % of Total							
	Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
	No.	%	No.	%	No.	%	No.	%
<b>Gender</b>								
Female	589	14.2%	160	14.0%	108	11.7%	321	15.5%
Male	3,189	77.0%	871	76.3%	734	79.3%	1,584	76.4%
Joint female/male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
No majority interest	364	8.8%	111	9.7%	84	9.1%	169	8.1%
<b>Race</b>								
Asian	4	0.1%	3	0.3%	1	0.1%	0	0.0%
Black/African American	48	1.2%	29	2.5%	6	0.6%	13	0.6%
Native Hawaiian/Pacific Islander	2	0.0%	0	0.0%	0	0.0%	2	0.1%
American Indian/Alaska Native	83	2.0%	5	0.4%	5	0.5%	73	3.5%
Two or More Races	4	0.1%	1	0.1%	1	0.1%	2	0.1%
White	3,824	92.3%	1,037	90.8%	872	94.2%	1,915	92.3%
No majority interest	177	4.3%	67	5.9%	41	4.4%	69	3.3%
<b>Ethnicity</b>								
Hispanic/Latino	116	2.8%	34	3.0%	12	1.3%	70	3.4%
Not Hispanic/Latino	3,893	94.0%	1,058	92.6%	879	94.9%	1,956	94.3%
No majority interest	133	3.2%	50	4.4%	35	3.8%	48	2.3%
<b>Racial or ethnic minority group holds majority ownership interest</b>								
	254	6.1%	70	6.1%	25	2.7%	159	7.7%
<b>Total stations</b>								
	4,142	100%	1,142	100%	926	100%	2,074	100%
Insufficient data	97	---	23	---	24	---	50	---
Stations not filed	118	---	42	---	21	---	55	---
All licensed stations	4,357	---	1,207	---	971	---	2,179	---

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same gender, race, or ethnicity hold voting interests that exceed 50%, nationally and by metro rank. Each station appears in only one gender, race, and ethnicity category. Joint female/male is defined as a situation in which the aggregate votes of the female attributable owners and the aggregate votes of the male attributable owners both separately exceed 50% (e.g., a station where a woman and a man each own 100% of the station as joint tenants).

	Gender of majority interest group	No. of Stations and % of Total							
		Nationally		Nielsen Audio Metro 1-100		Nielsen Audio Metro 101+		Outside Metro	
		No.	%	No.	%	No.	%	No.	%
<b>Race</b>									
Asian	Female	1	0.0%	1	0.1%	0	0.0%	0	0.0%
	Male	1	0.0%	1	0.1%	0	0.0%	0	0.0%
	Combination	2	0.0%	1	0.1%	1	0.1%	0	0.0%
Black/African American	Female	8	0.2%	3	0.3%	2	0.2%	3	0.1%
	Male	20	0.5%	13	1.1%	3	0.3%	4	0.2%
	Combination	20	0.5%	13	1.1%	1	0.1%	6	0.3%
Native Hawaiian/ Pacific Islander	Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Male	1	0.0%	0	0.0%	0	0.0%	1	0.0%
	Combination	1	0.0%	0	0.0%	0	0.0%	1	0.0%
American Indian/ Alaska Native	Female	36	0.9%	1	0.1%	2	0.2%	33	1.6%
	Male	30	0.7%	1	0.1%	3	0.3%	26	1.3%
	Combination	17	0.4%	3	0.3%	0	0.0%	14	0.7%
Two or More Races	Female	4	0.1%	1	0.1%	1	0.1%	2	0.1%
	Male	0	0.0%	0	0.0%	0	0.0%	0	0.0%
	Combination	0	0.0%	0	0.0%	0	0.0%	0	0.0%
White	Female	314	7.6%	94	8.2%	48	5.2%	172	8.3%
	Male	2,708	65.4%	727	63.7%	631	68.1%	1,350	65.1%
	Combination	802	19.4%	216	18.9%	193	20.8%	393	18.9%
No majority interest	All Stations	177	4.3%	67	5.9%	41	4.4%	69	3.3%
<b>Ethnicity</b>									
Hispanic/Latino	Female	15	0.4%	7	0.6%	0	0.0%	8	0.4%
	Male	58	1.4%	19	1.7%	8	0.9%	31	1.5%
	Combination	43	1.0%	8	0.7%	4	0.4%	31	1.5%
Not Hispanic/ Latino	Female	439	10.6%	112	9.8%	77	8.3%	250	12.1%
	Male	2,999	72.4%	818	71.6%	695	75.1%	1,486	71.6%
	Combination	455	11.0%	128	11.2%	107	11.6%	220	10.6%
No majority interest	All Stations	133	3.2%	50	4.4%	35	3.8%	48	2.3%
Any Racial or Ethnic Minority Group	Female	62	1.5%	11	1.0%	5	0.5%	46	2.2%
	Male	109	2.6%	34	3.0%	14	1.5%	61	2.9%
	Combination <sup>30</sup>	83	2.0%	25	2.2%	6	0.6%	52	2.5%
Total stations	---	4,142	100%	1,142	100%	926	100%	2,074	100%
Insufficient data	---	97	---	23	---	24	---	50	---
Stations not filed	---	118	---	42	---	21	---	55	---
All licensed stations	---	4,357	---	1,207	---	971	---	2,179	---

<sup>30</sup> This total includes one station for which (1) more than 50% of the votes are held by Hispanic or Latino women and (2) more than 50% of the votes are held by a combination of American Indian/Alaska Native men and American Indian/Alaska Native women.

Notes: The table reports the number and share of stations for which an individual or a group of individuals of the same race and gender or the same ethnicity and gender hold voting interests that exceed 50%, nationally and by metro rank. A station is classified as a combination if individuals of the same race or ethnicity hold voting interests that exceed 50%, but no gender group within the race or ethnicity group holds voting interests that exceed 50% (e.g., a station where Hispanic/Latino women hold 30% of voting shares and Hispanic/Latino men hold 25% of voting shares). Each station appears in only one race/gender and ethnicity/gender category.



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street, NE  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>

DA 23-36

Released: January 13, 2023

## COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO DISCONTINUE DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS SERVICES

WC Docket No(s). 23-20

Comments Due: January 30, 2023

Unless otherwise specified, the following procedures and dates apply to the application(s) (the Section 214 Discontinuance Application(s)) listed in the Appendix.

The Wireline Competition Bureau (Bureau), upon initial review, has found the Section 214 Discontinuance Application(s) listed herein to be acceptable for filing and subject to the procedures set forth in Section 63.71 of the Commission's rules.<sup>1</sup> The application(s) request authority, under section 214 of the Communications Act of 1934, as amended,<sup>2</sup> and section 63.71 of the Commission's rules,<sup>3</sup> to discontinue, reduce, or impair certain domestic telecommunications service(s) (Affected Service(s)) in specified geographic areas (Service Area(s)) as applicable and as fully described in each application.

In accordance with section 63.71(f) of the Commission's rules, the Section 214 Discontinuance Application(s) listed in the Appendix will be deemed granted automatically on **February 13, 2023**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.<sup>4</sup> We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission

<sup>1</sup> 47 CFR § 63.71.

<sup>2</sup> 47 U.S.C. § 214.

<sup>3</sup> 47 CFR § 63.71.

<sup>4</sup> See 47 CFR § 63.71(f) (stating, in relevant part, that an application filed by a non-dominant carrier "shall be automatically granted on the 31st day... unless the Commission has notified the applicant that the grant will not be automatically effective.").

action, as applicable. Should no petitions for reconsideration, applications for review, or petitions for judicial review be timely filed, the proceeding(s) listed in this Public Notice shall be terminated, and the docket(s) will be closed.

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **January 30, 2023**.<sup>5</sup> Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.<sup>6</sup> Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit one additional copy for each additional docket or rulemaking number associated with the proceeding in which they choose to file comments. Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.<sup>7</sup> All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, D.C. 20554.

Copies of the comments may also be emailed to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, using the contact information listed in the Appendix for the appropriate Section 214 Application. In addition, comments should be served upon the Applicant(s).

These proceedings are considered "permit but disclose" proceedings for purposes of the Commission's *ex parte* rules.<sup>8</sup> Participants should familiarize themselves with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or

<sup>5</sup> Comments are normally due 15 days after the Commission releases public notice of the proposed discontinuance. 47 CFR § 63.71(a). For purposes of computation of time, if the comment deadline falls on a weekend or officially recognized Federal legal holiday, however, comments will be due on the next business day. See 47 CFR § 1.4(e) and (j).

<sup>6</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

<sup>7</sup> Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

<sup>8</sup> 47 CFR § 1.1200 *et seq.*

otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530.

For further information, please see the contact(s) for the specific discontinuance proceeding you are interested in as listed in the Appendix. For further information on procedures regarding section 214 please visit <https://www.fcc.gov/encyclopedia/domestic-section-214-discontinuance-service>.

– FCC –

**Appendix**

**1) Applicant(s): Global Crossing Local Services, Inc., a Lumen company**

**WC Docket No. 23-20, Comp. Pol. File No. 1824**

**Link** – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2223-20\\*%22\)\)=](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-20*%22))=)

**Affected Service(s)** – Local Voice Service and Access Circuit

**Service Area(s)** – Phoenix and Tempe, Arizona; Concord, San Diego and Sunnyvale, California; Miami and Tampa, Florida; Alpharetta and Roswell, Georgia; Chicago, Illinois; Hebron, Kentucky; Andover and Canton, Massachusetts; Baltimore, Maryland; Southfield, Michigan; Eden Prairie, Minnesota; St. Louis, Missouri; Secaucus, New Jersey; Grand Island and New York, New York; Akron, Mason, Rock Creek and Stow, Ohio; Newtown Square, Pennsylvania; Houston and Humble, Texas; Vancouver, Washington; and Beloit, Wisconsin

**Authorized Date(s)** – on or after February 15, 2023

**Contact(s)** – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau



**Federal Communications Commission**  
Washington, D.C. 20554

**January 17, 2023**

DA 23-37  
*In Reply Refer to:*  
1800B3-ATS  
Released: January 17, 2023

St. Gabriel Communications  
c/o John Wells King, Esq.  
Law Office of John Wells King, PLLC  
4051 Shoal Creek Lane East  
Jacksonville, FL 32225  
(sent by electronic mail to: john@jwkinglaw.com)

Mr. Kevin J. Youngers  
3004 70<sup>th</sup> Ave.  
Greely, CO 80634  
(sent by electronic mail to: kevinyoungers@comcast.net)

In re: **St. Gabriel Communications**  
New NCE FM, Spencer, IA  
Facility ID No. 767664  
Application File No. 0000167515

**Informal Objection**

Dear Applicant and Objector:

We have before us the application, as amended, filed by St. Gabriel Communications (SGC) for a construction permit for a new noncommercial education (NCE) FM station at Spencer, Iowa.<sup>1</sup> We also have before us the Informal Objection to the SGC Application, filed by Kevin J. Youngers (Youngers), and a related responsive pleading.<sup>2</sup> For the reasons set forth below, we deny the Objection, deny the May 19, 2022, amendment to the SGC Application, and grant the SGC Application as amended by the May 16, 2022, amendment.

*Background.* SGC filed the SGC Application during the 2021 NCE FM Filing Window.<sup>3</sup> The Media Bureau (Bureau) identified the SGC Application as part of MX Group 78.<sup>4</sup> This group consisted of four mutually exclusive (MX) applications: the SGC Application, the application of Fairmont Area

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<sup>1</sup> Application File No. 0000167515 (SGC Application). As discussed below, SGC filed two amendments to the Application: one on May 16, 2022, and one on May 19, 2022.

<sup>2</sup> Pleading File No. 0000193345 (filed June 14, 2022) (Objection). SGC filed an Opposition to the Objection. Pleading File No. 0000197019 (filed Aug. 4, 2022) (Opposition). Youngers did not file a reply to the Opposition.

<sup>3</sup> *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB 2021).

<sup>4</sup> *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Education Stations; Opens Window to Accept Settlements and Technical Amendments*, Public Notice, 36 FCC Rcd 16452 (MB 2021) (*MX Groups Public Notice*).

Catholic Radio,<sup>5</sup> the application of VCY American, Inc.,<sup>6</sup> and the application of We Have This Hope Christian Radio, Inc.<sup>7</sup>

On April 4, 2022, the Bureau identified the FACR Application as the tentative selectee of MX Group 78.<sup>8</sup> The Bureau established a 30-day period for filing petitions to deny after which, if there was no substantial and material question concerning the grantability of the FACR Application, it would grant that application and dismiss the remaining mutually exclusive applications, including the SGC Application.<sup>9</sup> On May 16, 2022, SGC filed a minor technical amendment to its application to eliminate its mutual exclusivity with all other applications in MX Group 78 and render its application a singleton.<sup>10</sup> No party filed a petition to deny the FACR Application, and accordingly, on May 18, 2022, the Bureau granted the FACR Application and dismissed the VCY Application and the Hope Application. On May 19, 2022, SGC filed another minor technical amendment to its SGC Application, which sought authorization to increase the effective radiated power from 6 kW to 22 kW.<sup>11</sup> This amendment was only possible because the Bureau had dismissed the VCY Application.

On June 14, 2022, Youngers filed his Objection, claiming that SGC should not have been permitted to file its May 16 or May 19 amendments because “[n]o amendments on the original NCE applications were allowed after the settlement period which were before the [*Fair Distribution Order*].”<sup>12</sup> Youngers also argues that the Bureau should not accept amendments after the 30-day petition to deny period runs because only one application may be granted from each MX group, and “[i]f applications . . . can be amended after the selection process, then there is less pressure to make any settlements in the settlement period.”<sup>13</sup>

In the Opposition, SGC argues that section 73.7003(d) of the Commission’s rules (Rules) permits applications to be amended at any time, and that the Commission routinely accepts minor technical amendments after the settlement period has run.<sup>14</sup>

*Discussion.* Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),<sup>15</sup> petitions to deny and informal objections must provide properly supported allegations of fact that, if true,

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<sup>5</sup> Application File No. 0000167071 (FACR Application).

<sup>6</sup> Application File No. 0000167877 (VCY Application).

<sup>7</sup> Application File No. 0000167166 (Hope Application).

<sup>8</sup> *Threshold Fair Distribution Analysis of 16 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-356 (MB Apr. 4, 2022) (*Fair Distribution Order*).

<sup>9</sup> *Id.* at 11, para. 38.

<sup>10</sup> SGC Application, Amendment at Attach. “St. Gabriel Communications NEW Spencer IA – Purpose of Amendment 5-16-2022.pdf” (filed May 16, 2022).

<sup>11</sup> SGC Application, Amendment at Attach. “St. Gabriel Communications NEW Spencer IA – Purpose of Amendment No.2 5-19-2022.pdf” (filed May 19, 2022).

<sup>12</sup> Objection at 1.

<sup>13</sup> *Id.*

<sup>14</sup> Opposition at 1 (citing 47 CFR § 73.7003(d)).

<sup>15</sup> 47 U.S.C. § 309(d).

would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.<sup>16</sup>

We reject Younger’s suggestion that the May 16 amendment to the SGC application was prohibited, and that the application grant would violate the one-grant policy. Under the one-grant policy, the Commission only grants one application (or tied applications) per mutually exclusive group.<sup>17</sup> In our most recent review of our NCE processing rules, the Commission explicitly upheld the one-grant policy and rejected requests to allow for secondary grants after selection of a tentative selectee.<sup>18</sup> However, nothing in the Rules, the *MX Groups Public Notice*, nor our NCE FM processing procedures<sup>19</sup> prohibits an applicant from filing an amendment to eliminate its mutual exclusivities before, or after, the Bureau or the Commission conducts its comparative analysis. Specifically, the Commission held that it would “continue to permit additional grants from an MX group if an applicant—by *technical amendment*, the voluntary dismissal of competing applications, and/or a valid settlement agreement—*eliminates all conflicts to other applications in the group*.”<sup>20</sup> Here, SGC’s May 16 amendment fully resolved all of its mutually exclusivities with all of the other applicants in MX Group 78 and thus completely removed the application from MX Group 78. This amendment was not dependent on the Commission dismissing applications from the MX group and, therefore, does not violate our one-grant policy.

In contrast, SGC’s subsequent May 19 technical amendment to its engineering proposal violates our one-grant policy.<sup>21</sup> Unlike the May 16 amendment, SGC’s May 19 amendment is dependent on the Commission *involuntarily* dismissing the VCY Application, which is the type of secondary grant the Commission previously rejected.<sup>22</sup> The Commission has affirmed the dismissal of applications that became singletons based solely on the involuntary dismissal of other conflicting applications in the MX group.<sup>23</sup> We have also recently rejected similar efforts by applicants that rely on the involuntary

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<sup>16</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>17</sup> *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, MB Docket No. 19-3, Report and Order, 34 FCC Rcd 12519, 12542, para. 59 (2019) (*2019 NCE LPFM Order*) (emphasis added), *aff’d* Order on Reconsideration, 35 FCC Rcd 10180 (2020) (*NCE Order on Reconsideration*) (affirming the Commission’s long standing one-grant policy).

<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window Limited Application Filing Freeze to Commence on October 5, 2021*, Public Notice, 36 FCC Rcd 11458 (MB 2021).

<sup>20</sup> *2020 NCE LPFM Order*, 34 FCC Rcd at 12528, n.68; see also *NCE Order On Reconsideration*, 35 FCC Rcd at 10180, para. 2 (“[p]rior to dismissal, an applicant can seek to remove itself from the MX group to achieve grant as a ‘singleton’ either by settling with other applicants in the group or by *modifying its own engineering proposal*.”) (emphasis added).

<sup>21</sup> We reject SGC’s reliance on section 73.7003(d) to justify its second amendment. The rule only applies to settlements, not to unilateral amendments. See 47 CFR § 73.7003(d).

<sup>22</sup> SGC’s May 16 amendment was *not* premised on the involuntary dismissal of other applications in the MX group and eliminated all conflicts with the other applications in the MX group. See, e.g., *NCE October 2007 Window MX Group Number 363*, Letter Order, 25 FCC Rcd 9060 (MB 2010) (differentiating between a voluntary withdrawal that facilitated a settlement agreement and our “one selectee per NCE MX group” policy).

dismissal of mutually exclusive applications to circumvent the one-grant policy.<sup>24</sup> Accordingly, we deny the May 19 amendment, deny the Objection, and grant the SGC Application, as amended on May 16, 2022.<sup>25</sup>

*Conclusion/Action.* Accordingly, **IT IS ORDERED** that the Informal Objection, filed on June 14, 2022 (Pleading File No. 0000193345) by Kevin J. Youngers, **IS DENIED**.

**IT IS FURTHER ORDERED** the amendment filed by St. Gabriel Communications on May 19, 2022, to its pending application for a construction permit for a new noncommercial educational FM station at Spencer, Iowa (Application File No. 0000167515) **IS DENIED**.

**IT IS FURTHER ORDERED** that the application of St. Gabriel Communications for a construction permit for a new noncommercial educational FM station at Spencer, Iowa, as amended on May 16, 2022 (Application File No. 0000167515), **IS GRANTED**.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>23</sup> See, e.g., *Christian Music Network*, Memorandum Opinion and Order, 29 FCC Rcd 13268 (2014).

<sup>24</sup> *Centro Familiar de Restauracion y Vida*, Letter Order, DA 22-771 (MB July 18 2022).

<sup>25</sup> SGC is not precluded from filing a modification application to its construction permit, or modifying its facility at a later time.



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
TTY: 888-835-5322

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DA 23-38

Released: January 17, 2023

## MEDIA BUREAU ANNOUNCES COMMENT AND REPLY COMMENT DEADLINES FOR THE 2022 QUADRENNIAL REVIEW

### MB Docket No. 22-459

On December 22, 2022, the Media Bureau released a Public Notice<sup>1</sup> (2022 Quadrennial Public Notice) seeking comment, pursuant to the obligation under section 202(h) of the Telecommunications Act of 1996, on whether the media ownership rules remain “necessary in the public interest as the result of competition.”<sup>2</sup>

By this *Public Notice*, the Media Bureau announces that the summary of the 2022 Quadrennial Public Notice, including notice of the deadlines for filing comments and reply comments, was published in the *Federal Register* on January 17, 2023.<sup>3</sup> Accordingly, the deadline for filing comments is **March 3, 2023**, and the deadline for filing reply comments is **March 20, 2023**.

For additional information on these proceedings, contact Ty Bream, [Ty.Bream@fcc.gov](mailto:Ty.Bream@fcc.gov), of the Media Bureau, Industry Analysis Division. Press inquiries should be directed to Janice Wise, [Janice.Wise@fcc.gov](mailto:Janice.Wise@fcc.gov), (202) 418-8165.

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<sup>1</sup> *Media Bureau Opens Docket and Seeks Comment for 2022 Quadrennial Review of Media Ownership Rules*, MB Docket No. 22-459, Public Notice, DA 22-1364 (MB Dec. 22, 2022).

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 202(h) (1996); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004) (amending Sections 202(c) and 202(h) of the 1996 Act).

<sup>3</sup> *Media Bureau Opens Docket and Seeks Comment for 2022 Quadrennial Review of Media Ownership Rules*, 88 Fed. Reg. 2595 (Jan. 17, 2023).



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

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Internet: <https://www.fcc.gov>  
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DA 23-39

Released: January 17, 2023

## WIRELINE COMPETITION BUREAU APPROVES FURTHER REVISED ALASKA PLAN PERFORMANCE PLAN FOR ARCTIC SLOPE TELEPHONE COOPERATIVE

**WC Docket No. 10-90**  
**WC Docket No. 16-271**

In this Public Notice, the Wireline Competition Bureau (Bureau) approves a revised performance plan for rate-of-return Alaska Plan participant Arctic Slope Telephone Cooperative (ASTAC) (SAC 613001).

In the *Alaska Plan Order*, the Commission provided a one-time opportunity for Alaskan rate-of-return carriers to elect to receive support frozen at adjusted 2011 levels for a 10-year term in exchange for meeting individualized performance obligations—offering voice and broadband services at specified minimum speeds by five-year and 10-year service milestones to a specified number of locations.<sup>1</sup> On December 16, 2016, the Bureau authorized the individualized performance obligations and support amounts for 13 rate-of-return companies in Alaska.<sup>2</sup> The Commission directed the Bureau “to reassess the deployment obligations in the approved performance plans before the end of the fifth year of support,” that is, 2021, and required that “participating carriers update their end-of-term commitments no later than the end of the fourth year of support.”<sup>3</sup> The Commission further delegated to the Bureau the “authority to review and approve modifications that serve the public interest,”<sup>4</sup> including deployment obligations if changes are necessary based on changed circumstances.<sup>5</sup>

On December 23, 2021, the Bureau announced the performance obligations for rate-of-return Alaska Plan carriers as part of the five-year midterm review.<sup>6</sup> As part of its mid-term review, the Bureau approved revised performance obligations for ASTAC,<sup>7</sup> which ASTAC certified to meeting. On

<sup>1</sup> *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016) (*Alaska Plan Order*); 47 CFR § 54.306(b).

<sup>2</sup> *Wireline Competition Bureau Authorizes Alaska Plan Support for 13 Alaskan Rate-of-Return Companies*, WC Docket Nos. 10-90, 16-271, Public Notice, 31 FCC Rcd 13347 (WCB 2016) (*Alaska Plan Wireline Authorization Public Notice*). See also *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109, 10143-44, paras. 93-94 (2019) (imposing additional reporting obligations on Alaska Plan carriers).

<sup>3</sup> *Alaska Plan Order*, 31 FCC Rcd at 10158, para. 61.

<sup>4</sup> *Id.* Carriers with approved plans to maintain existing service levels are subject to biennial review. See *Alaska Plan Order*, 31 FCC Rcd at 10158, paras. 61-62. This midterm review also encompasses the Bureau’s biennial review. 47 CFR § 54.306(b).

<sup>5</sup> *Alaska Plan Order*, 31 FCC Rcd at 10158-59, para. 63.

<sup>6</sup> *Wireline Competition Bureau Announces Performance Obligations for Rate-Of-Return Alaska Plan Recipients After the Midterm Review*, WC Docket Nos. 10-90, 16-271, Public Notice, DA 21-1642 (WCB Dec. 23, 2021) (*Midterm Review Public Notice*).

November 18, 2022, ASTAC submitted updated wireline performance obligations,<sup>8</sup> and supplemented those on December 19, 2022.<sup>9</sup> ASTAC states that it was able to (1) negotiate access to fiber middle mile capacity at a lower rate, allowing ASTAC to offer service at higher speeds, i.e., at least 100/20 Mbps, in many areas, and (2) move service in Atkasuk from satellite to fiber middle mile resulting in an additional 78 newly deployed/upgraded locations by the end of the 10-year term.<sup>10</sup>

We find it is in the public interest to approve ASTAC's revised performance obligations, which are in Appendix A to this Public Notice. Appendix B to this Public Notice provides the minimum number of locations to be reported in the High-Cost Universal Broadband portal, or HUBB, i.e., newly deployed and upgraded locations over the term of the Alaska Plan, by speed and middle-mile, at the five-year and 10-year service milestones. The performance obligations we approve today replace the performance obligations the Bureau approved for ASTAC on December 23, 2021.<sup>11</sup>

For additional information on this proceeding, contact Rebekah Douglas, Wireline Competition Bureau, at [rebekah.douglas@fcc.gov](mailto:rebekah.douglas@fcc.gov) or (202) 418-7931.

- FCC -

(Continued from previous page) \_\_\_\_\_

<sup>7</sup> See *Midterm Review Public Notice* at 3, Appendix A. The fifth year of support ended on December 31, 2021.

<sup>8</sup> Letter from Jeffrey H. Smith, VP Public Policy and Advocacy, Vantage Point, Jens Laipenieks, ASTAC CEO to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-271 (filed Nov. 18, 2022) (including Attachment ASTAC WCBs Update DC 111522) (ASTAC *Ex Parte* Letter).

<sup>9</sup> Letter from Jeffrey H. Smith, VP Public Policy and Advocacy, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-271 (filed Dec. 19, 2022) (including Attachment ASTAC Updates Obligations 121622).

<sup>10</sup> *Id.* Other fiber projects are planned for 2023-2025. See ASTAC *Ex Parte* Letter Attachment.

<sup>11</sup> See Appendix A. See also *Midterm Review Public Notice* at 3, Appendix A. See also *Alaska Plan Wireline Authorization Public Notice*, 31 FCC Red at 13354, Appendix B; *supra* note 2.

## APPENDIX A PERFORMANCE OBLIGATIONS

### Arctic Slope Telephone Cooperative

	Note 1	Note 2		Note 3				Note 3	
Middle Mile Facility	Speed to End User	Locations Passed 1/1/15	Locations Passed 1/1/18	Number of Locations At Benchmark 1/1/18	Percent of Locations At Benchmark 1/1/18	Number of Locations At Benchmark Year 5	Percent of Locations At Benchmark Year 5	Number of Locations At Benchmark Year 10	Percent of Locations At Benchmark Year 10
Satellite	1Mb/384k	2,509	398	398	100%	398	100%	320	100%
Hybrid Microwave-Fiber	4Mb/1Mb	206							
Hybrid Microwave-Fiber**	10Mb/1Mb		161	161	100%				
Hybrid Microwave-Fiber***	25Mb/5Mb					161	100%	161	100%
Fiber**	10Mb/1Mb		2,156	2,156	100%				
Fiber***	25Mb/5Mb					2,156	100%		
Fiber***	100Mb/20Mb							2,234	100%
<b>Total</b>		<b>2,715</b>	<b>2,715</b>	<b>2,715</b>		<b>2,715</b>		<b>2,715</b>	

Note 1: Residential speeds. (Initial Filing Note) In Fiber and Hybrid fed markets, ASTAC offers a 10/1Mbps best effort service with a \$24.99/Mo access fee and metered usage (\$2 per GB used up to 100 GB, \$1 per GB after 101 GB and up). In the Satellite fed markets, ASTAC offers best effort speeds up to 1Mbps/384kbps service, including unlimited usage. ASTAC will update the Commission when our product offerings improve, triggered by improved economics\*\* on the middle mile service.

Note 2: Residential and estimated business locations passed in ETC's network as of 12/31/15.

Note 3: Year 1 is 2017

\*\* ASTAC's last mile (FTTH) network is capable of delivering higher broadband speeds in all markets than what is offered, but is limited by middle mile network cost/capacity constraints. ASTAC is able to meet the latency requirements in those markets connected by Fiber and Hybrid Microwave-Fiber middle mile. ASTAC has demonstrated why the reasonably comparable rate requirement and delivered speed metrics are not feasible in any of its markets with use of a simple economic model. We can show that the prohibitive factor continues to be the high cost of middle mile transport.

\*\*\* ASTAC was able to renegotiate a lower rate on middle mile capacity (Asymmetric) which enabled a new 25/5 Mbps service launch in January, 2021. Upload speeds were also improved in all fiber-fed markets. 11/15/22 update: 100/30 Mbps and 50/15 Mbps services were added in fiber-fed markets on June 1st, 2022. In Nuiqsut (Hybrid), only 25/5 Mbps offered due to capacity constraints. ATQ moved from Satellite to Fiber. The 100/30 Mbps service offering is reported under the 100/20 Mbps speed tier per guidance from USAC received 12/2/22.

**APPENDIX B  
HUBB LOCATIONS**

<b>Admin SAC</b>	<b>Carrier Name</b>	<b>Speed (Mbps)</b>	<b>Middle Mile</b>	<b>5 Year Obligation Newly Deployed, Upgraded Locations by Dec. 31, 2021</b>	<b>Minimum Total Locations Certified in the HUBB by Mar. 1, 2022<sup>1</sup></b>	<b>10 Year Obligation Newly Deployed, Upgraded Locations by Dec. 31, 2026</b>	<b>Minimum Total Locations Certified in the HUBB by Mar. 1, 2027</b>
613001	ARTC	25/5	Hybrid	161		161	
613001	ARTC	25/5	Fiber	2156		0	
613001	ARTC	100/20	Fiber	0		2234	
					<b>2317</b>		<b>2395</b>

<sup>1</sup> *Wireline Competition Bureau Announces The HUBB Certification Deadline for Deployed Fixed Locations for Alaska Plan Carriers ADAK, ASTAC, and MTA*, WC Docket Nos. 10-90, 16-271, Public Notice, DA 22-618 (WCB June 7, 2022); *Wireline Competition Bureau Further Extends the HUBB Certification Deadline for Deployed Fixed Locations For Alaska Plan Carriers ADAK, ASTAC, and MTA and Announces New Deadline*, WC Docket Nos. 10-90, 16-271, Public Notice, DA 22-846 (WCB Aug. 10, 2022).



# PUBLIC NOTICE

**Federal Communications Commission**  
45 L St., N.E.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>

**DA 23-40**  
**Released: January 17, 2023**

## **NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED**

### **WC Docket No. 22-433**

The Wireline Competition Bureau (Bureau) grants the application listed in this Public Notice pursuant to the Commission's streamlined procedures for domestic section 214 transfer of control applications, 47 CFR § 63.03. The Bureau determined that a grant of this application serves the public interest.<sup>1</sup> For purposes of computation of time when filing a petition for reconsideration or application for review, or for judicial review of the Commission's decision, the date of "public notice" shall be the release date of this Public Notice.<sup>2</sup> Should no petition for reconsideration, application for review, or petition for judicial review be timely filed, the proceeding listed in this Public Notice shall be terminated, and the docket will be closed.

Domestic Section 214 Application Filed for the Transfer of Control of  
Roome Telecommunications, Inc. from The Estate of Randal Lee Roome to  
Varcomm Holdings, Inc., WC Docket No. 22-433,  
Public Notice, DA 22-1312 (WCB 2022).

### **Effective Grant Date: January 14, 2023**

For further information, please contact Tracey Wilson at (202) 418-1394 or Dennis Johnson at (202) 418-0809, Competition Policy Division, Wireline Competition Bureau.

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<sup>1</sup> *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5529, para. 22 (2002).

<sup>2</sup> *Id.*; see 47 CFR § 1.4 (Computation of time).



# PUBLIC NOTICE

Federal Communications Commission  
45 L St., N.E.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
TTY: 1-888-835-5322

DA 23-41

Released: January 17, 2023

## PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES COMMENT AND REPLY COMMENT DATES FOR THE NOTICE OF PROPOSED RULEMAKING ON LOCATION-BASED ROUTING FOR WIRELESS 911 CALLS

PS Docket No. 18-64

**Comments Due: February 16, 2023**  
**Reply Comments Due: March 20, 2023**

On December 22, 2022, the Federal Communications Commission released a *Notice of Proposed Rulemaking (Notice)* seeking comment on proposed rules to more precisely route wireless 911 calls and texts to public safety answering points (PSAPs), which can result in faster response times during emergencies.<sup>1</sup>

The *Notice* set deadlines for filing comments and reply comments at 30 and 60 days, respectively, after publication of a summary of the *Notice* in the Federal Register.<sup>2</sup> On January 17, 2023, the Office of the Federal Register published a summary of the *Notice*, including the associated comment and reply comment dates.<sup>3</sup> Accordingly, comments must be filed on or before February 16, 2023, and reply comments must be filed on or before March 20, 2023. The *Notice* contains the comment filing instructions.<sup>4</sup>

For further information, contact Rachel Wehr, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-1138 or [Rachel.Wehr@fcc.gov](mailto:Rachel.Wehr@fcc.gov), or Brenda Boykin, Deputy Division Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-2062 or [Brenda.Boykin@fcc.gov](mailto:Brenda.Boykin@fcc.gov).

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<sup>1</sup> *Location-Based Routing for Wireless 911 calls*, PS Docket No. 18-64, Notice of Proposed Rulemaking, FCC 22-96, 2022 WL 17958801 (Dec. 22, 2022), <https://www.fcc.gov/document/fcc-proposes-rules-location-based-routing-wireless-911-calls#:~:text=FCC%20Proposes%20Rules%20for%20Location%2DBased%20Routing%20for%20Wireless%20911%20Calls,-Full%20Title%3A%20Federal&text=Description%3A,faster%20response%20times%20during%20emergencies.> (*Notice*).

<sup>2</sup> *Notice* at \*1.

<sup>3</sup> See 88 Fed. Reg. 2565 (Jan. 17, 2023).

<sup>4</sup> *Notice* at \*25, para. 77.



# PUBLIC NOTICE

Federal Communications Commission  
45 L St., N.E.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>

DA 23-42  
Released: January 18, 2023

## DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF IDEATEK TELCOM, LLC

### WC Docket No. 22-391

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by Daniel P. Friesen and IdeaTek Telcom, LLC (IdeaTek) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,<sup>1</sup> requesting consent to transfer control of IdeaTek.<sup>2</sup>

On December 9, 2022, the Bureau released a Public Notice seeking comment on the Application.<sup>3</sup> The Bureau did not receive comments or petitions in opposition to the Application.

#### **Applicants and Description of Transaction**

IdeaTek, a Kansas limited liability company, provides competitive voice and broadband services and is a competitive local exchange carrier serving approximately 15,000 subscribers in Kansas.<sup>4</sup> IdeaTek is an Eligible Telecommunications Carrier (ETC) and receives Connect America Fund (CAF) Phase II Auction 903 support in Kansas.<sup>5</sup> On March 15, 2022, the Bureau also authorized IdeaTek to receive \$23,590.60 in Rural Digital Opportunity Fund (RDOF) Auction 904 support to provide service to

<sup>1</sup> See 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

<sup>2</sup> Application of Daniel P. Friesen, IdeaTek Telcom, LLC for Consent to Transfer Control of Domestic Section 214 Authorization, WC Docket No. 22-391 (filed Nov. 8, 2022) (Application). Applicants filed supplements to their application on December 6, 2022 and December 12, 2022. Letter from Stephen E. Coran, Counsel to IdeaTek Telcom, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-391 (filed Dec. 6, 2022); Letter from Stephen E. Coran, Counsel to IdeaTek Telcom, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-391 (filed Dec. 12, 2022) (Dec. 12 Supplement). Applicants also filed applications for the transfer of wireless licenses. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

<sup>3</sup> See *Domestic Section 214 Application Filed for the Transfer of Control of IdeaTek Telcom, LLC*, WC Docket No. 22-391, Public Notice, DA 22-1285 (WCB Dec. 9, 2022).

<sup>4</sup> Application at 2.

<sup>5</sup> *Id.* IdeaTek was the winning bidder for \$6,186,881.60 of CAF Phase II Auction 903 support to serve 2,490 locations in Kansas. See *Connect America Fund Phase II Auction Support Authorized for 856 Winning Bids*, WC Docket No. 10-90, AU Docket No. 17-182, Public Notice, 34 FCC Rcd 4725, Attach. A (Authorized Long-Form Applicants and Winning Bids) (WCB 2019) (*CAF Phase II Public Notice*).

an estimated 89 locations in Kansas.<sup>6</sup> Daniel Friesen, a U.S. citizen, currently owns 53.21% of IdeaTek and is the sole manager, and Jerrod Reimer, a U.S. citizen, owns 13.54% of the company.<sup>7</sup>

Applicants state that “Pursuant to the terms of a Convertible Secured Promissory Note (‘Convertible Note’) and a Convertible Note Purchase Agreement (‘Purchase Agreement’), Peppertree Capital Fund IX, LP, a Delaware limited partnership, Peppertree Capital Fund IX QP, LP, a Delaware limited partnership, and Peppertree Capital FIX Co-Investors, LLC, (collectively, the ‘Peppertree Funds’), an Ohio limited liability company, made a significant debt investment in IdeaTek and acquired the right to convert its debt into ownership of up to a total of 49.5% in IdeaTek, subject to the prior consent of the Commission to a transfer of control of IdeaTek’s domestic section 214 authorization and wireless licenses.”<sup>8</sup> Following consummation of the proposed transaction, Peppertree Capital Fund IX QP, LP would own approximately 47.3% of IdeaTek, and the two other funds each would own approximately 1%.<sup>9</sup> The Peppertree Funds are managed by Peppertree Capital Management, Inc. (PCMI), an Ohio private equity firm controlled by United States citizens.<sup>10</sup> Upon consummation of the proposed transaction, the Convertible Note will convert to equity in IdeaTek, and Daniel P. Friesen’s interest will be reduced from 53.21% to 24.46%, thereby effectuating a transfer of control of IdeaTek.<sup>11</sup> Applicants state that the PCMI entities and their affiliates do not provide any telecommunications services.<sup>12</sup>

Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity, and that PCMI’s capital investment will enhance IdeaTek’s ability to meet and accelerate service obligations for its CAF and RDOF locations under the company’s existing management.<sup>13</sup>

### **Discussion**

We find, upon consideration of the record, that a grant of the Application will serve the public interest, convenience, and necessity. To make this determination under Commission precedent, we consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.<sup>14</sup> We then employ a

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<sup>6</sup> Application at 3; *see also Rural Digital Opportunity Fund Support Authorized for 5,657 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, DA 22-280 at Attach. A (Authorized Long-Form Applicants and Winning Bids) (WCB 2022) (*RDOF Public Notice*).

<sup>7</sup> Application at 11-12.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 2, Exh. A. (Post-Transaction Corporate Ownership Structure).

<sup>10</sup> *Id.* at 4, 12.

<sup>11</sup> *Id.* at 5; Dec. 12 Supplement (Verification). Separately, Mr. Reimer’s interest will fall below 10%, and after consummation, IdeaTek will be managed by a five-person board consisting of Mr. Friesen, Mr. Reimer, and Mr. Daniel Solomon, all of whom are current officers of the company, along with two members appointed by PCMI. *Id.*

<sup>12</sup> *Id.* at 13; Dec. 12 Supplement (Verification).

<sup>13</sup> Application at 7-11.

<sup>14</sup> *See, e.g., Application of Verizon Communications Inc. and América Móvil S.A.B. de C.V for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, 36 FCC Rcd 16994, 16996, para. 21 (2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ITC-214-20110901-00289, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelpia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries)*,

balancing test that weighs any potential public interest harms of the proposed transaction against any potential public interest benefits.<sup>15</sup> The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.<sup>16</sup>

We find that the record contains no evidence of any potential public interest harms. First, the proposed transaction will not result in a reduction of competition. The PCMI entities are not affiliated with any domestic telecommunications carriers,<sup>17</sup> and there will thus be no physical overlap or reduction in service providers in any markets as a result of the transaction. Further, Applicants state that the transaction will “not impact IdeaTek’s customers” and will have “no adverse –or, indeed, any— impact on customers and will not alter the planned manner of service delivery or billing.”<sup>18</sup> Applicants state further that no changes are planned to IdeaTek’s rates, terms, and conditions of services,<sup>19</sup> and we thus expect no potential harm to existing customers to result from the transaction.

Second, IdeaTek will remain financially, managerially, and technically obligated to meet all public interest and performance obligations associated with the receipt of CAF Phase II and RDOF funding in accordance with the Commission’s pre-transaction approval of its qualifications, and we expect that the proposed transaction will not negatively impact these obligations.<sup>20</sup> Applicants have confirmed that the proposed transaction will not affect IdeaTek’s deployment plans.<sup>21</sup> Specifically, Applicants state: “The debt conversion will not adversely impact IdeaTek’s ability to meet its CAF or RDOF commitments and, in fact, provides additional liquidity to accelerate buildout and growth and facilitate additional investment should it be necessary. The funds loaned to IdeaTek under the Convertible Note enabled IdeaTek to retire approximately 30% of its existing bank debt, and the conversion of the loan to equity will enhance IdeaTek’s access to other sources of capital.”<sup>22</sup> Applicants have also confirmed that “there will be no changes in the management of IdeaTek or the technology used by IdeaTek to provide service as a result of the proposed Transaction.”<sup>23</sup> Overall, we conclude that the record in this proceeding does not support a finding of a public interest harm.

We next consider whether the proposed transaction is likely to generate verifiable, transaction-

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*Assignees; Adelphia Communications Corporation, (and Subsidiaries, Debtors-in-Possession), Assignors and Transferors et al.*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*)).

<sup>15</sup> See *Verizon-TracFone Order*, 36 FCC Rcd at 16996, para. 21 (citing *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*)) (further citations omitted).

<sup>16</sup> See *Verizon-TracFone Order*, 36 FCC Rcd at 16996, para. 21 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002)) (further citations omitted).

<sup>17</sup> Dec. 12 Supplement at 1.

<sup>18</sup> Application at 7.

<sup>19</sup> *Id.* at 5.

<sup>20</sup> See *id.* at 10.

<sup>21</sup> *Id.* at 6.

<sup>22</sup> *Id.* at 9.

<sup>23</sup> *Id.* at 6.

specific public interest benefits.<sup>24</sup> Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.<sup>25</sup> Where potential harms appear unlikely, as is the case with the Application before us here, the Commission accepts a lesser degree of magnitude and likelihood than when harms are present.<sup>26</sup>

Applicants assert that the proposed transaction will “provide significant additional capital for IdeaTek to continue its ongoing expansion of Gigabit broadband services in Kansas” and, with regard to the RDOF program, will provide funding that “far exceeds the amount of money IdeaTek will need to complete its CAF and RDOF deployment obligations.”<sup>27</sup> Applicants state that “the Peppertree Funds’ capital infusion is helping, and will continue to help, accelerate the planned deployment and customer benefits.”<sup>28</sup> Applicants further state: “IdeaTek has completed its CAF network deployment to more than 76% of the required locations – well in excess of the 40% required by the end of 2022 – and has reduced the amount of its CAF letter of credit by 50%. In addition, IdeaTek has timely submitted required speed and latency pre-testing and testing results to USAC.”<sup>29</sup> Applicants state that the proposed transaction will further IdeaTek’s progress moving forward and “enhance IdeaTek’s ability to perform its CAF and RDOF obligations and achieve its growth objectives.”<sup>30</sup>

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,<sup>31</sup> and accelerating private sector deployment of advanced services is one of the aims of the Act.<sup>32</sup> In light of the Applicants’ commitments to meet all of Licensees’ federal high cost funding obligations<sup>33</sup> and the fact that Applicants are prepared to devote additional capital to accelerate facilities-based service offerings,<sup>34</sup> we find it likely that the proposed transaction would result in some public interest benefits. Absent any potential harms, and considering that the proposed transaction is likely to yield some benefits, we find, on balance, that the proposed transaction serves the public interest.

Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants

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<sup>24</sup> See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

<sup>25</sup> See *id.* at 9237-38, paras. 275-76.

<sup>26</sup> See *id.*

<sup>27</sup> Application at 10.

<sup>28</sup> *Id.* at 9.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 7.

<sup>31</sup> See, e.g., *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

<sup>32</sup> See *Verizon-TracFone Order*, 36 FCC Rcd at 16996-97, para. 22 (citing 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, Preamble, 110 Stat. 56 (1996) (one purpose of the Act is to “accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services”)).

<sup>33</sup> Application at 10.

<sup>34</sup> *Id.* at 9-10.

the Application discussed in this Public Notice, subject to Applicants' compliance with all applicable obligations.<sup>35</sup>

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice.<sup>36</sup> Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice. For further information, please contact Dennis Johnson, Wireline Competition Bureau, Competition Policy Division, (202) 418-0809.

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<sup>35</sup> See *CAF Phase II Public Notice*, 34 FCC Rcd at 4726-30 (listing obligations of CAF authorized support recipients); *RDOF Public Notice* at 1-9 (listing obligations of RDOF authorized support recipients).

<sup>36</sup> We direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 22-391 that the proposed transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to [hcinfo@usac.org](mailto:hcinfo@usac.org).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
American Electric Power Service Corporation
Request For Waiver of 47 C.F.R § 17.47

MEMORANDUM OPINION AND ORDER

Adopted: January 19, 2023

Released: January 19, 2023

By the Associate Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. Section 17.47(b) of the Commission’s rules requires antenna structure owners to conduct quarterly inspections of certain lighting systems; section 17.47(c) exempts from that requirement systems that the Wireless Telecommunications Bureau (Bureau) has found to include self-diagnostic features sufficient to make the quarterly inspections unnecessary. In this Memorandum Opinion and Order, we determine that the American Electric Power Service Corporation Monitoring System (AEPMS) satisfies the criteria of section 17.47(c) and that American Electric Power Service Corporation’s (AEP) antenna structures using that system are therefore exempt from the quarterly inspection requirement. Our action today should encourage other tower owners to invest in state-of-the-art technologies so that they, too, will become capable of continuous monitoring of both their lighting systems and control devices.

II. BACKGROUND

2. Section 17.47(b) provides that the owner of any antenna structure that is registered with the Commission and that has been assigned lighting specifications pursuant to part 17 “[s]hall inspect at

1 47 CFR § 17.47(b).

2 47 CFR § 17.47(c).

3 In the matter of American Electric Power Service Corporation Request for Waiver of 47 C.F.R. § 17.47(b), Request for Waiver, filed January 10, 2022 (AEP Request). On May 12, 2022, the Bureau’s Competition and Infrastructure Policy Division (CIPD) requested additional information. See Letter from Jill A. Springer, Associate Chief, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, to Bradford N. Holt, Director, Telecom Engineering Projects, American Electric Power Service Corporation (May 12, 2022). On May 31, 2022, AEP supplemented its waiver request with information regarding the technical characteristics and operational capabilities of the AEPMS. See Email from Bradford N. Holt, Director, Telecom Engineering Projects, American Electric Power Service Corporation, to Michael C. Smith, Program Analyst, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau (May 31, 2022) (AEP Supplement). On December 1, 2022, CIPD sent a second request for additional information. See Email from Michael C. Smith, Program Analyst, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, to Bradford N. Holt, Director, Telecom Engineering Projects, American Electric Power Service Corporation and Donald R. Schiller, Network Consultant Lead, American Electric Power Service Corporation (December 1, 2022). On December 29, 2022, AEP supplemented its waiver request with information regarding the technical characteristics and operational capabilities of the AEPMS. See Email from Donald R. Schiller, Network Consultant Lead, American Electric Power Service Corporation, to Michael C. Smith, Program Analyst, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau (December 29, 2022) (AEP Supplement II).

intervals not to exceed 3 months all automatic or mechanical control devices, indicators, and alarm systems associated with the antenna structure lighting to insure that such apparatus is functioning properly.”<sup>4</sup> Section 17.47(c) exempts from this requirement “any antenna structure monitored by a system that the Wireless Telecommunications Bureau has determined includes self-diagnostic features sufficient to render quarterly inspections unnecessary, upon certification of use of such system to the Bureau.”<sup>5</sup>

3. AEP provides monitoring for its affiliates and subsidiaries, currently in 375 sites across the United States, which are subject to the Commission’s lighting requirements in part 17.<sup>6</sup> AEP filed a petition with the Bureau asking us to determine that the self-diagnostic functions of the AEPMS are sufficiently robust to ensure that the control devices, indicators, and alarm systems on antenna structures using the AEPMS are operating properly, such that quarterly inspections are unnecessary.<sup>7</sup> AEP argues that the quarterly inspections of antenna monitoring systems mandated by section 17.47(b) have been rendered unnecessary because of technological advancements associated with the AEPMS. AEP asks us to “modify the Quarterly Inspection requirement to provide that such inspections be made annually with regard to all AEP’s monitored towers”<sup>8</sup> pursuant to section 17.47(c).<sup>9</sup>

4. Specifically, AEP asserts in its petition that the AEPMS is similar to systems that have previously supported waiver grants<sup>10</sup> and is a sophisticated, proven technology that is highly accurate and reliable.<sup>11</sup> AEP asserts that its system employs self-diagnostic functions that are sufficiently robust so as to make unnecessary quarterly inspections to ensure that the control devices, indicators, and alarm systems on the towers are operating properly.<sup>12</sup> AEP maintains that the AEPMS provides the functional equivalent of a continuous inspection of control devices on all towers it monitors. As a result, AEP states that “users of the AEP System, like users of the Eagle and Hark Systems,” systems for which the Commission previously approved waivers of section 17.47(b), “are alerted to actual and potential problems immediately in many cases and at most within twenty-four hours.”<sup>13</sup> In support of these contentions, AEP describes the alarm notification, 24-hour polling, manual contact, and staffing and fail-safe procedures of the systems as set forth below.

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<sup>4</sup> 47 CFR § 17.47(b).

<sup>5</sup> 47 CFR § 17.47(c).

<sup>6</sup> *AEP Request* at 3.

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.*

<sup>9</sup> Before creating the procedure for exemptions in section 17.47(c), the Commission granted limited waivers of section 17.47(b) and permitted antenna structure owners to conduct annual, rather than quarterly, inspections. After 2014, section 17.47(c) rendered such waivers unnecessary. *See 2004 and 2006 Biennial Regulatory Reviews – Streamlining and Other Revisions of Parts 1 and 17 of the Commission’s Rules Governing Construction, Marking and Lighting of Antenna Structures; Amendments to Modernize and Clarify Part 17 of the Commission’s Rules Concerning Construction, Marking and Lighting of Antenna Structures*, Report and Order, 29 FCC Rcd 9787, 9799-9802 (2014) (*Part 17 Order*). Accordingly, we treat AEP’s waiver request as a petition for relief of quarterly or annual inspection obligations pursuant to section 17.47(c) on our own motion.

<sup>10</sup> *AEP Request* at 4, 10, 12.

<sup>11</sup> *Id.* at 5, 12.

<sup>12</sup> *Id.* at 10.

<sup>13</sup> *Id.* at 4; *see also In the Matter of Requests of American Tower Corporation and Global Signal, Inc., to Waive Section 17.47(b) of the Commission’s Rules*, WT Docket No. 05-326, Memorandum Opinion and Order, 22 FCC Rcd 9743 (2007) (*ATC and Global Tower Waiver Order*) (waiving section 17.47(b) requirements for users of the Eagle and Hark Systems).

5. *Alarm notification.* At each AEPMS monitored tower, the tower site receives “alarms from the light controller, which contacts the AEP Network Operations Center (NOC) for every type of alarm condition.”<sup>14</sup> The AEPMS classifies alarms as either critical or minor, with beacon/strobe/flashing sidelight failure, beacon/strobe communication failure, photo cell failure, site communication failure, power failure, GPS Sync failure, filter failure, low flash energy, and consecutive missed flashes treated as critical<sup>15</sup>, and side and single marker failure classified as minor.<sup>16</sup> These alarms are captured and archived within the AEPMS database, which has an automated escalation protocol. If, after 30 minutes, the problem is not corrected and the alarm requires a Notice to Airmen (NOTAM)<sup>17</sup> to be filed, AEP NOC personnel issue and record a manual NOTAM.<sup>18</sup> In the event of a NOTAM-worthy event, NOC personnel create a field service ticket for a site equipment inspection, with such inspections to be completed within 7 days.<sup>19</sup> Personnel can also log into the system database and check the site anytime to perform additional diagnostics and troubleshooting and can attempt to correct the problem remotely.<sup>20</sup>

6. *24-hour polling.* The AEP System is programmed to proactively initiate a connection from each monitored site at least once every hour or 24 times per every 24 hours.<sup>21</sup> In the event communications are lost, the system generates an alarm requiring a NOC Technician to attempt to contact the site manually. If the NOC Technician is unable to connect to the tower, a NOTAM is issued and alerts are sent to the designated responsible site contacts for follow up. If alarms are cleared automatically then updates are recorded in the system database.<sup>22</sup> Once the issue is corrected and site correct operation verified, the NOTAM is canceled and recorded in an electronic database and stored for 5 years.<sup>23</sup>

7. *Manual contact.* The AEPMS allows NOC technicians to perform a “manual diagnostic review of any tower monitored by the system from any computer connected to the internet and a secure connection to AEP’s network.”<sup>24</sup> That function enables personnel to contact the AEPMS “at the tower and review the operational status of the tower's lighting system at any time.”<sup>25</sup> As a result, NOC personnel can remotely perform diagnostics and troubleshoot a problem, potentially correcting it remotely.<sup>26</sup>

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<sup>14</sup> *Id.* at 8.

<sup>15</sup> *Id.* at 4-5, 7.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> Antenna structure owners “[s]hall report immediately to the FAA, by means acceptable to the FAA, any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes.” 47 CFR § 17.48(a); *see also* FAA Circular AC-70/7460-1M, Chapter 2, Section 2.4 Light Failure Notification.

<sup>18</sup> *AEP Request* at 7, 8-9.

<sup>19</sup> *Id.* at 7.

<sup>20</sup> *Id.* at 9; *AEP Supplement* at Q1 response.

<sup>21</sup> *AEP Request* at 9.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 9-10.

<sup>26</sup> *Id.* at 6, 9; *AEP Supplement* at Q1 response.

8. *Staffing and Fail-Safe Procedures.* According to AEP, the AEPMS receives and reports alarms that are activated when the self-diagnostic functions of the obstruction lighting systems determine that there is a lighting malfunction. These monitoring devices are microcomputer-based and include programmable delays to prevent false alarms, alphanumeric labeling for input and output circuits to remove confusion as to the origin of alarms, and the capability of handling a variety of two-way communications to the NOC. The AEPMS allows NOC personnel to remotely perform inspections on the fly to ensure normal operation.<sup>27</sup> In addition, AEP monitors server health at both the physical and operating system levels, including monitoring software (that is external to the server) to ensure that the server components of the system are running properly.<sup>28</sup>

9. To monitor the alarms, AEP's NOC and backup NOC are staffed with trained personnel capable of responding to alarms 24 hours per day, 365 days per year, which allows personnel to "easily shift to either location quickly in the event that one site is compromised."<sup>29</sup> The NOC is located at AEP's primary facility in Gahanna, OH, which includes a backup diesel generator that helps prevent power failure at the facility.<sup>30</sup> AEP's NOC personnel can also access the system from any computer in the world.<sup>31</sup> In the event of a catastrophe, AEP has a backup NOC in Groveport, OH<sup>32</sup> and has prepared a detailed disaster recovery procedures plan that would be placed into effect.<sup>33</sup> Since the primary and secondary locations are manned, personnel can easily shift to either location quickly in the event that one site is compromised.<sup>34</sup> The existence of two NOC centers is an important fail-safe mechanism, as it allows the backup center to assume monitoring responsibilities in the event of a catastrophic failure at the primary center.<sup>35</sup>

10. In the event that both NOCs were to become incapacitated and suffer complete failures, AEP NOC technicians can connect from any physical location using a secure internet connection to the Telenium alarm servers.<sup>36</sup> In addition, ten off-site NOC contractors have remote Telenium alarm server access for uninterrupted alarm monitoring.<sup>37</sup> The transfer of monitoring would be immediate since off-site users are able to access the Telenium servers from any remote location through AEP's VPN network, which includes redundancies via New Albany, OH and Tulsa, OK.<sup>38</sup> These fail-safe procedures ensure that robust monitoring of the towers will continue even if one or both of the NOC centers is rendered inoperable.

11. Further, there is battery backup at both the sites and the NOC, as well as redundant communications systems within the AEP System.<sup>39</sup> Battery backup for the vast majority of the sites have both local generators and battery systems that ensure power for several days, while some of the sites have

<sup>27</sup> *AEP Request* at 5-6; *AEP Supplement* at Q1 response.

<sup>28</sup> *AEP Request* at 8.

<sup>29</sup> *Id.* at 5; *AEP Supplement* at Q1 response, Q3/4 response.

<sup>30</sup> *AEP Request* at 10, 11; *AEP Supplement* at Q3/4 response.

<sup>31</sup> *AEP Request* at 9-10.

<sup>32</sup> *Id.* at 11; *AEP Supplement* at Q3/4 response.

<sup>33</sup> *AEP Request* at 9-10.

<sup>34</sup> *Id.* at 11; *AEP Supplement* at Q3/4 response.

<sup>35</sup> *AEP Request* at 11; *AEP Supplement* at Q3/4 response.

<sup>36</sup> *AEP Request* at 9; *AEP Supplement* at Q3/4 response.

<sup>37</sup> *AEP Supplement* at Q3/4 response.

<sup>38</sup> *AEP Request* at 6; *AEP Supplement* at Q3/4 response.

<sup>39</sup> *AEP Request* at 6.

solar power systems with seven days of autonomy.<sup>40</sup> AEP states that 8% of the current AEPMS sites are designed with battery backup able to maintain communications links to the alarm system for only 2-3 hours;<sup>41</sup> however, AEP states that these sites are located within urban areas where field techs are quickly available, 24/7/365, to resolve the issue well within the 2-3 hour battery backup window,<sup>42</sup> and that “power to these locations is often restored automatically by distribution switching or as part of the utility’s power restoration plan.”<sup>43</sup> Communications of events to the AEP NOC are provided using digital cellular communications with 99.5% availability, and/or AEP’s internal network, designed with 99.999% availability.<sup>44</sup> The AEP System includes redundant systems using ring architecture, which, upon failure of a single transport node and/or cellular gateway, immediately switches to a backup to restore connectivity to the light controller. In the event that the light controller loses communications to the alarm server, the AEP System has redundant cellular gateways through the two Telenium alarm servers. The built-in redundancies ensure that the AEP System’s notifications are sent immediately in the event of an alarm.<sup>45</sup>

### III. DISCUSSION

12. We find that the AEPMS “includes self-diagnostic features sufficient to render quarterly inspections unnecessary”<sup>46</sup> and is similar to the monitoring systems we have evaluated in other orders. On May 15, 2007, the Commission granted American Tower Corporation (ATC) and Global Signal, Inc. (GSI) waivers of section 17.47(b) to allow annual, rather than quarterly, inspection of towers monitored by specified, technologically advanced monitoring systems.<sup>47</sup> In the 2014 *Part 17 Order*, the Commission granted exemptions from all inspection obligations to those entities previously granted a waiver for their antenna structures monitored by qualifying systems, as long as they continued to meet the advanced monitoring obligations to which they had already certified.<sup>48</sup> Since then, the Bureau has, on delegated authority, granted similar waivers to entities demonstrating that their systems were similarly robust, and were operated in a similar manner, to the systems described in the *ATC and Global Tower Waiver Order*.<sup>49</sup> Accordingly, we find that the AEPMS, when used in the manner described by AEP, justifies an exemption from the quarterly inspection requirement of section 17.47(b) pursuant to section 17.47(c).

13. The technology that the AEPMS employs is similar to that exhibited by other monitoring systems that we have previously found to be sufficiently robust to support waivers based on the efficacy of their system and backup procedures. The AEPMS is similar in that it has a continuous and permanent

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *AEP Supplement* at Q2 response; *see also AEP Supplement II* (stating that technicians are available 24/7/365).

<sup>43</sup> *AEP Supplement II*.

<sup>44</sup> *AEP Request* at 6.

<sup>45</sup> *AEP Request* at 6-7; *AEP Supplement* at Q3/4 response, Q5 response.

<sup>46</sup> 47 CFR § 17.47(c).

<sup>47</sup> *See ATC and Global Tower Waiver Order*, 22 FCC Rcd 9748, para. 18.

<sup>48</sup> *Part 17 Order*, 29 FCC Rcd at 9801, para 34.

<sup>49</sup> *See United States Cellular Corporation Request for Waiver of 47 C.F.R. § 17.47(b)*, Memorandum Opinion and Order, 30 FCC Rcd 5026 (WTB 2015); *Petition of Cellco Partnership For Exemption from 47 CFR § 17.47(b): Vanguard Monitoring System*; *Petition of Cellco Partnership For Exemption from 47 CFR § 17.47(b): QLI Monitoring System*, Memorandum Opinion and Order, 34 FCC Rcd 3759 (WTB 2019). *See also Part 17 Order*, 29 FCC Rcd at 9801, para 34.

two-way link between the tower site and the response center;<sup>50</sup> timely reporting of potential problems;<sup>51</sup> continuously staffed response centers;<sup>52</sup> 24-hour polling of both lighting and communications systems;<sup>53</sup> on demand interrogation capabilities;<sup>54</sup> backup response centers;<sup>55</sup> and essentially uninterrupted communications between the response center and the towers during power outages.<sup>56</sup>

14. Based on the record before us, and consistent with previous Commission and Bureau orders, the Bureau finds that the AEPMS includes self-diagnostic features sufficient to render quarterly inspections unnecessary.<sup>57</sup> We conclude that the AEPMS is a safe and reliable monitoring system with tracking mechanisms that ensure proper functioning of their remote monitoring technology. Such advanced technology provides the benefits of more rapid response in case of a lighting failure. As a result, the AEPMS, when used in the manner described by AEP, justifies an exemption from the quarterly inspection requirement of section 17.47(b). Therefore, pursuant to section 17.47(c), AEP is exempt from section 17.47(b) with regard to any of its towers monitored by the AEPMS in the manner described in this Order. This will enable AEP to more efficiently carry out its responsibilities under part 17 of the Commission's rules.<sup>58</sup> Our actions today should encourage other tower owners to invest in state-of-the-art technologies so that they, too, will become capable of continuous monitoring of both their lighting systems and control devices.

#### IV. ORDERING CLAUSE

15. Pursuant to sections 4(i), 303(q), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(q), 303(r), and pursuant to sections 0.131, 0.331 and 17.47(c) of the Commission's Rules, 47 CFR §§ 0.131, 0.331, 17.47(c), the Petition filed by American Electric Power Service Corporation IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Kari L. Hicks  
Associate Chief, Wireless Telecommunications Bureau

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<sup>50</sup> *AEP Request* at 5-7, 10.

<sup>51</sup> *Id.* at 4, 10.

<sup>52</sup> *Id.* at 5.

<sup>53</sup> *Id.* at 7, 9.

<sup>54</sup> *Id.* at 9-10; *AEP Supplement* at Q3/4 response.

<sup>55</sup> *AEP Request* at 11; *AEP Supplement* at Q3/4 response, Q5 response.

<sup>56</sup> *AEP Request* at 6; *AEP Supplement* at Q3/4 response.

<sup>57</sup> 47 CFR § 17.47(c).

<sup>58</sup> *See Part 17 Order*, 29 FCC Rcd at 9801, para. 34.



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
TTY: 888-835-5322

DA 23-44

Released: January 19, 2023

**OFFICE OF ENGINEERING AND TECHNOLOGY SEEKS COMMENT ON BLUEWIND MEDICAL LTD. REQUEST FOR WAIVER OF SECTION 15.223(A) OF THE COMMISSION'S RULES FOR OPERATION ON 6.78 MHZ**

**ET Docket No. 23-27**

**Comment Date: February 21, 2023**  
**Reply Comment Date: March 8, 2023**

By this public notice, we seek comment on a request by Bluewind Medical Ltd. (BlueWind Medical) to waive Section 15.223(a) of the Commission's rules to permit its implantable medical device system (the "BlueWind System") operating on the center frequency 6.78 MHz to exceed the 1.705-10 MHz band emission limits.<sup>1</sup>

BlueWind Medical states its tibial neuromodulation system is intended to be used to treat patients diagnosed with overactive bladder (OAB) and related symptoms.<sup>2</sup> BlueWind Medical's system is comprised of four units: an implant, the rechargeable External Control Unit (ECU), a software application, and a Hub unit.<sup>3</sup> The implant uses electrical pulses to stimulate nerves innervating the bladder, urinary sphincter, and pelvic floor.<sup>4</sup> The implant receives power and data from the ECU through near-field inductive coupling via pulse modulation of a 6.78 MHz carrier signal, at rate of up to 30 Hz.<sup>5</sup> BlueWind Medical claims its system will provide substantial health benefits to millions of people and pose no threat of harmful interference.<sup>6</sup>

Section 15.223(a) of the Commission's rules limits the field strength of any emission in the 1.705-10 MHz frequency range to 100 microvolts per meter at a distance of 30 meters.<sup>7</sup> The rule further stipulates that if the bandwidth of the emission is less than 10% of the center frequency, then the field strength measured at 30 meters shall not exceed 15 microvolts per meter or (bandwidth of the device in kHz) / (center frequency of device in MHz) microvolts per meter, whichever value is higher.<sup>8</sup> BlueWind

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<sup>1</sup> Bluewind Medical Ltd. Request for Waiver of Section 15.223(a) of the Commission's Rules for Intentional Radiators, ET Docket No. 23-27 (filed Dec. 23, 2022), <https://www.fcc.gov/ecfs/document/12230049602107/1> (BlueWind Waiver Request).

<sup>2</sup> BlueWind Waiver Request at 1.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 4, n. 5 and 6.

<sup>6</sup> *Id.* at 7.

<sup>7</sup> 47 CFR § 15.223(a).

<sup>8</sup> *Id.*

indicates that the applicable emission limit under the rule would be 15 microvolts per meter at 30 meters.<sup>9</sup> BlueWind Medical states that the ECU produces a maximum average field strength of 77 microvolts per meter.<sup>10</sup> However, to account for production tolerances, standard measurement uncertainty and potential adjustments for future generation designs, BlueWind Medical is seeking a waiver to permit its system to be certified and marketed with ECU emissions to not exceed a 108.8 microvolts per meter field strength.<sup>11</sup>

We seek comment on BlueWind Medical's Waiver Request. To develop a complete record on the issues presented by this request, this proceeding will be treated, for *ex parte* purposes, as "permit-but-disclose" in accordance with Section 1.1200(a) of the Commission's rules, subject to the requirements under Section 1.1206(b). BlueWind Medical filed its petition electronically as a non-docketed proceeding in the Commission's Electronic Comment Filing System.<sup>12</sup> We have opened a new docket, **ET Docket 23-27** to facilitate consideration of this request and have moved BlueWind Medical's submission into this docket. Parties should file all comments and reply comments in **ET Docket 23-27**.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.<sup>13</sup>

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

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<sup>9</sup> BlueWind Waiver Request at 14.

<sup>10</sup> *Id.* at 13.

<sup>11</sup> *Id.* at 13-14.

<sup>12</sup> BlueWind Medical filed its request in INBOX-PART15 ("Petition for Waiver of Part 15"), which is located under the Non-Docketed Filing tab in the Commission's Electronic Comment Filing System (ECFS).

<sup>13</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), available at <https://docs.fcc.gov/public/attachments/DA-20-304A1.pdf>.

Parties should also send a copy of their filings to Damian G. Ariza, Office of Engineering and Technology, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, or by e-mail to [damian.ariza@fcc.gov](mailto:damian.ariza@fcc.gov). Documents associated with this docket will be available for public inspection through the Commission's ECFS.

By the Acting Chief, Office of Engineering and Technology

-FCC-

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Lingo Telecom, LLC	)	Complaint No. 5908094
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**ORDER**

**Adopted: January 18, 2023**

**Released: January 18, 2023**

By the Acting Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider a complaint alleging that Lingo Telecom, LLC (Lingo) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.<sup>1</sup> We conclude that Lingo's actions violated the Commission's slamming rules, and we therefore grant Complainant's complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.<sup>2</sup> The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>3</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the order.<sup>4</sup> The Commission has also adopted rules to limit the liability of subscribers when an unauthorized carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.<sup>5</sup>

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.<sup>6</sup> Under the rules, upon a finding of material misrepresentation during

<sup>1</sup> See Informal Complaint No. 5908094 (filed Dec. 9, 2022); see also 47 CFR §§ 64.1100 – 64.1190.

<sup>2</sup> 47 U.S.C. § 258(a).

<sup>3</sup> See 47 CFR § 64.1120.

<sup>4</sup> See *id.* § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

<sup>5</sup> These rules require the unauthorized carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See *id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. See *id.* §§ 64.1140, 64.1170.

<sup>6</sup> *Id.* § 64.1120(a)(1)(i)(A).

the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.<sup>7</sup> The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.<sup>8</sup>

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without Complainant's authorization.<sup>9</sup> In the complaint, Complainant also alleged that she received a call from someone who claimed to be with AT&T, her company's existing carrier.<sup>10</sup>

5. Pursuant to our rules, we notified Lingo of the complaint, directing Lingo to address the specific misrepresentation allegation and to provide any evidence to rebut it.<sup>11</sup> With its response, Lingo provided an audio recording that it characterized as a "Quality Control Call," along with a contract Lingo said Complainant signed.<sup>12</sup> Lingo did not, however, address Complainant's misrepresentation allegation and did not provide a recording of the sales call or any other evidence related to the sales call.<sup>13</sup>

6. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible. We further find that Lingo has failed to provide persuasive evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization to change carriers is invalid.<sup>14</sup> As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding."<sup>15</sup> We therefore find that Lingo's actions resulted in an unauthorized change in Complainant's telecommunications service provider, as defined by the rules, and we discuss Lingo's liability below.<sup>16</sup>

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<sup>7</sup> See *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

<sup>8</sup> See *2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id.*

<sup>9</sup> See Informal Complaint No. 5908094.

<sup>10</sup> *Id.*

<sup>11</sup> 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

<sup>12</sup> See Lingo Response to Informal Complaint No. 5908094 (filed Jan. 11, 2023) (*Lingo Response*).

<sup>13</sup> Lingo simply stated that Complainant "would have been advised that the Company utilizes AT&T as the underlying provider, but that Lingo would be the carrier and would be invoicing for the services, as well as handling all customer service questions or concerns." See *Lingo Response* at 1.

<sup>14</sup> We also note that on the "Quality Control Call" Lingo submitted, the Lingo representative informs the consumer that "AT&T will continue to operate [Complainant's telephone lines]."

<sup>15</sup> *2018 Slamming Order*, 33 FCC Rcd at 5779, para. 18 (citing *Advantage Forfeiture Order*, 32 FCC Rcd 3723, 3725-30, paras. 7-13 (2017) (finding that the carrier's TPV recordings did not disprove that unlawful misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

<sup>16</sup> If Complainant is unsatisfied with the resolution of the complaint, the Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 CFR § 1.721. Such filing will be

(continued....)

7. Lingo must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.<sup>17</sup> We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the Complainant's authorized carrier nor Lingo may pursue any collection against Complainant for those charges.<sup>18</sup> Any charges imposed by Lingo on the Complainant for service provided after this 30-day period shall be paid by the Complainant to the authorized carrier at the rates the Complainant was paying the authorized carrier at the time of the unauthorized change of their telecommunications service provider.<sup>19</sup>

8. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361, and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Lingo Telecom, LLC IS GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that Lingo Telecom, LLC may not pursue any collection against Complainant for those charges.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kristi Thornton  
Acting Chief  
Consumer Policy Division  
Consumer and Governmental Affairs Bureau

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deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See id.* § 1.719.

<sup>17</sup> *See id.* § 64.1160(b).

<sup>18</sup> *See id.* § 64.1160(d).

<sup>19</sup> *See id.* § 64.1140, 64.1160.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
G.I.G., Inc. ) Facility ID No. 26041
) NAL/Acct. No. 202341420002
For License to Cover, Renewal Application, and ) LMS File Nos. 0000176044, 0000110806,
Special Temporary Authority ) 0000196169, and 0000195312
Low Power Television Station ) FRN: 0005056585
KCPO-LP, Sioux Falls, SD )

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 19, 2023

Released: January 19, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it G.I.G., Inc. (G.I.G.), licensee of low power television (LPTV) station KCPO-LP, Sioux Falls, South Dakota (KCPO-LP or Station). In this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL),<sup>1</sup> we find that G.I.G. apparently willfully violated section 74.788<sup>2</sup> of the Rules by failing to timely file a license to cover application for the Station, and willfully and repeatedly violated section 73.1745 of the Rules and 301 of the Act,<sup>3</sup> by engaging in unauthorized operation. Based upon our review of the facts and circumstances before us, we conclude that G.I.G. is apparently liable for a monetary forfeiture in the amount of six thousand, five hundred dollars (\$6,500). Upon resolution of the forfeiture proceeding commenced herein and so long as there are no other issues that would preclude such action, we will grant G.I.G.’s pending application to renew the Station’s license for a period of two years.<sup>4</sup>

<sup>1</sup> This NAL is issued pursuant to sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and section 1.80 of the Commission’s rules (Rules). See 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the NAL under section 0.283 of the Rules. See 47 CFR § 0.283.

<sup>2</sup> See 47 CFR § 74.788 (2022). Effective October 24, 2022, 47 CFR § 74.788 of the Commission’s rules was eliminated and found by the commission to be duplicative with 47 CFR § 73.3598 of the Rules. See 87 FR 58200, Oct. 24, 2022; In the Matter of Amend. of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission’s Rules Related to Low Power Television and Television Translator Stations, FCC 22-58 (July 13, 2022); 47 CFR § 74.780 (bbb) (making 47 CFR § 73.3598 applicable to all TV translator and LPTV stations). At the time the violation at issue occurred, 47 CFR § 74.788 was in effect; however, to the extent necessary we also find that the Licensee violated 47 CFR § 73.3598.

<sup>3</sup> See 47 CFR § 73.1745 and 47 U.S.C. § 301.

<sup>4</sup> See LMS File No. 0000176044.

## II. BACKGROUND

2. KCPO-LP was a former analog low power television (LPTV) station. The Station, like all other analog stations, was required to cease analog operations by 11:59 p.m. on July 13, 2021.<sup>5</sup> On March 31, 2020, the Station filed a construction permit to flash-cut its analog operations to digital operations on its licensed analog channel 26 (Digital CP).<sup>6</sup> That application was granted on April 20, 2020. Pursuant to Commission rules, the Station was assigned a construction permit expiration date of July 13, 2021.<sup>7</sup> On April 28, 2021, the Station was granted an extension of its construction permit to January 10, 2022 (CP Extension).<sup>8</sup> In the CP Extension, G.I.G. represented that construction of the Station had not been completed and laid out a timeline for completing construction. No subsequent request for tolling was filed.

3. As discussed in further detail below, the Licensee has stated that it commenced digital operations pursuant to the Digital CP on April 21, 2020. On July 29, 2022, G.I.G. filed a request for silent authority notifying the commission that the Station went silent on July 27, 2022 due to the loss its “site.”<sup>9</sup> In addition, the Licensee filed a request for special temporary authority to commence operations from a new location while it finalizes a construction permit to move to the proposed site on a permanent basis.<sup>10</sup> Both the Silent STA and Engineering STA applications remain pending.

4. Section 74.788(b) of the Commission’s rules stated that: “Any construction permit for which construction has not been completed and for which an application for license or extension of time has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.”<sup>11</sup> Although G.I.G. has maintained that it completed construction and began operating its digital facility on April 21, 2020,<sup>12</sup> it failed to file a timely application for license to cover after completing construction. As such, the Digital CP automatically expired on its own terms on January 11, 2021.

5. On December 1, 2021, G.I.G. filed an application for license renewal (Renewal Application). In that application G.I.G. certified that the Station was operational. As part of Video

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<sup>5</sup> See 47 CFR § 74.788(a) (2022); *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14932-33, para. 9 (2015). In that decision, the Commission extended the LPTV digital transition date and all valid digital construction permit expiration dates for analog stations until 12 months following the completion of the 39-month post-Incentive Auction transition period, or 51 months from the completion of the Incentive Auction and the release of the *Closing and Channel Reassignment Public Notice*. *Id.* See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (IATF and MB 2018) (*Closing and Channel Reassignment Public Notice*). Given the April 13, 2017 release date of the *Closing and Channel Reassignment Public Notice*, the LPTV digital transition date and expiration date of all analog stations’ digital construction permits were set as July 13, 2021. 47 CFR § 74.731. See e.g., *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771 (MB 2021).

<sup>6</sup> LMS File No. 0000110806.

<sup>7</sup> See 47 CFR § 74.788(a) (2022). See *supra* n. 2.

<sup>8</sup> LMS File No. 0000139698.

<sup>9</sup> LMS File No. 0000196169 (Silent STA).

<sup>10</sup> LMS File No. 0000195312 (Engineering STA).

<sup>11</sup> 47 CFR § 74.788(b) (2022). See *supra* n. 2.

<sup>12</sup> See Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff, at 1 (July 5, 2022) (on file under LMS main facility page for Facility ID No. 26041) (July 5, 2022 Response).

Division staff review of the Renewal Application it was discovered that G.I.G. had failed to file an application for license to cover (License Application) its Digital CP. As a result, on May 20, 2022, the Division sent G.I.G. a letter inquiring as to the Station's operational history.<sup>13</sup> On July 5 and 11, 2022 the Licensee filed two separate responses to the Division's inquiry letter asserting that G.I.G. in fact completed construction of its digital facility in April 2020 (July Responses).<sup>14</sup> In addition, on July 11, 2022, the Licensee filed a License Application and requested waiver of all applicable rules and grant of the application.<sup>15</sup> Following a series of phone calls in August 2022 between Division staff and legal counsel for G.I.G., on September 14 and September 22, 2022 G.I.G. submitted another series of responses to the Bureau attempting to demonstrate that the Station was constructed and had been operating since April 2020.<sup>16</sup> Included with its July and September Responses were declarations from viewers, program logs, certain financial information related to the operation of the station, a declaration from the Station's tower owner, and photographs of the facility.<sup>17</sup>

6. Upon review of G.I.G.'s July and September Responses, Division staff determined that the information G.I.G. submitted was still incomplete. Therefore, on September 26, 2022, the Division sent an inquiry letter to G.I.G. providing it one final time to provide documentation and information necessary to determine that the Station had been constructed and that grant of the Station's late-filed license to cover is warranted.<sup>18</sup> In its response filed on November 4, 2022, G.I.G. provided the additional documents requested by the Division. It also reiterated that its failure to file a timely license to cover was inadvertent and that its request for additional time to construct filed in March 2021 was at the advice of its consulting engineer and it appears to have been in error.<sup>19</sup>

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<sup>13</sup> Letter, from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to G.I.G., Inc. (May. 20, 2022) (on file under LMS main facility page for Facility ID No. 26041) (Inquiry Letter). We note that because the construction permit had not yet been canceled in LMS, the Station was able to file a license to cover application against its expired construction permit. Cancellation of a station's construction permit and deletion of its call sign by Media Bureau (Bureau) staff in the Licensing and Management System (LMS) is an administrative function and does not constitute an official Commission action nor require any affirmative cancellation by the Commission. See 47 CFR §74.788(b) (2022) and *supra* note 2); *Media Bureau Reminds Remaining Low Power Television and Television Translator Stations that the July 13, 2021 Digital Transition Date and Other Important Deadlines are One Week Away*, Public Notice, 36 FCC Rcd 10364 (MB 2021). As a result, failure by Bureau staff to cancel a construction permit in LMS does not result in an expired construction permit remaining valid.

<sup>14</sup> See July 5, 2022 Response at 1, *supra* n. 10; and Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff, at 1 (July 11, 2022) (on file under LMS main facility page for Facility ID No. 26041) (July 11, 2022 Response).

<sup>15</sup> File No. 0000194735.

<sup>16</sup> Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (September 14, 2022) (on file under LMS main facility page for Facility ID No. 26041) (Sept. 14, 2022 Response); Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (September 22, 2022) (on file under LMS main facility page for Facility ID No. 26041) (Sept. 22, 2022 Supplement).

<sup>17</sup> *Id.*

<sup>18</sup> Letter, from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to G.I.G., Inc. at 3 (September 26, 2022) (on file under LMS main facility page for Facility ID No. 26041) (Follow-Up Letter).

<sup>19</sup> Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff, at 2 (November 4, 2022) (on file under LMS main facility page for Facility ID No. 26041). G.I.G. states that because the Station's consulting engineer is now deceased, G.I.G. is unable to ascertain specific information related to the filing and its substance. (Sept. 14, 2022 Response at 1).

7. G.I.G. maintains that grant of its License Application is “clearly in the public interest for stations to continue operation.”<sup>20</sup> G.I.G. also argues that “that the appropriate penalty in this case should not be the draconian cancellation of the permit, but, rather, the imposition of a forfeiture.”<sup>21</sup>

### III. DISCUSSION

8. Pursuant to section 503(b)(1)(B) of the Act,<sup>22</sup> a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>23</sup> Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>24</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>25</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>26</sup> Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”<sup>27</sup>

9. *Apparent Violation.* The facts recited above appear to demonstrate that G.I.G. willfully violated section 74.788(a) of the Rules by failing to file a timely license to cover application upon completion of construction of the Station in April 2020.<sup>28</sup> G.I.G. stated that its failure to timely file for a license to cover was inadvertent and its actions (or lack thereof) were taken at the advice of its engineering consultant. However, it is well settled precedent that licensees are responsible for compliance with the Commission’s rules and that inadvertence does not excuse a violation or non-compliance.<sup>29</sup> Furthermore, applicants and licensees are responsible for the errors of their staff.<sup>30</sup> Even though the Station is currently silent, as a result of its failure to file a timely license to cover, G.I.G. also engaged in unauthorized operation for over two years (April 21, 2020 through July 27, 2022) in violation

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<sup>20</sup> Sept. 14, 2022 Response at 3.

<sup>21</sup> Nov. 4, 2022 Response at 26, Sept. 14, 2022 Response at 4 (both citing *Methow Valley Communications District*, DA 22-627 (June 10, 2022)).

<sup>22</sup> 47 U.S.C. § 503(b)(1)(B).

<sup>23</sup> *Id.* See also 47 CFR § 1.80(a)(1).

<sup>24</sup> 47 U.S.C. § 312(f)(1).

<sup>25</sup> See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

<sup>26</sup> See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

<sup>27</sup> 47 U.S.C. § 312(f)(2).

<sup>28</sup> See 47 CFR § 74.788(a) (2022). See *supra* n. 2 and para. 3.

<sup>29</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para 3 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”) (internal cite omitted); see also *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB 2020) (“It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.”) (internal cites omitted).

<sup>30</sup> See, e.g., *Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee's engineer was to blame for station's unauthorized operations).

of section 73.1745 of the Rules<sup>31</sup> and 301 of the Act.<sup>32</sup> We therefore find that G.I.G. has apparently violated the Rules and Act and is apparently liable for forfeiture.

10. *Proposed Forfeiture Amount.* The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.<sup>33</sup> The guidelines also specify a base forfeiture amount of \$10,000 for construction and operation without an instrument of authorization for the service.<sup>34</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>35</sup>

11. In this case, G.I.G. failed to timely-file for a license to cover and engaged in unauthorized operation of the Station for over two years. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to \$6,500 because, as a low power station, KPCO-LP is providing a secondary service.<sup>36</sup> While in other cases we have fined other low power television and TV translator licensees \$3,500 for similar violations,<sup>37</sup> we believe an increased amount is warranted here given the lengthy period of time (over two years) the Station engaged in unauthorized operation compared to those other cases (four to six months). Stations are only permitted to commence operation pursuant to a valid instrument of authorization and we find that G.I.G.'s failure represents extreme disregard of Commission's licensing processes and the Act itself.

12. *Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.<sup>38</sup> That Section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal

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<sup>31</sup> 47 CFR § 73.1745 (prohibiting unauthorized operation).

<sup>32</sup> 47 U.S.C. § 301 (requiring an authorization to transmit a broadcast signal).

<sup>33</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), note to paragraph (b)(10), Section I. See also *Clear Channel*, 26 FCC Rcd at 7157 (“We note that the staff may also issue Notices of Apparent Liability for ‘failure to file a required form’ as authorized by Section 503(b)(1)(B) of the Communications Act of 1934, as amended (the ‘Act’) and Section 1.80 of the Rules, for such violations of covering license application filing deadlines or take other enforcement action.”).

<sup>34</sup> A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

<sup>35</sup> 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(10).

<sup>36</sup> See e.g., *Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-1616 (rel. Dec. 21, 2021) (proposing \$3,500 forfeiture for late filed application for license to cover and four months unauthorized operations) (paid Jan. 20, 2022); *KAZT, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 21-1386 (rel. Nov. 5, 2021) (proposing \$3,500 forfeiture for late filed application for license to cover and six months unauthorized operations) (paid Nov. 30, 2021); *The Estate of Ettie Clark*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 22-327 (rel. Mar. 28, 2022) (finding that although the station is secondary, a forfeiture in the amount of \$6,500 was warranted given the lengthy period of time (over three years) the station engaged in unauthorized operation) (paid Apr. 19, 2022).

<sup>37</sup> See *id.*

<sup>38</sup> 47 U.S.C. § 309(k).

application.<sup>39</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under Section 309(e) of the Act—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>40</sup>

13. In this case, we find G.I.G.’s unauthorized operation of the Station, coupled with its lack of diligence and knowledge with regards to the Commission’s rules does not warrant routine license renewal. Not only did G.I.G. fail to file the required license application, but this error was compounded by the filing of its construction permit extension that proved to be unnecessary and contain inaccurate information. The Licensee also engaged in a pattern of failing to fully reply to the Division’s inquiries, resulting in an extensive delay in resolving the Division’s investigation and ultimately depriving the public of the service being provided by the Station.

14. Despite this, we find that designation for evidentiary hearing is not warranted here. Instead, in addition to the proposed forfeiture, we put in place additional measures to ensure that the Station complies with the Act and the Rules in the future. Specifically, pursuant to Section 309(k)(2) of the Act, upon resolution of the forfeiture proceeding commenced herein and so long as there are no other issues that would preclude grant, we will renew the Station’s license for a term of two years. This short-term renewal will afford the Commission an opportunity to review the Station’s compliance with the Act and the Rules and to take whatever corrective actions, if any, that may be warranted at that time.

15. *Other Pending Matters.* In light of the facts and circumstances discussed above, and our findings that forfeiture and a short term renewal are sufficient sanction for G.I.G.’s apparent violations, we will grant G.I.G.’s request for waiver of section 74.788 of the Rules and reinstate the construction permit.<sup>41</sup> We will act on KCPO-LP’s Silent STA, Engineering STA, and License Application under separate action upon conclusion of this forfeiture proceeding.

#### IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission’s rules,<sup>42</sup> G.I.G. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand, five hundred dollars (\$6,500) for its apparent willful violation of section 74.788 of the Commission’s rules and apparent willful and repeated violations of section 73.1745 of the Commission’s rules and section 301 of the Communications Act of 1934, as amended.<sup>43</sup>

17. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission’s rules,<sup>44</sup> that, within thirty (30) days of the release date of this *NAL*, G.I.G. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

18. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission’s online payment system),<sup>45</sup> or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Notification that

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<sup>39</sup> 47 U.S.C. § 309(k)(1).

<sup>40</sup> 47 U.S.C. § 309(k)(2), (k)(3).

<sup>41</sup> 47 CFR § 74.788(a) (2022); *see supra* n. 2.

<sup>42</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>43</sup> 47 CFR § 74.788 (2022); 47 CFR § 73.1745; and 47 U.S.C. § 301. *See supra* note 2.

<sup>44</sup> 47 CFR § 1.80.

<sup>45</sup> Payments made using CORES do not require the submission of an FCC Form 159.

payment has been made must be sent on the day of payment to Robin.Fagan@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:<sup>46</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>47</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

19. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554.<sup>48</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

20. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules.<sup>49</sup> The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554,

<sup>46</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>47</sup> Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>48</sup> See 47 CFR § 1.1914.

<sup>49</sup> 47 CFR §§ 1.16 and 1.80(g)(3).

ATTN: Robin Fagan, Attorney-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.<sup>50</sup> A courtesy copy should also be emailed to [Robin.Fagan@fcc.gov](mailto:Robin.Fagan@fcc.gov) to assist in processing the response.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

21. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section § 503(b)(2)(E) of the Communications Act of 1934, as amended, support that result.<sup>51</sup>

22. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Charles Poppen, G.I.G., Inc., P.O. Box 88336, Sioux Falls, South Dakota, 57109, as well as e-mailed to [cpoppen@kcpo.tv](mailto:cpoppen@kcpo.tv), and to their counsel: Aaron Shainis, Esq., Shainis & Peltzman, Chartered, 850 M Street, N.W., Suite 240, Washington, DC 20036, as well as e-mailed to [aaron@s-plaw.com](mailto:aaron@s-plaw.com).

FEDERAL COMMUNICATIONS COMMISSION

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>50</sup> Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

<sup>51</sup> See 47 U.S.C. 503(b)(2)(E); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).



# PUBLIC NOTICE

Federal Communications Commission  
45 L St., N.E.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>

DA 23-47  
Released: January 19, 2023

**DOMESTIC SECTION 214 APPLICATION  
GRANTED FOR THE TRANSFER OF CONTROL OF JAB WIRELESS, INC. AND ITS  
SUBSIDIARIES  
TO LSTAR EQUITY COMPANY HOLDINGS, L.P.**

**WC Docket No. 22-422**

**DOMESTIC SECTION 214 APPLICATION  
GRANTED FOR THE TRANSFER OF CONTROL OF JAB WIRELESS, INC. AND ITS  
SUBSIDIARIES TO GI DI IRIS ACQUISITION, INC.**

**WC Docket No. 22-230**

**SECTION 310(b)(4) PETITIONS FOR DECLARATORY RULING GRANTED**

**IB File Nos. ISP-PDR-20220610-00004 and ISP-PDR-20221208-00012**

By this Public Notice, the Wireline Competition Bureau (WCB) and the International Bureau (IB) grant, as conditioned below, two sets of applications and petitions for declaratory ruling regarding two separate transfers of control of JAB Wireless, Inc. (JAB Wireless) and its subsidiaries.

WCB grants an application filed by JAB Wireless, Skybeam, LLC (Skybeam), Essex Telcom, Inc. (Essex), and LStar Equity Company Holdings, L.P. (LStar Equity) (LStar Equity, together with JAB Wireless, Skybeam, and Essex, the LStar Equity Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules, requesting approval for the 2018 transfer of control that occurred when LStar Equity acquired a controlling interest in Skybeam and Essex (LStar Equity Transaction).<sup>1</sup> The LStar Equity Applicants consummated the transaction on November 7, 2018 without prior Commission consent.<sup>2</sup>

<sup>1</sup> See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Joint Application of JAB Wireless, Inc., Skybeam, Essex Telcom, Inc., and LStar Equity Company Holdings, L.P. for the Transfer of Control of Domestic Section 214 Authorization Under the Communications Act of 1934, as amended, WC Docket No. 22-422 (filed Dec. 2, 2022) (LStar Equity Application). On November 30, 2022, the LStar Equity Applicants filed a request for special temporary authority (STA) to address the unauthorized transfer of control. JAB Wireless, Inc., Skybeam, LLC, Essex Telcom, Inc. and LStar Equity Company Holdings, L.P., Request for Special Temporary Authority, WC Docket No. 22-422 (filed Nov. 30, 2022). On December 14, 2022, WCB granted the STA request to authorize the LStar Equity Applicants to continue providing service for 60 days pending approval of the domestic section 214 application. A grant of the domestic section 214 application is without prejudice to any enforcement action by the Commission for non-compliance with the Act or the Commission's rules. Any action on the GI DI Iris Acquisition Application or the LStar Equity Application is without prejudice to Commission action on other related, pending applications.

<sup>2</sup> LStar Equity Application at 3. The LStar Equity Applicants state that JAB Wireless, Skybeam, Essex, and other subsidiaries hold wireless licenses, including common carrier fixed point-to-point microwave licenses, and filed for (continued....)

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In addition, WCB grants an application filed by JAB Wireless, Skybeam, AirCanopy Internet Services, Inc. (AirCanopy), and Essex (Essex, together with Skybeam and AirCanopy, the Domestic 214 Authorization Holders), and GI DI Iris Acquisition Inc. (GI DI Iris Acquisition, together with JAB Wireless and the Domestic 214 Authorization Holders, the GI DI Iris Acquisition Applicants), pursuant to section 214 of the Act, and sections 63.03-04 of the Commission's rules, requesting approval for the transfer of control of the Domestic 214 Authorization Holders to GI DI Iris Acquisition (GI DI Iris Acquisition Application).<sup>3</sup>

IB grants two petitions for declaratory rulings related to the LStar Equity Transaction and the GI DI Iris Acquisition Application. First, IB grants a petition for declaratory ruling to permit foreign investment in JAB Wireless, the controlling U.S. parent of Digis, LLC, LP Broadband, Inc., Rhino Communications, Inc., Skybeam Acquisition Corporation, Skybeam, AirCanopy, and Essex (collectively, Wireless Licensees), above the 25% benchmarks in section 310(b)(4) of the Act,<sup>4</sup> and section 1.5000(a)(1) of the Commission's rules,<sup>5</sup> resulting from the LStar Equity Transaction that closed in 2018 (LStar Equity Petition).<sup>6</sup> Second, IB grants a petition for declaratory ruling to permit foreign investment in JAB Wireless, above the 25% benchmarks in section 310(b)(4) of the Act and section 1.5000(a)(1) of the Commission's rules, in connection with the GI DI Iris Acquisition Application that was filed in 2022 (GI DI Iris Acquisition Petition).<sup>7</sup>

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and received approval to transfer the wireless licenses in order to consummate the LStar Equity Transaction. *Id.* at 4-6 (citing wireless transfer applications), 16.

<sup>3</sup> See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Application for the Transfer of Control of JAB Wireless, Inc., Skybeam, AirCanopy Internet Services, Inc., and Essex Telcom, Inc., to GI DI Iris Acquisition Inc., WC Docket No 22-230 (filed Jun. 10, 2022) (GI DI Iris Acquisition Application). The GI DI Iris Acquisition Applicants also filed applications for the transfer of authorizations associated with wireless services. GI DI Iris Acquisition Application at 13. On July 1, 2022, November 16, 2022, December 6, 2022, and December 13, 2022, the GI DI Iris Acquisition Applicants filed supplements to the domestic section 214 application. Letter from Stephen E. Coran, Counsel to JAB Wireless, and Andrew D. Lipman, Counsel to GI DI Iris Acquisition Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-230 (filed July 1, 2022) (July 1, 2022 Supplement); Letter from JAB Wireless, Inc. and GI DI Iris Acquisition Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-230 (filed Nov. 16, 2022) (Nov. 16, 2022 Supplement); Letter from Stephen E. Coran, Counsel to JAB Wireless Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-230 (filed Dec. 6, 2022) (Dec. 6, 2022 Supplement); Letter from Stephen E. Coran, Counsel to JAB Wireless, Inc., and Andrew D. Lipman, Counsel to GI DI Iris Acquisition Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-230 (filed Dec. 13, 2022) (Dec. 13, 2022 Supplement).

<sup>4</sup> 47 U.S.C. § 310(b)(4).

<sup>5</sup> 47 CFR § 1.5000(a)(1).

<sup>6</sup> JAB Wireless, et al., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as amended, IBFS File No. ISP-PDR-20221208-00012 (filed Dec. 8, 2022) (LStar Equity Petition). Petitioners to the LStar Equity Petition also filed a supplement on December 8, 2022. Letter from Stephen E. Coran, Counsel to the LStar Equity Petition, to Marlene H. Dortch, Secretary, FCC, (filed Dec. 8, 2022) (on file in IBFS File No. ISP-PDR-20221208-00012) (LStar Equity Petition Dec 8, 2022 Supplement).

<sup>7</sup> JAB Wireless, et al., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as amended, IBFS File No. ISP-PDR-20220610-00004 (filed June 10, 2022) (GI DI Iris Acquisition Petition). Petitioners to the GI DI Iris Acquisition Petition filed supplements on July 8, 2022, July 29, 2022, August 25, 2022, September 28, 2022, November 16, 2022, and December 13, 2022. Letter from Stephen E. Coran, Counsel to JAB Wireless and Wireless Licensees, and Andrew D. Lipman, Counsel to GI DI Iris Acquisition, to Marlene H. Dortch, Secretary, FCC, (filed Jul. 8, 2022) (on file in IBFS File No. ISP-PDR-20220610-00004) (GI DI Iris Acquisition Petition Jul. 8, 2022 Supplement) (providing additional foreign ownership information); Letter from Stephen E. Coran, Counsel to JAB Wireless and Wireless Licensees, and Andrew D. Lipman, Counsel to GI DI Iris Acquisition, to Marlene H. Dortch, Secretary, FCC (filed Jul. 29, 2022) (on file in IBFS File No. ISP-PDR-20220610-00004) (GI DI Iris Acquisition Petition Jul. 29, 2022 Supplement) (adding information about insulated foreign limited partners and providing revised corporate ownership structure charts); Letter from Stephen E. Coran, (continued....)

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On October 4, 2022, WCB and IB released a public notice seeking comments on the GI DI Iris Acquisition Application and GI DI Iris Acquisition Petition and did not receive any comments or petitions in opposition to them.<sup>8</sup>

On December 14, 2022, WCB and IB released a public notice seeking comments on the 2018 LStar Equity Application and LStar Equity Petition and did not receive any comments or petitions in opposition to them.<sup>9</sup>

### **Domestic 214 Authorization Holders**

JAB Wireless, a Colorado corporation, does not itself provide telecommunications services.<sup>10</sup> The Domestic 214 Authorization Holders are all U.S. entities and direct and indirect wholly owned subsidiaries of JAB Wireless and provide fixed wireless, fiber broadband, and digital voice services under the name, “Rise Broadband”, in Texas, Oklahoma, Missouri, Illinois, Indiana, Nebraska, Iowa, Kansas, Colorado, Wyoming, Idaho, Nevada, Utah, Minnesota, Wisconsin, and South Dakota.<sup>11</sup> Skybeam received authorization for Rural Broadband Experiment (RBE) universal service funding support in several states in 2015 and 2016 and is designated as an Eligible Telecommunications Carrier (ETC) in Iowa, Kansas, Nebraska, and Texas.<sup>12</sup> In Illinois, Skybeam assigned its RBE obligations to Essex, and Essex is designated as an ETC in Illinois.<sup>13</sup> The GI DI Iris Acquisition Applicants state that Skybeam and

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\_\_\_\_\_ Counsel to JAB Wireless and Wireless Licensees, and Andrew D. Lipman, Counsel to GI DI Iris Acquisition, to Marlene H. Dortch, Secretary, FCC (filed Aug. 25, 2022) (on file in IBFS File No. ISP-PDR-20220610-00004) (GI DI Iris Acquisition Petition Aug. 25, 2022 Supplement) (stating that Skybeam holds only Educational Broadcast Service (EBS) and QQ special temporary authority); Letter from Stephen E. Coran, Counsel to JAB Wireless and Wireless Licensees, and Andrew D. Lipman, Counsel to GI DI Iris Acquisition, to Marlene H. Dortch, Secretary, FCC (filed Sep. 28, 2022) (on file in IBFS File No. ISP-PDR-20220610-00004) (GI DI Iris Acquisition Petition Sep. 28, 2022 Supplement) (providing further explanation about the services provided by the Wireless Licensees); Letter from Stephen E. Coran, Counsel to JAB Wireless and Wireless Licensees, and Andrew D. Lipman, Counsel to GI DI Iris Acquisition, to Marlene H. Dortch, Secretary, FCC (filed Nov. 16, 2022) (on file in IBFS File No. ISP-PDR-20220610-00004) (GI DI Iris Acquisition Petition Nov. 16, 2022 Supplement) (providing information regarding their common carrier services and eligibility to receive RBE support); ); Letter from Stephen E. Coran, Counsel to JAB Wireless and Wireless Licensees, and Andrew D. Lipman, Counsel to GI DI Iris Acquisition, to Marlene H. Dortch, Secretary, FCC (filed Dec. 13, 2022) (on file in IBFS File No. ISP-PDR-20220610-00004) (GI DI Iris Acquisition Petition Dec. 13, 2022 Supplement) (providing additional information requested by the Commission).

<sup>8</sup> *Domestic Section 214 Application Filed for the Transfer of Control of Skybeam, LLC and Affiliates to GI DI Iris Acquisition Inc.*, WC Docket No. 22-230; *Section 310(b)(4) Petition for Declaratory Ruling*, IB File No. ISP-PDR-20220610-0004, Public Notice, DA 22-1062 (WCB/IB Oct. 4, 2022) (*Oct. 4, 2022 Public Notice*).

<sup>9</sup> *Domestic Section 214 Application Filed for the Transfer of Control of Skybeam, LLC and Essex Telecom, Inc. to LStar Equity Company Holdings, L.P.*, *Section 310(b)(4) Petition for Declaratory Ruling*, WC Docket No. 22-422, IB File No. ISP-PDR-20221208-00012, Public Notice, DA 22-1320 (WCB/IB Dec. 14, 2022) (*Dec. 14, 2022 Public Notice*).

<sup>10</sup> GI DI Iris Acquisition Application at 3, 14.

<sup>11</sup> GI DI Iris Acquisition Application at 2-3, 11; LStar Equity Application at 3-4, 14-15.

<sup>12</sup> GI DI Iris Acquisition Application at 2-3 and 11; LStar Equity Application at 3-4, 14-15; Nov. 16, 2022 Supplement at 1-5. See *Rural Broadband Experiment Support Authorized for Ten Winning Bids for Skybeam, LLC, et al.*, WC Docket Nos. 10-90, 14-259, Public Notice, 30 FCC Rcd 8283 (WCB 2015); *Rural Broadband Experiment Support Authorized for Skybeam, LLC, et al.*, WC Docket Nos. 10-90, 14-259, Public Notice, 30 FCC Rcd 12725 (WCB 2015); *Rural Broadband Experiment Support Authorized for Skybeam, LLC, et al.*, WC Docket Nos. 10-90, 14-259, Public Notice, 31 FCC Rcd 100 (WCB 2016) (together, *RBE Public Notices*).

<sup>13</sup> GI DI Iris Acquisition Application at 7-8; LStar Equity Application at 7-8. Entities must be designated as ETCs under section 214(e) of the Act, 47 U.S.C. § 214(e), to receive RBE funding.

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Essex are the designated ETCs, and that AirCanopy is an affiliate providing service on behalf of Skybeam but is not a designated ETC receiving RBE support.<sup>14</sup>

### **Wireless Licensees**

The Wireless Licensees of JAB Wireless hold: (1) common carrier fixed point to-point microwave, private Microwave Industrial/Business Pool, Industrial/Business Pool (Conventional), Millimeter Wave 70-80-90 GHz, and 3650 – 3700 MHz (NN) radio services; (2) de facto (long term) 2.5 GHz spectrum leases; and (3) 6 GHz experimental licenses (Call Signs WL2XNE, WM2XJP and WM2XHL) (held by Skybeam).<sup>15</sup> The Wireless Licensees collectively provide fixed wireless broadband services under the trade name “Rise Broadband” in Texas, Oklahoma, Missouri, Illinois, Indiana, Nebraska, Iowa, Kansas, Colorado, Wyoming, Idaho, Nevada, Utah, Minnesota, Wisconsin, and South Dakota.<sup>16</sup> Rise Broadband offers high-speed internet and interconnected VoIP voice services via fixed wireless technology and fiber.<sup>17</sup> JAB Wireless is the controlling U.S. parent of the Wireless Licensees.<sup>18</sup>

### **The 2018 LStar Equity Transaction (WC Docket No. 22-422)**

Pursuant to an agreement dated May 2, 2018, the LStar Equity Applicants agreed to a series of transactions whereby LStar Equity converted certain debt and/or non-voting preferred stock into preferred and/or common stock, resulting in LStar Equity holding an equity interest of 71.8% and a controlling 66.6% voting interest in JAB Wireless.<sup>19</sup> The LStar Equity Applicants consummated the transaction on November 7, 2018 without prior Commission consent. Upon consummation of the transaction, Skybeam and Essex became wholly owned, indirect subsidiaries of LStar Equity.<sup>20</sup>

As a result of the completion of the LStar Equity Transaction, LStar Equity, a Delaware limited partnership, is owned or controlled by LSF VIII International 2, L.P. (Fund VIII Int’l), a Delaware limited partnership (58% equity and voting), Lone Star Fund VIII (U.S.), L.P. (Fund VIII US), a Delaware limited partnership (40% equity and voting), and LSF VIII Investments, L.P., a Bermuda exempted limited partnership and employee co-investment vehicle (1.98% equity and voting).<sup>21</sup> The sole general partner of LStar Equity is LStar Management LLC (LStar Management), a Delaware limited liability company (0% equity).<sup>22</sup> Ownership and control of LStar Management is split equally between Fund VIII

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<sup>14</sup> GI DI Iris Acquisition Application at 3, 8, 11. See *Connect America Fund ETC Annual Reports and Certifications*, WC Docket No. 10-90, WT Docket No. 14-58, Report and Order and Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8778, 8788, paras. 22, 54 (2014) (*Rural Broadband Experiments Order*). The GI DI Iris Acquisition Applicants state that “[a]ll JAB Wireless-owned ETCs in areas eligible for RBE support have been offering voice services on a common carrier basis.” Nov. 16, 2022 Supplement at 3. See *Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order*, 29 FCC Rcd 15644, 15668 n. 143 (2014); Rural Broadband Experiments – Frequently Asked Questions (FAQs), at <https://www.fcc.gov/general/rural-broadband-experiments> (explaining that “recipients of support in the rural broadband experiments, like all recipients of Connect America support, are free to meet their broadband public interest obligations through any affiliate within the holding company”).

<sup>15</sup> LStar Equity Petition at 2. GI DI Iris Acquisition Petition at 1-2.

<sup>16</sup> LStar Equity Petition at 8. GI DI Iris Acquisition Petition at 2.

<sup>17</sup> LStar Equity Petition at 8.

<sup>18</sup> LStar Equity Petition at 8. GI DI Iris Acquisition Petition at 2.

<sup>19</sup> LStar Equity Application at 5 and Exh. A (Post-Transaction Ownership). The LStar Equity Applicants state that since closing of the LStar Equity Transaction, there have been minor adjustments in equity interests of Wireless Licensees that have not resulted in a change of controlling interests of 10% or more. *Id.* at n.11.

<sup>20</sup> *Id.* at 14.

<sup>21</sup> LStar Equity Application, Exh. A and Exh. B (describing ownership in Exh. A) at 21-22.

<sup>22</sup> *Id.* at Exh. B at 23.

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US and Lone Star Fund IX (U.S.), L.P. (Fund IX US), a Delaware limited partnership, with each having a membership interest of 50% in LStar Management.<sup>23</sup> The sole general partner of Fund VIII Int'l and Fund VIII US is Lone Star Partners VIII, L.P. (Partners VIII), a Bermuda exempted limited partnership (1% indirect equity interest in LStar Equity).<sup>24</sup> The sole general partner of Partners VIII is Lone Star Management Co. VIII, Ltd., a Bermuda exempted limited company (less than 1% equity in LStar Equity).<sup>25</sup> The sole general partner of Fund IX US is Lone Star Partners IX, L.P. (Partners IX), a Bermuda exempted limited partnership (0% equity and 100% voting in LStar Equity).<sup>26</sup> The sole general partner of Partners IX is Lone Star Management Co. IX, Ltd., a Bermuda exempted limited partnership (0% equity in LStar Equity).<sup>27</sup> John P. Grayken, a citizen of Ireland, controls LStar Equity and owns 100% of the voting shares of Lone Star Management Co. VIII, Ltd. and Lone Star Management Co. IX, Ltd.<sup>28</sup>

**The LStar Equity Petition for Declaratory Ruling (ISP-PDR-20221208-00012)**

On December 8, 2022, JAB Wireless and LStar Equity (together, the LStar Equity Petitioners) filed a remedial petition for declaratory ruling (the LStar Equity Petition) pursuant to section 310(b)(4) of the Act, and section 1.5000(a)(1), requesting that the Commission find that it would serve the public interest to permit foreign ownership of JAB Wireless, above the 25% benchmarks in section 310(b)(4). The remedial LStar Equity Petition was filed to report the foreign ownership that occurred as result of the consummation of the LStar Equity Transaction.

The LStar Equity Petitioners state that, as a result of the LStar Equity Transaction, LStar Equity holds a 71.8% equity interest and 66.6% voting interest in JAB Wireless, the controlling U.S. parent of the Wireless Licensees.<sup>29</sup> According to the petition, the remaining 28.2% equity interest and 33.3% voting interest in JAB Wireless is held by other investors, each holding less than 10% interest in JAB Wireless.<sup>30</sup> The LStar Equity Petitioners contend that the limited partnership interests in LStar Equity are fully insulated in accordance with section 1.5003 of the Commission's rules.<sup>31</sup>

As a result of the completion of the LStar Equity Transaction, LStar Equity is owned or controlled by Fund VIII Int'l (58% equity and voting) (Delaware), Fund VIII US (40% equity and voting) (Delaware), and LSF VIII Investments, L.P. (1.98% equity and voting) (Bermuda).<sup>32</sup> LStar Management (Delaware), as the sole general partner of LStar Equity, holds 0% equity and 100% voting interest.<sup>33</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at Exh. B at 23-24.

<sup>25</sup> *Id.* at Exh. B at 24.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at Exh. B at 24-25. Control of LSF VIII Investments, L.P. is vested in its sole general partner, HudCo GenPar VIII, LLC, a Delaware limited liability company, which is in turn controlled by the board of directors of Hudson Advisors L.P., a U.S. investment advisor. *Id.* at Exh. B at 1-2, 25. The LStar Equity Applicants state that LStar Equity does not hold a controlling interest in any domestic telecommunications carriers. *Id.* at Exh. B at 15.

<sup>29</sup> LStar Equity Petition at 3, Exh. B.

<sup>30</sup> *Id.* at Exh. A at 6; Exh. B. Petitioners state that “[t]he remaining 28% interest in JAB [Wireless] is currently held and was held following the full completion of the 2018 Transaction by other entities and individuals, including members of JAB [Wireless] management and other interest-holders that existed prior to the 2018 Transaction. None of these entities or individuals has or will have a 10% or greater interest in JAB [Wireless]. JAB [Wireless] does not believe that any such entities or individuals are foreign individuals or entities.” *Id.* at Exh. A at 6.

<sup>31</sup> *Id.* at Exh. A at 6.

<sup>32</sup> *Id.* at Exh. A at 8; LStar Equity Petition Dec. 8, 2022 Supplement, Exh. A at 8, Exh. B.

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LStar Management is owned and controlled equally by Fund VIII US (50% equity and voting) and Fund IX US (50% equity and voting) (Delaware).<sup>34</sup> Partners VIII is the sole general partner of Fund VIII Int'l and Fund VIII US with 1% equity and 100% voting interests into JAB Wireless.<sup>35</sup>

PSPIB-RE Finance Partners II Inc. (PSPIB), a Canadian entity, holds a 16% limited partner interest in Fund VIII International.<sup>36</sup> The Public Sector Pension Investment Board, a Canadian entity, holds a 100% equity voting interest in PSPIB.<sup>37</sup> According to LStar Equity Petitioners, no other foreign limited partner holds a direct or indirect voting or equity interest of greater than 5% into JAB Wireless that is not exempt from specific approval requirements.<sup>38</sup> The LStar Equity Petitioners also state that, assuming the limited partnership interests are insulated, no foreign limited partner of Fund VIII US holds a direct or indirect voting or equity interest of greater than 5% into JAB Wireless that is not exempt from specific approval requirements.<sup>39</sup>

Lone Star Management Co. VIII, Ltd. (Bermuda) is the sole general partner of Partners VIII (less than 1% equity, 100% voting).<sup>40</sup> Partners IX (Bermuda) is the sole general partner of Fund IX US (0% equity, 100% voting).<sup>41</sup>

Lone Star Management Co. IX, Ltd. (Bermuda) is the sole general partner of Partners IX (0% equity, 100% voting).<sup>42</sup> John P. Grayken (Ireland) is the ultimate parent of LStar Equity and holds 100% equity and 100% voting interest in both Lone Star Management Co. VIII, Ltd. and Lone Star Management Co. IX, Ltd. and a less than 0.1% equity and 100% voting interest into JAB Wireless.<sup>43</sup>

The Kintyre Trust, a Bermuda entity, holds 41% equity and voting interests in Partners VIII and 38% equity and voting interests in Partners IX.<sup>44</sup> The trustee of the Kintyre Trust is Conyers Trust Company (Bermuda) Limited, which is ultimately owned for the benefit of the directors, partners and shareholders of Conyers, Dill & Pearman, all Bermuda entities.<sup>45</sup>

The Kintyre Trust holds its interests in Partners VIII and Partners IX through its wholly owned subsidiaries Jura US and Jura Bermuda, and their subsidiaries the Jura GP Companies, all Bermuda entities.<sup>46</sup> Jura US holds less than 0.1% equity and 31% voting interests in JAB Wireless.<sup>47</sup> Jura  
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<sup>33</sup> LStar Equity Petition Dec. 8, 2022 Supplement, Exh. A at 8, Exh. B.

<sup>34</sup> *Id.* at Exh. A at 8-9, Exh. B.

<sup>35</sup> *Id.* at Exh. A at 6-10, Exh. B.

<sup>36</sup> *Id.* at Exh. A at 6, Exh. B.

<sup>37</sup> *Id.* at Exh. A at 6-7, Exh. B.

<sup>38</sup> *Id.* at Exh. A at 6-7, Exh. B.

<sup>39</sup> *Id.* at Exh. A at 8, Exh. B.

<sup>40</sup> *Id.* at Exh. A at 15-16, Exh. B.

<sup>41</sup> *Id.* at Exh. A at 10, Exh. B.

<sup>42</sup> *Id.* at Exh. A at 15-16, Exh. B.

<sup>43</sup> LStar Equity Petition at 4, 9; LStar Equity Petition Dec. 8, 2022 Supplement, Exh. A at 16, Exh. B.

<sup>44</sup> LStar Equity Petition Dec. 8, 2022 Supplement, Exh. A at 11, Exh. B. The beneficiaries of the Kintyre Trust are charities and Mr. Grayken's children and remoter issue. According to the LStar Equity Petitioners, it is not possible to ascribe any specific interest in the Kintyre Trust to any beneficiary. *Id.* at Exh. A at 11-12, Exh. B.

<sup>45</sup> *Id.* at Exh. A at 11-14, Exh. B.

<sup>46</sup> *Id.* at Exh. A at 11-14, Exh. B.

<sup>47</sup> *Id.* at Exh. A at 17, Exh. B.

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Bermuda holds less than 0.1% equity and 13% voting interests into JAB Wireless.<sup>48</sup> Jura GP Holdings I Ltd. holds less than 0.1% equity and 41% voting interests into JAB Wireless.<sup>49</sup>

Pursuant to section 1.5001(h) of the rules,<sup>50</sup> the LStar Equity Petitioners state that the aggregate foreign ownership of the controlling U.S. parent, JAB Wireless is at least 50% and request approval of up to an aggregate 100% indirect foreign ownership.<sup>51</sup> Pursuant to section 1.5001(i) of the Commission's rules,<sup>52</sup> the LStar Equity Petitioners request specific approval of the following individual and entities:<sup>53</sup>

- John P. Grayken (less than 0.1% equity, 100% voting) (Ireland);
- Lone Star Kintyre Trust Bermuda (less than 0.1% equity, 41% voting) (Bermuda);
- Jura US Limited (less than 0.1% equity, 31% voting) (Bermuda);
- Jura Limited Bermuda (less than 0.1%, 13% voting) (Bermuda);
- Jura GP Holdings I Ltd (less than 0.1% equity, 6% voting) (Bermuda);
- Conyers Trust Company (Bermuda) Limited (less than 0.1% equity, 41% voting) (Bermuda);
- Conyers, Dill & Pearman (less than 0.1% equity, 41% voting) (Bermuda);
- Lone Star Partners VIII, L.P. (0.3% equity, 100% voting) (Bermuda);
- Lone Star Management Co VIII, Ltd. (less than 0.1% equity, 100% voting) (Bermuda);
- Lone Star Partners IX, L.P. (less than 0.1% equity; 100% voting) (Bermuda);
- Lone Star Management Co. IX, Ltd (less than 0.1% equity, 100% voting) (Bermuda),
- PSPIB-RE Finance Partners II Inc. (6.7% equity, 16% voting) (Canada); and
- Public Sector Pension Investment Board (6.7% equity, 16% voting) (Canada).

Given that the LStar Equity Transaction has already been consummated and that the proposed acquisition of JAB Wireless by GI DI Iris Acquisition will remove the LStar Equity ownership in JAB Wireless, the LStar Equity Petitioners do not seek advance approval pursuant to section 1.5001(k) of the Commission's rules for any of the foreign interests related to the LStar Equity Transaction.<sup>54</sup>

We received no comments regarding foreign ownership interests of the LStar Equity Petition. Based on our review of the record, under section 310(b)(4) of the Act and the Commission's foreign ownership rules and policies, we find that the public interest would not be served by prohibiting foreign ownership of JAB Wireless, the controlling U.S. parent, in excess of the 25% benchmarks in section

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<sup>48</sup> *Id.* at Exh. A at 17, Exh. B.

<sup>49</sup> *Id.* at Exh. A at 17, Exh. B.

<sup>50</sup> 47 CFR §1.5001(h).

<sup>51</sup> LStar Equity Petition at 3; LStar Equity Petition Dec. 8, 2022 Supplement, Exh. A at 16.

<sup>52</sup> 47 CFR §1.5001(i).

<sup>53</sup> LStar Equity Petition, Exh. A at 10. LStar Equity Petitioners contend that the limited partners of five entities should be considered insulated pursuant to section 1.5003 of the Commission's rules. The five entities are: (1) Fund VIII US, (2) Fund VIII International, (3) Fund IX US, (4) Partners VIII, and (5) Partners IX. LStar Petitioners further assert that such limited partners hold less than 10% equity or voting interest in LStar Equity. According to the LStar Equity Petition, the Limited Partnership Agreement for Fund VIII US prohibits limited partners from taking part in the management or operation of the business and from exercising any control of the business. LStar Equity Petitioners state that "[the Limited Partnership Agreement] does, however, include a single provision that allows removal of the general partner without cause by a 70% vote of the limited partners." LStar Equity Petitioners make similar arguments with respect to Fund VIII International, Fund IX US, Partners VIII, and Partners IX. 47 CFR §1.5003; LStar Equity Petition at 11-14; LStar Equity Petition Dec. 8, 2022 Supplement at 1-2. Since the LStar Equity ownership in JAB Wireless will be removed once GI DI Iris Acquisition acquires JAB Wireless, which, as discussed below, is contingent upon the GI DI Iris Acquisition Transaction closing within fifteen (15) days of release of this Public Notice, we find that it is not necessary to make a determination on this request at this time.

<sup>54</sup> 47 CFR §1.5001(k).

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310(b)(4) of the Act. We, therefore, grant the LStar Equity Petition subject to the conditions set forth herein. This ruling authorizes 100% aggregate foreign ownership of JAB Wireless as the controlling U.S. parent of the Wireless Licensees, subject to the terms and conditions set forth in section 1.5004 of the Commission's rules.<sup>55</sup>

As discussed below, grant of the LStar Equity Petition is conditioned on the removal of the LStar Equity ownership interest through the acquisition of JAB Wireless by GI DI Iris Acquisition within fifteen (15) days of the release of this Public Notice. While the LStar Equity Petitioners continue to have an ownership interest in JAB Wireless and the Wireless Licensees, they have an affirmative duty to monitor their foreign equity and voting interests, calculate their interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the rules,<sup>56</sup> and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act.<sup>57</sup> Failure to comply and/or remain in compliance shall constitute grounds for declaring this ruling terminated without further action on the part of the Commission. Failure to meet a condition of this ruling may also result in monetary sanctions or other enforcement action by the Commission.

#### **The Proposed GI DI Iris Transaction (WC Docket No. 22-230)**

Pursuant to an agreement dated May 28, 2022, by and among GI DI Iris Acquisition, GI DI Iris Merger Sub Inc., a newly formed company created for the purpose of completing the transaction (Merger Sub), JAB Wireless, and LStar Equity Company Holdings, L.P., Merger Sub will merge with and into JAB Wireless with JAB Wireless being the surviving entity pursuant to the proposed transaction (GI DI Iris Acquisition Transaction).<sup>58</sup> As a result of the proposed transaction, JAB Wireless will be a direct, wholly owned subsidiary of GI DI Iris Acquisition.<sup>59</sup> Further, the Domestic 214 Authorization Holders and Wireless Licensees will be indirect wholly owned subsidiaries of GI DI Iris Acquisition.<sup>60</sup>

GI DI Iris Acquisition, a newly formed Delaware limited liability company created for the purpose of completing this transaction, will be wholly owned by GI DI Intermediate Inc., a Delaware corporation that is wholly owned by GI DI Parent, LP (Iris Parent), a Delaware limited partnership.<sup>61</sup> GI

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<sup>55</sup> 47 CFR § 1.5004.

<sup>56</sup> 47 CFR §§ 1.5002-1.5003.

<sup>57</sup> 47 CFR § 1.5004, note to paragraph (a).

<sup>58</sup> GI DI Iris Acquisition Petition at 3.

<sup>59</sup> GI DI Iris Acquisition Application at Exh. A (Current and Post-Transaction Corporate Ownership Structure) at 3 and Exh. A (Post-Transaction Ownership Structure) at 1. GI DI Iris Acquisition does not provide telecommunications services. GI DI Iris Acquisition Application at 2. The GI DI Iris Acquisition Applicants state that GI DI Iris Acquisition is affiliated with the following providers of domestic telecommunications services through persons or entities that own or control a 10% or greater, direct or indirect, interest in GI DI Iris Acquisition, all U.S. entities: (1) Clarity Telecom, LLC, d/b/a Bluepeak (Bluepeak) provides competitive local exchange carrier (LEC) and/or interexchange services in Minnesota and South Dakota and also serves as an incumbent LEC in South Dakota. *Id.* at 11-12. The GI DI Iris Acquisition Applicants state that Bluepeak and Rise Broadband have certain minimal overlapping operations in approximately 40 zip codes in South Dakota, Minnesota, and Wyoming, and that there are other competitive providers in the areas, July 1, 2022 Supplement at 1; (2) Flexential Corp. provides collocation and other services in 15 states. GI DI Iris Acquisition Application at 12; (3) Single Digits, Inc. provides interconnected VoIP services in 27 states, the District of Columbia, and Puerto Rico, *Id.*; (4) Blue Stream Communications LLC provides broadband, video, and interconnected VoIP services in Florida, *Id.*; (5) ITS Telecommunications Systems, LLC (ITS) provides incumbent LEC services Florida, July 1, 2022 Supplement at 1-2. The GI DI Iris Acquisition Applicants state that because Rise Broadband does not operate in Florida, there is no overlap of services with ITS, and (6) ITS Fiber, LLC provides competitive LEC services in Marin County, Florida. GI DI Iris Acquisition Application at 12-13; July 1, 2022 Supplement at 1-2.

<sup>60</sup> GI DI Iris Acquisition Application at Exh. A at 3-4.

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DI Iris Holdings LP (Iris Holdings), a Delaware limited partnership, holds 99.5% equity and 100% voting interests in Iris Parent.<sup>62</sup> The 10% or greater equity holders of Iris Holdings are: (1) Iris Opportunity LP (Iris Opportunity), a Delaware limited partnership (32.8% equity, 0% voting), (2) GI Data Infrastructure Fund LP (GI DI Fund), a Delaware limited partnership (20.6% equity, 0% voting), and (3) GI Data Infrastructure Fund-A LP (GI DI Fund-A), a Delaware limited partnership (39.3% equity, 0% voting).<sup>63</sup> GI DI Iris GP LLC (Iris GP), a Delaware limited liability company, will be the general partner of Iris Holdings and Iris Opportunity (0% equity, 100% voting).<sup>64</sup> GI GP DI LP, a Delaware limited partnership, will be the general partner of GI DI Fund and GI DI Fund-A (0% equity, 100% voting).<sup>65</sup> GI GP DI LLC, a Delaware limited liability company, is the general partner of GI GP DI LP (0% equity, 100% voting) and the sole member and managing member of Iris GP (100% equity, 100% voting).<sup>66</sup> GI Manager L.P., a Delaware limited partnership, is the sole member of GI GP DI LLC (100% equity, 100% voting).<sup>67</sup> GI Manager Holdings LLC, a Delaware limited liability company, is the general partner of GI Manager L.P. (0% equity, 100% voting).<sup>68</sup> GI Manager LLC, a Delaware limited liability company, is the sole member of GI Manager Holdings LLC (100% equity, 100% voting).<sup>69</sup> GI Manager LLC is controlled by Richard

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<sup>61</sup> *Id.* at Exh A at 3, Exh. B at 1-2.

<sup>62</sup> *Id.* at Exh. A at 3, Exh. B at 2.

<sup>63</sup> *Id.* at Exh. A at 4, Exh. B at 2-3.

<sup>64</sup> *Id.* at Exh. A at 4, Exh. B at 3.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* Skybeam and Essex, which are ETCs receiving fixed RBE support, will be affiliated post-consummation with ITS, an incumbent LEC that did not elect to receive fixed, model-based support and receives cost-based universal service support. Dec. 13, 2022 Supplement at 1-2; GI DI Iris Acquisition Application at 12. In the *Hargray/ComSouth Order*, the Commission found that “the combination of two companies that receive high-cost universal service support under different mechanisms, one fixed and one cost-based, could result in potential harm to the Commission’s goal of ensuring that limited universal service resources are distributed efficiently and effectively” as a result of the companies having an incentive to shift costs from the fixed, model-based support company to the cost-based support company. *Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc. for Consent to the Transfer of Control of ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934*, WC Docket 18-52, Memorandum Opinion and Order, 33 FCC Rcd 4780, 4784, para. 19 (2018) (*Hargray/ComSouth Order*). Although GI GP DI LLC is the general partner that will ultimately control Skybeam, Essex, and ITS, the GI DI Iris Acquisition Applicants assert that there is no ability to engage in improper cost shifting as a result of its affiliates receiving universal service support under different mechanisms. Dec. 13, 2022 Supplement at 1-3. The GI DI Iris Acquisition Applicants affirm that the Skybeam and ITS do not have common control, shared or common costs, or consolidation of corporate books. *Id.* at 2. The Applicants state that GI DI Iris Acquisition, which ultimately controls Skybeam, and GI Blue Stream Holdings II LP (Blue Stream), the entity that ultimately controls ITS, “have different ownership, which precludes any consolidation of management or accounts between the two entities.” *Id.* They further state that “[t]he fiduciary duties that GP owes to the limited partners in each of the two non-overlapping co-invest partnerships . . . would preclude it from shifting costs from one partnership’s investment onto the partnership that holds another investment. The transaction will therefore not have the type of common control that will implicate a mixed-support condition as envisioned in the *Hargray/ComSouth Order*.” *Id.*; see *Order on Reconsideration*, WC Docket No. 20-389, 36 FCC Rcd 8859, 8864, para. 14 (2021) (stating that WCB should continue to apply the *Hargray/ComSouth* condition to remedy a potential public interest harm caused by a mixed support transaction, including in transactions in which post-merger affiliates have common control, common costs, cost sharing, or consolidation of corporate books). In light of the separate management control, cost accounting, and financial reporting of Skybeam and Essex and ITS, as demonstrated on this record, we do not find a potential public interest harm associated with a mixed support transaction that needs to be addressed, and therefore exercise our authority to exclude the GI DI Iris Acquisition Applicants from the *Hargray/ComSouth* condition. We therefore grant the GI DI Iris Acquisition Application without applying the mixed support condition.

<sup>67</sup> GI DI Iris Acquisition Application at Exh. A at 4, Exh. B at 3-4.

<sup>68</sup> *Id.*

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Magnuson, a U.S. citizen, as trustee of the Magnuson Living Trust, a California trust that will be the managing member of GI Manager LLC.<sup>70</sup> The only beneficiaries of the Magnuson Living Trust are Richard Magnuson, Allison Magnuson, Taylor Magnuson, and Scott Magnuson, who are all U.S. citizens.<sup>71</sup>

**The GI DI Iris Acquisition Petition for Declaratory Ruling (ISP-PDR-20220610-00004)**

On June 10, 2022, JAB Wireless and GI DI Iris Acquisition (together, the GI DI Iris Acquisition Petitioners) filed a petition for declaratory ruling (the GI DI Iris Acquisition Petition) pursuant to section 310(b)(4) of the Act and section 1.5000(a)(1) of the Commission's rules, asking the Commission to find that it would serve the public interest to permit post-transaction foreign ownership of JAB Wireless, the direct controlling U.S. parent of the Wireless Licensees.

Pursuant to the GI DI Iris Acquisition Transaction, Merger Sub will merge with and into JAB Wireless with JAB Wireless being the surviving entity.<sup>72</sup> Upon consummation of the transaction, the Wireless Licensees will remain wholly-owned subsidiaries of Skybeam, which in turn will remain a wholly-owned subsidiary of JAB Wireless.<sup>73</sup> JAB Wireless will be directly, wholly-owned by GI DI Iris Acquisition with Wireless Licensees becoming indirect, wholly-owned subsidiaries of GI DI Iris Acquisition.<sup>74</sup>

As a result of the proposed transaction, GI DI Iris Acquisition, a Delaware limited liability company, will be wholly owned by GI DI Intermediate Inc., a Delaware corporation that is wholly owned by GI DI Iris Parent, a Delaware limited partnership.<sup>75</sup> Iris Holdings, a Delaware limited partnership, holds 99.5% equity and 100% voting interests in Iris Parent.<sup>76</sup> GI DI Iris GP LLC (Iris GP), a Delaware limited liability company, will be the general partner of Iris Holdings and Iris Opportunity (0% equity, 100% voting).<sup>77</sup> GI GP DI LP, a Delaware limited partnership, will be the general partner of GI DI Fund and GI DI Fund-A (0% equity, 100% voting).<sup>78</sup> GI GP DI LLC, a Delaware limited liability company, is the general partner of GI GP DI LP (0% equity, 100% voting) and the sole member and managing member of Iris GP (100% equity, 100% voting).<sup>79</sup> GI Manager L.P., a Delaware limited partnership, is the sole member of GI GP DI LLC (100% equity, 100% voting).<sup>80</sup> GI Manager Holdings LLC, a Delaware limited liability company, is the general partner of GI Manager L.P. (0% equity, 100% voting).<sup>81</sup> GI Manager LLC, a Delaware limited liability company, is the sole member of GI Manager

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at Exh. B at 4.

<sup>72</sup> GI DI Iris Acquisition Petition at 3.

<sup>73</sup> GI DI Iris Acquisition Petition at Exh. A at A-1.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at Exh. A at 3, Exh. B at 1-2.

<sup>76</sup> *Id.* at Exh. A at 3, Exh. B at 2. The 10% or greater equity holders of Iris Holdings are: (1) Iris Opportunity LP (Iris Opportunity), a Delaware limited partnership (32.8% equity, 0% voting); (2) GI Data Infrastructure Fund LP (GI DI Fund), a Delaware limited partnership (20.6% equity, 0% voting); and (3) GI Data Infrastructure Fund-A LP (GI DI Fund-A), a Delaware limited partnership (39.3% equity, 0% voting). *Id.* at Exh. A at 4, Exh. B at 2-3.

<sup>77</sup> *Id.* at Exh. A at A-3, Exh. B at 4.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at Exh. A at 3.

<sup>81</sup> *Id.*

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Holdings LLC (100% equity, 100% voting).<sup>82</sup> GI Manager LLC is controlled by Richard Magnuson, a U.S. citizen, as trustee of the Magnuson Living Trust, a California trust that will be the managing member of GI Manager LLC.<sup>83</sup> The only beneficiaries of the Magnuson Living Trust are Richard Magnuson, Allison Magnuson, Taylor Magnuson, and Scott Magnuson, who are all U.S. citizens.<sup>84</sup>

The GI DI Iris Acquisition Petitioners assert that the consummation of the proposed transaction will result in approximately 68% aggregate indirect foreign ownership of GI DI Iris Acquisition, JAB Wireless, and Licensees.<sup>85</sup> This foreign ownership will arise through foreign entities that are currently or are expected to hold insulated limited partnership interests in GI DI Fund-A LP (approximately 89.3% equity in the fund) and Iris Opportunity (up to 100% equity in the fund).<sup>86</sup> Pursuant to section 1.5001(h) of the Commission's rules,<sup>87</sup> the GI DI Iris Acquisition Petitioners request up to 100% aggregate foreign ownership interest in the proposed controlling U.S. parent, JAB Wireless.<sup>88</sup>

We received no comments regarding foreign ownership interests of the GI DI Iris Acquisition Petition. Based on our review of the record, under section 310(b)(4) of the Act and the Commission's foreign ownership rules and policies, we find that the public interest would not be served by prohibiting foreign ownership of JAB Wireless, the controlling U.S. parent, in excess of the 25% benchmarks in section 310(b)(4) of the Act. We, therefore, grant the GI DI Iris Acquisition Petition subject to the conditions set forth herein. This ruling authorizes 100% aggregate foreign ownership of JAB Wireless as the controlling U.S. parent of the Wireless Licensees, subject to the terms and conditions set forth in section 1.5004 of the Commission's rules.<sup>89</sup>

According to the GI DI Iris Acquisition Petition, upon consummation of the GI DI Iris Acquisition Transaction, no foreign individual or entity will hold a 5% or greater direct or indirect equity and/or voting interest in GI DI Iris Acquisition and Wireless Licensees.<sup>90</sup> Therefore, the GI DI Iris Acquisition Petitioners do not request specific or advance approval for any foreign interest holder(s).<sup>91</sup> We note that, pursuant to Section 1.5001 and 1.5004 of the Commission's rules, GI DI Iris Acquisition Petitioner is required to seek and obtain Commission approval before any foreign individual, entity, or

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> GI DI Iris Acquisition Application at Exh. B at 4.

<sup>85</sup> GI DI Iris Acquisition Petition Jul. 8, 2022 Supplement at 2.

<sup>86</sup> GI DI Iris Acquisition Petition Jul. 8, 2022 Supplement at 1.

<sup>87</sup> 47 CFR §1.5001(h).

<sup>88</sup> GI DI Iris Acquisition Petition at 1.

<sup>89</sup> 47 CFR § 1.5004. A few of the terms and conditions set forth in section 1.5004 of the Commission's rules are as follows: (1) where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval, the licensee shall file a letter to the attention of the Chief, International Bureau, within 30 days after the insertion of the new, foreign-organized entity; (2) a licensee that has received a foreign ownership ruling, including a U.S.-organized successor-in-interest to such licensee as part of a pro forma reorganization, or any subsidiary or affiliate relying on such licensee's ruling, shall file a new petition for declaratory ruling under § 1.5000 to obtain Commission approval before its foreign ownership exceeds the routine terms and conditions of this section, and/or any specific terms of conditions of its rulings; and (3) if at any time the licensee, including any successor-in interest and any subsidiary or affiliate knows, or has reason to know, that it is no longer in compliance with its foreign ownership rulings or the Commission's rules relating to foreign ownership, it shall file a statement with the Commission explaining the circumstances within 30 days of the date it knew, or had reason to know, that it was no longer in compliance. *Id.*

<sup>90</sup> GI DI Iris Acquisition Petition at 8; 47 CFR § 1.5002.

<sup>91</sup> 47 CFR § 1.5001(i); 47 CFR § 1.5001(k).

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“group” acquires, directly and/or indirectly, more than 5% of JAB Wireless’ equity and/or voting interests, or a controlling interest, with the exception of any foreign individual, entity, or “group” that acquires an equity and/or voting interest of 10% or less, provided that the interest is exempt under 1.5001(i)(3) of the Commission’s rules.<sup>92</sup>

Under this ruling, the GI DI Iris Acquisition Petitioners also have an affirmative duty to monitor their foreign equity and voting interests, calculate their interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the Commission’s rules,<sup>93</sup> and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act.<sup>94</sup> Failure to comply and/or remain in compliance with a condition of this authorization shall constitute grounds for declaring it terminated without further action on the part of the Commission. Failure to meet a condition of this ruling may also result in monetary sanctions or other enforcement action by the Commission.

### **Executive Branch Review**

Under our rules and procedures, the Commission will generally refer petitions for section 310(b) foreign ownership rulings for common carrier wireless applicants and licensees and all the associated applications to the Executive Branch agencies (Agencies) for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants/Petitioners.<sup>95</sup>

We did not formally refer either the LStar Equity Application and Petition or the GI DI Iris Acquisition Application and Petition to the Agencies.<sup>96</sup> As the Applicants state, the foreign ownership at issue in the LStar Equity Transaction will be removed by the GI DI Iris Acquisition Transaction. Consequently, we found as a matter of discretion, that it would not be an efficient use of resources for the Agencies or the Commission to refer the Application and Petition in these circumstances.<sup>97</sup> We also find that because the only reportable foreign ownership in JAB Wireless and its subsidiaries will be through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities, the GI DI Iris Acquisition Application and Petition come within the exclusion from referral to the Executive Branch for national security, law enforcement, foreign policy and trade policy review and thus we did not refer them to the Agencies.<sup>98</sup> The decision not to refer the LStar Equity Petition to the Agencies is contingent upon consummation of the GI DI Iris Acquisition Transaction

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<sup>92</sup> 47 CFR §§ 1.5001, 1.5004. Section 1.5004(a)(1) states that a “‘100 percent aggregate allowance’ is subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or ‘group’ not previously approved acquires, directly and/or indirectly, more than 5 percent of the U.S. parent’s outstanding capital stock (equity) and/or voting stock, or a controlling interest, with the exception of any foreign individual, entity, or ‘group’ that acquires an equity and/or voting interest of 10 percent or less, provided that the interest is exempt under § 1.5001(i)(3).” 47 CFR § 1.5004.

<sup>93</sup> 47 CFR §§ 1.5002-1.5003.

<sup>94</sup> 47 CFR § 1.5004, note to paragraph (a).

<sup>95</sup> See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927, 10936, para. 24 (2020) (*Executive Branch Review Process Order*); 47 CFR § 1.40001(a)(1).

<sup>96</sup> Although we did not formally refer the Applications and Petitions, per standard practice, we provided a courtesy copy of the public notices to the Agencies. *Oct. 4, 2022 Public Notice* at 4-5; *Dec. 14, 2022 Public Notice* at 9. See *Executive Branch Review Process Order*, 35 FCC Rcd at 10939, para 30, n.81.

<sup>97</sup> *Dec. 14, 2022 Public Notice* at 9.

<sup>98</sup> *Oct. 4, 2022 Public Notice* at 4-5. See *Executive Branch Review Process Order*, 35 FCC Rcd at 10938-39, paras. 30, 32.

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within fifteen (15) days of the release of this Public Notice. We also require the GI DI Iris Acquisition Applicants and Petitioners to file a consummation notification within three (3) business days of the consummation of the GI DI Iris Acquisition Transaction. If the GI DI Iris Acquisition Applicants and Petitioners do not file a consummation notice within that time frame, the grant of the LStar Application and Petition as well as the GI DI Iris Acquisition Application and Petition shall be rescinded and will be null and void, and consistent with its regular practice, the Commission will refer the LStar Equity Application and Petition to the Agencies.<sup>99</sup> We also retain authority to pursue enforcement action by the Commission for non-compliance with the Act or the Commission's rules.

**Grant of Applications and Petitions for Declaratory Ruling**

We find, upon consideration of the record, that granting the domestic section 214 applications for the GI DI Iris Acquisition Transaction and the previous LStar Equity Transaction, which was consummated in 2018, will serve the public interest, convenience, and necessity,<sup>100</sup> and will not impact the Domestic 214 Authorization Holders' ability to meet RBE service, performance, and reporting obligations.<sup>101</sup> The GI DI Iris Acquisition Applicants remain obligated to comply with all applicable RBE requirements,<sup>102</sup> including offering voice services on a common carrier basis in each RBE-supported area.<sup>103</sup>

We also find that the public interest would not be served by prohibiting the foreign ownership of JAB Wireless, the controlling U.S. parent (related to the LStar Equity Petition), and the post-transaction foreign ownership of JAB Wireless (related to the GI DI Iris Acquisition Petition) in excess of the 25% benchmarks in section 310(b)(4) of the Act. The LStar Equity Application and Petition and the GI DI Iris Acquisition Application and Petition, are granted as set out in this Public Notice.

Grant of the LStar Application and Petition as well as grant of the GI DI Iris Acquisition Application and Petition are conditioned on the consummation of the GI DI Iris Acquisition Transaction within fifteen (15) days of release of this Public Notice and the GI DI Iris Acquisition Applicants filing the consummation notice within three (3) days after consummation. A failure to comply with this condition will result in the rescission of the grants which will be considered null and void.

Further, grant of the LStar Application and Petition and grant of the GI DI Iris Acquisition Application and Petition are without prejudice to any enforcement action by the Commission for non-compliance with the Act or the Commission's rules and without prejudice to Commission action on other related, pending applications or petitions.

Pursuant to sections 4(i)-(j), 214(a), 214(c), 303(r) and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 214(a), 214(c), 303(r), 310(b), and sections 1.5001-04, and

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<sup>99</sup> *Executive Branch Review Process Order*, 35 FCC Rcd at 10934-36, paras 17, 24; 47 CFR § 1.40001(a)(1).

<sup>100</sup> See 47 U.S.C. § 214(a); 47 CFR § 63.03. See, e.g., *Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9594, 9605, paras. 26 and 52 (2017) (finding no harm to competition in CenturyLink's incumbent LEC territory, nor outside of CenturyLink's incumbent LEC territory, where applicants operate as competitive LECs, and further finding that the transaction "will expand the on-net reach of the newly combined firm resulting in a more effective and stronger competitor against larger cable and incumbent LEC competitors, among others, particularly outside of Century Link's incumbent LEC region, where it, like Level 3, operates as a competitive LEC.").

<sup>101</sup> See GI DI Iris Acquisition Application at 4, 6-7.

<sup>102</sup> See *RBE Public Notices*; November Supplement at 4 and Attach. (Nov. 15, 2022 Verification of David A. Smolen, Secretary of GI DI Iris Acquisition Inc. (stating that to the extent Skybeam, Essex, and /or their affiliate AirCanopy do not comply with RBE obligations, GI DI Iris Acquisition Inc. understands that the Commission can seek support recovery from GI DI Iris Acquisition Inc., and that it will ensure that they meet all RBE obligations)).

<sup>103</sup> 47 U.S.C. § 214(e); 47 CFR § 54.101.

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63.03-04 of the Commission's rules, 47 CFR §§ 1.5001-04, 63.03-04, and pursuant to the authority delegated under sections 0.51, 0.91, 0.261, and 0.291 of the Commission's rules, 47 CFR §§ 0.51, 0.91, 0.261, and 0.291, we grant the LStar Equity Application and GI DI Iris Acquisition Application, and the associated LStar Equity Petition and GI DI Iris Acquisition Petition, as conditioned in this Public Notice. Grant of this ruling is without prejudice to the Commission's action on any other related pending application(s) or petition(s).

Grant of the LStar Equity Application and Petition and the GI DI Iris Acquisition Application and Petition is CONDITIONED on the consummation of the GI DI Iris Acquisition Transaction within fifteen (15) days of release of this Public Notice and the filing of a consummation notice in WC Docket No. 22-230, WC Docket No. 22-422, ISP-PDR-20220610-00004 and ISP-PDR20221208-00012 within three (3) days after consummation. If this condition is not met, the grants of the LStar Equity Application and Petition and the GI DI Iris Acquisition Application and Petition shall be rescinded and will be null and void.

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Gregory Kwan, Wireline Competition Bureau, (202) 418-1191 or Fara Mohsenikolour, International Bureau, (202) 418-1429.

**-FCC-**

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Requests for Review and/or Waiver of Decisions of
the Universal Service Administrator by
Accomack County Public School Accomack,
Accomac, Virginia et al.
Petition for Reconsideration by
Wake County Public Schools,
Cary, North Carolina
Schools and Libraries Universal Service
Mechanism
File Nos. SLD-201017311 et al.
File No. SLD-181018864
CC Docket No. 02-6

ORDER

Adopted: January 19, 2023

Released: January 19, 2023

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant 37 appeals of decisions of the Universal Service Administrative Company (USAC) from E-Rate program participants seeking to correct ministerial or clerical errors associated with the invoicing process. We also grant one petition for reconsideration. The petitioners inadvertently made ministerial or clerical errors while completing their E-Rate request for reimbursement (i.e., FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR)) or FCC Form 474 (Service Provider Invoice (SPI)) form or while requesting an invoice filing deadline extension. While these mistakes caused the reimbursement forms or invoice filing deadline extensions to be rejected or unprocessed, all filings were timely submitted in compliance with section 54.514(a) and (b) of the Commission's rules. To the extent necessary, we also waive section 54.719(b) of the Commission's

1 See Appendix A. The E-Rate program is formally known as the schools and libraries universal service support mechanism.

2 We initially denied Wake County Public Schools' request for review. See Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, Public Notice, 35 FCC Rcd 9927, 9936 (WCB 2020). On reconsideration, Wake County Public Schools raises new facts demonstrating that we should grant the appeal. Section 1.106(c)(2) of the Commission's rules provides that a petition for reconsideration of a decision may rely on facts not previously presented to the Commission if consideration of the facts relied on is required by the public interest. 47 C.F.R. § 1.106(c)(2).

3 47 CFR § 54.514(a) and (b) (requiring that invoices must be submitted to USAC: (1) 120 days after the last day to receive service; (2) 120 days after the date of the FCC Form 486 Notification Letter; or (3) 120 days after the date of a Revised Funding Commitment Decision Letter approving a post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request, whichever is latest, and

(continued....)

rules that requires applicants to seek review of a USAC decision from USAC in the first instance.<sup>4</sup> We also grant seven appeals where the petitioners filed timely requests for reimbursement pursuant to section 54.514(a) and (b) of the Commission's rules, but were later denied funding because the petitioners failed to respond to USAC's request for additional information regarding the submitted reimbursement form or extension request within the specified timeframe.<sup>5</sup>

## II. BACKGROUND

2. *Invoicing.* E-Rate applicants select one of two ways to seek reimbursement of the costs of eligible E-Rate equipment and services.<sup>6</sup> If an applicant pays the full cost of the equipment and services upfront, then the applicant must submit an FCC Form 472, the Billed Entity Applicant Reimbursement (BEAR) form, to request reimbursement for the discounted share of the costs from USAC.<sup>7</sup> If an applicant only pays its service provider the non-discounted share of the cost of the eligible equipment and services, then the service provider must file an FCC Form 474, the Service Provider Invoice (SPI) form, to receive reimbursement of the discounted share of the costs directly from USAC. Before 2014, invoice filing deadline extension requests were governed by a USAC procedural rule that allowed applicants or service providers to request and receive a 120-day invoice extension under certain conditions.<sup>8</sup> USAC routinely granted invoice extension requests that met its criteria, including requests made up to a year after the original invoice filing deadline. This allowed for the resubmission of invoices in cases where E-Rate participants made ministerial and clerical errors on their forms. In 2014, however, the Commission adopted a new E-Rate rule requiring applicants and service providers to submit invoicing forms for reimbursement to USAC no later than 120 days after the last day to receive service or 120 days after the date of the FCC Form 486 Notification letter, whichever is later.<sup>9</sup> The Commission's rules also allow an applicant or a service provider to receive a one-time 120-day extension of the invoice filing deadline for any cause, if the applicant or service provider requests the extension before the applicable invoice filing deadline.<sup>10</sup> The Commission further explained that waivers of these rules would generally

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also requiring the invoice filing deadline extension to be submitted in advance of the invoice filing deadline set forth in paragraph (a) of this section.

<sup>4</sup> 47 CFR § 1.3.

<sup>5</sup> See Appendix B.

<sup>6</sup> 47 CFR § 54.514(c).

<sup>7</sup> USAC Invoicing: FCC Form 472 Filing, <https://www.usac.org/e-rate/applicant-process/invoicing/fcc-form-472-filing/> (last visited Jan. 19, 2023).

<sup>8</sup> See, e.g., *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26950, para. 93 (2003) (noting that USAC provides an extension of the deadline to file invoices under certain conditions, including (1) authorized service provider changes; (2) authorized service substitutions; (3) no timely notice to USAC (e.g., the service providers' Form 486 Notification Letter is returned to USAC as undeliverable); (4) USAC errors that result in a late invoice; (5) USAC delays in data entering a form that ultimately result in a late invoice; (6) documentation requirements that necessitate third party contact or certification; (7) natural or man-made disasters that prevent timely filing of invoices; (8) good Samaritan BEARs; and (9) circumstances beyond the service providers control).

<sup>9</sup> 47 CFR § 54.514(a) (2014); *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8965-66, paras. 238-39 (2014) (*First 2014 E-Rate Order*). In December 2020, the Commission amended section 54.514(a) of its rules and provided applicants and service providers 120 days after the date of Revised Funding Commitment Decision Letter approving a post-commitment request made by the applicant or service provider or successful appeal of a previously denied or reduced funding request to submit their requests for reimbursement. See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 35 FCC Rcd 14426, 14429, para. 10 (WCB Dec. 10, 2020) (*2020 E-Rate Invoice Rule Modification Order*).

<sup>10</sup> 47 CFR § 54.514(b).

not be in the public's interest and directed the Wireline Competition Bureau (Bureau) to grant waivers only under extraordinary circumstances.<sup>11</sup>

3. *Appeal/Waiver Rules.* In 2014, the Commission also amended its rules to require parties seeking review of USAC decisions to first file an appeal with USAC.<sup>12</sup> Prior to the modification of this rule, a party could appeal an action or decision by USAC directly to the Commission.<sup>13</sup> Now, however, if USAC denies a timely-filed reimbursement form, the applicant or service provider must first appeal that decision to USAC, within the 60-day deadline set forth in section 54.720 of the Commission's rules.<sup>14</sup> When appealing USAC's invoicing-related decision, an applicant or service provider is not required to file another reimbursement form or seek a waiver of the invoice deadline.<sup>15</sup>

4. *Ministerial and Clerical Errors.* In the 2006 *Bishop Perry Order*, the Commission found good cause existed to grant petitioners' appeals where the applicants made immaterial clerical, ministerial, or procedural errors in filling out their FCC Forms 470 and 471.<sup>16</sup> The Commission waived the minimum processing standards established by USAC in these instances, noting there was no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements.<sup>17</sup> The Commission also found that the denial of funding requests inflicted undue hardship on the applicants and that rigid compliance with the application procedures did not further the purposes of section 254(h) of the Communications Act (Act), as amended by the Telecommunications Act of 1996, or serve the public interest.<sup>18</sup> In that decision and subsequent orders, relief has been granted to E-Rate participants for many types of ministerial and clerical errors on the FCC Form 471 and related forms,<sup>19</sup> defined as errors one would make "when entering data from one list to another, such as mistyping a number, using the wrong name or phone number, failing to enter an item from the source list onto the application, or making an arithmetical error."<sup>20</sup> In 2011, the Commission permitted applicants to correct ministerial and clerical

<sup>11</sup> *First 2014 E-Rate Order*, 29 FCC Rcd at 8966, para. 240.

<sup>12</sup> 47 CFR § 54.719(a)-(b). *See also First 2014 E-Rate Order*, 29 FCC Rcd at 8970-71, paras. 250-52 (revising sections 54.719 and 54.720 of the Commission's rules to, among other things, require parties seeking appeal of a USAC decision to first seek review with USAC). Parties seeking a waiver of the Commission's rules, however, must seek relief directly from the Commission. 47 CFR § 54.719(c).

<sup>13</sup> *See, e.g.*, 47 CFR § 54.719 (2013) (allowing the party to file an appeal with USAC, or directly with the Commission).

<sup>14</sup> 47 CFR § 54.720.

<sup>15</sup> *See* USAC, Schools and Libraries Program News Brief (Dec. 9, 2016), <https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=734>.

<sup>16</sup> *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5320-21, paras. 10-11 (2006) (*Bishop Perry Order*) (waiving the Commission's rules to allow applicants additional time to file their FCC Forms 471 where applicants committed ministerial or clerical errors). The FCC Form 470 is the Description of Services Requested and Certification Form that applicants are required to file to initiate the competitive bidding process and the FCC Form 470 is the Description of Services Ordered and Certification Form, applicants file with USAC to request discounts on eligible services and equipment for the upcoming funding year.

<sup>17</sup> *Id.* at para. 11.

<sup>18</sup> *Id.* (citing to 47 U.S.C. § 254(h)). The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amended the Communications Act of 1934.

<sup>19</sup> *See, e.g.*, *Bishop Perry Order*, 21 FCC Rcd at 5320-21, para. 10; *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319, 17319-21, para. 2 (WCB 2010) (*Ann Arbor Order*).

<sup>20</sup> *Ann Arbor Order*, 25 FCC Rcd at 17320, n.5. In the *Ann Arbor Order*, relief was granted for such mistakes as entering the wrong competitive bidding form number, entering the wrong billed entity number, entering the wrong name or service provider identification number (SPIN), entering the wrong expiration date for a contract, wrongly

(continued....)

errors on already-submitted FCC Forms 471 up until the date that the funding commitment decision letter is issued by USAC.<sup>21</sup> The Commission explained that because of the complexity and detail involved in completing E-Rate forms and associated documentation, such errors may not be discovered until significantly after a request for funding was filed.<sup>22</sup> The Bureau also expanded its relief for ministerial and clerical errors to the FCC Form 486 in instances where applicants submitted the form with the incorrect service start date, causing funding denials.<sup>23</sup> These decisions noted that the minor mistakes at issue did not warrant the complete rejection of the FCC Forms 486 given that the applicants made a procedural error and did not violate a Commission rule.<sup>24</sup>

5. *Late or Missing Information Requests.* In addition to granting relief for ministerial and clerical errors, the Commission has also found that it is in the public interest to grant appeals in situations where E-Rate participants had funding reduced or denied because USAC-requested information was not submitted in the specified timeframe.<sup>25</sup> The Commission determined that these appeals involved a procedural error on the part of the E-Rate participant, not a failure to adhere to a core program requirement or a misuse of funds.<sup>26</sup> The Commission further found that these appeals involved a processing deadline, not a program rule. Although deadlines are necessary for the efficient administration of the E-Rate program, in these cases, the Commission found that the applicants had demonstrated that rigid adherence to such procedures did not further the purposes of section 254(h) of the Act, or serve the public interest.<sup>27</sup> While these decisions involved USAC's information requests in the context of the processing the FCC Form 471,<sup>28</sup> information requests are also necessary for correctly processing E-Rate reimbursement forms (i.e., FCC Forms 472 and 474). Here, USAC has denied timely-filed reimbursement forms when applicants or service providers failed to respond within seven days to

(Continued from previous page)

classifying the type of service (recurring vs. non-recurring), making a calculation error, entering the monthly charge as the annual charge, entering the discounted annual price rather than the pre-discount annual price, and miscalculating the discount rate. *See, e.g., id.* at 17319-21, para. 2.

<sup>21</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6487, 6488-89, para. 5 (2011). In the *Bishop Perry Order*, the Commission gave applicants 15 calendar days to submit corrections of clerical or ministerial errors, or to refile their FCC Form 470 or FCC Form 471 application, or associated documentation. *Bishop Perry Order*, 21 FCC Rcd at 5326-27, para. 23.

<sup>22</sup> *Id.* at para. 5.

<sup>23</sup> *See, e.g., Request for Review and/or Waiver by Glendale Unified School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 1040 (WCB 2006); *Request for Waiver by Harvey Public Library District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15419 (WCB 2008); *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Barrow County School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 4028 (WCB 2011) (*Barrow County Order*) (granting waiver requests when the applicants inadvertently listed the wrong service start date on their FCC Forms 486). The FCC Form 486 is the Receipt of Service Confirmation and CIPA Certification Form, applicants are required to file to notify USAC that services have started and indicate the status of compliance with CIPA.

<sup>24</sup> *See, e.g., Barrow County Order*, 26 FCC Rcd at 4028, para. 2.

<sup>25</sup> *See, e.g., Requests for Review of the Decision of the Universal Service Administrator by Alpaugh Unified School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 6035 (2007) (*Alpaugh Unified School District Order*); *Requests for Review of Decisions of the Universal Service Administrator by Ben Gamla Palm Beach et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 1876 (WCB 2014) (granting requests for review of applicants that had been denied funding because they failed to respond to USAC's request for information within the USAC-specified time frame).

<sup>26</sup> *Alpaugh Unified School District Order*, 22 FCC Rcd at 6037, para. 5.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

USAC's request for additional information.<sup>29</sup>

### III. DISCUSSION

6. In this Order, we consider several appeals from E-Rate participants that timely submitted reimbursement forms or invoice filing deadline extension requests but were denied funding because of ministerial or clerical errors on the forms or extension requests.<sup>30</sup> We also consider appeals from applicants and service providers that were denied funding because they did not respond to USAC's information request regarding timely-filed reimbursement forms or extension requests within the specified timeframe.

7. *Ministerial and Clerical Errors.* The petitioners listed in Appendix A made ministerial or clerical errors when submitting their BEAR (FCC Form 472) or SPI (FCC Form 474) reimbursement forms when, for example, they inadvertently selected an incorrect last day of service from the invoice drop-down menu or otherwise entered a wrong billing, service or shipping date,<sup>31</sup> inadvertently requested funding for the wrong funding year,<sup>32</sup> entered the wrong service provider identification number,<sup>33</sup> entered the wrong customer billed date on the SPI form,<sup>34</sup> entered the wrong recipient of service on an invoice,<sup>35</sup> or entered the wrong application or funding request number on the BEAR or SPI form.<sup>36</sup>

8. We also consider several appeals where the petitioners' invoice filing deadline extension requests were denied or not processed because the requests contained ministerial or clerical errors. Here, the petitioners inadvertently requested an invoice filing deadline extension for the wrong funding year or

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<sup>29</sup> See, e.g., Request for Review of Marengo County Schools; Request for Waiver of Moniteau School District (explaining that USAC denied payment after applicant did not respond to email inquiry in seven days).

<sup>30</sup> See USAC, Schools and Libraries Program News Brief (Dec. 9, 2016), <https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=734>.

<sup>31</sup> Request for Waiver of Comcast Phone, LLC (Lake Villa School District); Request for Waiver of Connectivity Two, Inc. (CSAL, Inc. – CSAL Middle; CSAL, Inc. – Madison Prep; CSAL, Inc. – LAVCA; J.K. Haynes Charter School District; Martin Luther King, Jr. Christian Academy); Request for Waiver of Greenwood-Leflore Consolidated School District (Southern Light, LLC); Request for Waiver of Leland Community Unit School District No. 1; Request for Waiver of Marsh Valley School District; Request for Waiver of Notre Dame School; Request for Waiver of Plumsted Township School District; Request for Waiver of Pontiac Community Consolidated School District #429; Request for Review of Peoples Preparatory Charter; Request for Waiver of St. Edward Central Catholic High School; Request for Review of Wolfe County School District.

<sup>32</sup> Request for Waiver of Boys Latin of Philadelphia Charter School; Request for Review of Clinton School District 15; Request for Waiver of Madill City County Library; Request for Waiver of University of Chicago Charter Schools Corp.

<sup>33</sup> Request for Review of Hoxie Unified School District.

<sup>34</sup> Request for Waiver of Envision Technology Advisors, LLC (Sturgis Charter School).

<sup>35</sup> Request for Review of Whalley Computer Associates, Inc. (Mendon-Upton Regional School District).

<sup>36</sup> Request for Waiver of Accomack County Public School; Request for Waiver of Brother Rice High School; Request for Waiver of Chapel Hill ISD; Request for Waiver of Chickasaw Telecom (Bartlesville School District); Request for Waiver of Edmonds School District; Request for Waiver of Detroit Leadership Academy; Request for Waiver of Evergreen School District; Request for Waiver of Gamewood Technology Group, Inc d/b/a RiverStreet Networks (King And Queen County Sch. Div.); Request for Review of International Academy of Flint; Request for Waiver of Moreno Valley High School; Request for Waiver of e-Polk, Inc. (Rutherford County Schools); Request for Waiver of Data Management Services (Diocese Of Houma-Thibodaux); Request for Waiver of Rio Grande City Grulla Independent School District; Request for Waiver of Southeastern Services Inc. (Madison County School District); Petition for Reconsideration of Wake County Public Schools; Request for Waiver of Yonkers Public Schools.

wrong funding request number,<sup>37</sup> or left off one or more funding request numbers from a timely-filed invoice filing deadline extension request due to a clerical or computer error.<sup>38</sup>

9. We find that it is the public interest to grant the appeals included in Appendix A. The Commission may waive any provision of its rules on its own motion or on petition for good cause shown.<sup>39</sup> A rule may be waived where particular facts make strict compliance inconsistent with the public interest.<sup>40</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>41</sup> In sum, a waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>42</sup>

10. The petitioners in Appendix A argue that immaterial clerical, ministerial or procedural errors caused the rejection or denial of their otherwise-timely reimbursement forms or extension requests. The petitioners' mistakes on these forms and requests are nearly identical to those mistakes made in the context of FCC Forms 470, 471, 486, and other related forms or submissions for funding under the E-Rate program, discussed above, and we find that the same rationale for granting those requests applies here. Namely, we find that petitioners submitted timely reimbursement forms or requests for an invoice filing deadline extensions to USAC pursuant to section 54.514(a) and (b) of the Commission's rules.<sup>43</sup> However, those forms or requests were rejected or denied by USAC for the types of ministerial and clerical errors that the Commission has previously determined should be reconsidered by USAC on other E-Rate forms and requests. We also find that the denial of funding inflicts undue hardship on the E-Rate participants and rigid compliance with the invoice filing deadline and invoice filing deadline extension rules does not further the purposes of section 254(h) or serve the public interest.<sup>44</sup> In addition, we further find that there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements.<sup>45</sup>

11. While applicants must file waivers to extend the invoice filing with the Commission,<sup>46</sup> USAC has the authority to accept evidence of a ministerial and clerical error on appeal and correct the issue on the submitted form or request. Most petitioners included in Appendix A, however, did not file an appeal with USAC based on the ministerial or clerical error found on their reimbursement form. Some petitioners said USAC directed them to refile their reimbursement form, resulting in a denial because the new reimbursement form was submitted after the invoice filing deadline set forth in 54.514(a) of the Commission's rules.<sup>47</sup> Other petitioners filed a waiver directly with the Commission, either based on

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<sup>37</sup> Request for Waiver of Fall Mountain Regional School District; Request for Waiver of The New America School - Las Cruces.

<sup>38</sup> Request for Waiver of Southwest Plains Regional Service Center (Bucklin USD 459); Request for Waiver of Columbia School District.

<sup>39</sup> 47 CFR § 1.3.

<sup>40</sup> See *Northeast Cellular Telephone Co. v. FCC*, 879 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>41</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>42</sup> *Northeast Cellular*, 879 F.2d at 1166.

<sup>43</sup> 47 CFR §§ 54.514(a)-(b).

<sup>44</sup> *Id.*

<sup>45</sup> See *supra* para. 4.

<sup>46</sup> See *supra* n.13.

<sup>47</sup> Request for Review of Clinton School District 15; Request for Waiver of St. Edward Central Catholic High School; Request for Waiver of Connectivity Two, Inc. (CSAL, Inc. – CSAL Middle; CSAL, Inc. – Madison Prep; CSAL, Inc. – LAVCA; J.K. Haynes Charter School District; Martin Luther King, Jr. Christian Academy); Request  
(continued....)

their understanding of the rules or on the advice of USAC.<sup>48</sup> Two petitioners' appeal requests were denied because USAC treated them as waivers for the invoice filing deadline and dismissed the petitioners' appeals because it did not have the authority to waive section 54.514(a) of the Commission's rules.<sup>49</sup> One appeal was denied by USAC for being filed more than 60 days after the adverse decision, although the appeal was actually timely based on the date of the FCC Form 472 (BEAR) Notification Letter.<sup>50</sup> One appeal was denied by USAC, even though the petitioner documented the invoice's ministerial and clerical error in its appeal.<sup>51</sup> To the extent petitioners filed an appeal with the Commission in the first instance, we also waive our rule that requires parties to first file an appeal with USAC and direct USAC to treat their appeals as timely filed.<sup>52</sup>

12. Based on the circumstances described by petitioners listed in Appendix A, we find good cause to waive our rules because of the substantial hardship and confusion caused by USAC's invoice denials and incorrect guidance that applicants and service providers needed a waiver of the invoice filing deadline from the Commission before they could correct the clerical and ministerial errors on their reimbursement forms or extension requests. Thus, we waive section 54.719(b) of the Commission's rules for the petitioners that appealed to the Commission first. To the extent petitioners included in Appendix A also filed their appeals late, we further waive section 54.720 of our rules that require appeals be filed within 60 days from the date of the adverse decision.<sup>53</sup> This is consistent with precedent where the Commission has waived the filing deadline when E-Rate participants had filed an appeal within 60 days of discovering or receiving notice of the ministerial or clerical error.<sup>54</sup>

13. Going forward, we direct USAC to review appeals of ministerial and clerical errors as described above and not to direct these petitioners to file waiver requests with the Commission.<sup>55</sup>

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for Waiver of Southeastern Services Inc. (Madison County School District); Request for Waiver of University of Chicago Charter Schools Corp.

<sup>48</sup> Request for Waiver of Accomack County Public School; Request for Waiver of Boys Latin of Philadelphia Charter School; Request for Waiver of Brother Rice High School; Request for Waiver of Data Management Services (Diocese Of Houma-Thibodaux); Request for Waiver of Chapel Hill ISD; Comcast Phone, LLC (Lake Villa School District); Request for Waiver of Detroit Leadership Academy; Request for Waiver of Envision Technology Advisors, LLC (Sturgis Charter School); Request for Waiver of e-Polk Inc. (Rutherford County Schools); Request for Waiver of Fall Mountain Regional School District; Request for Waiver of Gamewood Technology Group, Inc d/b/a RiverStreet Networks (King And Queen County Sch. Div.); Request for Waiver of Greenwood-Leflore Consolidated School District (Southern Light, LLC ); Request for Review of Hoxie Unified School District; Moreno Valley High School; Request for Waiver of Edmonds School District; Request for Waiver of Evergreen School District; Request for Waiver of Leland Community Unit School District No. 1; Request for Waiver of Madill City County Library; Request for Waiver of Marsh Valley School District; Request for Waiver of Chickasaw Telecom (Bartlesville School District); Request for Waiver of Notre Dame School; Request for Waiver of Plumsted Township School District; Request for Waiver of Pontiac Community Consolidated School District #429; Request for Waiver of Rio Grande City Grulla Independent School District; Request for Waiver of Southwest Plains Regional Service Center (Bucklin USD 459); Request for Waiver of The New America School - Las Cruces; Request for Waiver of Wake County Public Schools; Request for Waiver of Yonkers Public Schools; Request for Review of Wolfe County School District..

<sup>49</sup> Request for Waiver of Columbia School District; Request for Waiver of International Academy of Flint.

<sup>50</sup> Request for Review of Peoples Preparatory Charter.

<sup>51</sup> Request for Review of Whalley Computer Associates, Inc. (Mendon-Upton Regional School District).

<sup>52</sup> 47 CFR § 54.719(b).

<sup>53</sup> 47 CFR § 54.720.

<sup>54</sup> See, e.g., *Ann Arbor Order*, 25 FCC Rcd at 17319, n.2 (waiving the filing deadline for petitioners that filed the appeal as soon they received actual notice of the mistake).

<sup>55</sup> 47 CFR § 54.719(a).

Because the original reimbursement form (i.e., FCC Form 472 or FCC Form 474) was timely filed pursuant to section 54.514(a) of our rules, applicants and service providers should not be required to submit a new reimbursement form to correct the error in question, which may result in the form being denied because it was submitted after the invoice filing deadline.<sup>56</sup> Instead, USAC should allow the applicant or service provider to correct the timely filed reimbursement form or extension request, and not require that a new form or request be submitted to correct the error. We note that if a clerical or ministerial mistake of this type is discovered after the 60-day appeal-filing deadline,<sup>57</sup> E-Rate participants should first file a waiver request with the Commission seeking a waiver of section 54.720 of the Commission's rules and explain how and when the clerical or ministerial error was discovered.<sup>58</sup>

14. *Late or Missing Information Requests.* We also find that it is in the public interest to grant the appeals included in Appendix B where petitioners did not respond in seven days to USAC's request for information about a timely-filed reimbursement form or extension of the invoice filing deadline request. These petitioners did not meet the deadline to submit additional information concerning their form or request because they did not receive USAC's request for additional information,<sup>59</sup> or did not respond in a timely manner due to personnel issues.<sup>60</sup> We find that the circumstances in these cases are nearly identical to those missing the deadline for responding to USAC information requests in the context of the FCC Form 471 applications, and the same rationale applies here. Namely, we find that these appeals involved a procedural error on the part of the E-Rate participant, not a failure to adhere to a core program requirement or a misuse of funds.<sup>61</sup> Further, these appeals involve a processing deadline, and not a program rule. We find, as the Commission noted in the context of late or missing information when processing FCC Form 471 applications, that the petitioners have demonstrated that rigid adherence to such procedures does not further the purposes of section 254(h) of the Act or serve the public interest.<sup>62</sup>

15. We encourage applicants and service providers to invoice early and timely request a one-time 120-day invoice filing deadline extension if any issues arise or could arise regarding the invoice filing deadline set forth by section 54.514(a)-(b) of the Commission's rules. By building in additional time for the E-Rate invoicing process, problems caused by ministerial and clerical errors or missed information requests can be resolved with USAC, before the invoicing filing deadline expires without the

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<sup>56</sup> 47 CFR § 54.514 (requiring that invoices be submitted either 120 days after the last day to receive service or 120 days after the date of the FCC Form 486 Notification Letter, whichever is later). *See supra* para. 2.

<sup>57</sup> 47 CFR § 54.720.

<sup>58</sup> 47 CFR § 54.719(c) (noting that parties seeking waivers of the Commission's rules must seek relief directly from the Commission). The Commission has permitted waivers in certain instances where E-Rate participants have filed their appeals late. *See, e.g., Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, para. 2 (WCB 2011) (*ABC Unified School District Order*) (waiving the filing deadline for petitioners that submitted their appeals to the Commission or USAC only a few days late or submitted their appeals within a reasonable period after receiving actual notice of USAC's adverse decision).

<sup>59</sup> Request for Waiver of All County Business Machines (St. Raymond High School for Boys); Request for Review of Marengo County Schools; Request for Waiver of Moniteau School District; Request for Waiver of PenTeleData Limited Partnership I (Crestwood Area School District); Request for Review of Vector Resources Inc. (Los Angeles Unified School District).

<sup>60</sup> Request for Waiver of Pinnacle Charter School. Consistent with precedent, we also find good cause exists to waive section 54.720(a) or (b) of the Commission's rules, which requires that petitioners file their appeals within 60 days of an adverse USAC decision, for Pinnacle Charter School. *See, e.g., ABC Unified School District Order*, 26 FCC Rcd at 11019, para. 2 (waiving the filing deadline for petitioners that submitted their appeals to the Commission or USAC only a few days late).

<sup>61</sup> *Alpaugh Unified School District Order*, 22 FCC Rcd at 6037, para. 5.

<sup>62</sup> *Id.*

need for the party to file an appeal or a waiver request. We remand the applications included in Appendices A and B to USAC and direct USAC to complete its review of these requests consistent with this Order. In remanding these requests to USAC, we make no finding as to the merits of the petitioners' requests. We also waive sections 54.507(d) and 54.514(a) of the Commission's rules and direct USAC to waive any procedural deadline that might be necessary to effectuate our ruling.<sup>63</sup>

#### IV. ORDERING CLAUSES

16. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291 and 54.722(a), the Requests for Review and/or Waiver filed by Petitioners in the Appendices A and B are GRANTED and their submissions ARE REMANDED to USAC for further consideration.

17. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3, 47 CFR §§ 0.91, 0.291, 1.3, that sections 54.507(d) and 54.514(a) of the Commission's rules, 47 CFR §§ 54.507(d) and 54.514(a), ARE WAIVED for the petitioners listed in the Appendices A and B as provided herein.

18. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3, 47 CFR §§ 0.91, 0.291, 1.3, that section 54.720 of the Commission's rules, 47 CFR § 54.720, IS WAIVED for the petitioners listed in the Appendices A and B as provided herein.

19. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, that USAC SHALL COMPLETE its review of each remanded request in the appendices and ISSUE a decision based on a complete review and analysis.

FEDERAL COMMUNICATIONS COMMISSION

Jodie Griffin  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>63</sup> See 47 CFR § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year); 47 CFR § 54.514(a) (codifying the invoice filing deadline rule).

**APPENDIX A**  
**Ministerial and Clerical Errors**

<b>Petitioner</b>	<b>Application Number(s)</b>	<b>Funding Year(s)</b>	<b>Date Filed</b>
Accomack County Public School, VA	201017311	2020	11/9/2021
Brother Rice High School, MI	201010735	2020	2/25/2022
Boys Latin of Philadelphia Charter School, PA	171038199	2017	3/7/2019
Chapel Hill ISD, NC	201038055	2020	5/4/2022
Chickasaw Telecom (Bartlesville School District), OK	1025540	2015	5/4/2018
Clinton School District 15, IL	171036103	2017	3/5/2019
Columbia School District, MS	181000752	2018	11/4/2019
Comcast Phone, LLC (Lake Villa School District), PA	191022632	2019	2/18/2022
Connectivity Two, Inc., LA (CSAL, Inc. – CSAL Middle; CSAL, Inc. – Madison Prep; CSAL, Inc. – LAVCA; J.K. Haynes Charter School District; Martin Luther King, Jr Christian Academy)	181029426 181030093 181036337 181036599	2018	11/4/2019
Detroit Leadership Academy	937495	2014	8/25/2020
Edmonds School District, WA	171043556	2017	9/12/2019
Envision Technology Advisors, LLC, (Sturgis Charter School), RI	171042340	2017	8/12/2019  (Supplement filed 09/27/2019)
Evergreen School District, MT	171046534	2017	1/30/2019
e-Polk Inc. (Rutherford County Schools), NC	181038842	2018	11/27/2019
Data Management Services (Diocese Of Houma-Thibodaux), LA	191009664	2019	3/23/2021
Fall Mountain Regional School District, NH	201004374	2020	2/7/2022
Gamewood Technology Group, Inc d/b/a RiverStreet Networks (King And Queen County Sch. Div.), VA	201034337	2020	11/17/2021

Greenwood-Leflore Consolidated School District (Southern Light, LLC ), MS	191027347	2019	6/29/2021
Hoxie Unified School District, KS	171007771	2017	3/13/2019
International Academy of Flint, MI	201020634	2020	3/3/2022
Leland Community Unit School District No. 1, IL	191020024	2019	11/17/2021
Madill City County Library, OK	171029197	2017	1/31/2019
Marsh Valley School District, ID	171041283	2017	12/28/2018
Moreno Valley High School, NM	181040799	2018	12/4/2019
Notre Dame School, IL	161040129	2016	12/13/2017
Peoples Preparatory Charter School, NJ	201046074	2020	12/16/2022
Plumsted Township School District, NJ	171043301	2017	12/21/2018
Pontiac Community Consolidated School District #429, IL	201038746	2020	11/2/2021
Rio Grande City Grulla Independent School District, TX	201028628	2020	1/24/2022
Southeastern Services Inc. (Madison County School District), FL	181017181	2018	4/24/2020
Southwest Plains Regional Service Center (Bucklin USD 459), KS	161000902	2016	12/13/2017
St. Edward Central Catholic High School, IL	181002769	2018	2/7/2020
The New America School - Las Cruces, NM	1026869	2015	3/17/2019
University of Chicago Charter Schools Corp, IL	171001597	2017	9/6/2019
Wake County Public Schools, NC	181018864	2018	9/28/2020
Whalley Computer Associates, Inc. (Mendon-Upton Regional School District), MA	211000814	2022	12/21/2022
Wolfe County School District.	211033819	2021	11/30/2022
Yonkers Public Schools, NY	191036149	2019	5/24/2021

**APPENDIX B**  
**Late or Missing Information Requests**

<b>Petitioner</b>	<b>Application Number(s)</b>	<b>Funding Year(s)</b>	<b>Date Filed</b>
All County Business Machines (St. Raymond High School for Boys), NY	181040825	2018	4/9/2020
Holmes County Public Library, OH	201040084	2020	3/1/2022
Marengo County Schools, AL	181026566	2018	11/27/2019
Moniteau School District, PA	181030001	2018	11/8/2019
PenTeleData Limited Partnership I (Crestwood Area School District), PA	171018222	2017	5/3/2019
Pinnacle Charter School, CO	191021161	2019	10/15/2021
Vector Resources Inc. (Los Angeles Unified School District, CA	442526	2005	7/23/2010



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
TTY: 1-888-835-5322

DA 23-49

Released: January 19, 2023

## CONNECT AMERICA FUND PHASE II AUCTION APPLICATION REVIEW CONCLUDES; LONG-FORM APPLICATIONS MADE PUBLIC

**AU Docket No. 17-182**  
**WC Docket No. 10-90**

By this Public Notice, the Wireline Competition Bureau (WCB) announces the conclusion of the Connect America Fund Phase II auction (Auction 903 or CAF Phase II auction) long-form application review. There were 195 authorized applicant state combinations, totaling \$1.48 billion authorized in 10-year support, covering 708,494 locations in 45 states. Authorized bids included a range of performance tiers, with more than one-half of the winning bids at 100/20 Mbps or higher. Additionally, 10 applicants were authorized to receive CAF Phase II auction support in conjunction with New York's New NY Broadband Program totaling \$65.49 million in 10-year support, covering 47,200 locations in New York.<sup>1</sup>

All Auction 903 winning bids have been authorized or defaulted, with state-level summaries of authorizations posted under the "Data" tab on the Auction 903 webpage at <https://www.fcc.gov/auction/903>. The summary provides for each authorized Auction 903 long-form applicant: 1) the total support amount over 10 years and total number of locations that the long-form applicant is authorized for in each state; 2) the total number of locations to which the authorized support recipient must offer the required voice and broadband services for each performance tier and latency in each state; and 3) the eligible census blocks included in the winning bids that are authorized in each state.<sup>2</sup>

As part of the Rural Broadband Accountability Plan,<sup>3</sup> the Commission is also making available additional information from the long-form applications submitted by applicants (FCC Form 683 and FCC Form 5625). The Auction 903 FCC Form 683 long-form applications will be viewable through the application search feature, which can be accessed through the "Application" tab on the Auction 903 web page.<sup>4</sup> The FCC Form 5625 long-form applications for New York applicants will be viewable on the "New York" tab on the Auction 903 web page. The Commission will continue to withhold from routine public inspection information related to a long-form applicant's detailed technology and system design description and its project funding description; financial information for which confidential treatment was

<sup>1</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 32 FCC Rcd 968 (2017) (waiving the CAF Phase II auction rules to allow distribution of CAF Phase II auction support in Connect America Fund-eligible areas in New York in coordination with New York's New NY Broadband Program).

<sup>2</sup> This summary will also be updated to reflect that Gila Local Exchange Carrier, Inc. was later assigned a different study area code than it was originally assigned for its Auction 903 support.

<sup>3</sup> See generally Federal Communications Commission, *Rural Broadband Accountability Plan*, <https://www.fcc.gov/rbap> (last visited Jan. 19, 2023).

<sup>4</sup> Federal Communications Commission, *Connect America Fund Phase II Auction (Auction 903)*, <https://www.fcc.gov/auction/903> (last visited Jan. 19, 2023).

requested under the section 0.459(a)(4) abbreviated confidential treatment process; letter of credit documentation; and any other information subject to a request for confidential treatment that has been granted or remains pending.<sup>5</sup>

**Further Information Contact:****Press Information****Office of Media Relations**

Anne Veigle  
(202) 418-0500

**General Universal Service Information****Wireline Competition Bureau,  
Telecommunications Access Policy Division**

Lauren Garry  
Heidi Lankau  
Katie King  
(202) 418-7400

**Universal Service Administrative Company**

Stephen Snowman  
(202) 414-2725

**Auction 903 Information**

General Auction Information, Process, and  
Procedures

**Office of Economics and Analytics,  
Auctions Division**

(717) 338-2868

Post-Auction Rules, Policies, and Regulations

**Office of Economics and Analytics,  
Auctions Division**

(202) 418-0660

**Small Businesses**

Additional information for small and  
disadvantaged businesses

**Office of Communications Business  
Opportunities**

(202) 418-0990  
<http://www.fcc.gov/ocbo/>

**Accessible Formats**

Braille, large print, electronic files, or  
audio format for people with disabilities

**Consumer and Governmental Affairs Bureau**

(202) 418-0530  
[fcc504@fcc.gov](mailto:fcc504@fcc.gov)

**FCC Internet Sites**

<http://www.fcc.gov>  
<https://www.fcc.gov/auction/903>

-FCC-

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<sup>5</sup> See *Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018*; AU Docket No. 17-182 et al., Public Notice, 33 FCC Rcd 8257, 8266-67 (WCB/WTB 2018); *Connect America Fund Phase II Auction Support for 962 Winning Bids Ready to be Authorized*, AU Docket No. 17-182 et al., Public Notice, 34 FCC Rcd 955, 957 & n.10 (WCB/OEA 2019).



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
45 L STREET NE  
WASHINGTON D.C. 20554

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DA No. 23-50

Report No. SCL-00402

Friday January 20, 2023

## Actions Taken Under Cable Landing License Act

### Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 C.F.R. § 1.767(a))

By the Chief, Telecommunications and Analysis Division, International Bureau:

Pursuant to an Act relating to the landing and operation of submarine cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 CFR § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules, 47 CFR § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this public notice.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 CFR § 1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Commission Announces Department of State's Revised Procedures for its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (rel. Apr. 19, 2022).

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. Cable landing licensees should review the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

Transfer of Control

Grant of Authority

Date of Action: 01/12/2023

**Current Licensee:** Telxius Cable America, S.A.**FROM:** KKR Management LLP**TO:** Pontegadea Inversiones, S.L.

Telxius Cable América S.A. (Telxius Cable América) filed an application (Application) for consent to transfer control of negative control rights over Telxius Cable América from KKR Management LLP (KKR Management) to Pontegadea Inversiones, S.L. (Pontegadea). The Application was placed on Public Notice on March 11, 2022. See Non-Streamlined Submarine Cable Landing License Applications Accepted For Filing, File No. SCL-T/C-20220222-00006, Public Notice, Report No. SCL-00365NS (IB March 11, 2022). Applicants filed supplements to the Application on January 8, 2023 and January 11, 2023.

The Application has been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 CFR § 1.767(b), and consistent with the procedures established by the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Commission Announces Department of State's Revised Procedures For Its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (IB Apr. 19, 2022). On March 16, 2022, the Department of Justice (DOJ), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a letter notifying the Commission that the Committee was reviewing the Application for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Application. We deferred action on the Application in response to the Committee's request. On December 21, 2022, the National Telecommunications and Information Administration, on behalf of the Committee, filed a Petition to Adopt Conditions to Authorization and License. The Committee has no objection to the Commission granting the application, provided that the Commission conditions its approval on the assurance of Telxius Cable América, S.A., Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Telxius Cable Colombia Inc., Telefónica, S.A., Telxius Telecom, S.A., and Pontegadea Inversiones, S.L. to abide by the commitments and undertakings set forth in the December 9, 2022, Letters of Agreement (LOAs) attached to the Petition to Adopt Conditions to Authorization and License.

Telxius Cable América is a licensee on the BRUSA system (SCL-LIC-20160330-00011), the MAREA system (SCL-LIC-20160525-00012), the Pacific Caribbean Cable System (PCCS) (SCL-LIC-20130122-00001), and the South America-1 (SAM-1) system (SCL-LIC-20000204-00003, SCL-MOD-20190826-00028). The BRUSA system connects Virginia Beach, Virginia; San Juan, Puerto Rico; and Fortaleza and Rio de Janeiro, Brazil. The MAREA system connects Virginia Beach, Virginia with Bilbao, Spain. PCCS connects the British Virgin Islands, Puerto Rico, Aruba, Colombia, Panama, Ecuador, and the continental United States. The SAM-1 system connects Florida, Puerto Rico, Argentina, Brazil (Fortaleza, Rio de Janeiro, Salvador and Santos), Chile (Arica and Valparaiso), Colombia, the Dominican Republic, Guatemala (Puerto Barrios and Puerto San Jose), and Peru (Lurin and Mancora).

Telxius Cable América, a Uruguay company, is a wholly owned subsidiary of Telxius Telecom, S.A. (Telxius Parent), a Spanish company. Pontel Participaciones, S.L. (Pontel), a Spanish company, holds 60% equity and voting interests in Telxius Parent. Taurus Bidco S.à.r.l (Taurus Bidco), a Luxembourg company ultimately owned and controlled by KKR Management, a Delaware company, holds the remaining 40% equity and voting interests and certain negative control rights over Telxius Parent. Telefónica, S.A. (Telefonica), a publicly traded Spanish company, holds 83.35% equity and voting interests in Pontel and ultimate de jure control over Telxius Parent. The remaining 16.65% voting and equity interests in Pontel are held by Pontegadea, a Spanish company, that is 99.99% owned by Mr. Amancio Ortega Gaona, a citizen of Spain.

The transaction will be comprised of a series of steps. First, the 40% equity and voting interests and negative control rights currently held by Taurus Bidco in Telxius Parent will be acquired by Pontel. Simultaneously, Telefonica and Pontegadea will carry out a capital restructuring that will result in Telefonica holding 70% voting and equity interests in Pontel and Pontegadea holding the remaining 30% voting and equity interests in Pontel. As soon as possible thereafter, Telefonica and Pontel will restructure their interests by merging Pontel into Telxius Parent, with Telxius Parent surviving, such that Telefonica (70%) and Pontegadea (30%) will hold their interests directly in Telxius Parent.

As part of the transaction, a Shareholder Agreement will be executed pursuant to which Pontegadea will acquire certain negative control rights over shareholder, board of directors, and third-party transaction matters that could be deemed to constitute de facto control. The Shareholder Agreement gives Pontegadea certain rights beyond standard minority shareholder protections that will provide Pontegadea with an effective veto over certain Pontel (and following the restructuring, Telxius Parent) matters, including business plan, annual budget, ability to enter into contracts above a certain value threshold, ability to enter into related party transactions with Telefonica and its non-Telxius subsidiaries, and influence over the appointment, replacement, and removal of the CEO and CFO. Following consummation of the transaction, Telefonica will continue to retain de jure control over Telxius Parent and Telxius Cable América.

After completion of the transaction, the following individuals and entities will hold 10% or greater direct or indirect interests in Telxius Cable América: (1) Telxius Parent (100% equity and voting interests in Telxius Cable América); (2) Telefonica (70% equity and voting interests in Telxius Parent), in which no shareholder, as of February 1, 2022, holds an interest sufficient to give it a 10% or greater direct or indirect interest in Telxius Cable América at consummation; (3) Pontegadea (30% equity and voting interests in Telxius Parent and certain negative control rights), and (4) Mr. Amancio Ortega Gaona (99.99% equity and voting interests in Pontegadea). According to the Applicants, there will be no other 10% percent or greater direct or indirect interest holders in Telxius Cable América.

Pontegadea certifies that it accepts and will abide by the routine conditions specified in section 1.767(g) of the Commission's rules, 47 CFR § 1.767(g).

We grant the Petition to Adopt Conditions to Authorization and License (Petition) filed in this proceeding by the National Telecommunications and Information Administration, on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, on December 21, 2022. Accordingly, we condition grant of the Application on Telxius Cable América S.A., Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Telxius Cable Colombia, S.A., Telefónica, S.A., Telxius Telecom, S.A., and Pontegadea Inversiones, S.L.

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abiding by the commitments and undertakings set forth in:

(1) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022;

(2) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022;

(3) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Cesar Parra, Network Director, Telxius Cable Colombia, S.A., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022; and

(4) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022.

Copies of the Petition and the LOAs are publicly available and may be viewed on the FCC website through International Bureau Filing System (IBFS) by searching for SCL-T/C-20220222-00006 and accessing "Other filings related to this application" from the Document Viewing area.

A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the transfer of control application and the underlying cable landing licenses, SCL-LIC-20160330-00011, SCL-LIC-20160525-00012, SCL-LIC-20130122-00001, SCL-LIC-20000204-00003, SCL-MOD-20190826-00028, and thus grounds for declaring the cable landing licenses terminated without further action on the part of the Commission. Failure to meet a condition of the grant of the transfer of control application or the cable landing licenses may also result in monetary sanctions or other enforcement action by the Commission.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

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Transfer of Control

Grant of Authority

Date of Action: 01/12/2023

**Current Licensee:** Telxius Cable Colombia, S.A.**FROM:** KKR Management LLP**TO:** Pontegadea Inversiones, S.L.

Telxius Cable Colombia, S.A. (Telxius Cable Colombia) filed an application (Application) for consent to transfer control of negative control rights over Telxius Cable Colombia from KKR Management LLP (KKR Management) to Pontegadea Inversiones, S.L. (Pontegadea). The Application was placed on Public Notice on March 11, 2022. See Non-Streamlined Submarine Cable Landing License Applications Accepted For Filing, File No. SCL-T/C-20220222-00007, Public Notice, Report No. SCL-00365NS (IB March 11, 2022). Applicants filed supplements to the Application on January 8, 2023 and January 11, 2023.

The Application has been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 CFR § 1.767(b), and consistent with the procedures established by the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Commission Announces Department of State's Revised Procedures For Its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (IB Apr. 19, 2022). On March 16, 2022, the Department of Justice (DOJ), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a letter notifying the Commission that the Committee was reviewing the Application for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Application. We deferred action on the Application in response to the Committee's request. On December 21, 2022, the National Telecommunications and Information Administration, on behalf of the Committee, filed a Petition to Adopt Conditions to Authorization and License. The Committee has no objection to the Commission granting the application, provided that the Commission conditions its approval on the assurance of Telxius Cable América, S.A., Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Telxius Cable Colombia Inc., Telefónica, S.A., Telxius Telecom, S.A., and Pontegadea Inversiones, S.L. to abide by the commitments and undertakings set forth in the December 9, 2022, Letters of Agreement (LOAs) attached to the Petition to Adopt Conditions to Authorization and License.

Telxius Cable Colombia is a licensee on the Pacific Caribbean Cable System (PCCS) (SCL-LIC-20130122-00001). PCCS connects the British Virgin Islands, Puerto Rico, Aruba, Colombia, Panama, Ecuador, and the continental United States.

Telxius Cable Colombia, a Colombia company, is a subsidiary of Telxius Cable América S.A. (Telxius Cable América), a Uruguay company. Telxius Cable América holds 94.985846% equity and voting interests in Telxius Cable Colombia. The remaining equity and voting interests in Telxius Cable Colombia are held by other subsidiaries of Telxius Telecom, S.A. (Telxius Parent), a Spanish company. Telxius Cable América is a wholly owned subsidiary of Telxius Parent. Pontel Participaciones, S.L. (Pontel), a Spanish company, holds 60% equity and voting interests in Telxius Parent. Taurus Bideo S.à.r.l (Taurus Bideo), a Luxembourg company ultimately owned and controlled by KKR Management, a Delaware company, holds the remaining 40% equity and voting interests and certain negative control rights over Telxius Parent. Telefónica, S.A. (Telefonica), a publicly traded Spanish company, holds 83.35% equity and voting interests in Pontel and ultimate de jure control over Telxius Parent. The remaining 16.65% voting and equity interests in Pontel are held by Pontegadea, a Spanish company, that is 99.99% owned by Mr. Amancio Ortega Gaona, a citizen of Spain.

The transaction will be comprised of a series of steps. First, the 40% equity and voting interests and negative control rights currently held by Taurus Bideo in Telxius Parent will be acquired by Pontel. Simultaneously, Telefonica and Pontegadea will carry out a capital restructuring that will result in Telefonica holding 70% voting and equity interests in Pontel and Pontegadea holding the remaining 30% voting and equity interests in Pontel. As soon as possible thereafter, Telefonica and Pontel will restructure their interests by merging Pontel into Telxius Parent, with Telxius Parent surviving, such that Telefonica (70%) and Pontegadea (30%) will hold their interests directly in Telxius Parent.

As part of the transaction, a Shareholder Agreement will be executed pursuant to which Pontegadea will acquire certain negative control rights over shareholder, board of directors, and third-party transaction matters that could be deemed to constitute de facto control. The Shareholder Agreement gives Pontegadea certain rights beyond standard minority shareholder protections that will provide Pontegadea with an effective veto over certain Pontel (and following the restructuring, Telxius Parent) matters, including business plan, annual budget, ability to enter into contracts above a certain value threshold, ability to enter into related party transactions with Telefonica and its non-Telxius subsidiaries, and influence over the appointment, replacement, and removal of the CEO and CFO. Following consummation of the transaction, Telefonica will continue to retain de jure control over Telxius Parent and Telxius Cable Colombia.

After completion of the transaction, the following individuals and entities will hold 10% or greater direct or indirect interests in Telxius Cable Colombia: (1) Telxius Cable América, a Uruguay company (94.985846% equity and voting interests in Telxius Cable Colombia), (2) Telxius Parent (100% equity and voting interests in Telxius Cable América); (3) Telefonica (70% equity and voting interests in Telxius Parent), in which no shareholder, as of February 1, 2022, holds an interest sufficient to give it a 10% or greater direct or indirect interest in Telxius Cable Colombia at consummation; (4) Pontegadea (30% equity and voting interests in Telxius Parent and certain negative control rights), and (5) Mr. Amancio Ortega Gaona (99.99% equity and voting interests in Pontegadea). According to the Applicants, there will be no other 10% percent or greater direct or indirect interest holders in Telxius Cable Colombia.

Pontegadea certifies that it accepts and will abide by the routine conditions specified in section 1.767(g) of the Commission's rules, 47 CFR § 1.767(g).

We grant the Petition to Adopt Conditions to Authorization and License (Petition) filed in this proceeding by the National Telecommunications and Information Administration, on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, on December 21, 2022. Accordingly, we condition grant of the Application on Telxius Cable América S.A., Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Telxius Cable Colombia, S.A., Telefónica, S.A., Telxius Telecom, S.A., and Pontegadea Inversiones, S.L. abiding by the commitments and undertakings set forth in:

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(1) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022;

(2) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022;

(3) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Cesar Parra, Network Director, Telxius Cable Colombia, S.A., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022; and

(4) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022.

Copies of the Petition and the LOAs are publicly available and may be viewed on the FCC website through International Bureau Filing System (IBFS) by searching for SCL-T/C-20220222-00007 and accessing "Other filings related to this application" from the Document Viewing area.

A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the transfer of control application and the underlying cable landing license, SCL-LIC-20130122-00001, and thus grounds for declaring the cable landing license terminated without further action on the part of the Commission. Failure to meet a condition of the grant of the transfer of control application or the cable landing license may also result in monetary sanctions or other enforcement action by the Commission.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

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Transfer of Control

Grant of Authority

Date of Action: 01/12/2023

**Current Licensee:** Telxius Cable Puerto Rico, Inc.**FROM:** KKR Management LLP**TO:** Pontegadea Inversiones, S.L.

Telxius Cable Puerto Rico, Inc. (Telxius Cable Puerto Rico) filed an application (Application) for consent to transfer control of negative control rights over Telxius Cable Puerto Rico from KKR Management LLP (KKR Management) to Pontegadea Inversiones, S.L. (Pontegadea). The Application was placed on Public Notice on March 11, 2022. See Non-Streamlined Submarine Cable Landing License Applications Accepted For Filing, File No. SCL-T/C-20220222-00008, Public Notice, Report No. SCL-00365NS (IB March 11, 2022). Applicants filed supplements to the Application on January 8, 2023 and January 11, 2023.

The Application has been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 CFR § 1.767(b), and consistent with the procedures established by the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Commission Announces Department of State's Revised Procedures For Its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (IB Apr. 19, 2022). On March 16, 2022, the Department of Justice (DOJ), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a letter notifying the Commission that the Committee was reviewing the Application for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Application. We deferred action on the Application in response to the Committee's request. On December 21, 2022, the National Telecommunications and Information Administration, on behalf of the Committee, filed a Petition to Adopt Conditions to Authorization and License. The Committee has no objection to the Commission granting the application, provided that the Commission conditions its approval on the assurance of Telxius Cable América, S.A., Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Telxius Cable Colombia Inc., Telefónica, S.A., Telxius Telecom, S.A., and Pontegadea Inversiones, S.L. to abide by the commitments and undertakings set forth in the December 9, 2022, Letters of Agreement (LOAs) attached to the Petition to Adopt Conditions to Authorization and License.

Telxius Cable Puerto Rico is a licensee on the BRUSA system (SCL-LIC-20160330-00011), the Pacific Caribbean Cable System (PCCS) (SCL-LIC-20130122-00001), and the South America-1 (SAm-1) system (SCL-LIC-20000204-00003, SCL-MOD-20190826-00028). The BRUSA system connects Virginia Beach, Virginia; San Juan, Puerto Rico; and Fortaleza and Rio de Janeiro, Brazil. PCCS connects the British Virgin Islands, Puerto Rico, Aruba, Colombia, Panama, Ecuador, and the continental United States. The SAm-1 system connects Florida, Puerto Rico, Argentina, Brazil (Fortaleza, Rio de Janeiro, Salvador and Santos), Chile (Arica and Valparaiso), Colombia, the Dominican Republic, Guatemala (Puerto Barrios and Puerto San Jose), and Peru (Lurin and Mancora).

Telxius Cable Puerto Rico, a Puerto Rico company, is a wholly owned subsidiary of Telxius Cable América, S.A. (Telxius Cable América), a Uruguay company, which is a wholly owned subsidiary of Telxius Telecom, S.A. (Telxius Parent), a Spanish company. Pontel Participaciones, S.L. (Pontel), a Spanish company, holds 60% equity and voting interests in Telxius Parent. Taurus Bidco S.à.r.l (Taurus Bidco), a Luxembourg company ultimately owned and controlled by KKR Management, a Delaware company, holds the remaining 40% equity and voting interests and certain negative control rights over Telxius Parent. Telefónica, S.A. (Telefonica), a publicly traded Spanish company, holds 83.35% equity and voting interests in Pontel and ultimate de jure control over Telxius Parent. The remaining 16.65% voting and equity interests in Pontel are held by Pontegadea, a Spanish company, that is 99.99% owned by Mr. Amancio Ortega Gaona, a citizen of Spain.

The transaction will be comprised of a series of steps. First, the 40% equity and voting interests and negative control rights currently held by Taurus Bidco in Telxius Parent will be acquired by Pontel. Simultaneously, Telefonica and Pontegadea will carry out a capital restructuring that will result in Telefonica holding 70% voting and equity interests in Pontel and Pontegadea holding the remaining 30% voting and equity interests in Pontel. As soon as possible thereafter, Telefonica and Pontel will restructure their interests by merging Pontel into Telxius Parent, with Telxius Parent surviving, such that Telefonica (70%) and Pontegadea (30%) will hold their interests directly in Telxius Parent.

As part of the transaction, a Shareholder Agreement will be executed pursuant to which Pontegadea will acquire certain negative control rights over shareholder, board of directors, and third-party transaction matters that could be deemed to constitute de facto control. The Shareholder Agreement gives Pontegadea certain rights beyond standard minority shareholder protections that will provide Pontegadea with an effective veto over certain Pontel (and following the restructuring, Telxius Parent) matters, including business plan, annual budget, ability to enter into contracts above a certain value threshold, ability to enter into related party transactions with Telefonica and its non-Telxius subsidiaries, and influence over the appointment, replacement, and removal of the CEO and CFO. Following consummation of the transaction, Telefonica will continue to retain de jure control over Telxius Parent and Telxius Cable Puerto Rico.

After completion of the transaction, the following individuals and entities will hold 10% or greater direct or indirect interests in Telxius Cable Puerto Rico: (1) Telxius Cable América (100% equity and voting interests in Telxius Cable Puerto Rico), (2) Telxius Parent (100% equity and voting interests in Telxius Cable América); (3) Telefonica (70% equity and voting interests in Telxius Parent), in which no shareholder, as of February 1, 2022, holds an interest sufficient to give it a 10% or greater direct or indirect interest in Telxius Cable Puerto Rico at consummation; (4) Pontegadea (30% equity and voting interests in Telxius Parent and certain negative control rights), and (5) Mr. Amancio Ortega Gaona (99.99% equity and voting interests in Pontegadea). According to the Applicants, there will be no other 10% percent or greater direct or indirect interest holders in Telxius Cable Puerto Rico.

Pontegadea certifies that it accepts and will abide by the routine conditions specified in section 1.767(g) of the Commission's rules, 47 CFR § 1.767(g).

We grant the Petition to Adopt Conditions to Authorization and License (Petition) filed in this proceeding by the National Telecommunications and Information Administration, on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, on December 21, 2022. Accordingly, we condition grant of the Application on Telxius Cable América S.A., Telxius Cable USA,

Inc., Telxius Cable Puerto Rico, Inc., Telxius Cable Colombia, S.A., Telefónica, S.A., Telxius Telecom, S.A., and Pontegadea Inversiones, S.L. abiding by the commitments and undertakings set forth in:

(1) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022;

(2) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022;

(3) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Cesar Parra, Network Director, Telxius Cable Colombia, S.A., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022; and

(4) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022.

Copies of the Petition and the LOAs are publicly available and may be viewed on the FCC website through International Bureau Filing System (IBFS) by searching for SCL-T/C-20220222-00008 and accessing "Other filings related to this application" from the Document Viewing area.

A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the transfer of control application and the underlying cable landing licenses, SCL-LIC-20160330-00011, SCL-LIC-20130122-00001, SCL-LIC-20000204-00003, SCL-MOD-20190826-00028, and thus grounds for declaring the cable landing licenses terminated without further action on the part of the Commission. Failure to meet a condition of the grant of the transfer of control application or the cable landing licenses may also result in monetary sanctions or other enforcement action by the Commission.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

Transfer of Control

Grant of Authority

Date of Action: 01/12/2023

**Current Licensee:** Telxius Cable USA, Inc.**FROM:** KKR Management LLP**TO:** Pontegadea Inversiones, S.L.

Telxius Cable USA, Inc. (Telxius Cable USA) filed an application (Application) for consent to transfer control of negative control rights over Telxius Cable USA, Inc. (Telxius Cable USA) from KKR Management LLP (KKR Management) to Pontegadea Inversiones, S.L. (Pontegadea). The Application was placed on Public Notice on March 11, 2022. See Non-Streamlined Submarine Cable Landing License Applications Accepted For Filing, File No. SCL-T/C-20220222-00009, Public Notice, Report No. SCL-00365NS (IB March 11, 2022). Applicants filed supplements to the Application on January 8, 2023 and January 11, 2023.

The Application has been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 CFR § 1.767(b), and consistent with the procedures established by the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Commission Announces Department of State's Revised Procedures For Its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (IB Apr. 19, 2022). On March 16, 2022, the Department of Justice (DOJ), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a letter notifying the Commission that the Committee was reviewing the Application for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Application. We deferred action on the Application in response to the Committee's request. On December 21, 2022, the National Telecommunications and Information Administration, on behalf of the Committee, filed a Petition to Adopt Conditions to Authorization and License. The Committee has no objection to the Commission granting the application, provided that the Commission conditions its approval on the assurance of Telxius Cable América, S.A., Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Telxius Cable Colombia Inc., Telefónica, S.A., Telxius Telecom, S.A., and Pontegadea Inversiones, S.L. to abide by the commitments and undertakings set forth in the December 9, 2022, Letters of Agreement (LOAs) attached to the Petition to Adopt Conditions to Authorization and License.

Telxius Cable USA is a licensee on the BRUSA system (SCL-LIC-20160330-00011), the MAREA system (SCL-LIC-20160525-00012), the Pacific Caribbean Cable System (PCCS) (SCL-LIC-20130122-00001), and the South America-1 (SAM-1) system (SCL-LIC-20000204-00003, SCL-MOD-20190826-00028). The BRUSA system connects Virginia Beach, Virginia; San Juan, Puerto Rico; and Fortaleza and Rio de Janeiro, Brazil. The MAREA system connects Virginia Beach, Virginia with Bilbao, Spain. PCCS connects the British Virgin Islands, Puerto Rico, Aruba, Colombia, Panama, Ecuador, and the continental United States. The SAM-1 system connects Florida, Puerto Rico, Argentina, Brazil (Fortaleza, Rio de Janeiro, Salvador and Santos), Chile (Arica and Valparaiso), Colombia, the Dominican Republic, Guatemala (Puerto Barrios and Puerto San Jose), and Peru (Lurin and Mancora).

Telxius Cable USA, a Florida company, is a wholly owned subsidiary of Telxius Cable América, a Uruguay company, which is a wholly owned subsidiary of Telxius Telecom, S.A. (Telxius Parent), a Spanish company. Pontel Participaciones, S.L. (Pontel), a Spanish company, holds 60% equity and voting interests in Telxius Parent. Taurus Bidco S.à.r.l (Taurus Bidco), a Luxembourg company ultimately owned and controlled by KKR Management, a Delaware company, holds the remaining 40% equity and voting interests and certain negative control rights over Telxius Parent. Telefónica, S.A. (Telefonica), a publicly traded Spanish company, holds 83.35% equity and voting interests in Pontel and ultimate de jure control over Telxius Parent. The remaining 16.65% voting and equity interests in Pontel are held by Pontegadea, a Spanish company, that is 99.99% owned by Mr. Amancio Ortega Gaona, a citizen of Spain.

The transaction will be comprised of a series of steps. First, the 40% equity and voting interests and negative control rights currently held by Taurus Bidco in Telxius Parent will be acquired by Pontel. Simultaneously, Telefonica and Pontegadea will carry out a capital restructuring that will result in Telefonica holding 70% voting and equity interests in Pontel and Pontegadea holding the remaining 30% voting and equity interests in Pontel. As soon as possible thereafter, Telefonica and Pontel will restructure their interests by merging Pontel into Telxius Parent, with Telxius Parent surviving, such that Telefonica (70%) and Pontegadea (30%) will hold their interests directly in Telxius Parent.

As part of the transaction, a Shareholder Agreement will be executed pursuant to which Pontegadea will acquire certain negative control rights over shareholder, board of directors, and third-party transaction matters that could be deemed to constitute de facto control. The Shareholder Agreement gives Pontegadea certain rights beyond standard minority shareholder protections that will provide Pontegadea with an effective veto over certain Pontel (and following the restructuring, Telxius Parent) matters, including business plan, annual budget, ability to enter into contracts above a certain value threshold, ability to enter into related party transactions with Telefonica and its non-Telxius subsidiaries, and influence over the appointment, replacement, and removal of the CEO and CFO. Following consummation of the transaction, Telefonica will continue to retain de jure control over Telxius Parent and Telxius Cable USA.

After completion of the transaction, the following individuals and entities will hold 10% or greater direct or indirect interests in Telxius Cable USA: (1) Telxius Cable América (100% equity and voting interests in Telxius Cable USA), (2) Telxius Parent (100% equity and voting interests in Telxius Cable América); (3) Telefonica (70% equity and voting interests in Telxius Parent), in which no shareholder, as of February 1, 2022, holds an interest sufficient to give it a 10% or greater direct or indirect interest in Telxius Cable USA at consummation; (4) Pontegadea (30% equity and voting interests in Telxius Parent and certain negative control rights), and (5) Mr. Amancio Ortega Gaona (99.99% equity and voting interests in Pontegadea). According to the Applicants, there will be no other 10% percent or greater direct or indirect interest holders in Telxius Cable USA.

Pontegadea certifies that it accepts and will abide by the routine conditions specified in section 1.767(g) of the Commission's rules, 47 CFR § 1.767(g).

We grant the Petition to Adopt Conditions to Authorization and License (Petition) filed in this proceeding by the National Telecommunications and Information Administration, on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications

Services Sector, on December 21, 2022. Accordingly, we condition grant of the Application on Telxius Cable América S.A., Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Telxius Cable Colombia, S.A., Telefónica, S.A., Telxius Telecom, S.A., and Pontegadea Inversiones, S.L. abiding by the commitments and undertakings set forth in:

(1) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022;

(2) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022;

(3) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Cesar Parra, Network Director, Telxius Cable Colombia, S.A., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022; and

(4) the Letter of Agreement from Gabriel Zadikian, President Board of Directors, Telxius Cable América, S.A., Guillermo Cañete, President, Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., Rafael Arranz Ruiz, Chief Operating Officer, Telxius Telecom S.A., José Manuel Santero Muñoz, Director, Strategy & Corporate Development Office, Telefónica, S.A., and Jaime Francisco Carro Merchán, General Counsel and Secretary of the Board, Pontegadea Inversiones S.L., to Assistant Secretary for Trade and Economic Security, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice; Office of Foreign Investment Review, Director, Undersecretary of Acquisition and Sustainment, U.S. Department of Defense, dated December 9, 2022.

Copies of the Petition and the LOAs are publicly available and may be viewed on the FCC website through International Bureau Filing System (IBFS) by searching for SCL-T/C-20220222-00009 and accessing "Other filings related to this application" from the Document Viewing area.

A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the transfer of control application and the underlying cable landing licenses, SCL-LIC-20160330-00011, SCL-LIC-20160525-00012, SCL-LIC-20130122-00001, SCL-LIC-20000204-00003, SCL-MOD-20190826-00028, and thus grounds for declaring the cable landing licenses terminated without further action on the part of the Commission. Failure to meet a condition of the grant of the transfer of control application or the cable landing licenses may also result in monetary sanctions or other enforcement action by the Commission.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

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Transfer of Control

Grant of Authority

Date of Action: 01/12/2023

**Current Licensee:** Telxius Cable USA, Inc.**FROM:** KKR & Co. Inc.**TO:** KKR & Co. Inc.

On June 2, 2022, Telxius Cable USA, Inc. (Telxius Cable USA) filed a notification on of the pro forma transfer of control of negative control rights over Telxius Cable USA, effective May 31, 2022. Applicants filed supplements on November 22, 2022, January 8, 2023, and January 11, 2023.

Telxius Cable USA is a licensee on the BRUSA system (SCL-LIC-20160330-00011), the MAREA system (SCL-LIC-20160525-00012), the Pacific Caribbean Cable System (PCCS) (SCL-LIC-20130122-00001), and the South America-1 (SAM-1) system (SCL-LIC-20000204-00003, SCL-MOD-20190826-00028). The BRUSA system connects Virginia Beach, Virginia; San Juan, Puerto Rico; and Fortaleza and Rio de Janeiro, Brazil. The MAREA system connects Virginia Beach, Virginia with Bilbao, Spain. PCCS connects the British Virgin Islands, Puerto Rico, Aruba, Colombia, Panama, Ecuador, and the continental United States. The SAM-1 system connects Florida, Puerto Rico, Argentina, Brazil (Fortaleza, Rio de Janeiro, Salvador and Santos), Chile (Arica and Valparaiso), Colombia, the Dominican Republic, Guatemala (Puerto Barrios and Puerto San Jose), and Peru (Lurin and Mancora).

Telxius Cable USA, a Florida company, is a wholly owned subsidiary of Telxius Cable América, a Uruguay company, which is a wholly owned subsidiary of Telxius Telecom, S.A. (Telxius Parent), a Spanish company. Pontel Participaciones, S.L. (Pontel), a Spanish company, holds 60% equity and voting interests in Telxius Parent. Taurus Bidco S.à.r.l (Taurus Bidco), a Luxembourg company ultimately owned and controlled by KKR Management, a Delaware company, holds the remaining 40% equity and voting interests and certain negative control rights over Telxius Parent. The pro forma transaction did not affect the 60% interests in Telxius Parent held by Pontel.

The pro forma transfer of control was the result of an internal reorganization that brought about certain changes to the upper-tier corporate structure of KKR Group Co. Inc. (formerly KKR & Co. Inc.) (Old Pubco), which is now a wholly owned subsidiary of KKR & Co. Inc. (formerly KKR Aubergine Inc.) (New KKR Parent).

In Step 1 of the reorganization: (1) KKR Aubergine Merger Sub II LLC (Merger Sub II) merged with Old Pubco, with Old Pubco being the surviving company in the merger; (2) holders of common stock and Series C preferred stock in Old Pubco received the same number of shares and class of stock of New KKR Parent; (3) Series I Preferred Stock of Old Pubco held by KKR Management LLP was converted into Series I preferred stock of New KKR Parent having the same rights; and (4) Old Pubco, which was now a wholly owned subsidiary of New KKR Parent, changed its name to KKR Group Co. Inc.

In Step 2 of the reorganization: (1) KKR Holdings L.P. became a subsidiary of New KKR Parent through a merger with a newly formed subsidiary of New Pubco, KKR Aubergine Merger Sub I LLC (Merger Sub I), with KKR Holdings L.P. being the surviving company in the merger; (2) in connection with the merger of KKR Holdings L.P. and Merger Sub I, each limited partner of KKR Holdings L.P. received: (i) one share of common stock of New KKR Parent for each limited partner unit in KKR Holdings L.P. and (ii) such limited partner's proportionate share of newly issued 8.5 million shares of New KKR Parent common stock; (3) as a result of the merger: (i) KKR Holdings L.P. changed its name to KKR Group Holdings L.P.; (ii) KKR Group Holdings Corp. became the general partner of KKR Group Holdings L.P.; and (iii) Series II preferred stock in Old Pubco was cancelled; and (4) New KKR Parent transferred all of its limited partner interests in KKR Holdings L.P. to Old Pubco, and Old Pubco contributed the number of limited partner interests representing 1% ownership of KKR Holdings L.P. to KKR Group Holdings Corp. As a result of the mergers, New KKR Parent became the successor public company of the businesses of KKR and changed its name to KKR & Co. Inc.

KKR Management LLP, which controlled Old Pubco through its holding of the sole share of Series I Preferred Stock, now controls New KKR Parent through its holding of the company's sole share of Series I Preferred Stock, which, among other things, continues to give KKR Management LLP the power to elect the company's board of directors. Prior to and after the transaction, KKR Management LLP remained in ultimate control of Taurus Bidco S.à r.l (Taurus Bidco), which holds 40.0% equity and voting interests in Telxius Parent and certain negative control rights. Telxius Cable USA remained under the de jure control of Telefónica, S.A. (Telefónica Parent).

Upon consummation, the 10% or greater direct or indirect interest holders of Telxius Cable USA are: (1) Telxius Cable América, S.A. (Telxius Cable América) (100% equity and voting interests in Telxius Cable USA); (2) Telxius Telecom, S.A. (Telxius Parent) (100% equity and voting interests in Telxius Cable América); (3) Pontel Participaciones, S.L. (Pontel), a Spanish entity (60.0% equity and voting interests in Telxius Parent); (4) Telefónica, S.A. (Telefónica Parent), a publicly traded Spanish entity (83.35% equity and voting interests in Pontel); (5) Taurus Bidco S.à r.l. (Taurus Bidco), a Luxembourg entity (40.0% equity and voting interests in Telxius Parent and certain negative control rights); (6) Taurus Midco S.à r.l. (Taurus Midco), a Luxembourg entity (100% equity and voting interests in Taurus Bidco); (7) Taurus Topco S.à r.l. (Taurus Topco), a Luxembourg entity (100% equity and voting interests in Taurus Midco); (8) KKR Taurus Aggregator L.P., a Canadian entity (100% equity and voting interests in Taurus Topco).

The principal direct and indirect voting interests in KKR Taurus Aggregator L.P. are held by or through the following entities: (1) KKR Taurus Aggregator GP Limited, a Cayman Islands entity (general partner of KKR Taurus Aggregator L.P. and holds 100% voting interests and less than 1% equity interest in KKR Taurus Aggregator L.P.); (2) KKR Global Infrastructure Investors II L.P., a Cayman Islands entity (sole shareholder of KKR Taurus Aggregator GP Limited and holds 100% equity and voting interests in KKR Taurus Aggregator GP Limited. KKR Global Infrastructure Investors II L.P. is also a limited partner of KKR Taurus Aggregator L.P., with no voting interest and 26.41% equity interests in KKR Taurus Aggregator L.P.); (3) KKR Taurus Co-Invest L.P., a Canadian entity (limited partner of KKR Taurus Aggregator L.P., with no voting interest and 44.97% equity interests in KKR Taurus Aggregator L.P.); (4) KKR Associates Infrastructure II L.P., a Cayman Islands entity (general partner of KKR Global Infrastructure Investors II L.P. and holds 100% voting interests and 5.0% equity interests in KKR Global Infrastructure Investors II L.P.); (5) KKR Infrastructure II Limited, a Cayman Islands entity (general partner of KKR Associates Infrastructure II L.P. and holds 100% voting interests and 99.0% equity interests in KKR Associates Infrastructure II L.P.); (6) KKR Financial Holdings LLC, a Delaware entity (50.0% voting interests in KKR Infrastructure II Limited. KKR Financial Holdings LLC's equity interest in KKR

Infrastructure II Limited is not a fixed percentage but is based on the investment returns allocable to KKR Associates Infrastructure II, L.P. as the general partner of KKR Global Infrastructure Investors II L.P.); (7) KKR Group Partnership L.P., a Cayman Islands entity (50.0% voting interests in KKR Infrastructure II Limited. KKR Group Partnership L.P.'s equity interest in KKR Infrastructure II Limited is not a fixed percentage but is based on the investment returns allocable to KKR Associates Infrastructure II, L.P. as the general partner of KKR Global Infrastructure Investors II L.P. KKR Group Partnership L.P. also holds 100% equity and voting interests in KKR Financial Holdings LLC); (8) KKR Group Holdings Corp., a Delaware entity (general partner of KKR Group Partnership L.P., in which it holds approximately 70% equity interests. KKR Group Holdings Corp. is also the general partner of KKR Group Holdings L.P., in which it holds 1% equity interest); (9) KKR Group Holdings L.P., a Delaware entity (limited partner of KKR Group Partnership L.P., in which it holds an approximate 30% equity interest); (10) Old Pubco, a Delaware entity (100% equity and voting interests in KKR Group Holdings Corp. Old Pubco is also a limited partner of KKR Group Holdings L.P., holding 0% voting interest and 99% equity interests in that entity); (11) New KKR Parent (100% equity and voting interests in KKR Group Holdings Corp.); KKR Management LLP (100% voting interests and no equity interest in New KKR Parent).

Applicants state that no other entity holds 10% or greater direct or indirect equity interest in Telxius Cable USA through either Pontel or Taurus Bidco.

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Transfer of Control

Grant of Authority

Date of Action: 01/12/2023

**Current Licensee:** Telxius Cable Colombia, S.A.**FROM:** KKR & Co. Inc.**TO:** KKR & Co. Inc.

On June 2, 2022, Telxius Cable Colombia, S.A. (Telxius Cable Colombia) filed a notification of the pro forma transfer of control of negative control rights over Telxius Cable Colombia, effective May 31, 2022. Applicants filed supplements on November 22, 2022, January 8, 2023, and January 11, 2023.

Telxius Cable Colombia is a licensee on the Pacific Caribbean Cable System (PCCS) (SCL-LIC-20130122-00001). PCCS connects the British Virgin Islands, Puerto Rico, Aruba, Colombia, Panama, Ecuador, and the continental United States.

Telxius Cable Colombia, a Colombia company, is a subsidiary of Telxius Cable América S.A. (Telxius Cable América), a Uruguay company. Telxius Cable América holds 94.985846% equity and voting interests in Telxius Cable Colombia. The remaining equity and voting interests in Telxius Cable Colombia are held by other subsidiaries of Telxius Telecom, S.A. (Telxius Parent), a Spanish company. Telxius Cable América is a wholly owned subsidiary of Telxius Parent. Pontel Participaciones, S.L. (Pontel), a Spanish company, holds 60% equity and voting interests in Telxius Parent. Taurus Bidco S.à.r.l (Taurus Bidco), a Luxembourg company ultimately owned and controlled by KKR Management, a Delaware company, holds the remaining 40% equity and voting interests and certain negative control rights over Telxius Parent. The pro forma transaction did not affect the 60% interests in Telxius Parent held by Pontel.

The pro forma transfer of control was the result of an internal reorganization that brought about certain changes to the upper-tier corporate structure of KKR Group Co. Inc. (formerly KKR & Co. Inc.) (Old Pubco), which is now a wholly owned subsidiary of KKR & Co. Inc. (formerly KKR Aubergine Inc.) (New KKR Parent).

In Step 1 of the reorganization: (1) KKR Aubergine Merger Sub II LLC (Merger Sub II) merged with Old Pubco, with Old Pubco being the surviving company in the merger; (2) holders of common stock and Series C preferred stock in Old Pubco received the same number of shares and class of stock of New KKR Parent; (3) Series I Preferred Stock of Old Pubco held by KKR Management LLP was converted into Series I preferred stock of New KKR Parent having the same rights; and (4) Old Pubco, which was now a wholly owned subsidiary of New KKR Parent, changed its name to KKR Group Co. Inc.

In Step 2 of the reorganization: (1) KKR Holdings L.P. became a subsidiary of New KKR Parent through a merger with a newly formed subsidiary of New Pubco, KKR Aubergine Merger Sub I LLC (Merger Sub I), with KKR Holdings L.P. being the surviving company in the merger; (2) in connection with the merger of KKR Holdings L.P. and Merger Sub I, each limited partner of KKR Holdings L.P. received: (i) one share of common stock of New KKR Parent for each limited partner unit in KKR Holdings L.P. and (ii) such limited partner's proportionate share of newly issued 8.5 million shares of New KKR Parent common stock; (3) as a result of the merger: (i) KKR Holdings L.P. changed its name to KKR Group Holdings L.P.; (ii) KKR Group Holdings Corp. became the general partner of KKR Group Holdings L.P.; and (iii) Series II preferred stock in Old Pubco was cancelled; and (4) New KKR Parent transferred all of its limited partner interests in KKR Holdings L.P. to Old Pubco, and Old Pubco contributed the number of limited partner interests representing 1% ownership of KKR Holdings L.P. to KKR Group Holdings Corp. As a result of the mergers, New KKR Parent became the successor public company of the businesses of KKR and changed its name to KKR & Co. Inc.

KKR Management LLP, which controlled Old Pubco through its holding of the sole share of Series I Preferred Stock, now controls New KKR Parent through its holding of the company's sole share of Series I Preferred Stock, which, among other things, continues to give KKR Management LLP the power to elect the company's board of directors. Prior to and after the transaction, KKR Management LLP remained in ultimate control of Taurus Bidco S.à.r.l (Taurus Bidco), which holds 40.0% equity and voting interests in Telxius Parent and certain negative control rights. Telxius Cable Colombia remained under the de jure control of Telefónica, S.A. (Telefónica Parent).

Upon consummation, the 10% or greater direct or indirect interest holders of Telxius Cable Colombia are: (1) Telxius Cable América, S.A. (Telxius Cable América) (94.985846% equity and voting interests in Telxius Cable Colombia); (2) Telxius Telecom, S.A. (Telxius Parent) (100% equity and voting interests in Telxius Cable América); (3) Pontel Participaciones, S.L. (Pontel), a Spanish entity (60.0% equity and voting interests in Telxius Parent); (4) Telefónica, S.A. (Telefónica Parent), a publicly traded Spanish entity (83.35% equity and voting interests in Pontel); (5) Taurus Bidco S.à.r.l. (Taurus Bidco), a Luxembourg entity (40.0% equity and voting interests in Telxius Parent and certain negative control rights); (6) Taurus Midco S.à.r.l. (Taurus Midco), a Luxembourg entity (100% equity and voting interests in Taurus Bidco); (7) Taurus Topco S.à.r.l. (Taurus Topco), a Luxembourg entity (100% equity and voting interests in Taurus Midco); (8) KKR Taurus Aggregator L.P., a Canadian entity (100% equity and voting interests in Taurus Topco).

The principal direct and indirect voting interests in KKR Taurus Aggregator L.P. are held by or through the following entities: (1) KKR Taurus Aggregator GP Limited, a Cayman Islands entity (general partner of KKR Taurus Aggregator L.P. and holds 100% voting interests and less than 1% equity interest in KKR Taurus Aggregator L.P.); (2) KKR Global Infrastructure Investors II L.P., a Cayman Islands entity (sole shareholder of KKR Taurus Aggregator GP Limited and holds 100% equity and voting interests in KKR Taurus Aggregator GP Limited. KKR Global Infrastructure Investors II L.P. is also a limited partner of KKR Taurus Aggregator L.P., with no voting interest and 26.41% equity interests in KKR Taurus Aggregator L.P.); (3) KKR Taurus Co-Invest L.P., a Canadian entity (limited partner of KKR Taurus Aggregator L.P., with no voting interest and 44.97% equity interests in KKR Taurus Aggregator L.P.); (4) KKR Associates Infrastructure II L.P., a Cayman Islands entity (general partner of KKR Global Infrastructure Investors II L.P. and holds 100% voting interests and 5.0% equity interests in KKR Global Infrastructure Investors II L.P.); (5) KKR Infrastructure II Limited, a Cayman Islands entity (general partner of KKR Associates Infrastructure II L.P. and holds 100% voting interests and 99.0% equity interests in KKR Associates Infrastructure II L.P.); (6) KKR Financial Holdings LLC, a Delaware entity (50.0% voting interests in KKR Infrastructure II Limited. KKR Financial Holdings LLC's equity interest in KKR Infrastructure II Limited is not a fixed percentage but is based on the investment returns allocable to KKR Associates Infrastructure II, L.P. as the general partner of KKR Global Infrastructure Investors II L.P.); (7) KKR Group Partnership L.P., a Cayman Islands entity (50.0% voting interests in KKR Infrastructure II Limited. KKR Group Partnership L.P.'s equity interest in KKR Infrastructure II Limited is not a fixed percentage

Investors II L.P. KKR Group Partnership L.P. also holds 100% equity and voting interests in KKR Financial Holdings LLC); (8) KKR Group Holdings Corp., a Delaware entity (general partner of KKR Group Partnership L.P., in which it holds approximately 70% equity interests. KKR Group Holdings Corp. is also the general partner of KKR Group Holdings L.P., in which it holds 1% equity interest); (9) KKR Group Holdings L.P., a Delaware entity (limited partner of KKR Group Partnership L.P., in which it holds an approximate 30% equity interest); (10) Old Pubco, a Delaware entity (100% equity and voting interests in KKR Group Holdings Corp. Old Pubco is also a limited partner of KKR Group Holdings L.P., holding 0% voting interest and 99% equity interests in that entity); (11) New KKR Parent (100% equity and voting interests in KKR Group Holdings Corp.); KKR Management LLP (100% voting interests and no equity interest in New KKR Parent).

Applicants state that no other entity holds 10% or greater direct or indirect equity interest in Telxius Cable Colombia through either Pontel or Taurus Bidco.

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Transfer of Control

Grant of Authority

Date of Action: 01/12/2023

**Current Licensee:** Telxius Cable America, S.A.**FROM:** KKR & Co. Inc.**TO:** KKR & Co. Inc.

On June 2, 2022, of Telxius Cable América, S.A. (Telxius Cable América) filed a notification of the pro forma transfer of control of negative control rights over Telxius Cable América, effective May 31, 2022. Applicants filed supplements on November 22, 2022, January 8, 2023, and January 11, 2023.

Telxius Cable América is a licensee on the BRUSA system (SCL-LIC-20160330-00011), the MAREA system (SCL-LIC-20160525-00012), the Pacific Caribbean Cable System (PCCS) (SCL-LIC-20130122-00001), and the South America-1 (SAM-1) system (SCL-LIC-20000204-00003, SCL-MOD-20190826-00028). The BRUSA system connects Virginia Beach, Virginia; San Juan, Puerto Rico; and Fortaleza and Rio de Janeiro, Brazil. The MAREA system connects Virginia Beach, Virginia with Bilbao, Spain. PCCS connects the British Virgin Islands, Puerto Rico, Aruba, Colombia, Panama, Ecuador, and the continental United States. The SAM-1 system connects Florida, Puerto Rico, Argentina, Brazil (Fortaleza, Rio de Janeiro, Salvador and Santos), Chile (Arica and Valparaiso), Colombia, the Dominican Republic, Guatemala (Puerto Barrios and Puerto San Jose), and Peru (Lurin and Mancora).

Telxius Cable América, a Uruguay company, is a wholly owned subsidiary of Telxius Telecom, S.A. (Telxius Parent), a Spanish company. Pontel Participaciones, S.L. (Pontel), a Spanish company, holds 60% equity and voting interests in Telxius Parent. Taurus Bidco S.à.r.l (Taurus Bidco), a Luxembourg company ultimately owned and controlled by KKR Management, a Delaware company, holds the remaining 40% equity and voting interests and certain negative control rights over Telxius Parent. The pro forma transaction did not affect the 60% interests in Telxius Parent held by Pontel.

The pro forma transfer of control was the result of an internal reorganization that brought about certain changes to the upper-tier corporate structure of KKR Group Co. Inc. (formerly KKR & Co. Inc.) (Old Pubco), which is now a wholly owned subsidiary of KKR & Co. Inc. (formerly KKR Aubergine Inc.) (New KKR Parent).

In Step 1 of the reorganization: (1) KKR Aubergine Merger Sub II LLC (Merger Sub II) merged with Old Pubco, with Old Pubco being the surviving company in the merger; (2) holders of common stock and Series C preferred stock in Old Pubco received the same number of shares and class of stock of New KKR Parent; (3) Series I Preferred Stock of Old Pubco held by KKR Management LLP was converted into Series I preferred stock of New KKR Parent having the same rights; and (4) Old Pubco, which was now a wholly owned subsidiary of New KKR Parent, changed its name to KKR Group Co. Inc.

In Step 2 of the reorganization: (1) KKR Holdings L.P. became a subsidiary of New KKR Parent through a merger with a newly formed subsidiary of New Pubco, KKR Aubergine Merger Sub I LLC (Merger Sub I), with KKR Holdings L.P. being the surviving company in the merger; (2) in connection with the merger of KKR Holdings L.P. and Merger Sub I, each limited partner of KKR Holdings L.P. received: (i) one share of common stock of New KKR Parent for each limited partner unit in KKR Holdings L.P. and (ii) such limited partner's proportionate share of newly issued 8.5 million shares of New KKR Parent common stock; (3) as a result of the merger: (i) KKR Holdings L.P. changed its name to KKR Group Holdings L.P.; (ii) KKR Group Holdings Corp. became the general partner of KKR Group Holdings L.P.; and (iii) Series II preferred stock in Old Pubco was cancelled; and (4) New KKR Parent transferred all of its limited partner interests in KKR Holdings L.P. to Old Pubco, and Old Pubco contributed the number of limited partner interests representing 1% ownership of KKR Holdings L.P. to KKR Group Holdings Corp. As a result of the mergers, New KKR Parent became the successor public company of the businesses of KKR and changed its name to KKR & Co. Inc.

KKR Management LLP, which controlled Old Pubco through its holding of the sole share of Series I Preferred Stock, now controls New KKR Parent through its holding of the company's sole share of Series I Preferred Stock, which, among other things, continues to give KKR Management LLP the power to elect the company's board of directors. Prior to and after the transaction, KKR Management LLP remained in ultimate control of Taurus Bidco S.à.r.l (Taurus Bidco), which holds 40.0% equity and voting interests in Telxius Parent and certain negative control rights. Telxius Cable América remained under the de jure control of Telefónica, S.A. (Telefónica Parent).

Upon consummation, the 10% or greater direct or indirect interest holders of Telxius Cable América are: (1) Telxius Telecom, S.A. (Telxius Parent) (100% equity and voting interests in Telxius Cable América); (2) Pontel Participaciones, S.L. (Pontel), a Spanish entity (60.0% equity and voting interests in Telxius Parent); (3) Telefónica, S.A. (Telefónica Parent), a publicly traded Spanish entity (83.35% equity and voting interests in Pontel); (4) Taurus Bidco S.à.r.l. (Taurus Bidco), a Luxembourg entity (40.0% equity and voting interests in Telxius Parent and certain negative control rights); (5) Taurus Midco S.à.r.l. (Taurus Midco), a Luxembourg entity (100% equity and voting interests in Taurus Bidco); (6) Taurus Topco S.à.r.l. (Taurus Topco), a Luxembourg entity (100% equity and voting interests in Taurus Midco); (7) KKR Taurus Aggregator L.P., a Canadian entity (100% equity and voting interests in Taurus Topco).

The principal direct and indirect voting interests in KKR Taurus Aggregator L.P. are held by or through the following entities: (1) KKR Taurus Aggregator GP Limited, a Cayman Islands entity (general partner of KKR Taurus Aggregator L.P. and holds 100% voting interests and less than 1% equity interest in KKR Taurus Aggregator L.P.); (2) KKR Global Infrastructure Investors II L.P., a Cayman Islands entity (sole shareholder of KKR Taurus Aggregator GP Limited and holds 100% equity and voting interests in KKR Taurus Aggregator GP Limited. KKR Global Infrastructure Investors II L.P. is also a limited partner of KKR Taurus Aggregator L.P., with no voting interest and 26.41% equity interests in KKR Taurus Aggregator L.P.); (3) KKR Taurus Co-Invest L.P., a Canadian entity (limited partner of KKR Taurus Aggregator L.P., with no voting interest and 44.97% equity interests in KKR Taurus Aggregator L.P.); (4) KKR Associates Infrastructure II L.P., a Cayman Islands entity (general partner of KKR Global Infrastructure Investors II L.P. and holds 100% voting interests and 5.0% equity interests in KKR Global Infrastructure Investors II L.P.); (5) KKR Infrastructure II Limited, a Cayman Islands entity (general partner of KKR Associates Infrastructure II L.P. and holds 100% voting interests and 99.0% equity interests in KKR Associates Infrastructure II L.P.); (6) KKR Financial Holdings LLC, a Delaware entity (50.0% voting interests in KKR Infrastructure II Limited. KKR Financial Holdings LLC's equity interest in KKR Infrastructure II Limited is not a fixed percentage but is based on the investment returns allocable to KKR Associates Infrastructure II, L.P. as the

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general partner of KKR Global Infrastructure Investors II L.P.); (7) KKR Group Partnership L.P., a Cayman Islands entity (50.0% voting interests in KKR Infrastructure II Limited. KKR Group Partnership L.P.'s equity interest in KKR Infrastructure II Limited is not a fixed percentage but is based on the investment returns allocable to KKR Associates Infrastructure II, L.P. as the general partner of KKR Global Infrastructure Investors II L.P. KKR Group Partnership L.P. also holds 100% equity and voting interests in KKR Financial Holdings LLC); (8) KKR Group Holdings Corp., a Delaware entity (general partner of KKR Group Partnership L.P., in which it holds approximately 70% equity interests. KKR Group Holdings Corp. is also the general partner of KKR Group Holdings L.P., in which it holds 1% equity interest); (9) KKR Group Holdings L.P., a Delaware entity (limited partner of KKR Group Partnership L.P., in which it holds an approximate 30% equity interest); (10) Old Pubco, a Delaware entity (100% equity and voting interests in KKR Group Holdings Corp. Old Pubco is also a limited partner of KKR Group Holdings L.P., holding 0% voting interest and 99% equity interests in that entity); (11) New KKR Parent (100% equity and voting interests in KKR Group Holdings Corp.); KKR Management LLP (100% voting interests and no equity interest in New KKR Parent).

Applicants state that no other entity holds 10% or greater direct or indirect equity interest in Telxius Cable América through either Pontel or Taurus Bidco.

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Transfer of Control

Grant of Authority

Date of Action: 01/12/2023

**Current Licensee:** Telxius Cable Puerto Rico, Inc.**FROM:** KKR & Co. Inc.**TO:** KKR & Co. Inc.

On June 2, 2022, Telxius Cable Puerto Rico, Inc. (Telxius Cable Puerto Rico) filed a notification of the pro forma transfer of control of negative control rights over Telxius Cable Puerto Rico, effective May 31, 2022. Applicants filed supplements on November 22, 2022, January 8, 2023, and January 11, 2023.

Telxius Cable Puerto Rico is a licensee on the BRUSA system (SCL-LIC-20160330-00011), the Pacific Caribbean Cable System (PCCS) (SCL-LIC-20130122-00001), and the South America-1 (SAM-1) system (SCL-LIC-20000204-00003, SCL-MOD-20190826-00028). The BRUSA system connects Virginia Beach, Virginia; San Juan, Puerto Rico; and Fortaleza and Rio de Janeiro, Brazil. PCCS connects the British Virgin Islands, Puerto Rico, Aruba, Colombia, Panama, Ecuador, and the continental United States. The SAM-1 system connects Florida, Puerto Rico, Argentina, Brazil (Fortaleza, Rio de Janeiro, Salvador and Santos), Chile (Arica and Valparaiso), Colombia, the Dominican Republic, Guatemala (Puerto Barrios and Puerto San Jose), and Peru (Lurin and Mancora).

Telxius Cable Puerto Rico, a Puerto Rico company, is a wholly owned subsidiary of Telxius Cable América, S.A. (Telxius Cable América), a Uruguayan company, which is a wholly owned subsidiary of Telxius Telecom, S.A. (Telxius Parent), a Spanish company. Pontel Participaciones, S.L. (Pontel), a Spanish company, holds 60% equity and voting interests in Telxius Parent. Taurus Bidco S.à.r.l (Taurus Bidco), a Luxembourg company ultimately owned and controlled by KKR Management, a Delaware company, holds the remaining 40% equity and voting interests and certain negative control rights over Telxius Parent. The pro forma transaction did not affect the 60% interests in Telxius Parent held by Pontel.

The pro forma transfer of control was the result of an internal reorganization that brought about certain changes to the upper-tier corporate structure of KKR Group Co. Inc. (formerly KKR & Co. Inc.) (Old Pubco), which is now a wholly owned subsidiary of KKR & Co. Inc. (formerly KKR Aubergine Inc.) (New KKR Parent).

In Step 1 of the reorganization: (1) KKR Aubergine Merger Sub II LLC (Merger Sub II) merged with Old Pubco, with Old Pubco being the surviving company in the merger; (2) holders of common stock and Series C preferred stock in Old Pubco received the same number of shares and class of stock of New KKR Parent; (3) Series I Preferred Stock of Old Pubco held by KKR Management LLP was converted into Series I preferred stock of New KKR Parent having the same rights; and (4) Old Pubco, which was now a wholly owned subsidiary of New KKR Parent, changed its name to KKR Group Co. Inc.

In Step 2 of the reorganization: (1) KKR Holdings L.P. became a subsidiary of New KKR Parent through a merger with a newly formed subsidiary of New Pubco, KKR Aubergine Merger Sub I LLC (Merger Sub I), with KKR Holdings L.P. being the surviving company in the merger; (2) in connection with the merger of KKR Holdings L.P. and Merger Sub I, each limited partner of KKR Holdings L.P. received: (i) one share of common stock of New KKR Parent for each limited partner unit in KKR Holdings L.P. and (ii) such limited partner's proportionate share of newly issued 8.5 million shares of New KKR Parent common stock; (3) as a result of the merger: (i) KKR Holdings L.P. changed its name to KKR Group Holdings L.P.; (ii) KKR Group Holdings Corp. became the general partner of KKR Group Holdings L.P.; and (iii) Series II preferred stock in Old Pubco was cancelled; and (4) New KKR Parent transferred all of its limited partner interests in KKR Holdings L.P. to Old Pubco, and Old Pubco contributed the number of limited partner interests representing 1% ownership of KKR Holdings L.P. to KKR Group Holdings Corp. As a result of the mergers, New KKR Parent became the successor public company of the businesses of KKR and changed its name to KKR & Co. Inc.

KKR Management LLP, which controlled Old Pubco through its holding of the sole share of Series I Preferred Stock, now controls New KKR Parent through its holding of the company's sole share of Series I Preferred Stock, which, among other things, continues to give KKR Management LLP the power to elect the company's board of directors. Prior to and after the transaction, KKR Management LLP remained in ultimate control of Taurus Bidco S.à.r.l (Taurus Bidco), which holds 40.0% equity and voting interests in Telxius Parent and certain negative control rights. Telxius Cable Puerto Rico remained under the de jure control of Telefónica, S.A. (Telefónica Parent).

Upon consummation, the 10% or greater direct or indirect interest holders of Telxius Cable Puerto Rico are: (1) Telxius Cable América, S.A. (Telxius Cable América) (100% equity and voting interests in Telxius Cable Puerto Rico); (2) Telxius Telecom, S.A. (Telxius Parent) (100% equity and voting interests in Telxius Cable América); (3) Pontel Participaciones, S.L. (Pontel), a Spanish entity (60.0% equity and voting interests in Telxius Parent); (4) Telefónica, S.A. (Telefónica Parent), a publicly traded Spanish entity (83.35% equity and voting interests in Pontel); (5) Taurus Bidco S.à.r.l. (Taurus Bidco), a Luxembourg entity (40.0% equity and voting interests in Telxius Parent and certain negative control rights); (6) Taurus Midco S.à.r.l. (Taurus Midco), a Luxembourg entity (100% equity and voting interests in Taurus Bidco); (7) Taurus Topco S.à.r.l. (Taurus Topco), a Luxembourg entity (100% equity and voting interests in Taurus Midco); (8) KKR Taurus Aggregator L.P., a Canadian entity (100% equity and voting interests in Taurus Topco).

The principal direct and indirect voting interests in KKR Taurus Aggregator L.P. are held by or through the following entities: (1) KKR Taurus Aggregator GP Limited, a Cayman Islands entity (general partner of KKR Taurus Aggregator L.P. and holds 100% voting interests and less than 1% equity interest in KKR Taurus Aggregator L.P.); (2) KKR Global Infrastructure Investors II L.P., a Cayman Islands entity (sole shareholder of KKR Taurus Aggregator GP Limited and holds 100% equity and voting interests in KKR Taurus Aggregator GP Limited. KKR Global Infrastructure Investors II L.P. is also a limited partner of KKR Taurus Aggregator L.P., with no voting interest and 26.41% equity interests in KKR Taurus Aggregator L.P.); (3) KKR Taurus Co-Invest L.P., a Canadian entity (limited partner of KKR Taurus Aggregator L.P., with no voting interest and 44.97% equity interests in KKR Taurus Aggregator L.P.); (4) KKR Associates Infrastructure II L.P., a Cayman Islands entity (general partner of KKR Global Infrastructure Investors II L.P. and holds 100% voting interests and 5.0% equity interests in KKR Global Infrastructure Investors II L.P.); (5) KKR Infrastructure II Limited, a Cayman Islands entity (general partner of KKR Associates Infrastructure II L.P. and holds 100% voting interests and 99.0% equity interests in KKR Associates Infrastructure II L.P.); (6) KKR Financial Holdings LLC, a Delaware entity (50.0% voting interests in KKR Infrastructure II Limited. KKR Financial Holdings LLC's equity interest in KKR Infrastructure II Limited is not a fixed percentage but is based on the investment returns allocable to KKR Associates Infrastructure II, L.P. as the

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general partner of KKR Global Infrastructure Investors II L.P.); (7) KKR Group Partnership L.P., a Cayman Islands entity (50.0% voting interests in KKR Infrastructure II Limited. KKR Group Partnership L.P.'s equity interest in KKR Infrastructure II Limited is not a fixed percentage but is based on the investment returns allocable to KKR Associates Infrastructure II, L.P. as the general partner of KKR Global Infrastructure Investors II L.P. KKR Group Partnership L.P. also holds 100% equity and voting interests in KKR Financial Holdings LLC); (8) KKR Group Holdings Corp., a Delaware entity (general partner of KKR Group Partnership L.P., in which it holds approximately 70% equity interests. KKR Group Holdings Corp. is also the general partner of KKR Group Holdings L.P., in which it holds 1% equity interest); (9) KKR Group Holdings L.P., a Delaware entity (limited partner of KKR Group Partnership L.P., in which it holds an approximate 30% equity interest); (10) Old Pubco, a Delaware entity (100% equity and voting interests in KKR Group Holdings Corp. Old Pubco is also a limited partner of KKR Group Holdings L.P., holding 0% voting interest and 99% equity interests in that entity); (11) New KKR Parent (100% equity and voting interests in KKR Group Holdings Corp.); KKR Management LLP (100% voting interests and no equity interest in New KKR Parent).

Applicants state that no other entity holds 10% or greater direct or indirect equity interest in Telxius Cable Puerto Rico through either Pontel or Taurus Bidco.

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# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
45 L STREET NE  
WASHINGTON D.C. 20554

News media information 202-418-0500  
Internet: <http://www.fcc.gov> (or <ftp.fcc.gov>)  
TTY (202) 418-2555

DA No. 23-51

Report No. TEL-02246

Friday January 20, 2023

## International Authorizations Granted

### Section 214 Applications (47 CFR §§ 63.18, 63.24); Section 310(b) Petitions (47 CFR § 1.5000)

The following applications have been granted pursuant to the Commission's processing procedures set forth in sections 63.12, 63.20 of the Commission's rules, 47 CFR §§ 63.12, 63.20, other provisions of the Commission's rules, or procedures set forth in an earlier public notice listing the applications as accepted for filing.

Unless otherwise noted, these grants authorize the applicants: (1) to become a facilities-based international common carrier subject to 47 CFR §§ 63.21, 63.22; and/or (2) to become a resale-based international common carrier subject to 47 CFR §§ 63.21, 63.23; (3) to assign or transfer control of international section 214 authority in accordance with 47 CFR § 63.24; or (4) to exceed the foreign ownership benchmarks applicable to common carrier radio licensees under 47 U.S.C. § 310(b); see Subpart T of Part 1 of the Commission's rules, 47 CFR §§ 1.5000-5004.

THIS PUBLIC NOTICE SERVES AS EACH NEWLY AUTHORIZED CARRIER'S SECTION 214 CERTIFICATE. It contains general and specific conditions, which are set forth below. Newly authorized carriers should carefully review the terms and conditions of their authorizations. Failure to comply with general or specific conditions of an authorization, or with other relevant Commission rules and policies, could result in fines and forfeitures.

Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, in regard to the grant of any of these applications may be filed within thirty days of this public notice (see 47 CFR § 1.4(b)(2)).

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ITC-ASG-20221117-00134 E Central Louisiana Cellular, LLC

Assignment

Grant of Authority

Date of Action: 01/17/2023

Current Licensee: Central Louisiana License Co., LLC

FROM: Central Louisiana License Co., LLC

TO: Central Louisiana Cellular, LLC

On November 17, 2022, Central Louisiana License Co., LLC (License Co.) filed a notification of the pro forma assignment of the international section 214 authorization held by License Co, ITC-214-20101103-00432, to Central Louisiana Cellular LLC (Cellular), effective October 27, 2022. Cellular is a wholly owned subsidiary of License Co. In a corporate reorganization, License Co. assigned its international 214 authorization to Cellular.

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**ITC-ASG-20221202-00144** E

Mashell Telecom, Inc. d/b/a Rainier Connect

Assignment

Grant of Authority

Date of Action: 01/17/2023

**Current Licensee:** Rainier Connect

**FROM:** Rainier Connect

**TO:** Mashell Telecom, Inc. d/b/a Rainier Connect

On December 2, 2022, Mashell Telecom, Inc. d/b/a Rainier Connect (Mashell Telecom) filed a notification of the pro forma assignment of the international 214 authorization held by Rainier Connect Inc. (Rainier), ITC-214-19970821-00502, to Mashell Telecom, effective December 31, 2003. Mashell Telecom and Rainier were both wholly owned subsidiaries of Mashell Inc. In a corporate reorganization, Rainier was merged into Mashell Telecom with Mashell Telecom being the surviving entity.

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Transfer of Control

Grant of Authority

Date of Action: 01/12/2023

**Current Licensee:** Telxius Cable Puerto Rico, Inc.**FROM:** KKR Management LLP**TO:** Pontegadea Inversiones, S.L.

Telxius Cable Puerto Rico, Inc. (Telxius Cable Puerto Rico), a Puerto Rico company that holds an international section 214 authorization (ITC-214-20131121-00316), filed an application (Application) for consent to transfer control of negative control rights over Telxius Cable Puerto Rico from KKR Management LLP (KKR Management) to Pontegadea Inversiones, S.L. (Pontegadea). The Application was placed on Public Notice on March 11, 2022. See Non Streamlined International Applications/Petitions Accepted For Filing, File No. ITC-T/C-20220222-00030, Public Notice, Report No. TEL-02168NS (IB March 11, 2022). Applicants filed supplements to the Application on January 8, 2023 and January 11, 2023.

On March 16, 2022, the Department of Justice (DOJ), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a letter notifying the Commission that the Committee was reviewing the Application for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Application. We deferred action on the Application in response to the Committee's request. On December 21, 2022, the National Telecommunications and Information Administration, on behalf of the Committee, filed a Petition to Adopt Conditions to Authorization and License. The Committee has no objection to the Commission granting the application, provided that the Commission conditions its approval on the assurance of Telxius Cable Puerto Rico, Inc. and Telxius Cable USA, Inc. to abide by the commitments and undertakings set forth in the December 9, 2022, Letter of Agreement (LOA) attached to the Petition to Adopt Conditions to Authorization and License.

Telxius Cable Puerto Rico is a wholly owned subsidiary of Telxius Cable América, S.A. (Telxius Cable América), a Uruguay company, which is a wholly owned subsidiary of Telxius Telecom, S.A. (Telxius Parent), a Spanish company. Pontel Participaciones, S.L. (Pontel), a Spanish company, holds 60% equity and voting interests in Telxius Parent. Taurus Bidco S.à.r.l (Taurus Bidco), a Luxembourg company ultimately owned and controlled by KKR Management, a Delaware company, holds the remaining 40% equity and voting interests and certain negative control rights over Telxius Parent. Telefónica, S.A. (Telefonica), a publicly traded Spanish company, holds 83.35% equity and voting interests in Pontel and ultimate de jure control over Telxius Parent. The remaining 16.65% voting and equity interests in Pontel are held by Pontegadea, a Spanish company, that is 99.99% owned by Mr. Amancio Ortega Gaona, a citizen of Spain.

The transaction will be comprised of a series of steps. First, the 40% equity and voting interests and negative control rights currently held by Taurus Bidco in Telxius Parent will be acquired by Pontel. Simultaneously, Telefonica and Pontegadea will carry out a capital restructuring that will result in Telefonica holding 70% voting and equity interests in Pontel and Pontegadea holding the remaining 30% voting and equity interests in Pontel. As soon as possible thereafter, Telefonica and Pontel will restructure their interests by merging Pontel into Telxius Parent, with Telxius Parent surviving, such that Telefonica (70%) and Pontegadea (30%) will hold their interests directly in Telxius Parent.

As part of the transaction, a Shareholder Agreement will be executed pursuant to which Pontegadea will acquire certain negative control rights over shareholder, board of directors, and third-party transaction matters that could be deemed to constitute de facto control. The Shareholder Agreement gives Pontegadea certain rights beyond standard minority shareholder protections that will provide Pontegadea with an effective veto over certain Pontel (and following the restructuring, Telxius Parent) matters, including business plan, annual budget, ability to enter into contracts above a certain value threshold, ability to enter into related party transactions with Telefonica and its non-Telxius subsidiaries, and influence over the appointment, replacement, and removal of the CEO and CFO. Following consummation of the transaction, Telefonica will continue to retain de jure control over Telxius Parent and Telxius Cable Puerto Rico.

After completion of the transaction, the following individuals and entities will hold 10% or greater direct or indirect interests in Telxius Cable Puerto Rico: (1) Telxius Cable América (100% equity and voting interests in Telxius Cable Puerto Rico), (2) Telxius Parent (100% equity and voting interests in Telxius Cable América); (3) Telefonica (70% equity and voting interests in Telxius Parent), in which no shareholder, as of February 1, 2022, holds an interest sufficient to give it a 10% or greater direct or indirect interest in Telxius Cable Puerto Rico at consummation; (4) Pontegadea (30% equity and voting interests in Telxius Parent and certain negative control rights), and (5) Mr. Amancio Ortega Gaona (99.99% equity and voting interests in Pontegadea). According to the Applicants, there will be no other 10% or greater direct or indirect interest holders in Telxius Cable Puerto Rico.

We grant the Petition to Adopt Conditions to Authorization and License (Petition) filed in this proceeding by the National Telecommunications and Information Administration, on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, on December 21, 2022. Accordingly, we condition grant of the Application on Telxius Cable Puerto Rico, Inc. and Telxius Cable USA, Inc. abiding by the commitments and undertakings set forth in the Letter of Agreement from Guillermo Cañete, President, Telxius Cable USA, Inc., and Guillermo Cañete, President, Telxius Cable Puerto Rico, Inc., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, National Security Division, United States Department of Justice, dated December 9, 2022.

Copies of the Petition and the LOA are publicly available and may be viewed on the FCC website through International Bureau Filing System (IBFS) by searching for ITC-T/C-20220222-00030 and accessing "Other filings related to this application" from the Document Viewing area.

A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the transfer of control application and the underlying international section 214 authorization, ITC-214-20131121-00316, and thus grounds for declaring the cable landing licenses terminated without further action on the part of the Commission. Failure to meet a condition of the grant of the transfer of control application or the cable landing licenses may also result in monetary sanctions or other enforcement action by the Commission.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

Transfer of Control

Grant of Authority

Date of Action: 01/12/2023

**Current Licensee:** Telxius Cable USA, Inc.**FROM:** KKR Management LLP**TO:** Pontegadea Inversiones, S.L.

Telxius Cable USA, Inc. (Telxius Cable USA), a Florida corporation that holds international section 214 authorizations (ITC-214-20080709-00314, ITC-214-20040518-00203), filed an application (Application) for consent to transfer control of negative control rights over Telxius Cable USA from KKR Management LLP (KKR Management) to Pontegadea Inversiones, S.L. (Pontegadea). The Application was placed on Public Notice on March 11, 2022. See Non Streamlined International Applications/Petitions Accepted For Filing, File No. ITC-T/C-20220222-00031, Public Notice, Report No. TEL-02168NS (IB March 11, 2022). Applicants filed supplements to the Application on January 8, 2023 and January 11, 2023.

On March 16, 2022, the Department of Justice (DOJ), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a letter notifying the Commission that the Committee was reviewing the Application for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Application. We deferred action on the Application in response to the Committee's request. On December 21, 2022, the National Telecommunications and Information Administration, on behalf of the Committee, filed a Petition to Adopt Conditions to Authorization and License. The Committee has no objection to the Commission granting the application, provided that the Commission conditions its approval on the assurance of Telxius Cable USA, Inc. and Telxius Cable Puerto Rico, Inc. to abide by the commitments and undertakings set forth in the December 9, 2022, Letter of Agreement (LOA) attached to the Petition to Adopt Conditions to Authorization and License.

Telxius Cable USA is a wholly owned subsidiary of Telxius Cable América, a Uruguay company, which is a wholly owned subsidiary of Telxius Telecom, S.A. (Telxius Parent), a Spanish company. Pontel Participaciones, S.L. (Pontel), a Spanish company, holds 60% equity and voting interests in Telxius Parent. Taurus Bidco S.à.r.l (Taurus Bidco), a Luxembourg company ultimately owned and controlled by KKR Management, a Delaware company, holds the remaining 40% equity and voting interests and certain negative control rights over Telxius Parent. Telefonica, S.A. (Telefonica), a publicly traded Spanish company, holds 83.35% equity and voting interests in Pontel and ultimate de jure control over Telxius Parent. The remaining 16.65% voting and equity interests in Pontel are held by Pontegadea, a Spanish company, that is 99.99% owned by Mr. Amancio Ortega Gaona, a citizen of Spain.

The transaction will be comprised of a series of steps. First, the 40% equity and voting interests and negative control rights currently held by Taurus Bidco in Telxius Parent will be acquired by Pontel. Simultaneously, Telefonica and Pontegadea will carry out a capital restructuring that will result in Telefonica holding 70% voting and equity interests in Pontel and Pontegadea holding the remaining 30% voting and equity interests in Pontel. As soon as possible thereafter, Telefonica and Pontel will restructure their interests by merging Pontel into Telxius Parent, with Telxius Parent surviving, such that Telefonica (70%) and Pontegadea (30%) will hold their interests directly in Telxius Parent.

As part of the transaction, a Shareholder Agreement will be executed pursuant to which Pontegadea will acquire certain negative control rights over shareholder, board of directors, and third-party transaction matters that could be deemed to constitute de facto control. The Shareholder Agreement gives Pontegadea certain rights beyond standard minority shareholder protections that will provide Pontegadea with an effective veto over certain Pontel (and following the restructuring, Telxius Parent) matters, including business plan, annual budget, ability to enter into contracts above a certain value threshold, ability to enter into related party transactions with Telefonica and its non-Telxius subsidiaries, and influence over the appointment, replacement, and removal of the CEO and CFO. Following consummation of the transaction, Telefonica will continue to retain de jure control over Telxius Parent and Telxius Cable USA.

After completion of the transaction, the following individuals and entities will hold 10% or greater direct or indirect interests in Telxius Cable USA: (1) Telxius Cable América (100% equity and voting interests in Telxius Cable USA), (2) Telxius Parent (100% equity and voting interests in Telxius Cable América); (3) Telefonica (70% equity and voting interests in Telxius Parent), in which no shareholder, as of February 1, 2022, holds an interest sufficient to give it a 10% or greater direct or indirect interest in Telxius Cable USA at consummation; (4) Pontegadea (30% equity and voting interests in Telxius Parent and certain negative control rights), and (5) Mr. Amancio Ortega Gaona (99.99% equity and voting interests in Pontegadea). According to the Applicants, there will be no other 10% or greater direct or indirect interest holders in Telxius Cable USA.

We grant the Petition to Adopt Conditions to Authorization and License (Petition) filed in this proceeding by the National Telecommunications and Information Administration, on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, on December 21, 2022. Accordingly, we condition grant of the Application on Telxius Cable USA, Inc. and Telxius Cable Puerto Rico, Inc. abiding by the commitments and undertakings set forth in the Letter of Agreement from Guillermo Cañete, President, Telxius Cable USA, Inc., and Guillermo Cañete, President, Telxius Cable Puerto Rico, Inc., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, National Security Division, United States Department of Justice, dated December 9, 2022.

Copies of the Petition and the LOA are publicly available and may be viewed on the FCC website through International Bureau Filing System (IBFS) by searching for ITC-T/C-20220222-00031 and accessing "Other filings related to this application" from the Document Viewing area.

A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the transfer of control application and the underlying cable landing licenses, ITC-214-20080709-00314, ITC-214-20040518-00203, and thus grounds for declaring the cable landing licenses terminated without further action on the part of the Commission. Failure to meet a condition of the grant of the transfer of control application or the cable landing licenses may also result in monetary sanctions or other enforcement action by the Commission.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

Transfer of Control

Grant of Authority

Date of Action: 01/12/2023

**Current Licensee:** Telxius Cable USA, Inc.**FROM:** KKR & Co. Inc.**TO:** KKR & Co. Inc.

A notification was filed On June 2, 2022, Telxius Cable USA, Inc. (Telxius Cable USA), a Florida company that holds international section 214 authorizations (ITC-214-20080709-00314, ITC-214-20040518-00203), filed a notification of the pro forma transfer of control of negative control rights over Telxius Cable USA, effective May 31, 2022. Applicants filed a supplement on January 11, 2023.

Telxius Cable USA is a wholly owned subsidiary of Telxius Cable América, a Uruguay company, which is a wholly owned subsidiary of Telxius Telecom, S.A. (Telxius Parent), a Spanish company. Pontel Participaciones, S.L. (Pontel), a Spanish company, holds 60% equity and voting interests in Telxius Parent. Taurus Bidco S.à.r.l (Taurus Bidco), a Luxembourg company ultimately owned and controlled by KKR Management, a Delaware company, holds the remaining 40% equity and voting interests and certain negative control rights over Telxius Parent. The pro forma transaction did not affect the 60% interests in Telxius Parent held by Pontel.

The pro forma transfer of control was the result of an internal reorganization that brought about certain changes to the upper-tier corporate structure of KKR Group Co. Inc. (formerly KKR & Co. Inc.) (Old Pubco), which is now a wholly owned subsidiary of KKR & Co. Inc. (formerly KKR Aubergine Inc.) (New KKR Parent).

In Step 1 of the reorganization: (1) KKR Aubergine Merger Sub II LLC (Merger Sub II) merged with Old Pubco, with Old Pubco being the surviving company in the merger; (2) holders of common stock and Series C preferred stock in Old Pubco received the same number of shares and class of stock of New KKR Parent; (3) Series I Preferred Stock of Old Pubco held by KKR Management LLP was converted into Series I preferred stock of New KKR Parent having the same rights; and (4) Old Pubco, which was now a wholly owned subsidiary of New KKR Parent, changed its name to KKR Group Co. Inc.

In Step 2 of the reorganization: (1) KKR Holdings L.P. became a subsidiary of New KKR Parent through a merger with a newly formed subsidiary of New Pubco, KKR Aubergine Merger Sub I LLC (Merger Sub I), with KKR Holdings L.P. being the surviving company in the merger; (2) in connection with the merger of KKR Holdings L.P. and Merger Sub I, each limited partner of KKR Holdings L.P. received: (i) one share of common stock of New KKR Parent for each limited partner unit in KKR Holdings L.P. and (ii) such limited partner's proportionate share of newly issued 8.5 million shares of New KKR Parent common stock; (3) as a result of the merger: (i) KKR Holdings L.P. changed its name to KKR Group Holdings L.P.; (ii) KKR Group Holdings Corp. became the general partner of KKR Group Holdings L.P.; and (iii) Series II preferred stock in Old Pubco was cancelled; and (4) New KKR Parent transferred all of its limited partner interests in KKR Holdings L.P. to Old Pubco, and Old Pubco contributed the number of limited partner interests representing 1% ownership of KKR Holdings L.P. to KKR Group Holdings Corp. As a result of the mergers, New KKR Parent became the successor public company of the businesses of KKR and changed its name to KKR & Co. Inc.

KKR Management LLP, which controlled Old Pubco through its holding of the sole share of Series I Preferred Stock, now controls New KKR Parent through its holding of the company's sole share of Series I Preferred Stock, which, among other things, continues to give KKR Management LLP the power to elect the company's board of directors. Prior to and after the transaction, KKR Management LLP remained in ultimate control of Taurus Bidco S.à r.l (Taurus Bidco), which holds 40.0% equity and voting interests in Telxius Parent and certain negative control rights. Telxius Cable USA remained under the de jure control of Telefónica, S.A. (Telefónica Parent).

Upon consummation, the 10% or greater direct or indirect interest holders of Telxius Cable USA are: (1) Telxius Cable América, S.A. (Telxius Cable América) (100% equity and voting interests in Telxius Cable USA); (2) Telxius Telecom, S.A. (Telxius Parent) (100% equity and voting interests in Telxius Cable América); (3) Pontel Participaciones, S.L. (Pontel), a Spanish entity (60.0% equity and voting interests in Telxius Parent); (4) Telefónica, S.A. (Telefónica Parent), a publicly traded Spanish entity (83.35% equity and voting interests in Pontel); (5) Taurus Bidco S.à r.l. (Taurus Bidco), a Luxembourg entity (40.0% equity and voting interests in Telxius Parent and certain negative control rights); (6) Taurus Mideo S.à r.l. (Taurus Mideo), a Luxembourg entity (100% equity and voting interests in Taurus Bidco); (7) Taurus Topco S.à r.l. (Taurus Topco), a Luxembourg entity (100% equity and voting interests in Taurus Mideo); (8) KKR Taurus Aggregator L.P., a Canadian entity (100% equity and voting interests in Taurus Topco).

The principal direct and indirect voting interests in KKR Taurus Aggregator L.P. are held by or through the following entities: (1) KKR Taurus Aggregator GP Limited, a Cayman Islands entity (general partner of KKR Taurus Aggregator L.P. and holds 100% voting interests and less than 1% equity interest in KKR Taurus Aggregator L.P.); (2) KKR Global Infrastructure Investors II L.P., a Cayman Islands entity (sole shareholder of KKR Taurus Aggregator GP Limited and holds 100% equity and voting interests in KKR Taurus Aggregator GP Limited. KKR Global Infrastructure Investors II L.P. is also a limited partner of KKR Taurus Aggregator L.P., with no voting interest and 26.41% equity interests in KKR Taurus Aggregator L.P.); (3) KKR Taurus Co-Invest L.P., a Canadian entity (limited partner of KKR Taurus Aggregator L.P., with no voting interest and 44.97% equity interests in KKR Taurus Aggregator L.P.); (4) KKR Associates Infrastructure II L.P., a Cayman Islands entity (general partner of KKR Global Infrastructure Investors II L.P. and holds 100% voting interests and 5.0% equity interests in KKR Global Infrastructure Investors II L.P.); (5) KKR Infrastructure II Limited, a Cayman Islands entity (general partner of KKR Associates Infrastructure II L.P. and holds 100% voting interests and 99.0% equity interests in KKR Associates Infrastructure II L.P.); (6) KKR Financial Holdings LLC, a Delaware entity (50.0% voting interests in KKR Infrastructure II Limited. KKR Financial Holdings LLC's equity interest in KKR Infrastructure II Limited is not a fixed percentage but is based on the investment returns allocable to KKR Associates Infrastructure II, L.P. as the general partner of KKR Global Infrastructure Investors II L.P.); (7) KKR Group Partnership L.P., a Cayman Islands entity (50.0% voting interests in KKR Infrastructure II Limited. KKR Group Partnership L.P.'s equity interest in KKR Infrastructure II Limited is not a fixed percentage but is based on the investment returns allocable to KKR Associates Infrastructure II, L.P. as the general partner of KKR Global Infrastructure Investors II L.P. KKR Group Partnership L.P. also holds 100% equity and voting interests in KKR Financial Holdings LLC); (8) KKR Group Holdings Corp., a Delaware entity (general partner of KKR Group Partnership L.P., in which it holds approximately 70% equity interests. KKR Group Holdings Corp. is also the general partner of KKR Group Holdings L.P., in which it holds 1% equity interest); (9) KKR Group Holdings L.P.,

— a Delaware entity (limited partner of KKR Group Partnership L.P., in which it holds an approximate 30% equity interest); (10) Old Pubco, a Delaware entity (100% equity and voting interests in KKR Group Holdings Corp. Old Pubco is also a limited partner of KKR Group Holdings L.P., holding 0% voting interest and 99% equity interests in that entity); (11) New KKR Parent (100% equity and voting interests in KKR Group Holdings Corp.); KKR Management LLP (100% voting interests and no equity interest in New KKR Parent).

Applicants state that no other entity holds 10% or greater direct or indirect equity interest in Telxius Cable USA.

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Transfer of Control

Grant of Authority

Date of Action: 01/12/2023

**Current Licensee:** Telxius Cable Puerto Rico, Inc.**FROM:** KKR & Co. Inc.**TO:** KKR & Co. Inc.

A notification was filed On June 2, 2022, Telxius Cable Puerto Rico, Inc. (Telxius Cable Puerto Rico), a Puerto Rico company that holds an international section 214 authorization (ITC-214-20131121-00316), filed a notification pro forma transfer of control of negative control rights over Telxius Cable Puerto Rico, effective May 31, 2022. Applicants filed a supplement on January 11, 2023.

Telxius Cable Puerto Rico is a wholly owned subsidiary of Telxius Cable América, S.A. (Telxius Cable América), a Uruguay company, which is a wholly owned subsidiary of Telxius Telecom, S.A. (Telxius Parent), a Spanish company. Pontel Participaciones, S.L. (Pontel), a Spanish company, holds 60% equity and voting interests in Telxius Parent. Taurus Bidco S.à.r.l (Taurus Bidco), a Luxembourg company ultimately owned and controlled by KKR Management, a Delaware company, holds the remaining 40% equity and voting interests and certain negative control rights over Telxius Parent. The pro forma transaction did not affect the 60% interests in Telxius Parent held by Pontel.

The pro forma transfer of control was the result of an internal reorganization that brought about certain changes to the upper-tier corporate structure of KKR Group Co. Inc. (formerly KKR & Co. Inc.) (Old Pubco), which is now a wholly owned subsidiary of KKR & Co. Inc. (formerly KKR Aubergine Inc.) (New KKR Parent).

In Step 1 of the reorganization: (1) KKR Aubergine Merger Sub II LLC (Merger Sub II) merged with Old Pubco, with Old Pubco being the surviving company in the merger; (2) holders of common stock and Series C preferred stock in Old Pubco received the same number of shares and class of stock of New KKR Parent; (3) Series I Preferred Stock of Old Pubco held by KKR Management LLP was converted into Series I preferred stock of New KKR Parent having the same rights; and (4) Old Pubco, which was now a wholly owned subsidiary of New KKR Parent, changed its name to KKR Group Co. Inc.

In Step 2 of the reorganization: (1) KKR Holdings L.P. became a subsidiary of New KKR Parent through a merger with a newly formed subsidiary of New Pubco, KKR Aubergine Merger Sub I LLC (Merger Sub I), with KKR Holdings L.P. being the surviving company in the merger; (2) in connection with the merger of KKR Holdings L.P. and Merger Sub I, each limited partner of KKR Holdings L.P. received: (i) one share of common stock of New KKR Parent for each limited partner unit in KKR Holdings L.P. and (ii) such limited partner's proportionate share of newly issued 8.5 million shares of New KKR Parent common stock; (3) as a result of the merger: (i) KKR Holdings L.P. changed its name to KKR Group Holdings L.P.; (ii) KKR Group Holdings Corp. became the general partner of KKR Group Holdings L.P.; and (iii) Series II preferred stock in Old Pubco was cancelled; and (4) New KKR Parent transferred all of its limited partner interests in KKR Holdings L.P. to Old Pubco, and Old Pubco contributed the number of limited partner interests representing 1% ownership of KKR Holdings L.P. to KKR Group Holdings Corp. As a result of the mergers, New KKR Parent became the successor public company of the businesses of KKR and changed its name to KKR & Co. Inc.

KKR Management LLP, which controlled Old Pubco through its holding of the sole share of Series I Preferred Stock, now controls New KKR Parent through its holding of the company's sole share of Series I Preferred Stock, which, among other things, continues to give KKR Management LLP the power to elect the company's board of directors. Prior to and after the transaction, KKR Management LLP remained in ultimate control of Taurus Bidco S.à.r.l (Taurus Bidco), which holds 40.0% equity and voting interests in Telxius Parent and certain negative control rights. Telxius Cable Puerto Rico remained under the de jure control of Telefónica, S.A. (Telefónica Parent).

Upon consummation, the 10% or greater direct or indirect interest holders of Telxius Cable Puerto Rico are: (1) Telxius Cable América, S.A. (Telxius Cable América) (100% equity and voting interests in Telxius Cable Puerto Rico); (2) Telxius Telecom, S.A. (Telxius Parent) (100% equity and voting interests in Telxius Cable América); (3) Pontel Participaciones, S.L. (Pontel), a Spanish entity (60.0% equity and voting interests in Telxius Parent); (4) Telefónica, S.A. (Telefónica Parent), a publicly traded Spanish entity (83.35% equity and voting interests in Pontel); (5) Taurus Bidco S.à.r.l. (Taurus Bidco), a Luxembourg entity (40.0% equity and voting interests in Telxius Parent and certain negative control rights); (6) Taurus Midco S.à.r.l. (Taurus Midco), a Luxembourg entity (100% equity and voting interests in Taurus Bidco); (7) Taurus Topco S.à.r.l. (Taurus Topco), a Luxembourg entity (100% equity and voting interests in Taurus Midco); (8) KKR Taurus Aggregator L.P., a Canadian entity (100% equity and voting interests in Taurus Topco).

The principal direct and indirect voting interests in KKR Taurus Aggregator L.P. are held by or through the following entities: (1) KKR Taurus Aggregator GP Limited, a Cayman Islands entity (general partner of KKR Taurus Aggregator L.P. and holds 100% voting interests and less than 1% equity interest in KKR Taurus Aggregator L.P.); (2) KKR Global Infrastructure Investors II L.P., a Cayman Islands entity (sole shareholder of KKR Taurus Aggregator GP Limited and holds 100% equity and voting interests in KKR Taurus Aggregator GP Limited. KKR Global Infrastructure Investors II L.P. is also a limited partner of KKR Taurus Aggregator L.P., with no voting interest and 26.41% equity interests in KKR Taurus Aggregator L.P.); (3) KKR Taurus Co-Invest L.P., a Canadian entity (limited partner of KKR Taurus Aggregator L.P., with no voting interest and 44.97% equity interests in KKR Taurus Aggregator L.P.); (4) KKR Associates Infrastructure II L.P., a Cayman Islands entity (general partner of KKR Global Infrastructure Investors II L.P. and holds 100% voting interests and 5.0% equity interests in KKR Global Infrastructure Investors II L.P.); (5) KKR Infrastructure II Limited, a Cayman Islands entity (general partner of KKR Associates Infrastructure II L.P. and holds 100% voting interests and 99.0% equity interests in KKR Associates Infrastructure II L.P.); (6) KKR Financial Holdings LLC, a Delaware entity (50.0% voting interests in KKR Infrastructure II Limited. KKR Financial Holdings LLC's equity interest in KKR Infrastructure II Limited is not a fixed percentage but is based on the investment returns allocable to KKR Associates Infrastructure II, L.P. as the general partner of KKR Global Infrastructure Investors II L.P.); (7) KKR Group Partnership L.P., a Cayman Islands entity (50.0% voting interests in KKR Infrastructure II Limited. KKR Group Partnership L.P.'s equity interest in KKR Infrastructure II Limited is not a fixed percentage but is based on the investment returns allocable to KKR Associates Infrastructure II, L.P. as the general partner of KKR Global Infrastructure Investors II L.P. KKR Group Partnership L.P. also holds 100% equity and voting interests in KKR Financial Holdings LLC); (8) KKR Group Holdings Corp., a Delaware entity (general partner of KKR Group Partnership L.P., in which it holds approximately 70% equity interests. KKR Group Holdings Corp. is also the general partner of KKR Group Holdings L.P., in which it holds 1% equity interest); (9) KKR Group Holdings L.P.,

a Delaware entity (limited partner of KKR Group Partnership L.P., in which it holds an approximate 30% equity interest); (10) Old Pubco, a Delaware entity (100% equity and voting interests in KKR Group Holdings Corp. Old Pubco is also a limited partner of KKR Group Holdings L.P., holding 0% voting interest and 99% equity interests in that entity); (11) New KKR Parent (100% equity and voting interests in KKR Group Holdings Corp.); KKR Management LLP (100% voting interests and no equity interest in New KKR Parent).

Applicants state that no other entity holds 10% or greater direct or indirect equity interest in Telxius Cable Puerto Rico.

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**ITC-T/C-20221213-00154** E Northwest Missouri Cellular Limited Partnership  
Transfer of Control  
Grant of Authority Date of Action: 01/13/2023

**Current Licensee:** Northwest Missouri Cellular Limited Partnership

**FROM:** Northwest Missouri Cellular Limited Partnership

**TO:** ALLTEL Corporation

Northwest Missouri Cellular Limited Partnership d/b/a NorthwestCell (NWMC), a Delaware limited partnership that holds an international section 214 authorization (ITC-214-20010427-00255), filed an application seeking consent to the transfer of control of NWMC resulting from the conversion of limited partnership interests in NWMC held by Alltel Corporation (Alltel) into general partnership interests. Alltel currently holds 38.05% limited partnership interests in NWMC and no general partnership interests. The other partners of NWMC are Missouri Stateline Communications, Inc., an Iowa corporation (approx. 20.44% general partnership interest and 0.21% limited partnership interest); Rock Port Telephone Company, a Missouri company (approx. 20.45% general partnership interest and 0.21% limited partnership interest); and Grand River Communications, Inc., a Missouri corporation (approx. 20.44% general partnership interest and 0.21% limited partnership interest).

Prior to September 17, 2020, each of NWMC's four partners, including Alltel, held both general partnership and limited partnership interests. On that date, the partners amended the partnership agreement to convert the general partnership interest held by Alltel in NWMC to a limited partnership interest through a pro forma transfer of control. See ITC-T/C-20200922-00170, International Authorizations Granted, Report No. TEL-02049, Public Notice, 35 FCC Red 11513, 11514 (IB 2020). The partners now seek consent to return NWMC to its pre-2020 ownership, whereby Alltel will hold both general partnership and limited partnership interests in NWMC. Specifically, Alltel will hold approx. 23.39% general partnership interest and 14.66% limited partnership interest in NWMC. The proposed transaction will not change the interests held by the other partners.

Alltel, a Delaware corporation, is wholly owned by AirTouch Cellular Inc. (Airtouch), a California corporation. Airtouch is wholly owned by Verizon Americas LLC, which in turn is wholly owned by Verizon Communications, Inc. (Verizon), both Delaware corporations. No individual or entity holds a 10% or greater direct or indirect equity or voting interest in Verizon.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

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**INFORMATIVE**

**ITC-214-19960830-00414** AT&T Corp.

By letter dated January 11, 2023, AT&T Corp. notified the Commission that it will be discontinuing its IPL Analog Services in the lower 48 states, Hawaii, Alaska, Canada, United Arab Emirates, United Kingdom, Mexico, Philippines, Guam, and Japan effective January 31, 2024.

**ITC-214-20220519-00065** Cloaked Wireless Inc

On January 16, 2023, Cloaked Wireless Inc. notified the Commission that it is withdrawing its application for international section 214 filed on May 19, 2022.

**SURRENDER**

**ITC-214-20051223-00517** Uno Communications, Inc.

By letter filed on January 9, 2023, Uno Communications, Inc. notified the Commission that it surrendered its international section 214 authorization effective January 9, 2023.

## CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

(1) These authorizations are subject to the Exclusion List for International Section 214 Authorizations, which identifies restrictions on providing service to particular countries or using particular facilities. The most recent Exclusion List is at the end of this Public Notice. The list applies to all U.S. international carriers, including those that have previously received global or limited global Section 214 authority, whether by Public Notice or specific written order. Carriers are advised that the attached Exclusion List is subject to amendment at any time pursuant to the procedures set forth in Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118, 11 FCC Rcd 12884 (1996), para. 18. A copy of the current Exclusion List is maintained in the FCC Reference Information Center and is available at <https://www.fcc.gov/exclusion-list-international-section-214-authorizations>. It is also attached to each Public Notice that grants international Section 214 authority.

(2) The export of telecommunications services and related payments to countries that are subject to economic sanctions may be restricted. For information concerning current restrictions, call the Office of Foreign Assets Control, U.S. Department of the Treasury, (202) 622-2520.

(3) Carriers shall comply with the requirements of Section 63.11 of the Commission's rules, which requires notification by, and in certain circumstances prior notification by, U.S. carriers acquiring an affiliation with foreign carriers. A carrier that acquires an affiliation with a foreign carrier will be subject to possible reclassification as a dominant carrier on an affiliated route pursuant to the provisions of Section 63.10 of the rules.

(4) A carrier may provide switched services over its authorized resold private lines in the circumstances specified in Section 63.23(d) of the rules, 47 CFR § 63.23(d).

(5) Carriers shall comply with the "No Special Concessions" rule, Section 63.14, 47 CFR § 63.14.

(6) Carriers regulated as dominant for the provision of a particular communications service on a particular route for any reason other than a foreign carrier affiliation under Section 63.10 of the rules shall file tariffs pursuant to Section 203 of the Communications Act, as amended, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 CFR Part 61. Carriers shall not otherwise file tariffs except as permitted by Section 61.19 of the rules, 47 C.F.R. § 61.19. Except as specified in Section 20.15 with respect to commercial mobile radio service providers, carriers regulated as non-dominant, as defined in Section 61.3, and providing detariffed international services pursuant to Section 61.19, must comply with all applicable public disclosure and maintenance of information requirements in Sections 42.10 and 42.11.

(7) International facilities-based service providers must file and maintain a list of U.S.-international routes on which they have direct termination arrangements with a foreign carrier. 47 CFR § 63.22(h). A new international facilities-based service provider or one without existing direct termination arrangements must file its list within thirty (30) days of entering into a direct termination arrangement(s) with a foreign carrier(s). Thereafter, international facilities-based service providers must update their lists within thirty (30) days after adding a termination arrangement for a new foreign destination or discontinuing an arrangement with a previously listed destination. See Process For The Filing Of Routes On Which International Service Providers Have Direct Termination Arrangements With A Foreign Carrier, ITC-MS-20181015-00182, Public Notice, 33 FCC Rcd 10008 (IB 2018).

(8) Any U.S. Carrier that owned or leased bare capacity on a submarine cable between the United States and any foreign point must file a Circuit Capacity Report to provide information about the submarine cable capacity it holds. 47 CFR § 43.82(a)(2). See <https://www.fcc.gov/circuit-capacity-data-us-international-submarine-cables>.

(9) Carriers should consult Section 63.19 of the rules when contemplating a discontinuance, reduction or impairment of service.

(10) If any carrier is reselling service obtained pursuant to a contract with another carrier, the services obtained by contract shall be made generally available by the underlying carrier to similarly situated customers at the same terms, conditions and rates. 47 U.S.C. § 203.

(11) To the extent the applicant is, or is affiliated with, an incumbent independent local exchange carrier, as those terms are defined in Section 64.1902 of the rules, it shall provide the authorized services in compliance with the requirements of Section 64.1903.

(12) Except as otherwise ordered by the Commission, a carrier authorized here to provide facilities-based service that (i) is classified as dominant under Section 63.10 of the rules for the provision of such service on a particular route and (ii) is affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide facilities-based switched service on that route unless the current rates the affiliate charges U.S. international carriers to terminate traffic are at or below the Commission's relevant benchmark adopted in International Settlement Rates, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997). See also Report and Order on Reconsideration and Order Lifting Stay in IB Docket No. 96-261, FCC 99-124 (rel. June 11, 1999). For the purposes of this rule, "affiliated" and "foreign carrier" are defined in Section 63.09.

(13) Carriers shall comply with the Communications Assistance for Law Enforcement Act (CALEA), see 47 CFR §§ 1.20000 et seq.

(14) Every carrier must designate an agent for service in the District of Columbia. See 47 U.S.C. § 413, 47 CFR §§ 1.47(h), 64.1195.

#### Exclusion List for International Section 214 Authorizations

The following is a list of countries and facilities not covered by grant of global Section 214 authority under Section 63.18(e)(1) of the Commission's Rules, 47 CFR § 63.18(e)(1). Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate Section 214 application pursuant to Section 63.18(e)(3) of the Commission's Rules. See 47 CFR § 63.22(c).

#### Countries:

None.

#### Facilities:

Any non-U.S.-licensed space station that has not received Commission approval to operate in the U.S. market pursuant to the procedures adopted in the Commission's DISCO II Order, IB Docket No. 96-111, Report and Order, FCC 97-399, 12 FCC Rcd 24094, 24107-72 paragraphs 30-182 (1997) (DISCO II Order). Information regarding non-U.S.-licensed space stations approved to operate in the U.S. market pursuant to the Commission's DISCO II procedures is maintained at <https://www.fcc.gov/approved-space-station-list>.

This list is subject to change by the Commission when the public interest requires. The most current version of the list is maintained at <https://www.fcc.gov/exclusion-list-international-section-214-authorizations>.

For additional information, contact the International Bureau's Telecommunications and Analysis Division, (202) 418-1480.



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
45 L STREET NE  
WASHINGTON D.C. 20554

News media information 202-418-0500  
Internet: <http://www.fcc.gov> (or <ftp.fcc.gov>)  
TTY (202) 418-2555

DA No. 23-52

Friday January 20, 2023

Report No. SAT-01695

## Satellite Policy Branch Information

### Actions Taken

The Commission, by its International Bureau, took the following actions pursuant to delegated authority. The effective date of these actions is the release date of this Notice, except where an effective date is specified.

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SAT-MOD-20220919-00111 E S3137 Capella Space Corp.  
Modification  
Grant of Authority Effective Date: 01/17/2023

Nature of Service: Earth Exploration Satellite Service

On January 17, 2023, the Satellite Division modified the license of Capella Space Corp. to reflect changes to orbital parameters and maximum equivalent isotropically radiated power (EIRP) density for the previously-authorized Capella-9 non-geostationary satellite orbit (NGSO) satellite and to include authority to construct, deploy, and operate an additional NGSO satellite, Capella-10. Capella will operate Capella-9 and Capella-10 in the earth-exploration satellite service (EESS) at an altitude of approximately 600 kilometers (+/- 50 kilometers) and inclination of 44 degrees (+/- 3 degrees), and also will conduct imaging at altitudes down to approximately 450 km during de-orbit. Capella will also operate Capella-10 with the same technical parameters as Capella-9, including using a center frequency of 9600 MHz and a bandwidth of 600 megahertz for SAR imaging, a center frequency of 8212.5 MHz and bandwidth of 337.5 megahertz for its EESS downlinks, a center frequency of 2036 MHz and bandwidth of 1.4 megahertz for its space operations uplinks, and a center frequency of 8027 MHz and bandwidth of 1.4 megahertz for its space operations downlinks. Capella-10 will operate inter-satellite links with the Inmarsat system, including all the satellites on the Commission's "ISAT" list, using frequencies assigned for operations by Inmarsat BGAN terminals in the 1525.0-1559.0 MHz transmitting (space-to-space) and 1626.5-1660.0 MHz receiving (space-to-space) frequency bands. In addition, the Division authorized Capella-10 for limited operations with an earth station for purposes of radar calibration in the 9400-9900 MHz band (Earth-to-space). This application was granted in accordance with the small satellite procedures in section 25.122 of the Commission's rules, 47 CFR § 25.122.

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SAT-STA-20220824-00097 E S2750 Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/19/2023

On January 19, 2023, the Satellite Division granted, with conditions, special temporary authority to Intelsat License LLC, for a period of 180 days, to operate Intelsat 16 over a new coverage area in the 11.7-12.2 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) frequency bands at the 76.2° W.L. orbital location.

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SAT-STA-20220915-00110 E S2154 Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/19/2023

Application listed as granted in IBFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

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**SAT-STA-20221031-00150** E S2253 Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/19/2023

On January 19, 2023, the Satellite Division granted, with conditions, special temporary authority for an additional period of 180 days, to Intelsat License LLC to continue to operate Galaxy 11 with a new coverage area in the 10.95-11.2 GHz and 11.7-12.2 GHz (space-to-Earth), and 13.75-14.5 GHz (Earth-to-space) frequency bands at the 93.1° W.L. orbital location.

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**SAT-STA-20221118-00164** E S3083 Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/19/2023

Application listed as granted in IBFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

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**INFORMATIVE**

**SAT-AMD-20210309-00030** S2946 Spire Global, Inc.  
See IBFS File No. SAT-MOD-20200603-00065 for a description of the action taken.

**SAT-AMD-20211223-00203** SpaceQuest, Ltd.

See IBFS File No. SAT-LOA-20210503-00058 for a description of the action taken

**SAT-AMD-20220805-00078** S3032 BlackSky Global LLC

See IBFS File No. SAT-MOD-20211230-00205 for a description of the action taken.

**SAT-AMD-20221014-00136** S3042 HawkEye 360, Inc.

See IBFS File No. SAT-MOD-20220906-00099 for a description of the action taken.

**SAT-APL-20210309-00031** S3045 Spire Global, Inc.

See IBFS File No. SAT-MPL-20200618-00078 for a description of the action taken.

**SAT-LOA-20210503-00058** S3085 SpaceQuest, Ltd.

The Satellite Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective January 20, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

**SAT-LOA-20220920-00112** S3152 Planet Labs PBC

The Satellite Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective January 20, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

**SAT-LOA-20221201-00167** S3156 The Tomorrow Companies, Inc.

The Satellite Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective January 20, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

**SAT-MOD-20200603-00065** S2946 Spire Global, Inc.

The Satellite Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective January 20, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

**SAT-MOD-20211207-00186** S3051 Kuiper Systems LLC

The Satellite Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective January 20, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

**SAT-MOD-20211230-00205** S3032 BlackSky Global LLC

The Satellite Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective January 20, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

**INFORMATIVE**

**SAT-MOD-20220310-00027** S2103 ORBCOMM License Corp.

The Satellite Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective January 20, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

**SAT-MOD-20220421-00042** S2912 Planet Labs PBC

The Satellite Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective January 19, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

**SAT-MOD-20220906-00099** S3042 HawkEye 360, Inc.

The Satellite Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective January 20, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

**SAT-MPL-20200618-00078** S3045 Spire Global, Inc.

The Satellite Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective January 20, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

**SAT-MPL-20220311-00029** S2978 Space Norway AS

The Satellite Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective January 20, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

**SAT-PDR-20220805-00077** S3149 Fleet Space Technologies

The Satellite Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective January 20, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

For more information concerning this Notice, contact the Satellite Division at 202-418-0719.



# PUBLIC NOTICE

Federal Communications Commission  
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Washington, D.C. 20554

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DA 23-53

Released: January 20, 2023

## COMMUNICATIONS EQUITY AND DIVERSITY COUNCIL TO HOST FEBRUARY 7, 2023 MEDIA OWNERSHIP DIVERSITY SYMPOSIUM

GN Docket No. 17-208

This Public Notice announces that the FCC's Communications Equity and Diversity Council (CEDC) will host a Media Ownership Diversity Symposium on February 7, 2023, from 9:30 am to 4:45 pm, ET. The goal of the full-day symposium, "Expanding Digital and Media Ownership Opportunities for Women and Minorities," is to explore the challenges as well as possible creative solutions to increasing ownership opportunities for women and people of color to achieve success and viewpoint diversity in all facets of media – TV, radio, cable, and streaming.

Symposium participants will include:

- Experts from both large and small media companies who have grown and thrived in the media and tech industries, as well as some entrepreneurs who did not sustain operations, despite their best efforts, and exited their businesses;
- Research entities and thought leaders;
- Advertising and marketing experts, as well as representatives from successful media/tech training programs.

Panel presentations on research and trends in ownership and employment diversity will include:

- **Competitive Hurdles for Minorities in Media** exploring competitive challenges for people of color, women, small and independently owned firms in media and tech, and probing ways to level the playing field. The panel will examine how to incentivize the sale of stations to diverse owners, and the policy and regulatory measures that could create more robust competition in the media industry.
- **Grooming Next-Gen Minority Leaders, CEOs & Owners**, discussing best practices to cultivate the next generation of diverse media leaders, training and succession plans from college, through mid-level development to C-Suite and to ownership. Panelists will share strategies for bringing young diverse owners into the current media landscape of streaming, apps, gaming, coding, and social media, as well as traditional broadcast radio, television, and cable ownership.
- **Show Me the Money: Access to Capital, Investors and Ad Dollars for Diverse Owners**, exploring what incentives exist to fund or support diverse owners, including tax incentives. The panel will also focus on the important role of access to increased advertising dollars by female and minority-owned media outlets.

The detailed agenda for the Media Ownership Diversity Symposium will be released prior to the event. The Symposium is scheduled as a hybrid event with participants both live and virtually presented. Attendees will have several opportunities to network and collaborate during the Symposium. The

Symposium is scheduled to commence at 9:30 a.m. ET in the Commission Meeting Room of the Federal Communications Commission, 45 L Street, N.E., Washington, D.C. While the Symposium is open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the Symposium will not be required to have an appointment but must otherwise comply with protocols outlined at: <https://www.fcc.gov/visit>. Additionally, the Symposium will be available to the public via live feed from the FCC's web page at <https://www.fcc.gov/live>. The public may also follow the Symposium on the Commission's YouTube page at <https://www.youtube.com/user/fccdotgovvideo>. In addition, the public may follow the event on Twitter@fcc or via the Commission's Facebook page at [www.facebook.com/fcc](http://www.facebook.com/fcc). Members of the public may submit questions during the panel discussions to [livequestions@fcc.gov](mailto:livequestions@fcc.gov).

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate.

Members of the public may submit written comments to the CEDC using the FCC's Electronic Comment Filing System, ECFS, at [www.fcc.gov/ecfs](http://www.fcc.gov/ecfs). Any comments should be filed in GN Docket No. 17-208.

More information about the CEDC is available at <https://www.fcc.gov/communications-equity-and-diversity-council>. You may also contact Jamila Bess Johnson, the Designated Federal Officer for the Communications Equity and Diversity Council, at (202) 418-2608, or [Jamila-Bess.Johnson@fcc.gov](mailto:Jamila-Bess.Johnson@fcc.gov); or Keyla Hernandez-Ulloa, Co-Deputy Designated Federal Officer, at (202) 418-0965 or [Keyla.Hernandez-Ulloa@fcc.gov](mailto:Keyla.Hernandez-Ulloa@fcc.gov); or Aurélie Mathieu, Attorney Advisor, WCB, at (202) 418-2194 or [Aurélie.Mathieu@fcc.gov](mailto:Aurélie.Mathieu@fcc.gov), or Diana Coho, Consumer Affairs and Outreach Specialist, CGB at (202) 418-2848 or [Diana.Coho@fcc.gov](mailto:Diana.Coho@fcc.gov).

– FCC –



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>

DA 23-54

Released: January 20, 2023

## WIRELINE COMPETITION BUREAU ANNOUNCES COMMENT DATES FOR THE PREVENTING DIGITAL DISCRIMINATION NOTICE OF PROPOSED RULEMAKING

GN Docket No. 22-69

**Comment Date: February 21, 2023**

**Reply Comment Date: March 21, 2023**

On December 22, 2022, the Commission released a Notice of Proposed Rulemaking seeking comment on potential rules to address digital discrimination of access to broadband, pursuant to section 60506 of the Infrastructure Investment and Jobs Act of 2021.<sup>1</sup> Specifically, in the *Preventing Digital Discrimination NPRM*, the Commission proposes to (1) adopt a definition of “digital discrimination of access,” (2) revise the Commission’s informal consumer complaint process to accept complaints of digital discrimination of access, and (3) adopt model policies and best practices for states and localities combating digital discrimination. The *Preventing Digital Discrimination NPRM* also seeks comment on other rules the Commission should adopt to facilitate equal access and combat digital discrimination, and the legal authority for adopted rules.

On January 20, 2023, a summary of the *Preventing Digital Discrimination NPRM* was published in the Federal Register.<sup>2</sup> Accordingly, comments are due on or before **February 21, 2023**, and reply comments are due on or before **March 21, 2023**. Complete comment filing instructions are set forth in the *Preventing Digital Discrimination NPRM*.<sup>3</sup>

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

For further information, contact Aurélie Mathieu, Competition Policy Division, Wireline Competition Bureau, at (202) 418-2194 (voice) or e-mail at [Aurelie.Mathieu@fcc.gov](mailto:Aurelie.Mathieu@fcc.gov).

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<sup>1</sup> See *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Notice of Proposed Rulemaking, FCC 22-98 (rel. Dec. 22, 2022) (*Preventing Digital Discrimination NPRM*); see also Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60506 (2021).

<sup>2</sup> Federal Communications Commission, *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, Proposed Rule, 88 Fed. Reg. 3681 (Jan. 20, 2023).

<sup>3</sup> *Preventing Digital Discrimination NPRM* at para. 97.



# PUBLIC NOTICE

Federal Communications Commission  
45 L St., N.E.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
TTY: 1-888-835-5322

DA 23-55  
Released: January 20, 2023

## PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON REGION 34 (OKLAHOMA) 700 MHZ REGIONAL PLAN UPDATE

WT Docket No. 02-378

Comments Due: February 21, 2023  
Reply Comments Due: March 8, 2023

*Introduction.* By this Public Notice, the Public Safety and Homeland Security Bureau (Bureau) seeks comment on the Region 34 (Oklahoma)<sup>1</sup> – Regional Planning Committee (RPC) proposed modifications to its 700 MHz Public Safety Plan (Plan) for General Use<sup>2</sup> spectrum in the narrowband segment of the 700 MHz band (769-775/799-805 MHz).<sup>3</sup>

*Background.* In 1998, the Commission established a structure to allow RPCs optimal flexibility to meet state and local needs, encourage innovative use of narrowband spectrum in the 700 MHz band, and accommodate new and as yet unanticipated developments in technology and equipment.<sup>4</sup> Each of the fifty-five (55) RPCs is required to submit its plan for General Use spectrum.<sup>5</sup> The Commission's role in relation to the RPCs is limited to (1) defining the regional boundaries; (2) requiring fair and open procedures, *i.e.*, requiring notice, opportunity for comment, and reasonable consideration; (3) specifying the elements that all regional plans must include; and (4) reviewing and accepting proposed plans (or amendments to approved plans) or rejecting them with an explanation.<sup>6</sup>

*The Region 34 700 MHz Plan Update.* On January 12, 2021, the RPC submitted an amendment to the Region 34 – 700 MHz Plan.<sup>7</sup> In its amendment, the RPC proposes, among other things, to:

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<sup>1</sup> The Region 34 (Oklahoma) 700 MHz regional planning area includes the entire state of Oklahoma.

<sup>2</sup> The General Use spectrum is administered by RPCs and is licensed for public safety services on a site-by-site basis in accordance with the relevant Commission-approved regional plan and frequency coordination.

<sup>3</sup> See Letter from Scott Walsh, Chair, Regional Planning Committee 34, to Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, WT Docket No. 02-378 (dated Jan. 12, 2021) (Cover Letter). See also Region 34 700 MHz Plan Update, WT Docket 02-378 (filed Jan. 12, 2021) (Plan Amendment).

<sup>4</sup> See *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, First Report and Order and Third Notice of Proposed Rulemaking, 14 FCC Rcd 152 (1998) (*First Report and Order*); Second Memorandum Opinion and Order, 15 FCC Rcd 16844 (2000). See also 47 CFR § 90.527.

<sup>5</sup> See 47 CFR § 90.527.

<sup>6</sup> *First Report and Order*, 14 FCC Rcd at 195 para. 87.

<sup>7</sup> See Cover Letter and Plan Amendment.

- Indicate that all “Pre-Assignment” channel pools have expired and that the RPC will now process all applications for General Use channels on a first-come, first-served basis;<sup>8</sup>
- Incorporate the State License channels into its plan but reserve them for site-by-site licensing to the state until all other “General Access” channels are allotted to other licensees;<sup>9</sup>
- Specify that operation on interoperability channels will be guided by the most recent version of the National Interoperability Field Operations Guide (NIFOG), the State of Oklahoma Statewide Communications Interoperability Plan (SCIP) and local Tactical Interoperability Communications Plans (TICP);<sup>10</sup>
- Incorporate the Air-to-Ground and former Reserve channels into its plan;<sup>11</sup>
- Designate six former Reserve channels for deployable trunked systems;<sup>12</sup>
- Allow meetings of the RPC to be held in person or virtual.<sup>13</sup>

Region 34’s RPC received concurrence letters for the proposed Plan Amendment from its nine adjacent regions: Region 4 (Arkansas), Region 7 (Colorado), Region 16 (Kansas), Region 18 (Louisiana), Region 24 (Missouri), Region 29 (New Mexico), Region 40 (Texas - Dallas), Region 50 (Texas - El Paso), Region 52 (Texas - Lubbock).<sup>14</sup>

We have reviewed the Region 34 Plan Amendment and find that it sufficiently complies with the applicable Commission rules and policies, and tentatively accept it.

*Request for Comments on the Region 34 Plan Amendment.* Prior to taking further action on the RPC’s proposal to amend its 700 MHz plan, by this *Public Notice*, we solicit comment on the Region 34 Plan Amendment. The Plan Amendment is available through ECFS at [ecfs@fcc.gov](mailto:ecfs@fcc.gov) under WT Docket No. 02-378.

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<sup>8</sup> *Id.* at 12, 32.

<sup>9</sup> *Id.* at 32. *See also* 47 CFR § 90.531(b)(5) (listing all State License channels).

<sup>10</sup> Plan Amendment at 42-44.

<sup>11</sup> *Id.*, Appendix D at 61-62. *See also* 47 CFR § 90.531(b)(2), (b)(7) (listing all Air-to-Ground and former Reserve channels).

<sup>12</sup> Plan Amendment, Appendix D at 64, 65, 66, 67, 92, and 94. The deployable trunked channels coincide with recommendations from National Public Safety Telecommunications Council and the National Regional Planning Council. *See Public Safety and Homeland Security Bureau Approves Recommended Nationwide Channels for Deployable Trunked Systems in the 700 MHz Narrowband Public Safety Band*, Public Notice, WT Docket 02-378, 30 FCC Rcd 3723 (PSHSB 2015).

<sup>13</sup> Plan Amendment at 9.

<sup>14</sup> *See* Letter from Richard E. Ranson, Chairman Region 1, to Region 39 RPC, PR Docket No. 93-58 (Dec. 22, 2020); Letter from David Baker, Chairman Region 4, to Region 39 RPC, PR Docket No. 93-58 (Oct. 19, 2020); Letter from Ralph Bevan, Chairman Region 10, to Region 39 RPC, PR Docket No. 93-58 (Nov. 16, 2020); Letter from Michael B. Marshall, Vice Chairman Region 17, to John Johnson, Region 39 RPC, PR Docket No. 93-58 (Nov. 18, 2020); Letter from Tom Lariviere, MSRPFAC Region 23, to John Johnson, PR Docket No. 93-58 (Dec. 18, 2020); Letter from Scott Bigham, Chairman Region 24, to Region 39 RPC, PR Docket No. 93-58 (Oct. 21, 2020); Letter from Scott Smith, Chairman Region 31, to Region 39 RPC, PR Docket No. 93-58 (Nov. 17, 2020); Letter from Linn Skipper, Chairman Region 37, to Region 39 RPC, PR Docket No. 93-58 (Oct. 6, 2020); Letter from Rodney Thompson, Chairman Region 42, to Region 39 RPC, PR Docket No. 93-58 (Oct. 1, 2020); Letter from Dave Saffel, Chairman Region 44, to Region 39, 800 MHz RPC, PR Docket No. 93-58 (Nov. 16, 2020) (collectively filed Feb. 25, 2021 as an attachment to redline version of the Plan Amendment at 59-68).

### Instructions for Filing Comments

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on the Region 34 700 MHz Plan Amendment on or before **February 21, 2023**, and reply comments on or before **March 8, 2023**. All comments and reply comments should reference the subject Plan and **WT Docket No. 02-378**.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
  - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.<sup>15</sup>
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L St, NE, Washington, DC 20554.

*People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (tty).

For further information regarding this matter, contact Brian Marengo, Electronics Engineer, Policy and Licensing Division, Public Safety and Homeland Security Bureau at (202) 418-0838 or [Brian.Marengo@fcc.gov](mailto:Brian.Marengo@fcc.gov).

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<sup>15</sup> In response to the COVID-19 pandemic, the FCC has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission's electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law. *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, DA 20-304 (rel. Mar. 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

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DA 23-56

Released: January 23, 2023

## CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU ANNOUNCES COMPLIANCE DATE FOR AMENDED TELEPHONE CONSUMER PROTECTION ACT RULES ON PRERECORDED CALLS

### CG Docket No. 02-278

On December 30, 2020, the Commission released the *TCPA Exemptions Order* to implement section 8 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act).<sup>1</sup> In that rulemaking, the Commission amended the Telephone Consumer Protection Act (TCPA)<sup>2</sup> rules related to exemptions for non-commercial calls to residential numbers; commercial calls to residential numbers that do not include an advertisement or constitute telemarketing; tax-exempt nonprofit organization calls to residential numbers; and Health Insurance Portability and Accountability Act (HIPAA)-related calls to residential numbers.<sup>3</sup>

Specifically, the Commission adopted numerical limits on exempted artificial or prerecorded voice calls to residential lines (three calls per thirty-day period for most types of calls and one call per day, up to three calls per seven-day period for certain HIPAA-related calls). The Commission also required callers making such exempt calls to allow consumers to opt out of any future calls that they do not wish to receive.<sup>4</sup> These rule changes resulted in modified information collection requirements under the Paperwork Reduction Act of 1995, which the Office of Management and Budget (OMB) approved on September 15, 2021.<sup>5</sup> The Commission explained in the *TCPA Exemptions Order* that it would publish in the Federal Register a compliance date for the amended rules, which would be six months following the date of publication.<sup>6</sup>

<sup>1</sup> Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, § 8 (2019) (TRACED Act).

<sup>2</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227 (TCPA); 47 CFR § 64.1200 *et seq.*

<sup>3</sup> *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 35 FCC Rcd 15188 (2020) (*TCPA Exemptions Order*).

<sup>4</sup> *Id.* As part of the *TCPA Exemptions Order*, the Commission also codified in its rules the existing exemptions for certain types of calls to wireless numbers, including calls by package delivery companies, financial institutions, prison inmate calling services, and healthcare providers. *See* Federal Communications Commission, *Limits on Exempted Calls Under the Telephone Consumer Protection Act of 1991*, 86 FR 11443 (Feb. 25, 2021).

<sup>5</sup> *See* Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520); Notice of Office of Management and Budget Action, OMB Control No. 3060-0519 (approved Sept. 15, 2021), available at [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202107-3060-001](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202107-3060-001).

<sup>6</sup> *See T CPA Exemptions Order*, 35 FCC Rcd at 15200, para. 42 (stating that callers will have six months from publication of such notification in the Federal Register to come into compliance with the amended rules).

After the Commission released the *TCPA Exemptions Order*, two parties asked the Commission to reconsider the new requirements.<sup>7</sup> On December 27, 2022, the Commission released an Order on Reconsideration and Declaratory Ruling amending the rules to allow callers the option of obtaining either oral or written consent if they wish to make more calls than the numerical limits on exempted artificial or prerecorded voice message calls to residential telephone lines and affirming the numerical limits and opt-out requirements on such calls.<sup>8</sup> OMB approved this non-substantive rule change on January 4, 2023.

On January 20, 2023, the Commission announced in the Federal Register that compliance with the amendments to 47 CFR §§ 64.1200(a)(3), (a)(3)(ii) through (v), (b)(2), (b)(3), and (d) is required as of July 20, 2023.<sup>9</sup>

For further information, contact Richard D. Smith, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at (717) 338-2797 or Richard.Smith@FCC.gov.

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<sup>7</sup> See *ACA International et al*, Petition for Partial Reconsideration, CG Docket No. 02-278 (filed Mar. 29, 2021); *Enterprise Communications Advocacy Coalition (ECAC)*, Petition for Reconsideration, CG Docket No. 02-278 (filed Mar. 17, 2021).

<sup>8</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; ACA International, the Edison Electric Institute, the Cargo Airline Association, and the American Association of Healthcare Administrative Management Petition for Partial Reconsideration; Enterprise Communications Advocacy Coalition Petition for Reconsideration*, CG Docket No. 02-278, Order on Reconsideration and Declaratory Ruling, FCC 22-100 (rel. Dec. 27, 2022). In the Declaratory Ruling, the Commission also confirmed that consumers who provide their wireless or residential telephone number to a company involved in the provision of their utility service, have given prior express consent to be contacted by that company at that number with informational messages that are closely related to the utility service so long as the consumer has not provided instructions to the contrary.

<sup>9</sup> See Federal Communications Commission, *Limits on Exempted Calls Under the Telephone Consumer Protection Act of 1991*, 88 FR 3668 (Jan. 20, 2023).



# PUBLIC NOTICE

Federal Communications Commission  
45 L St., N.E.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>

DA 23-57  
January 23, 2023

## NOTICE OF DOMESTIC SECTION 214 AUTHORIZATIONS GRANTED

### WC Docket No. 22-447

The Wireline Competition Bureau (Bureau) grants the application listed in this Public Notice pursuant to the Commission's streamlined procedures for domestic section 214 transfer of control applications, 47 CFR § 63.03. The Bureau determined that a grant of this application serves the public interest.<sup>1</sup> For the purposes of computation of time when filing a petition for reconsideration or application for review, or for judicial review of the Commission's decision, the date of "public notice" shall be the release date of this Public Notice.<sup>2</sup> Should no petition for reconsideration, application for review, or petition for judicial review be timely filed, the proceedings listed in this Public Notice shall be terminated, and their dockets will be closed.

Domestic Section 214 Application Filed for the Transfer of Control of  
Glandorf Telephone Company, Inc. to The Kalida Telephone Company,  
WC Docket No. 22-447, Public Notice, DA 22-1351 (WCB 2022).

**Effective Grant Date: January 21, 2023**

For further information, please contact Myrva Charles at (202) 418-1506 or Dennis Johnson at (202) 418-0809, Competition Policy Division, Wireline Competition Bureau.

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<sup>1</sup> *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5529, para. 22 (2002).

<sup>2</sup> *Id.*; see 47 CFR § 1.4 (Computation of time).



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

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Internet: <https://www.fcc.gov>

DA 23-58

Released: January 23, 2023

## WIRELINE COMPETITION BUREAU ANNOUNCES COMMENT DATES FOR NOTICE OF PROPOSED RULEMAKING REGARDING DATA BREACH REPORTING REQUIREMENTS

WC Docket No. 22-21

**Comment Date: February 22, 2023**

**Reply Comment Date: March 24, 2023**

By this Public Notice, the Wireline Competition Bureau announces that comments in response to the *Notice of Proposed Rulemaking (NPRM)* regarding data breach reporting requirements are due no later than February 22, 2023, and reply comments are due no later than March 24, 2023.<sup>1</sup>

The *NPRM* set deadlines for filing comments and reply comments at 30 and 60 days, respectively, after a summary of the item is published in the Federal Register.<sup>2</sup> The Federal Register published that summary on January 23, 2023.<sup>3</sup> Complete filing instructions are contained in the *NPRM* and the *Federal Register Notice*.<sup>4</sup>

For additional information, contact Melissa Kirkel of the Wireline Competition Bureau at (202) 418-7958 or [Melissa.Kirkel@fcc.gov](mailto:Melissa.Kirkel@fcc.gov).

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<sup>1</sup> *Data Breach Reporting Requirements*, WC Docket No. 22-21, Notice of Proposed Rulemaking, FCC 22-102 (rel. Jan. 6, 2023) (*NPRM*).

<sup>2</sup> *Id.*

<sup>3</sup> *Data Breach Reporting Requirements*, Notice of Proposed Rulemaking, 88 Fed. Reg. 3953 (Jan. 23, 2023) (*Federal Register Notice*).

<sup>4</sup> *See NPRM*, FCC 22-102, at para. 57; *Federal Register Notice*, 88 Fed. Reg. at 3953.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	NCE FM 2021 Window, MX Group Number
<b>Threshold Fair Distribution Analysis of 1</b>	)	59B
<b>Group of Mutually Exclusive Applications</b>	)	
<b>for a Permit to Construct a New</b>	)	
<b>Noncommercial Educational FM Station</b>	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 23, 2023**

**Released: January 23, 2023**

By the Chief, Audio Division, Media Bureau

**I. BACKGROUND**

1. The Media Bureau (Bureau) has before it for comparative consideration a group of mutually exclusive (MX) applications for a new noncommercial educational (NCE) FM station construction permit.<sup>1</sup> By this Memorandum Opinion and Order (Order), the Bureau performs a threshold fair distribution of service analysis and identifies the tentative selectee in this group. Petitions to deny the application of this tentative selectee must be filed within 30 days of the date of release of this Order.<sup>2</sup>

2. The group addressed in this Order consists of applications that were filed in November 2021, during the filing window for new NCE FM applications.<sup>3</sup> These applicants have had an opportunity to settle among themselves,<sup>4</sup> and are now subject to a simplified, comparative process codified in Part 73, Subpart K, of the Commission's rules.<sup>5</sup> During the first step of this process, the Bureau, acting pursuant to delegated authority,<sup>6</sup> uses service area population data, Tribal Priority criteria, and certifications provided by the applicants to perform a threshold fair distribution analysis.

<sup>1</sup> On November 29, 2021, the Bureau issued a public notice identifying 231 groups of mutually exclusive NCE FM applications. *See Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 16452 (MB 2021) (*NCE MX Public Notice*). The group analyzed herein was included on the *NCE MX Public Notice*.

<sup>2</sup> *See* 47 CFR § 73.7004(b).

<sup>3</sup> *See Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB 2021). The window was available for FM reserved band (channels 201-220) proposals. *See* 47 CFR § 73.501.

<sup>4</sup> *See NCE MX Public Notice* at 2-5.

<sup>5</sup> 47 CFR §§ 73.7000 – 7005.

<sup>6</sup> *See Comparative Consideration of 76 Groups of Mutually Exclusive Applications*, Memorandum Opinion and Order, 22 FCC Rcd 6101, n.16 (2007). *See also* 47 CFR §§ 0.61 and 0.283. A Section 307(b) analysis is ordinarily conducted at the staff level because the Bureau has delegated authority to make Section 307(b) determinations. *See Reexamination of Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7397 (2000) (*NCE Order*). In contrast, the point system analysis, which is conducted when Section 307(b) is not determinative, must be conducted by the Commission as this analysis is considered a simplified “hearing” for purposes of 47 U.S.C. §155(c)(1). *See NCE Order*, 15 FCC Rcd at 7420.

## II. THRESHOLD FAIR DISTRIBUTION OF SERVICE PROCEDURES

3. Section 307(b) of the Communications Act of 1934, as amended (Section 307(b)) states that the Commission must “provide a fair, efficient, and equitable distribution” of broadcast service among the states and communities.<sup>7</sup> In accordance with this directive, the Commission considers the fair distribution of service as a first, or threshold, issue in its NCE FM comparative review process.<sup>8</sup> Accordingly, when applicants in a mutually exclusive NCE FM group<sup>9</sup> propose to serve different communities, the Bureau first performs a threshold “fair distribution” analysis to ascertain whether grant of any of the applications would best further the Section 307(b) objective.<sup>10</sup> In the first step of the Section 307(b), or fair distribution, analysis, the Bureau determines whether any of the applicants in the MX group is a federally recognized Native American Tribe or Alaska Native Village proposing to serve Tribal Lands<sup>11</sup> and claims the Tribal Priority.<sup>12</sup>

4. If there is no Tribal Applicant in the MX group,<sup>13</sup> the Bureau proceeds to the second step in the Section 307(b) analysis and determines whether any applicant would provide a first or second reserved band channel NCE aural service to a substantial population (the First or Second NCE Service Preference) and compares population coverage totals.<sup>14</sup> Specifically, during this step, an NCE FM applicant is eligible to receive a fair distribution preference (or Section 307(b) preference)<sup>15</sup> if it would provide a first or second reserved band channel NCE aural service to at least 10% of the population (in the aggregate), within the proposed station’s service area, provided that the population served is at least 2,000 people. If only one applicant in an MX group qualifies for the First or Second NCE Service

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<sup>7</sup> 47 U.S.C. § 307(b).

<sup>8</sup> See 47 CFR § 73.7002; *NCE Order*, 15 FCC Rcd at 7396 (concluding that “fair distribution of stations to communities should remain a threshold issue”), Memorandum Opinion and Order, 16 FCC Rcd 5074, 5077 (2001) (*NCE MO&O*) (“when competing FM applications propose to serve different communities, a proposal would be considered best, as a threshold matter, if it would provide service to a significant unserved or underserved population”).

<sup>9</sup> Conflicting NCE FM applications, which cannot all be granted consistent with the Commission's technical rules, are considered mutually exclusive. An MX group consists of all applications which are MX to at least one other application in the group.

<sup>10</sup> See 47 U.S.C. § 307(b) (“In considering applications for licenses . . . when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”); 47 CFR § 73.7002(a). Applicants’ Form 2100, Schedule 340, Fair Distribution of Service certifications enable the Bureau to consider whether service to one community over the other would best achieve the Commission’s directive to distribute radio service fairly among communities.

<sup>11</sup> See 47 CFR §§ 73.7000, 73.7002(b).

<sup>12</sup> An NCE FM applicant is eligible to receive a fair distribution preference, and ultimately be awarded the construction permit, if it identifies itself as a Tribal Applicant, proposes Tribal Coverage, and proposes the first reserved channel NCE service owned by any Tribal Applicant at a community of license located on Tribal Lands (the Tribal Priority). See 47 CFR § 73.7000 (defining a “Tribal Applicant” and “Tribal Coverage”); see also 47 CFR § 73.7002(b); *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, First Report and Order, 25 FCC Rcd 1583 (2010) (establishing the Section 307(b) Tribal Priority).

<sup>13</sup> The MX group addressed in this Order does not contain a Tribal Applicant. Accordingly, the first step of the Section 307(b) analysis, the Tribal Priority analysis, is unnecessary herein.

<sup>14</sup> See 47 CFR § 73.7002(b).

<sup>15</sup> The terms “fair distribution preference” and “Section 307(b) preference” are used interchangeably to refer to the preference given to an MX application that is deemed to substantially further the fair distribution of service goals enunciated in Section 307(b) of the Act.

Preference, its “fair distribution” (Section 307(b)) preference is dispositive,<sup>16</sup> and the applicant will be awarded the construction permit.

5. If more than one applicant in the MX group claims a First or Second NCE Service Preference, the applicant proposing to provide the greatest number of people with the highest level of service will be awarded a construction permit, if it will provide such service to at least 10% of the people within the station's 60 dBu contour *and* to at least 5,000 more people than the next best applicant.<sup>17</sup> First service will be preferred over second service.<sup>18</sup> Accordingly, the Bureau first examines the applicants' first service levels alone to determine whether one of the proposals is superior and should receive a decisive preference. If such applicants are equivalent with respect to first service, or no applicant qualifies for a first service preference, the Bureau considers combined first and second NCE aural service population totals. At each stage of the Section 307(b) analysis, any applicant that is comparatively disfavored in terms of Section 307(b) eligibility or service totals is eliminated. The process ends when the Bureau determines that one applicant is entitled to a Section 307(b) preference, or that either (1) none of the remaining applicants can be selected or eliminated based on a Section 307(b) preference, or (2) each remaining applicant proposes to serve the same community. Any remaining MX applicants proposing equivalent service overall, or proposing the same community, proceed to a point system analysis.<sup>19</sup>

6. Each applicant claiming a First or Second NCE Service preference must support its fair distribution claim with an exhibit identifying the population residing within the proposed station's 60 dBu service contour and the number of people that would receive a new first or second NCE aural service.<sup>20</sup> Further, any applicant which receives a decisive Section 307(b) preference is required to construct and operate technical facilities substantially as proposed, and cannot downgrade service to the area on which the preference was based for a period of four years of on-air operations.<sup>21</sup>

### III. GROUP ANALYSIS

7. This Section contains a narrative description of our analysis. Unless otherwise noted, each component of the analysis is based on information provided by each of the respective applicants.<sup>22</sup>

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<sup>16</sup> As noted, in the case of an MX group with a Tribal Applicant, an applicant qualifying for a Tribal Priority, however, will prevail over any MX applicant claiming a First or Second NCE Service Preference.

<sup>17</sup> 47 CFR § 73.7002(b).

<sup>18</sup> *Id.*

<sup>19</sup> See 47 CFR § 73.7003 (point system selection procedures).

<sup>20</sup> See *id.* § 73.7002(b). Applicants were required to use the most recently available, *i.e.*, 2010 Census, population data. See *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window*, DA 21-885, at 5-7 and n.24 (MB rel. July 23, 2021) (*NCE Filing Procedures Public Notice*); FCC Form 2100, Schedule 340, Instructions for Fair Distribution of Service at 12-14. An applicant's fair distribution showing must be computed as of the time of filing (close of the filing window for applications filed prior to the window) and cannot be enhanced thereafter. See 47 CFR § 73.7003(e) and (f)(3); *NCE Filing Procedures Public Notice* at 11; *NCE MO&O*, 16 FCC Rcd at 5082-83. However, an applicant that subsequently makes engineering changes that would diminish its fair distribution position must amend its application to reflect that diminished position. See 47 CFR §§ 1.65 and 73.7003(e).

<sup>21</sup> See 47 CFR § 73.7005(b); see also 47 CFR § 73.7002(c). During this period, such applicant may make minor modifications to its authorized facilities, provided that “(i) the modification does not downgrade service to the area on which the preference was based, or (ii) any potential loss of first and second NCE service is offset by at least equal first and, separately, combined first and second NCE service population gain(s), and the applicant would continue to qualify for a decisive Section 307(b) preference.” *Id.*

<sup>22</sup> See FCC Form 2100, Schedule 340, Noncommercial Educational Station for Reserved Channel Construction Permit Application, Fair Distribution of Service certifications. An applicant responding “Yes” to any of the certification questions was required to submit an attachment with a justification for its certification.

8. **Group 59B.**<sup>23</sup> This group consists of six applications to serve different communities in Florida and Georgia. In Florida, Faith and Action Community Outreach, Inc. (Faith) proposes to serve Madison, and Big Bend Heritage Music Association, Inc. (Big Bend) proposes to serve Perry. In Georgia, Elijah Radio (Elijah) proposes to serve Dasher; Georgia Public Telecommunications Commission (GPTC) proposes to serve Pelham; Church Planters of America (Church Planters) proposes to serve Quitman; and Bemiss Road Baptist Church and Lowndes County Christian Academy Inc. (Bemiss) proposes to serve Valdosta.

9. Group 59B originally included two additional applicants, CSN International (CSN) and Inverse Focus Ministry, Inc. (Inverse). The Bureau initially performed a fair distribution analysis of the eight applications and identified Inverse as the tentative selectee in Group 59B.<sup>24</sup> Inverse and CSN, however, subsequently requested dismissal of their applications.<sup>25</sup> Accordingly, the Bureau conducted a second 307(b) analysis and identified Big Bend as the new tentative selectee of this group.<sup>26</sup> However, Big Bend subsequently filed an amendment to its application in which it revised its population data and certified that it was not eligible for a fair distribution preference.<sup>27</sup> Accordingly, we will perform a third fair distribution analysis of this group.

10. Elijah and GPTC each claims that it is eligible for a fair distribution preference based on combined first and second NCE population totals.<sup>28</sup> The other applicants do not. Accordingly, Big Bend, Faith, Church Planters, and Bemiss are each eliminated. Elijah would provide a combined first and second NCE service to 12,723 people; and GPTC to 6,971 people. Because Elijah's proposed combined first and second NCE service exceeds GPTC's proposal by at least 5,000 people, GPTC is eliminated. Elijah is the tentative selectee for Group 59B.

#### IV. ADDITIONAL MATTERS

11. **Acceptability Studies.** Once the Bureau identifies a tentative selectee pursuant to the fair distribution analysis, the next step is to consider whether the selectee's application has defects.<sup>29</sup> If

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<sup>23</sup> Group 59, which originally contained 17 applications, was bifurcated as a result of a technical amendment. The other applications in the MX group were evaluated as Group 59A in a previous order. *See Comparative Consideration of 27 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 22-61, at paras. 32-34 (2022).

<sup>24</sup> *See Threshold Fair Distribution Analysis of 13 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-477 at 4-5, para. 11 (MB May 2, 2022).

<sup>25</sup> *See* File Nos. 167809 and 167493.

<sup>26</sup> *Threshold Fair Distribution Analysis of 5 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-1166, at 4-5, para. 10 (MB Nov. 9, 2022).

<sup>27</sup> *See* File No. 166291, Fair Distribution of Service Section and Attach. "Perry 210 Amendment Purpose.pdf" (filed Dec. 7, 2022).

<sup>28</sup> *See* File Nos. 167410 and 167018, Fair Distribution of Service Section, and associated exhibits. Elijah's 60 dBu contour encompasses 101,868 people, and its claimed aggregated first and second NCE service is 12,723 people. GPTC's 60 dBu contour encompasses 19,136 people, and its claimed aggregated first and second NCE service is 6,971 people. Thus, each would provide combined first and second NCE service to at least 10% percent of the population within its respective 60 dBu contour and to more than 2,000 people.

<sup>29</sup> If a tentative selectee's application is found unacceptable for filing, it is dismissed. The applicant then has one opportunity to submit a curative amendment and a petition for reconsideration requesting reinstatement *nunc pro tunc* within 30 days, provided that the amendment is minor and does not alter the fair distribution analysis. *See* 47 CFR § 73.3522(b)(1). A tentative selectee that is unable to cure the defect is disqualified. 47 CFR § 73.7004(d).

the Bureau finds the application acceptable for filing, we announce acceptance by the release of this Order, and petitions to deny may be filed within 30 days following the release date of the Order.<sup>30</sup>

12. The Bureau has studied the application of the tentative selectee identified herein and determined that the application is acceptable for filing. The tentative selectee identified in this Order appears to be fully qualified to become the licensee of the new NCE FM station it has proposed. We tentatively conclude that the grant of the application would serve the public interest, convenience, and necessity. It is our intention to grant the application if, after the 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application. Such determinations of grantability may, of course, involve additional matters that may impact the timing or outcome of a decision. For example, a proposal to serve an area near the United States border with Canada or Mexico cannot become ripe for grant prior to the successful completion of international coordination.

#### V. ORDERING CLAUSES

13. **Group 59B.** Accordingly, IT IS ORDERED, that the tentative selection of the application of Big Bend Heritage Music Association, Inc. (File No. 166291), for authority to construct a new noncommercial educational FM station at Perry, Georgia, IS RESCINDED.

14. IT IS FURTHER ORDERED that the Application filed by Elijah Radio (File No. 167410) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Dasher, Georgia and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive applications of Big Bend Heritage Music Association, Inc. (File No. 166291), Faith and Action Community Outreach, Inc. (File No. 165985), Georgia Public Telecommunications Commission (File No. 167018), Church Planters of America (File No. 167096), and Bemiss Road Baptist Church and Lowndes County Christian Academy Inc. (File No. 167233), and TO GRANT the application of Elijah Radio (File No. 167410), CONDITIONED UPON that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>30</sup> 47 CFR § 73.7004.



Federal Communications Commission  
Washington, D.C. 20554

January 23, 2023

**DA 23-60**  
***In Reply Refer to:***  
**1800B3-HOD**  
**Released: January 23, 2023**

Centro Cristiano de Vida Eterna San Antonio  
c/o Dan J. Alpert, Esq.  
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Arlington, VA 22201  
(sent by email to [dja@commlaw.tv](mailto:dja@commlaw.tv))

Texas Public Radio  
c/o Melodie A. Virtue, Esq.  
Foster Garvey PC  
1000 Potomac Street, NW  
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In re: **NCE MX Group 196**

**Centro Cristiano de Vida Eterna San Antonio**  
New NCE FM Station, Shiner, Texas  
Facility ID No. 768082  
Application File No. 167134

**Texas Public Radio**  
New NCE FM Station, Gonzales, Texas  
Facility ID No. 766260  
Application File No. 166683

**Centro Cristiano de Vida Eterna San Antonio**  
New NCE FM Station, Runge, Texas  
Facility ID No. 768090  
Application File No. 167130

Dear Counsel:

We have before us the referenced application (Application) filed by Centro Cristiano de Vida Eterna San Antonio (CCVESA), which seeks authority to construct a new noncommercial educational FM station at Shiner, Texas,<sup>1</sup> and has been designated the tentative selectee for NCE MX Group 196.<sup>2</sup>

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<sup>1</sup> Application File No. 0000167134 (Application).

<sup>2</sup> *Threshold Fair Distribution Analysis of 5 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-1166, at 5, para. 11 (MB Nov. 9, 2022) (Fair Distribution Order).

Also before us is a Petition to Deny (Petition) the Application filed by Texas Public Radio (TPR),<sup>3</sup> and CCVESA's response to a Letter of Inquiry sent by the Bureau.<sup>4</sup> For the reasons set forth below, we grant the Petition, rescind our tentative selection of the Application, dismiss the Application, and refer NCE MX Group 196 to the Commission to conduct a point system analysis.<sup>5</sup>

**Background.** CCVESA filed the Application during the November 2021 filing window for new NCE FM applications.<sup>6</sup> The Bureau determined that the Application was mutually exclusive with another application filed by CCVESA,<sup>7</sup> and an application filed by TPR,<sup>8</sup> and designated the three applications NCE MX Group 196.<sup>9</sup> The Bureau later determined that the Application was entitled to a fair distribution preference, and designated it the tentative selectee of NCE MX Group 196.<sup>10</sup>

TPR timely filed the Petition. Among other things, TPR asserts that Application should be dismissed because CCVESA failed to provide a proper site assurance exhibit.<sup>11</sup> TPR notes that the Application lists a tower owned by American Tower Corporation (ATC) but includes contact information for an officer of Vertical Bridge REIT, LLC, a different tower company.<sup>12</sup>

To date, CCVESA has not opposed the Petition or amended the CCVESA-Shiner Application to correct the contact information provided. However, it has responded to an LOI we sent, which requested information regarding whether, at the time it filed the Application, CCVESA had reasonable assurance that the site specified in the Application was available to it.<sup>13</sup> In the LOI Response, CCVESA indicated that it had not contacted ATC directly but understood that Cody Peters at ATC had been contacted.<sup>14</sup> While the LOI requested "all documents ... in the possession of [CCVESA] and its agents related to the availability of the proposed site," CCVESA submitted no documentation with its LOI Response.

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<sup>3</sup> Pleading File No. 204985 (filed Dec. 9, 2022) (Petition).

<sup>4</sup> Letter from Dan J. Alpert, Counsel, Centro Cristiano de Vida Eterna San Antonio, to Tom Hutton, Deputy Division Chief, Law, Audio Division, Media Bureau (dated Jan. 14, 2022) (LOI Response).

<sup>5</sup> See 47 CFR § 73.7002(b); see also *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7420 (2001) (*NCE Order*).

<sup>6</sup> Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB 2021).

<sup>7</sup> Application File No. 167130.

<sup>8</sup> Application File No. 166683.

<sup>9</sup> Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational FM Stations, Public Notice, MB Docket No. 20-343, 36 FCC Rcd 16452 (MB 2021).

<sup>10</sup> *Fair Distribution Order*, DA 22-1166, at 5, para. 14.

<sup>11</sup> Petition at 3-4. TPR also alleges that (1) the Application should not have been awarded a fair distribution preference, and (2) CCVESA underreported its existing authorizations in the Application. *Id.* at 5-6. Given our dismissal of the Application on site availability grounds, we need not and do not reach TPR's other allegations.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> Letter from Albert Shuldiner, Chief, Audio Division, to Martin Guevara, Centro Cristiano de Vida Eterna San Antonio, Application File No. 166134 (dated Nov. 23, 2021).

<sup>14</sup> LOI Response at 1-2.

**Discussion.** We conclude that the CCVESA-Shiner Application is defective. As TPR notes,<sup>15</sup> because the Application specified a site owned by ATC, CCVESA was required to specify the name of the person contacted about the site, the person's telephone number, and the person's status (*i.e.* owner, agent or authorized representative). CCVESA submitted information regarding an individual employed by an unrelated tower company.<sup>16</sup> To date, CCVESA has not amended the Application to correct this error.

We also find that, based on the record before us, CCVESA lacked reasonable assurance that the site specified in the Application was available at the time it filed the Application. CCVESA has not submitted any evidence that it obtained reasonable assurance of the availability of the site specified in the Application. This site availability defect is non-curable and renders the Application subject to dismissal without an opportunity to amend.<sup>17</sup> Accordingly, we grant the Petition, rescind our initial tentative selection of the Application, and dismiss the Application.

In light of this finding, we conduct a new fair distribution analysis. The remaining two applications in NCE MX Group 196 propose service to different communities in Texas. Texas Public Radio proposes to serve Gonzales. CCVESA proposes to serve Runge (CCVESA-Runge). Each applicant claims eligibility for a fair distribution preference based on first NCE service population totals.<sup>18</sup> TPR claims to provide new first NCE service to 4,175 people, and CCVESA-Runge claims to provide new first NCE service to 3,724 people. The proposals are comparable because neither exceeds the other by at least 5,000 people.<sup>19</sup> Therefore, we consider combined first and second NCE service population totals. TPR would provide a first or second NCE service to 16,542 people, and CCVESA-Runge would provide a first or second NCE service to 18,675 people.<sup>20</sup> Because these proposals are also comparable, the fair distribution analysis ends here. Accordingly, because we are unable to designate a tentative selectee under a section 307(b) fair distribution analysis, TPR and CCVESA-Runge will proceed to a point system analysis.

The point system analysis, which is conducted when section 307(b) is not determinative, must be conducted by the Commission, as this analysis is considered a simplified "hearing" for purposes of section 155(c)(1) of the Act.<sup>21</sup> Accordingly we have referred the matter to the Commission to make a determination under a point system analysis.<sup>22</sup>

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<sup>15</sup> Petition at 4.

<sup>16</sup> Application at Vertical Bridge Tower Contact Attach.

<sup>17</sup> See *Able Radio Corp.*, Letter Order, 26 FCC Rcd 16161, 16163 (MB 2011); *Radio Delaware, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 8630, 8631, paras. 9-11 (Rev. Bd. 1989).

<sup>18</sup> See Application File Nos. 166683 and 167130, Fair Distribution of Service Section, and associated exhibits. TPR claims that it would provide first NCE service to 4,175 of the 17,649 people encompassed within its 60 dBu contour. CCVESA-Runge claims that it would provide first NCE service to 3,724 of the 18,675 people within its 60 dBu contour. Thus, each applicant would provide first NCE service to at least 10% of the population within its respective 60 dBu contour and to more than 2,000 people.

<sup>19</sup> The applicant proposing to provide service to the greatest number of people will only be awarded a construction permit if it will provide such service to at least 10% of the people within the station's 60 dBu contour *and* to at least 5,000 more people than the next best applicant. See 47 CFR § 73.7002(b).

<sup>20</sup> See Application File Nos. 166683 and 167130, Fair Distribution of Service Section, and associated exhibits.

<sup>21</sup> See 47 CFR § 73.7002(b); see also *NCE Order*, 15 FCC Rcd at 7420.

<sup>22</sup> See *Central Florida Educational Foundation, Inc. c/o Joseph E. Dunne, Esq.*, Letter Order, 22 FCC Rcd. 18332, 18334 (MB 2007) (referring the matter to the Commission for consideration where the initial outcome would be

**Ordering Clauses.** For the reasons discussed above, **IT IS ORDERED** that the Petition to Deny (Pleading File No. 204985) filed by Texas Public Radio on December 9, 2022, **IS GRANTED**.

**IT IS FURTHER ORDERED**, that the tentative selection of the application of Centro Cristiano de Vida Eterna San Antonio (File No. 167134) for authority to construct a new noncommercial educational FM station at Shineer, Texas, **IS RESCINDED** and the application **IS DISMISSED**.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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altered by the potential for a new points analysis). *See also Comparative Consideration of 24 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educ. FM Stations*, Memorandum Opinion and Order, 25 FCC Rcd 12887, 12914 (2010) (“staff should refer only those issues to the Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the particular NCE group, or where a new or novel question or substantial and material question of fact otherwise exists.”).

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re Application of	)	
	)	
<b>Associated Students of St. Mary’s College</b>	)	NAL/Acct. No. MB-202341410001
	)	FRN: 0013878715
For Renewal of License for	)	Facility ID No. 3024
Station KSMC(FM)	)	Application File No. 0000176133
Moraga, California	)	

**ORDER**

**Adopted: January 24, 2023**

**Released: January 24, 2023**

By the Chief, Audio Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Associated Students of St. Mary’s College (Licensee), licensee of Station KSMC(FM), Moraga, California (Station). The Consent Decree resolves issues arising from the Bureau’s review of the captioned license renewal application (Application) for the Station. In particular, the Consent Decree resolves the Bureau’s investigation of Licensee’s compliance with the Filing Deadline Rule and the Online Public Inspection File Rule contained in sections 73.3539(a), 73.3527(b)(2)(i), and 73.561(a) of the Commission’s rules (Rules).<sup>1</sup> The Bureau’s Audio Division suspended processing of the Application because Licensee did not comply with its renewal application filing deadline and public file obligations.

2. The Licensee has shown that, at the time of the violations, the Station was a student-run noncommercial educational (NCE) station licensed to an educational institution and that the violations at the Station are first-time documentation violations within the parameters of our policy concerning violations of documentation requirements of Rules by student-run NCE radio stations.<sup>2</sup> The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated sections 73.3539(a) and 73.3527(b)(2)(i) of the Rules. Pursuant to the Consent Decree, Licensee agrees, among other things, to make a civil penalty payment to the United States Treasury in the amount of \$500, implement a comprehensive compliance plan to ensure future compliance with its online public inspection file obligations and timely filing of renewal applications, and, one year after entering into the Consent Decree, submit a compliance report to the Audio Division.<sup>3</sup>

<sup>1</sup> See 47 CFR §§ 73.3539(a), 73.3527(b)(2)(i), 73.561(a).

<sup>2</sup> See *William Penn University*, Policy Statement and Order, 28 FCC Rcd 6932, 6932, para. 2 (MB 2013) (in cases of “first-time violations of certain documentation requirements of our Rules by student-run NCE radio stations . . . instead of issuing a Notice of Apparent Liability (NAL), the Bureau will first afford the licensee an opportunity to negotiate a consent decree in which the licensee agree to a compliance plan and makes a voluntary contribution to the United States Treasury. In negotiating the amount of the voluntary contribution, the Bureau will consider the totality of circumstances, including giving a appropriate consideration to the station’s finances with respect to reducing the base forfeiture amount significantly.”).

<sup>3</sup> License disclosed in the Application that the Station was silent for two periods without authorization: from February 2020 until August 20, 2020, and from September 10, 2021, to December 10, 2021. Licensee explains that first period of silence was initially because of a broken antenna, but the silence was extended because it was partially attributable to COVID-19 related closures, while the second period of silence was due to concerns over RF safety levels. We will not take any action for the first period of silence without STA was in part due to the COVID-

3. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau's consideration of potential violations of the Rules.

4. Based on the record before us, we conclude that nothing in that record creates a substantial and material question of fact as to whether Licensee possesses the basic qualifications to remain a Commission licensee.

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended,<sup>4</sup> and by the authority delegated by sections 0.61 and 0.283 of the Rules,<sup>5</sup> the Consent Decree attached hereto **IS ADOPTED** without change, addition, or modification.

6. **IT IS FURTHER ORDERED** that the investigation by the Media Bureau of the matters noted above **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that Associated Students of St. Mary's College **IS ADMONISHED** for its violation of section 73.561(d) of the Commission's rules.<sup>6</sup>

8. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Susan H. Collins, Associated Students of St. Mary's College, 1928 St. Mary's Road, Moraga, CA 94575, and to its counsel, Derek Teslik, Esq., Gray Miller Persh LLP, 2233 Wisconsin Avenue, NW, Suite 226, Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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19 pandemic, but will admonish Licensee for its second period of silence without STA. *See* 47 CFR § 73.1740(a)(4) (Commission authorization required for silence of more than 30 days).

<sup>4</sup> 47 U.S.C. §§ 154(i), 154(j), 503(b).

<sup>5</sup> 47 CFR §§ 0.61, 0.283.

<sup>6</sup> This admonishment is issued pursuant to sections 1.80 and 0.283(d) of the rules, 47 CFR §§ 1.80 and 0.283.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Application of	)	
	)	
<b>Associated Students of St. Mary’s College</b>	)	NAL/Acct. No. MB-202341410023
	)	FRN: 0013878715
For Renewal of License for	)	Facility ID No. 3024
Station KSMC(FM)	)	Application File No. 0000176133
Moraga, California	)	

**CONSENT DECREE**

**Adopted: January 24, 2023**

**Released: January 24, 2023**

1. The Media Bureau of the Federal Communications Commission and Associated Students of St. Mary’s College (hereafter “Licensee,” as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau’s investigation into the Licensee’s compliance with sections 73.3539(a) and 73.3527(b)(2)(i) of the Commission’s rules<sup>1</sup> relating to the timely filing of renewal applications and the maintenance of an online public inspection file. To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with sections 73.3539(a) and 73.3527(b)(2)(i).

**I. DEFINITIONS**

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) “Application” means application of Associated Students of St. Mary’s College for renewal of the radio broadcast license for station KSMC(FM), Application File No. 0000176133.
  - (d) “Bureau” means the Media Bureau of the Commission.
  - (e) “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices.
  - (f) “Compliance Plan” means the processes and procedures developed by the Licensee in an effort to ensure compliance with 47 CFR §§ 73.3527(b)(2)(i) and 73.3539(a) of the Rules.
  - (g) “Covered Employees” means all employees, volunteers, and agents of the Licensee, including students enrolled at Licensee, who are responsible for performing, supervising, overseeing, or managing activities related to the filing of timely renewal applications as required by the Filing Deadline Rule, and the maintenance of online public inspection files, as required by the Online Public Inspection File Rule.
  - (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.

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<sup>1</sup> 47 CFR §§ 73.3527(b)(2)(i), 73.3539(a).

- (i) “Filing Deadline Rule” means 47 CFR § 73.3539(a).
- (j) “Investigation” means the Bureau’s decision to hold and not process the Licensee’s Application due to noncompliance sections 73.3527(b)(2)(i) and 73.3539(a) of the Rules.
- (k) “Licensee” means Associated Students of St. Mary’s College and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (l) “Online Public Inspection File Rule” means 47 CFR § 73.3527(b)(2)(i).
- (m) “Parties” means the Licensee and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (o) “Station” means station KSMC(FM), Moraga, California.

## II. BACKGROUND

3. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed “not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed.”<sup>2</sup> An application for renewal of the Station’s license should have been filed by August 1, 2021, the first full business day following the first day of the fourth full calendar month prior to the Station’s license expiration date of December 1, 2021. The Station’s Application was not filed until December 1, 2021, the day the Station’s license expired.

4. Section 73.3527(b)(2)(i) requires radio station licensees to maintain an online public inspection file and to upload certain documents to the Commission’s public inspection file database throughout the year.<sup>3</sup> This includes among other requirements, the requirement that quarterly issues and programs lists be uploaded to the station’s online public inspection file no later than the tenth day after each quarter. It is crucial that stations maintain online public inspection files that are complete and up to date because the information in them directly affects, among other things, the public’s ability to be informed about a station’s compliance with its obligations.

5. The Licensee recently filed the Application to renew its radio station license. We have determined that the Licensee did not comply with either the Filing Deadline Rule or the Online Public Inspection File Rule. Specifically, as noted in paragraph 3 above, the Licensee failed to file the Application by August 1, 2021, and the Licensee failed to place any issues and programs lists in its online public file as required by the Online Public Inspection File Rule prior to April 11, 2022. Based on the Licensee’s failure to comply with the Filing Deadline Rule and the Online Public Inspection File Rule, the Bureau commenced the Investigation and suspended processing the Application.

6. The Bureau and Licensee have negotiated the terms of the Consent Decree that terminates the Investigation into the matters discussed above. As part of the Consent Decree, the Licensee has agreed to make a settlement payment of Five Hundred Dollars (\$500) to the U.S. Treasury, and to implement and maintain a Compliance Plan designed to ensure its future compliance with the Rules noted above for one (1) year after the Effective Date.

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<sup>2</sup> 47 CFR § 73.3539(a).

<sup>3</sup> 47 CFR § 73.3527(b)(2)(i).

### III. TERMS OF AGREEMENT

7. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

8. **Jurisdiction.** The Licensee agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

9. **Effective Date.** The Parties agree that this Consent Decree shall become effective on the Effective Date. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

10. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In addition, the Bureau agrees to process the Application in the ordinary course. In consideration for such, the Licensee agrees to the terms, conditions, and procedures contained herein.

11. The Bureau agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion or in response to any petition to deny or other third-party objection, any new proceeding, formal or informal, or take any action on its own motion against the Licensee concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of the Licensee's basic qualifications to be a Commission licensee or to hold Commission licenses or authorizations.<sup>4</sup>

12. **Admission of Liability.** The Licensee admits for the purpose of this Consent Decree that it failed to timely file its application for renewal of license, in violation of section 73.3539(a) of the Rules. Licensee also admits that it failed to maintain an online public inspection file, specifically, that it did not upload any issues and programs lists, in violation of section 73.3527(b)(2)(i) of the Rules during the Station's prior license term.

13. Pursuant to section 503(b)(2)(E) of the Act, in exercising its forfeiture authority, the Commission may consider, among other things, "any history of prior offenses" by the licensee.<sup>5</sup> The Licensee acknowledges that the Commission or its delegated authority may consider the Licensee's admission of liability in this Consent Decree in proposing any future forfeiture against Licensee in the event the Licensee is determined to have apparently committed a violation of the Act, the Rules, or of any orders of the Commission after the Effective Date, whether related to the timely filing of applications or otherwise.

14. **Civil Penalty.** Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of Five Hundred Dollars (\$500), within thirty (30) calendar days after the Effective Date. Licensee acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in section 3701(b)(1) of the Debt Collection Improvement Act of 1996.<sup>6</sup>

15. **Payment.** The Bureau has agreed to accept, and Licensee has agreed to make, a civil penalty payment to the United States Treasury in the amount of Five Hundred Dollars (\$500) within thirty

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<sup>4</sup> See 47 CFR § 1.93(b).

<sup>5</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>6</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

(30) calendar days after the Effective Date. Licensee will also send electronic notification of payment to Alexander Sanjenis at [Alexander.Sanjenis@fcc.gov](mailto:Alexander.Sanjenis@fcc.gov) on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),<sup>7</sup> or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>8</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>9</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

16. **Compliance Officer.** Within 30 calendar days after the Effective Date, the Licensee shall designate a responsible party to serve as a Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall report directly to the Licensee's Chancellor (or equivalent senior officer/owner) on a regular basis, and shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that the Licensee complies with the terms and conditions of the Compliance Plan and this Consent Decree. The Compliance Officer shall have specific knowledge

<sup>7</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>8</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>9</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

of the Filing Deadline Rule and the Online Public Inspection File Rule prior to assuming his/her duties. The Bureau acknowledges that the Compliance Officer, Chancellor, and/or Board Member may be the same individual.

17. **Compliance Plan.** For purposes of settling the matters set forth herein, the Licensee agrees that it shall, within 30 calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Filing Deadline Rule and Online Public Inspection File Rule, and with the terms and conditions of this Consent Decree. The Compliance Plan shall contain, at a minimum, the following elements:

- (a) **Compliance Manual.** The Compliance Plan shall include a Compliance Manual that is distributed to all Covered Employees. The Licensee may adopt a Compliance Manual that it has prepared or one that has been prepared by an outside source, such as a trade association (e.g., the National Association of Broadcasters), another licensee, or a law firm. The Compliance Manual shall:
  - i. thoroughly explain the requirements embodied in the Online Public Inspection File Rule;
  - ii. contain Operating Procedures that Covered Employees must follow to help ensure the Licensee's compliance with the Online Public Inspection File Rule. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Licensee's Station uploads all required information to its online public inspection files in a timely manner and otherwise maintain full, complete, and up to date information therein. The Operating Procedures shall also include a compliance checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Online Public Inspection File Rule; and
  - iii. be periodically reviewed and revised as necessary to ensure that the information set forth therein remains current, complete, accurate, and effective.
- (b) **Compliance Training Program.** If the Licensee has Covered Employees, the Compliance Plan shall include a compliance training program to provide periodic training to those Covered Employees on complying with the Online Public Inspection File Rule. As part of the compliance training program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with the Online Public Inspection File Rule and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall receive initial training under the compliance training program within 30 calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after such initial training is provided shall receive training under the compliance training program within 30 calendar days after the date he or she becomes a Covered Employee. The Licensee shall provide training under the compliance training plan on at least an annual basis, and it shall periodically review and revise the compliance training program as necessary to ensure that it remains current, complete, and effective.
- (c) **Compliance Report.** One year after entering into this Consent Decree, the Licensee shall submit a compliance report to the Bureau for the Station. The compliance report shall contain a certification of the Licensee's compliance with the Online Public Inspection File Rule during the previous year. The compliance report shall be submitted to the Bureau no later than 30 calendar days after the one-year anniversary of the Effective Date. The Bureau may, within its sole discretion, require the Licensee to submit

more frequent or additional compliance reports in accordance with the terms of paragraph 20 below.

- i. The compliance report shall include a certification by the Compliance Officer stating that the Compliance Officer has personal knowledge that the Licensee: (i) has established and implemented the Compliance Plan; (ii) has utilized the operating procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree.
- ii. The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with section 1.16 of the Rules,<sup>10</sup> and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- iii. If the Compliance Officer is unable to provide the requisite certification, the Compliance Officer shall provide the Bureau with a report detailing the noncompliance, as described below.
- iv. The compliance report shall be submitted to the Audio Division staff: Alexander Sanjenis, Assistant Division Chief, at Alexander.Sanjenis@fcc.gov.

18. **Reporting Noncompliance.** The Licensee shall report any instance of noncompliance with the Online Public Inspection File Rule, and any instance of noncompliance with any applicable terms and conditions of this Consent Decree within 10 calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each such instance of noncompliance; (ii) the steps that the Licensee has taken or will take to remedy such noncompliance, including the schedule on which such actions will be taken; and (iii) the steps that the Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventative action will be taken. All reports of noncompliance shall be submitted to the Audio Division staff: Alexander Sanjenis, Assistant Division Chief, at Alexander.Sanjenis@fcc.gov.

19. **Termination Date.** The obligations to which the Licensee is subject pursuant to this Consent Decree shall terminate upon submission of the Compliance Report pursuant to Paragraph 17(c), provided the Bureau is satisfied that the Licensee has demonstrated substantial compliance with its obligations. If the Bureau is not satisfied that the Licensee has demonstrated substantial compliance with its obligations, the Bureau may, within its sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

20. **Further Violation(s).** The Licensee acknowledges that the Bureau retains the discretion and authority to propose sanctions against the Licensee, including the issuance of notices of apparent liability for forfeitures, for any apparent willful and/or repeated violation by the Licensee of the Online Public Inspection File Rule that occurs during the term of this Consent Decree.

21. **Waivers.** As of the Effective Date, the Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, neither the Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de*

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<sup>10</sup> 47 CFR § 1.16.

*novus*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act<sup>11</sup> relating to the matters addressed in this Consent Decree.

22. **Severability**. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

23. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

24. **Subsequent Rule or Order**. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Licensee does not expressly consent) that provision will be superseded by such Rule or Order.

25. **Successors and Assigns**. The Licensee agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

26. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

27. **Modifications**. This Consent Decree cannot be modified without the advance written consent of both Parties.

28. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

29. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

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<sup>11</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

30. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.



\_\_\_\_\_  
Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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1/24/2023  
Date

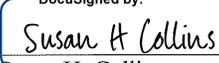
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Susan H. Collins  
Vice President for Finance and Administration  
Associated Students of St. Mary's College

\_\_\_\_\_  
Date

30. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

\_\_\_\_\_  
Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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Date

DocuSigned by:  
  
\_\_\_\_\_  
Susan H. Collins  
Vice President for Finance and Administration  
Associated Students of St. Mary's College

1/21/2023

\_\_\_\_\_  
Date

Before the  
 Federal Communications Commission  
 Washington, D.C. 20554

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	
	)	
U.S. Department of Health and Human Services	)	
Petition for Declaratory Ruling	)	

**DECLARATORY RULING**

**Adopted: January 23, 2023**

**Released: January 23, 2023**

By the Chief, Consumer and Governmental Affairs Bureau:

**I. INTRODUCTION**

1. In this declaratory ruling, we apply Commission precedent to ensure that millions of Americans can receive the information they need to maintain enrollment in Medicaid and other governmental health care programs to avoid losing health care coverage. Specifically, we grant in significant part the request of the U.S. Department of Health and Human Services (HHS) to confirm that federal and state governmental agencies working in conjunction with local governments, governmental contractors, and managed care entities acting under contract with state governments may, under certain circumstances, make autodialed and prerecorded or artificial voice calls or send autodialed text messages to raise awareness of the eligibility and enrollment requirements for these governmental health care programs without violating the Telephone Consumer Protection Act (TCPA).<sup>1</sup> We also outline other ways HHS and its partners can reach consumers without running afoul of the restrictions of the TCPA.

2. The federal health care policies implemented in response to the COVID-19 pandemic changed the eligibility requirements for Medicaid and other governmental health care programs. Those changes have resulted in a substantial increase in participation in these programs.<sup>2</sup> When the government’s continuous enrollment requirement, which ensures that individuals enrolled in Medicaid throughout the pandemic are not at risk of losing coverage, comes to an end, millions of Americans will need to complete renewals necessary to redetermine their eligibility to remain in the program, a process complicated by staff shortages at state agencies that administer the Medicaid program.<sup>3</sup> In this declaratory ruling, we help eligible consumers avoid coverage losses by confirming that federal and state governmental agencies and their contractual partners can communicate via automated calls and text

<sup>1</sup> See Letter from Xavier Becerra, Secretary, U.S. Department of Health and Human Services, to Jessica Rosenworcel, Chairwoman, FCC (April 28, 2022) (filed in CG Docket No. 02-278) (noting that millions of Americans will lose their Medicaid coverage when the public health emergency ends unless they take steps to renew eligibility) (HHS Letter). We treat the letter as a petition for declaratory ruling. See 47 CFR § 1.2.

<sup>2</sup> HHS Letter at 2 (noting that these programs provide health coverage to 86 million Americans and that enrollment has increased 20% since the start of the public health emergency).

<sup>3</sup> See Amy Goldstein, *Millions of vulnerable Americans likely to fall off Medicaid once the federal public health emergency ends*, Washington Post (March 14, 2022) (indicating that as many as 16 million low-income Americans risk losing Medicaid coverage), [www.washingtonpost.com/health/2022/03/14/medicaid-loss-of-coverage/](https://www.washingtonpost.com/health/2022/03/14/medicaid-loss-of-coverage/).

messages or prerecorded voice message calls with program enrollees about the steps necessary to retain enrollment in these health care programs.

## II. BACKGROUND

### A. TCPA

3. The TCPA generally requires “any person” making certain calls to obtain the recipient’s prior express consent before making the call absent an emergency purpose.<sup>4</sup> In relevant part, the TCPA’s restrictions apply to “robocalls” made: (1) using an automatic telephone dialing system or artificial or prerecorded voice to a wireless phone;<sup>5</sup> and (2) using an artificial or prerecorded voice to a residential telephone line.<sup>6</sup> The prohibition on using an autodialer to call a wireless number also applies to text messages sent using an autodialer.<sup>7</sup> If a robocall includes or introduces an advertisement or constitutes telemarketing, consent generally must be in writing, after the caller makes certain disclosures (i.e., “prior express written consent”).<sup>8</sup> And the Commission has made clear that a consumer simply providing their telephone number constitutes their “prior express consent” to be contacted at that number regarding information closely related to the purpose for which they provided the number, absent instructions to the contrary.<sup>9</sup>

4. Separately, the Commission has clarified that federal and state governments making calls in the conduct of official business do not fall within the meaning of “person” in section 227(b)(1).<sup>10</sup> As a

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<sup>4</sup> See 47 U.S.C. § 227(b)(1).

<sup>5</sup> See 47 U.S.C. § 227(b)(1)(A); 47 CFR § 64.1200(a)(1)-(2). See *Facebook, Inc. v. Duguid*, 141 S.Ct. 1163, 1168-73 (2021) (holding that to qualify as an “automatic telephone dialing system” under the TCPA, a device must have the capacity either to store a telephone number using a random or sequential number generator, or to produce a telephone number using a random or sequential number generator).

<sup>6</sup> 47 U.S.C. § 227(b)(1)(B); 47 CFR § 64.1200(a)(3). The Commission has exempted from this prohibition artificial and prerecorded voice calls to residential telephone lines that are not made for a commercial purpose and calls made for a commercial purpose that do not contain an unsolicited advertisement or constitute telemarketing. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8773-74, paras. 40-41 (1992) (*1992 TCPA Order*) (noting that artificial or prerecorded voice messages that do not seek to sell a product or service do not tread heavily upon the consumer interests implicated by the TCPA).

<sup>7</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003) (*2003 TCPA Order*); see also *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009) (noting that text messaging is a form of communication used primarily between telephones and is therefore consistent with the definition of a “call”).

<sup>8</sup> See 47 CFR § 64.1200(a)(2)-(3), (b), (f)(9) (defining “prior express written consent”).

<sup>9</sup> See *1992 TCPA Order*, 7 FCC Rcd at 8769, para. 31. In the *ACA Declaratory Ruling*, for example, the Commission clarified that a party who provides his or her wireless number to a creditor as part of a credit application “reasonably evidences prior express consent by the cell phone subscriber to be contacted at the number regarding the debt.” *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Request of ACA International for Clarification and Declaratory Ruling*, CG Docket No. 02-278, 23 FCC Rcd 559, 564, para. 9 (2008) (*ACA Declaratory Ruling*); *Rules and Regulations Implementing the Consumer Protection Act of 1991, Blackboard, Inc. Petition for Expediated Declaratory Rulemaking*, CG Docket 02-278, Declaratory Ruling, 31 FCC Rcd 9054, 9064, para. 23 (2016) (confirming that the provision of a telephone number by a parent or student to a school provides prior express consent to receive communications from the school closely related to the educational mission of the school or to official school activities absent instructions to the contrary from the party who provides the phone number) (*Blackboard Declaratory Ruling*).

<sup>10</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Broadnet Teleservices LLC Petition for Declaratory Ruling*, CG Docket No. 02-278, Declaratory Ruling, 31 FCC Rcd 7394, 7399-41, paras. 12-15 (2016) (interpreting the TCPA to exclude calls made by the federal government, in line with the longstanding interpretive presumption that the word “person” does not include the federal government absent a clear

(continued....)

result, federal and state governmental callers and texters are not subject to the TCPA's prohibitions on using automated equipment without the prior express consent of the called party. On the other hand, contractors making calls on behalf of such governments, along with local governmental entities and their contractors, are "persons" subject to the TCPA, except in those cases where the federal or state government is so involved in placing the call as to be deemed to have initiated it.<sup>11</sup>

#### B. HHS Letter

5. On April 28, 2022, HHS filed a letter requesting clarification that automated calls and texts or prerecorded telephone calls made to encourage individuals to renew enrollment with their state Medicaid program, Children's Health Insurance Program (CHIP), Basic Health Program (BHP), or Health Insurance Marketplace (Marketplace) are permissible under the TCPA.<sup>12</sup> HHS notes that the continuous enrollment requirement in Medicaid imposed by the public health emergency "extends through the end of the month in which the public health emergency ends, and state agencies may begin to terminate coverage for ineligible individuals at that time."<sup>13</sup> HHS indicates that millions of vulnerable Americans risk losing Medicaid coverage when the public health emergency relating to the COVID-19 pandemic ends.<sup>14</sup> HHS contends that these coverage losses can be avoided if state governmental agencies and their partners are able to communicate via automated calls and text messages or prerecorded voice messages with enrollees about the steps required to retain their enrollment in these health coverage programs.<sup>15</sup>

6. HHS notes that many state agencies and their partners, including local governments, contractors, and managed care entities under contract with state agencies, are considering the use of robocalls and robotexts to remind enrollees to respond to requests from Medicaid agencies to renew their enrollment during three phases of this process.<sup>16</sup> During the first phase, all Medicaid enrollees, along with CHIP and BHP enrollees whose most recent renewal has been delayed due to the public health emergency, may receive text messages or prerecorded calls reminding them to contact their program to

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"affirmative showing of statutory intent to the contrary") (2016 Broadnet Declaratory Ruling); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Broadnet Teleservices LLC Petition for Declaratory Ruling, National Consumer Law Center Petition for Reconsideration and Stay, Professional Services Council Petition for Reconsideration*, CG Docket No. 02-278, Order on Reconsideration, 35 FCC Rcd 15052, 15059-61, paras. 22-26 (2020) (clarifying that state government callers in the conduct of official business do not fall within the meaning of "person" in section 227(b)(1)) (2020 Broadnet Order).

<sup>11</sup> See, e.g., 2020 Broadnet Order, 35 FCC Rcd at 15059, paras. 18-21 (concluding that governmental callers rather than a contractor were the "maker of the call" because the governmental entity made all decisions regarding whether to make a call, the timing of the call, the call recipients, and the content of the call). The Commission noted that determining whether a governmental entity or its contractor is the maker of the call is a highly fact-specific, case-by-case inquiry. See *id.* at 15059, paras. 19-20.

<sup>12</sup> See HHS Letter at 1.

<sup>13</sup> *Id.* at 5. The Families First Coronavirus Response Act, Pub. L. No. 116-127, made increasing federal matching funds available for state Medicaid programs that meet specific requirements, including that they maintain the enrollment of most Medicaid enrollees through the end of the month in which the public health emergency ends. On December 29, 2022, the President signed the Consolidated Appropriations Act that decoupled the Medicaid continuous enrollment provision from the public health emergency and terminates this provision on March 31, 2023. As a result, states can resume Medicaid disenrollments beginning April 1, 2023. States are required to maintain updated contact information, and make attempts to contact enrollees prior to disenrollment in Medicaid. See Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (2022).

<sup>14</sup> HHS Letter at 2 (citing an Urban Institute projection that 15.8 million people are at risk of losing Medicaid coverage).

<sup>15</sup> *Id.* at 3, 6 (noting that local governments play a critical role and often conduct determinations of Medicaid and CHIP eligibility and "managed care facilities" under contract with a state serve as important messengers on behalf of the state).

<sup>16</sup> *Id.* at 3.

ensure their contact information is up to date.<sup>17</sup> In the second phase, when renewals are being processed for Medicaid enrollees, along with regular annual renewals for CHIP and BHP enrollees, some individuals will need to provide additional information, such as updated income information to complete the redetermination of eligibility.<sup>18</sup> These individuals may receive text messages or prerecorded calls reminding them to respond to their program.<sup>19</sup> If they do not respond, these individuals may receive another reminder.<sup>20</sup>

7. Lastly, in the event a determination is made that an individual is no longer eligible for the program for which they have enrolled, during the final phase, the individual may receive text messages or prerecorded calls explaining the actions that they can take to enroll in another health coverage program.<sup>21</sup> HHS indicates that no more than six to eight individual calls or messages will be made to any individual enrollee;<sup>22</sup> once an enrollee has responded with the requested information, or has enrolled in another health care coverage program, the individual should not receive any additional calls or text messages.<sup>23</sup>

8. HHS offers two reasons supporting its request. First, HHS contends that a consumer providing their telephone number when applying for a governmental health care program constitutes prior express consent to be contacted at that telephone number regarding eligibility for and ongoing enrollment in the program.<sup>24</sup> Second, HHS urges that, because federal and state agencies are so involved in placing these calls by determining the content, timing, and recipient of the call or text message, the federal or state government is the maker of the call under the TCPA even if a third party is involved.<sup>25</sup>

9. On May 3, 2022, the Commission released a Public Notice seeking comments on the issues raised in the HHS Letter.<sup>26</sup> A wide variety of commenters including non-profit organizations, governmental entities, health insurance providers, and consumer groups expressed support for HHS' requested clarification.<sup>27</sup> In general, these commenters reiterate that millions of the most vulnerable Americans risk losing important health care benefits when the public health emergency comes to an end.<sup>28</sup> These commenters indicate that the use of autodialed calls and text messages are highly effective in reaching the most vulnerable groups such as low-income, elderly, and non-English speaking individuals with the information that they require to maintain these health care benefits.<sup>29</sup> Although in agreement

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<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 4-5.

<sup>22</sup> *Id.* at 5.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 8.

<sup>25</sup> *Id.* at 8-9 (noting that the Commission has clarified that federal and state governmental callers are not considered "persons" that are subject to the TCPA).

<sup>26</sup> See *Consumer and Governmental Affairs Bureau Seeks Comment on Request Relating to Enrollment in Medicaid and Other Governmental Health Coverage Programs*, CG Docket No. 02-278, Public Notice (DA 22-487) (May 3, 2022).

<sup>27</sup> See, e.g., Blue Cross Comments at 1; California DHCS Comments at 2-4; CareFirst Comments at 1; Colorado HCPF Comments at 1-2; MassHealth Comments at 1; NCLC et al. Comments at 2; TennCare Comments at 1; Wisconsin DHS Comments at 1.

<sup>28</sup> See, e.g., CBPP Comments at 1; LeadingAge Comments at 2; MACPAC Comments at 2; NYS Comments at 2.

<sup>29</sup> See, e.g., AAPCHO Comments at 1 (noting the importance of autodialed calls and text messages to reach Asian Americans); Community Catalyst Comments at 2 (importance of text messages in reaching low-income individuals); LeadingAge Comments at 1 (importance in contacting older individuals).

with HHS that the provision of a telephone number upon application for a governmental health care program constitutes prior express consent under existing Commission precedent, NCLC suggests that the better grounds for relief when such telephone numbers have been reassigned to other users is a free-to-end-user exemption rather than deeming the federal or state government the maker of the call.<sup>30</sup> Two commenters express concerns that granting HHS' request will result in an increased number of unwanted robocalls absent limitations to avoid abuse.<sup>31</sup>

### III. DISCUSSION

10. A critical component of the nation's efforts to address the COVID-19 pandemic is the ability of governmental agencies to communicate effectively with the public.<sup>32</sup> As states resume routine renewals and other eligibility actions relating to governmental health care programs, their ability to communicate with Medicaid, CHIP, and BHP enrollees will be critical to successful retention of health care coverage for eligible enrollees.

11. In this declaratory ruling, we confirm that enrollees' provision of a telephone number on an application for coverage in Medicaid or other government health care programs constitutes prior express consent to be contacted at that number regarding enrollment eligibility and the other reasons HHS describes in its petition because the purpose of those calls and texts is closely related to the purpose for which the enrollees provided their numbers. And we reiterate that, when the enrollee is no longer at that number or did not provide a number in the first place, federal and state governmental agencies may nevertheless use autodialers to call or send the text to reach those enrollees, despite a lack of prior express consent.<sup>33</sup> We also emphasize that callers and texters have other options to contact enrollees without running afoul of the TCPA.<sup>34</sup> Our clarification will enable government and partner callers to communicate time-sensitive, important information to millions of vulnerable American about maintaining their eligibility for critical health care benefits.

12. As we have with past clarifications, we remind unscrupulous callers and texters that they should not view this as a retreat from our aggressive work to combat illegal calls and texts. As the COVID-19 pandemic continues to impact the United States, phone scammers have seized the opportunity

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<sup>30</sup> See NCLC Reply Comments at 4-8. In addition to ensuring that calls and texts are not charged to the recipient, NCLC suggests a number of other conditions including, among others, requiring that all callers check the Reassigned Numbers Database (RND), limiting prerecorded call messages to less than one minute, providing opt-out information, limiting the number of calls and messages to one per day and a total of seven over a fourteen-day period, restricting calls and messages to certain hours, and requiring callers to make calls or send text messages via only those voice and text providers that can provide Caller ID reflecting the name and telephone number for the government agency on whose behalf the call is made and STIR/SHAKEN attestations. *Id.* at 5-7. NCLC also requests that the Commission take action to protect consumers from insurance scam calls that could be confused with legitimate calls from state governments and their contractors. *See id.* at 11-12. As noted below, we will continue to use our enforcement authority to aggressively combat such scams.

<sup>31</sup> See Bailey Glasser Comments at 1; Shields Comments at 2-3.

<sup>32</sup> See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Declaratory Ruling, 35 FCC Rcd 2840 (2020) (confirming that health care providers, state and local health officials, and other government officials may lawfully communicate health and safety information about COVID-19 to protect individuals without violating the TCPA, pursuant to the "emergency purposes" exception).

<sup>33</sup> As explained in the *2020 Broadnet Order*, because the TCPA does not apply to the federal or state government calls, it cannot apply to federal or state government employees acting in their official capacities. *See 2020 Broadnet Order*, 35 FCC Rcd at 15057, 15059, n.38 & para. 22.

<sup>34</sup> As discussed in greater detail below, we strongly encourage callers relying upon prior express consent to call or text enrollees to utilize the RND to determine whether the telephone number provided has been reassigned to another individual.

to prey upon consumers.<sup>35</sup> For example, we have received reports of scam and hoax text messages and automated calls relating to health care coverage.<sup>36</sup> We will be vigilant in monitoring complaints about these calls and will not hesitate to enforce our rules when appropriate.

#### A. Prior Express Consent

13. Consistent with Commission precedent, we confirm that a consumer who provides their telephone number in an application form used to determine eligibility or seek benefits from Medicaid, CHIP, BHP, and Marketplace health care coverage has given their prior express consent to be called or texted at that number by local governments, governmental contractors, and managed care entities when acting under contract and pursuant to the authorization and direction of a federal or state agency with equipment covered by the TCPA regarding eligibility for and ongoing enrollment in those programs.<sup>37</sup> That is because these calls and texts contain information closely related to the purpose for which the consumer provided their telephone number.<sup>38</sup> To bolster this view, as HHS indicates, these consumers sign an acknowledgment that “they may be contacted if more information is needed” when they apply for benefits.<sup>39</sup>

14. We thus agree with HHS and commenters that by providing their telephone numbers on their benefits applications and acknowledging they may be contacted for more information, these consumers have given prior express consent to be called at that number under the TCPA regarding their enrollment eligibility.<sup>40</sup>

15. Consumers who have applied for benefits in governmental health care programs expect and likely welcome calls and texts that inform them of requirements that may affect the provision of health care benefits for which they have applied, including the potential loss of coverage. The reason consumers apply to such health care programs is to obtain the associated benefits; any reasonable consumer would view a call or text designed to prevent termination of benefits as closely related to the purpose for which they provided their telephone number. We thus have no problem concluding that these calls and texts are closely related to the purpose for which enrollees gave their numbers when they applied for benefits. We note, however, that any entity making calls in reliance upon the prior express consent created by the provision of a telephone number on an application for governmental health care benefits should be prepared to demonstrate that they are acting pursuant to the direction and authorization of a governmental agency to make calls or send text messages to enrollees.

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<sup>35</sup> See Federal Communications Commission, *COVID-19 Consumer Warnings and Safety Tips* (<https://www.fcc.gov/covid-scams>) (last visited Sept. 1, 2022).

<sup>36</sup> *Id.*

<sup>37</sup> The Commission has made clear in several contexts that “persons who knowingly release their telephone numbers” for a particular purpose “have in effect given their invitation or permission to be called at the number which they have given” for that purpose, absent instructions to the contrary. See, e.g., *1992 TCPA Order*, 7 FCC Rcd at 8769, para. 31. In the *ACA Declaratory Ruling*, for example, the Commission clarified that a party who provides his or her wireless number to a creditor as part of a credit application “reasonably evidences prior express consent by the cell phone subscriber to be contacted at the number regarding the debt.” *ACA Declaratory Ruling*, 23 FCC Rcd at 564, para. 9 (also confirming that the provision of a wireless telephone number to a creditor extended prior express consent to a third-party debt collector calling on behalf of the creditor to collect the debt related to that transaction).

<sup>38</sup> See, e.g., *Blackboard Declaratory Ruling*, 31 FCC Rcd at 9064, para. 23 (confirming that the provision of a telephone number by a parent or student to a school provides prior express consent to receive communications from the school closely related to the educational mission of the school or to official school activities absent instructions to the contrary from the party who provides the phone number).

<sup>39</sup> See HHS Letter at 8.

<sup>40</sup> See, e.g., ACH Comments at 2; Amerihealth Comments at 1; Centene Comments at 1; NCLC et al. Comments at 6-7; NYDH Comments at 2; TennCare Comments at 1.

16. We caution, as NCLC urges, that consumers in this context have not consented to calls or texts that contain advertising or constitute telemarketing.<sup>41</sup> Consent to make an autodialed or prerecorded call or send an automated text that contains advertising or constitutes telemarketing, must be in writing and after certain disclosures.<sup>42</sup> The mere provision of a telephone number does not satisfy these conditions. Additionally, consumers may revoke prior express consent using any reasonable method— orally or in writing.<sup>43</sup> Callers relying upon prior express consent to make autodialed or prerecorded calls, therefore, must be prepared to honor revocation requests made by any reasonable means from recipients who no longer wish to receive calls and texts relating to governmental health care programs.<sup>44</sup> We also note that the burden is on the caller to prove that it obtained the necessary prior express consent if any question arises as to whether prior express consent was provided by a call recipient.<sup>45</sup> If so, callers will need to demonstrate that the telephone number called was provided on an application for governmental health care benefits.

17. Finally, we emphasize that even calls made to telephone numbers that have been provided by the called party may be subject to TCPA liability if the number has been reassigned from the person who provided consent.<sup>46</sup> As NCLC notes, the Reassigned Numbers Database (RND) is a critical tool callers should use to avoid calling a person whose telephone number has been reassigned to another individual.<sup>47</sup> Callers that make use of the RND can ensure that they are making the most efficient use of their limited resources by avoiding calls to unintended recipients while ensuring compliance with the TCPA.<sup>48</sup> We therefore strongly encourage all callers relying upon prior express consent to utilize the RND before making such calls.

#### **B. Federal and State Governmental Callers**

18. Consistent with Commission precedent, we confirm that federal or state governmental agencies that take the physical steps to make autodialed, prerecorded voice, or artificial voice calls, or send text messages using an autodialer for the purposes HHS describes are not “persons” subject to the

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<sup>41</sup> NCLC et al. Comments at 12.

<sup>42</sup> See 47 CFR § 64.1200(a)(2), (b). The term “prior express written consent” is defined in 47 CFR § 64.1200(f)(9) (a consumer’s written consent to receive telemarketing robocalls must be signed and be sufficient to show that the consumer: (1) received “clear and conspicuous disclosure” of the consequences of providing the requested consent, *i.e.*, that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2) having received this information, agrees in writing to receive such calls at a telephone number the consumer designates).

<sup>43</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 30 FCC Rcd 7961 at 7996, para. 64 (2015) (*2015 TCPA Order*).

<sup>44</sup> *Id.* at 7993, para. 55. HHS indicates that each message will identify the agency that is sending the message or on whose behalf a message is sent and will provide the called party with information on how to opt out of or stop receiving future messages. See HHS Letter at 5.

<sup>45</sup> See *2015 TCPA Order*, 30 FCC Rcd at 7989-90, para. 47; *ACA Declaratory Ruling*, 23 FCC Rcd at 565, para. 10.

<sup>46</sup> See 47 U.S.C. § 227(b); 47 CFR § 64.1200(a); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Report and Order, 33 FCC Rcd 12024, 12024-25, para. 1 (2018) (*Reassigned Numbers Order*).

<sup>47</sup> NCLC et al. Comments at 8-9. The RND is designed to prevent a consumer from getting unwanted calls intended for someone who previously held their phone number. Callers and texters can use the RND to determine whether a telephone number may have been reassigned following a specific date so they can avoid potential liability for calling consumers who have not consented to these calls. See 47 CFR § 64.1200(m). The Reassigned Numbers Database can be found at [www.reassigned.us](http://www.reassigned.us).

<sup>48</sup> Callers may be eligible for a safe harbor if they can prove that they checked the most recent update of the RND and the database erroneously reported that the number had not been reassigned after the caller obtained consent. 47 CFR § 64.1200(m); *Reassigned Numbers Order*, 33 FCC Rcd at 12043-44, paras. 53-58.

TCPA and their calls and texts do not, therefore, require prior express consent. Thus, federal or state governmental callers do need not to obtain the prior express consent of the called party via the provision of a telephone number to make such calls or send such texts.

19. In the *2016 Broadnet Declaratory Ruling* and the *2020 Broadnet Order*, the Commission made clear that federal and state government callers are not “persons” subject to the TCPA’s restrictions if their calls are made in the conduct of official business.<sup>49</sup> The Commission previously found that a caller may be found to have made or initiated a call in one of two ways: first, by “tak[ing] the steps necessary to physically place a telephone call”; and second, by being “so involved in the placing of a specific telephone call as to be directly liable for initiating it.”<sup>50</sup> Applying that precedent, we clarify that, when HHS or any federal or state agency “tak[es] the steps necessary to physically place” the calls or texts to enrollees in the governmental health care programs that HHS identifies in its Petition, the federal or state agency is the “maker” of such call and, therefore, such call is not subject to the TCPA. Informational calls made by federal or state government employees regarding enrollment and eligibility for governmental health care programs are “the conduct of official business” and nothing in the record indicates an affirmative showing to the contrary.

20. We are unable on this record, however, to confirm that such federal or state agencies, when they are not “taking the steps to physically place” the call or send the text, are nevertheless “so involved” in the calls at issue to be deemed the maker or initiator of the communication when a third party is involved in a calling campaign. The Commission has said that could occur when the federal or state government caller makes the decisions regarding whether to make a call, the timing of the call, the call recipients, and the content of the call, among other factors.<sup>51</sup> This is a highly fact-specific, case-by-case inquiry.<sup>52</sup> No such specific facts are before us. As HHS notes, there will be a wide variety of different calling campaigns involving third-party contractors that will vary from state to state.<sup>53</sup> As a result, we decline to opine generally on this issue, and instead simply reiterate Commission precedent to guide callers in assessing their individual circumstances in each state and locality but cannot make a specific ruling on the “so involved” basis for finding a federal or state agency the maker of the call in any future calling campaigns.<sup>54</sup> We note, however, that in the future we might be able to issue case-by-case guidance if HHS or another petitioner were to present us with more specific facts regarding a specific calling campaign and the respective roles of the government and any contractors in those situations.

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<sup>49</sup> See *2016 Broadnet Declaratory Ruling*, 31 FCC Rcd at 7399-41, paras. 12-15; *2020 Broadnet Order*, 35 FCC Rcd at 15059-61, paras. 22-26; see also NCLC et al. Comments at 3 (acknowledging Commission rulings that the TCPA is inapplicable to calls made by the federal government or its employees). State and federal contractors, however, are “persons” under the TCPA and thus subject to TCPA restrictions. *2020 Broadnet Order*, 35 FCC Rcd at 15059, para. 22.

<sup>50</sup> *DISH Declaratory Ruling*, 28 FCC Rcd at 6583, paras. 26-27. The multi-factor analysis for determining liability of third parties under the TCPA is set forth in the *DISH Declaratory Ruling*, the *2015 TCPA Order*, and the *Dialing Services Forfeiture Order*. See *DISH Declaratory Ruling*, 28 FCC Rcd at 6583-84, paras. 26-27; *2015 TCPA Order*, 30 FCC Rcd at 7980-84, paras. 30-37; *Dialing Services, LLC*, Forfeiture Order, 32 FCC Rcd 6192, 6195-99, paras. 9-18 (2017).

<sup>51</sup> *2020 Broadnet Order*, 35 FCC Rcd. at 15059, paras. 18-21 (these additional factors include the extent to which a person willfully enables fraudulent spoofing, and whether a calling platform knowingly allows clients to use the platform for unlawful purposes).

<sup>52</sup> *Id.*

<sup>53</sup> See, e.g., Letter from Daniel Tsai, Deputy Administrator and Director, Department of Health and Human Services to Marlene H. Dortch, Secretary, FCC at 2 (July 13, 2022) (filed in CG Docket No. 02-278) (noting that every state governmental health care program is unique) (*HHS July 13 ex parte*).

<sup>54</sup> See, e.g., *2020 Broadnet Order*, 35 FCC Rcd at 15059, paras. 18-21; *2015 TCPA Order*, 30 FCC Rcd at 7978-84, paras. 25-37.

21. Lastly, we note that the Commission has acknowledged that federal and state contractors making calls on behalf of governmental entities may also qualify in some instances for forms of derivative immunity. The Commission has stated that courts are best positioned to apply the body of existing immunity law to governmental contractors and make such determinations on a case-by-case basis.<sup>55</sup> We, therefore, direct governmental contractors to this body of law to make determinations as to whether they may qualify for derivative immunity in this context.

### C. Other Options for Contacting Enrollees

22. We believe that the options we describe here—obtaining prior express consent and/or having a federal or state agency physically place a call—should ensure HHS and its partners can reach enrollees in a timely manner. However, to the extent that there are limited situations in which callers do not have prior express consent to call or text a wireless telephone number, we confirm that there are a number of other options that callers have to communicate with those consumers without violating the TCPA.

23. *Calls to Residential Telephone Lines.* We confirm that calls made using an artificial or prerecorded voice message to a residential telephone line<sup>56</sup> to raise awareness of the eligibility for and enrollment in Medicaid, CHIP, BHP, and Marketplace, as HHS has described them, are exempt from the prior express consent requirement as “calls made for a commercial purpose but [which do] not include or introduce an advertisement or constitute telemarketing”<sup>57</sup> because these calls appear to simply inform enrollees about the state of their benefits and how to ensure they do not lose such benefits. Nothing in HHS’s request suggests that these communications will advertise a particular insurance product or any other product or service, and thus they do not appear to be advertising or telemarketing. As a result, this exemption is available for calls from local governments, governmental contractors, and managed care entities acting under contract and pursuant to the authorization and direction of a governmental agency in regard to determinations of eligibility for or enrollment in these governmental health coverage programs.<sup>58</sup> Of course, if such calls do contain telemarketing or advertising, and are made by “persons” under the TCPA who lack derivative immunity as noted above, they would require prior express written consent. And, in all cases, these calls must satisfy the Commission’s identification requirements if they use artificial or prerecorded voice messages.<sup>59</sup>

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<sup>55</sup> 2020 Broadnet Order, 35 FCC Rcd at 15057, 15062, paras. 15, 28.

<sup>56</sup> The TCPA does not define “residential telephone line.” We note that a number assigned to a wireless service is not a “residential telephone line” under section 64.1200 of our rules. Compare 47 CFR § 64.1200(a)(1)-(2) with 47 CFR § 64.1200(a)(3).

<sup>57</sup> See 47 CFR § 64.1200(a)(3)(ii)-(iii). We note that the Commission recently amended its rules to limit the number of exempted calls that can be made to a residential line to three artificial or prerecorded voice calls within any consecutive 30-day period for three categories of exemptions. This amendment has not, however, gone into effect. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 35 FCC Rcd 15188 at 15194, 15197, 15198, paras. 15, 28, 33 (2020).

<sup>58</sup> See 47 CFR § 64.1200(a)(3)(iii). The term “advertisement” is defined to mean “any material advertising the commercial availability or quality of any property, goods, or services.” 47 CFR § 64.1200(f)(1). The term “telemarketing” is defined as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.” 47 CFR § 64.1200(f)(13). HHS indicates that Medicaid and CHIP managed care entities may not include marketing or marketplace activities as defined by Medicaid-related managed care regulations in their automated calls and text messages or prerecorded voice calls. See HHS Letter at 7 (citing 42 CFR § 438.104).

<sup>59</sup> See 47 CFR § 64.1200(b). All artificial or prerecorded message calls must, “[a]t the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call.” In addition, “[d]uring or after the message,” such a call must “state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual.” *Id.*

(continued....)

24. *Communications Not Subject to the TCPA.* HHS and its partners have alternative options of communicating with enrollees that are not otherwise subject to the TCPA, and therefore may avoid TCPA restrictions altogether. For instance, callers can use live operators rather than prerecorded voice messages and/or non-autodialed text messages.<sup>60</sup> Further, they can use email or direct mail to contact enrollees.<sup>61</sup> Although these methods may be somewhat less efficient than autodialed calls and texts or prerecorded messages, they nevertheless may offer a reasonable means to communicate important information to consumers without infringing upon the privacy rights protected under the TCPA.

25. *Free-to-End User Exemption Requests.* We decline to adopt a free-to-end-user exemption in this case as suggested by NCLC.<sup>62</sup> We agree with HHS that the imposition of potentially burdensome conditions inherent in any free-to-end-user request may unduly hinder the effectiveness of critical outreach efforts by diverting the already limited resources of state and local governmental agencies to compliance with these conditions.<sup>63</sup> Should conditions change, HHS and its partners are, of course, free to request a free-to-end-user exemption from the Commission.<sup>64</sup>

26. We believe that the guidance we provide today will assist HHS and its partners in complying with the TCPA while making these critical calls. HHS and its partners may also configure their calling and texting efforts to further ensure compliance with the guidance set forth herein. For instance, callers can now verify the prior express consent they have received by checking the RND to identify numbers that have been disconnected and possibly reassigned to other individuals and can use that information to assess whether alternative means of communication should be utilized. We strongly encourage robocallers and robotexters to make use of this tool to avoid potential TCPA liability and to explore the options we identify here as well as any other options that may assist health agencies in making these critical calls.

#### IV. ORDERING CLAUSES

27. For the reasons stated above, IT IS ORDERED, pursuant to sections 1-4 and 227 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 227, and sections 1.2 and 64.1200 of the Commission's rules, 47 CFR §§ 1.2, 64.1200, and the authority delegated in sections 0.141 and 0.361 of the Commission's rules, 47 CFR §§ 0.141, 0.361, that this Declaratory Ruling is ADOPTED.

28. IT IS FURTHER ORDERED that the request filed by the U.S. Department of Health and Human Services on April 28, 2022, IS GRANTED IN PART and DENIED IN PART to the extent discussed herein.

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§ 64.1200(b)(1), (2). There are additional requirements for artificial or prerecorded voice calls that include telemarketing but those requirements are not applicable in this context.

<sup>60</sup> We caution, however, that a text message sent using a peer-to-peer platform requires consumer consent unless it "is not capable of dialing such numbers without a person actively and affirmatively manually dialing each one." See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, P2P Alliance Petition for Clarification*, CG Docket No. 02-278, Declaratory Ruling, 35 FCC Red 6526 at 6528, para. 8 (2020).

<sup>61</sup> We decline to address whether HHS and its partners must comply with any legal requirements outside of the TCPA if they opt to send notices via e-mail or direct mail.

<sup>62</sup> See NCLC et al. Reply Comments at 4-8. See also 47 U.S.C. § 227(b)(2)(C) (permitting the Commission to exempt, by rule or order, "calls to a telephone number assigned to a cellular telephone service that are not charged to the called party," subject to any conditions set by the Commission).

<sup>63</sup> See, e.g., CMMS/HHS Reply Comments at 2; *HHS July 13 ex parte* at 2 (noting the resource challenges involved in compliance with additional safeguards including potential cost restrictions).

<sup>64</sup> Section 227(b)(2)(C) authorizes the Commission to adopt, by rule or order, exemptions from the prohibition on calls to "a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interests of the privacy rights this section is intended to protect." 47 U.S.C. § 227(b)(2)(C).

29. IT IS FURTHER ORDERED that, pursuant to section 1.4 of the Commission's rules, 47 CFR § 1.4, this Declaratory Ruling shall be effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark  
Chief  
Consumer and Governmental Affairs Bureau

## Appendix

## List of Commenters

<b>Commenters</b>	<b>Abbreviation</b>
Advocates for Community Health	ACH
AHIP	AHIP
American Academy of Pediatrics et al.	AAP
Amerihealth Caritas	Amerihealth
Anthem, Inc.	Anthem
Arizona Health Care Cost Containment System	Arizona HCCCS
Association of Asian Pacific Community Health Organizations	AAPCHO
Association for Community Affiliated Plans	ACAP
Bailey Glasser, LLP	Bailey Glasser
Blue Cross Blue Shield Association	Blue Cross
State of California Department of Health Care Services	California DHCS
CareFirst Blue Cross Blue Shield	CareFirst
Centene Corp.	Centene
Center for Accountability, Modernization, and Innovation	CAMI*
Center on Budget and Policy Priorities	CBPP
<b>Centers for Medicare and Medicaid Services</b>	<b>CMMS/HHS</b>
Colorado Access	Colorado Access
Colorado Dept. of Health Care Policy and Financing	Colorado HCPF
Community Catalyst	Community Catalyst
Cognosante, LLC	Cognosante
Connected Health Initiative	CHI
Connecticut Department of Social Services	Connecticut DSS
Drips Holdings, LLC	Drips Holdings
Enrollment Coalition	Enrollment Coalition
Gainwell Technologies	Gainwell
Healthcare and Family Services	HFS
Healthcare Information and Management Systems Society	HIMSS
Healthcare Leadership Council	Health Leadership
<b>Icario, Inc.</b>	<b>Icario</b>
Illinois Department of Healthcare and Family Services	Illinois HFS
Illinois Primary Health Care Association	Illinois PHCA
Indiana Primary Health Care Association	Indiana PHCA
Kaiser Permanente	Kaiser
LeadingAge (Meridith Chillemi)	LeadingAge
Massachusetts Office of Health and Human Services	MassHealth
Medicaid and CHIP Payment and Access Commission	MACPAC
Medicaid Health Plans of America	MHPA
Medicaid Matters New York	MMNY
National Association of Community Health Centers	NACHC
National Association of Medicaid Directors	NAMD
National Consumer Law Center et al.	NCLC*
Nevada Department of Health and Human Services	Nevada DHHS
New Jersey Primary Care Association	New Jersey PCA
NY State of Health, NYS Department of Health	NYDH
Ohio Association of Community Health Centers	OACHC

Oregon Health Authority

SameSky Health, Inc.

Joe Shields

Tennessee Department of Finance & Administration

Tennessee Primary Care Association

UnitedHealth Group

United States of Care

Commonwealth of Virginia – Department of Medical Assistance Services

State of Wisconsin – Dept. of Health Services

Oregon HA

SameSky

Shields

TennCare

Tennessee PCA

UnitedHealth

USC

Virginia DMAS

Wisconsin DHS

\* filing both comment and reply comment (bold - reply comments only).



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DA 23-63

Released: January 24, 2023

## UPDATED TOWER CONSTRUCTION GUIDANCE FOLLOWING THE RECLASSIFICATION OF THE NORTHERN LONG-EARED BAT AS ENDANGERED UNDER THE ENDANGERED SPECIES ACT

On December 2, 2021, the Wireless Telecommunications Bureau (Bureau) of the Federal Communications Commission (Commission) issued guidance to the tower industry on the recommended steps for considering the potential effects that proposed facilities could have in the northern long-eared bat's (*Myotis septentrionalis*) range as part of an applicant's environmental review.<sup>1</sup> On November 29, 2022, U.S. Fish and Wildlife Service (Service) announced a final rule to reclassify the northern long-eared bat from being listed as threatened to being listed as an endangered species under the Endangered Species Act (ESA).<sup>2</sup> The final rule takes effect on January 30, 2023. With this guidance, the Commission provides updated instructions for the industry following the effective date of the final rule.

*Background.* On April 2, 2015, the northern long-eared bat was listed as threatened under the ESA due to the continued spread of white-nose syndrome.<sup>3</sup> In January 2016, the Service released a final 4(d) rule<sup>4</sup> and programmatic biological opinion<sup>5</sup> requiring protective measures related to the northern long-eared bat. Among other things, the Opinion provided an optional framework to applicants to streamline northern long-eared bat section 7 consultation (Streamlined Framework), pursuant to the ESA under certain circumstances.<sup>6</sup>

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<sup>1</sup> *Revised Tower Construction Guidance for Protection of Northern Long-Eared Bat under the Endangered Species Act*, Public Notice, DA 21-1501 (WTB 2021) (2021 Public Notice).

<sup>2</sup> U.S. Fish and Wildlife Service, News Release, *U.S. Fish and Wildlife Service Reclassifies Northern Long-eared Bat as Endangered under the Endangered Species Act* (Nov. 29, 2022), [https://www.fws.gov/sites/default/files/documents/FINAL.FWS\\_NEWS%20RELEASE.NLEB%20final%20rule.11252022.pdf](https://www.fws.gov/sites/default/files/documents/FINAL.FWS_NEWS%20RELEASE.NLEB%20final%20rule.11252022.pdf).

<sup>3</sup> Service, Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Northern Long-Eared Bat With 4(d) Rule, 80 Fed. Reg. 17973 (Apr. 2, 2015); 50 CFR § 17.11(h).

<sup>4</sup> Service, Endangered and Threatened Wildlife and Plants; 4(d) Rule for the Northern Long-Eared Bat, 81 Fed. Reg. 1900 (Jan. 14, 2016); 50 CFR § 17.40(o). A 4(d) rule framework is a streamlined consultation with the Service to determine the extent of the potential effects of a project on listed species and/or their critical habitat and whether further consultation is required.

<sup>5</sup> Service, Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-Eared Bat and Activities Excluded from Take Prohibitions (2016), <https://www.fws.gov/sites/default/files/documents/BOnlebFinal4d.pdf> (Opinion).

<sup>6</sup> Opinion at 4-6.

In 2016, the Bureau released a Public Notice setting forth guidance to applicants for using the Streamlined Framework for facilities that may affect the northern long-eared bat.<sup>7</sup> The Bureau indicated that if the Streamlined Framework applied to a proposed facility, the tower owner was not required to submit additional documentation to the Commission.<sup>8</sup>

In 2021, the Bureau issued further guidance on using the Streamlined Framework.<sup>9</sup> The Bureau directed applicants using the Streamlined Framework to complete the automated determination key for the northern long-eared bat through the Service's Information for Planning and Consultation (IPaC) system and follow the Service's process for federal actions.<sup>10</sup>

On January 30, 2023, the Service's final rule reclassifying the northern long-eared bat as endangered under the ESA will take effect.<sup>11</sup> Among other actions, the final rule removes the northern long-eared bat's species-specific rule issued under section 4(d) of the Act.<sup>12</sup>

*Discussion.* With this *Public Notice*, we notify applicants that the 4(d) rule and Streamlined Framework are null and void once the final rule takes effect on January 30, 2023. Accordingly, an applicant must re-initiate Service consultation for any project that is proposed or is in pre-construction status as of January 30, 2023 and that relied on the 4(d) and Streamlined Framework. The Service has announced that it is “developing other streamlining tools to assist” applicants with consultations for the northern long-eared bat, including a “rangewide northern long-eared bat determination key” available through the IPaC, and an Interim Consultation Framework to help “ensure that projects in compliance with the 4(d) rule are not delayed.”<sup>13</sup> The Service states that the “new formal consultation framework will facilitate the transition from the 4(d) rule to typical Section 7 consultation procedures for federally endangered animals, until spring 2024.”<sup>14</sup>

We therefore direct applicants to consult with the Service's resources<sup>15</sup> and the applicant's respective field Service office<sup>16</sup> to determine how to proceed with the consultation process for any project affected by the Service's final rule and ensure continued ESA compliance.

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<sup>7</sup> *Tower Construction Guidance for Protection of Northern Long-Eared Bat under the Endangered Species Act*, Public Notice, 31 FCC Rcd 3960 (WTB 2016).

<sup>8</sup> *Id.* at 3961 (“If no action is required with respect to the NLEB, or if the [Streamlined] Framework applies, the FCC does not require additional reporting.”).

<sup>9</sup> *2021 Public Notice*.

<sup>10</sup> *Id.*

<sup>11</sup> Service, Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat, 87 Fed. Reg. 73488 (Nov. 30, 2022) (*Final Rule*).

<sup>12</sup> *Id.*

<sup>13</sup> Service, *Final rule to reclassify the northern long-eared bat as endangered under the Endangered Species Act Questions and Answers*, [https://www.fws.gov/sites/default/files/documents/FINAL.FWS\\_FAQs\\_NLEB%20final%20rule%20FAQs.11222022%20%281%29.pdf](https://www.fws.gov/sites/default/files/documents/FINAL.FWS_FAQs_NLEB%20final%20rule%20FAQs.11222022%20%281%29.pdf).

<sup>14</sup> *Id.*

<sup>15</sup> See Service, *Northern Long-eared Bat*, <https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis> (last visited Jan. 18, 2023) (providing resources on the transition, including a Frequently Asked Questions and webinar slides).

<sup>16</sup> See *Final Rule*, 87 Fed. Reg. at 73494 (“If any private entity is concerned that they may be engaging in an activity that will result in take of a northern long-eared bat, they should coordinate with their respective Service field office.”).

For further information, contact Deborah Spring, Biologist, Wireless Telecommunications Bureau, Competition and Infrastructure Policy Division, [Deborah.Spring@FCC.gov](mailto:Deborah.Spring@FCC.gov).

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# PUBLIC NOTICE

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DA 23-64

Released: January 24, 2023

## WIRESHIP COMPETITION BUREAU ANNOUNCES REVISED FILING DEADLINE OF MARCH 31, 2023 FOR BRINGING PUERTO RICO TOGETHER FUND AND THE CONNECT USVI FUND STAGE 2 MOBILE COVERAGE

**WC Docket No. 18-143**  
**WC Docket No. 10-90**

In this Public Notice, the Wireline Competition Bureau (Bureau) announces a revised filing deadline of March 31, 2023 for the mobile network coverage milestone of the Bringing Puerto Rico Together Fund and the Connect USVI Fund Stage 2 mobile support recipients.<sup>1</sup>

In 2019, the Commission adopted the *PR-USVI Stage 2 Order*, which made available \$258.8 million in Stage 2 high-cost support over a three-year period to mobile providers in Puerto Rico and the U.S. Virgin Islands (Territories) to restore, harden, and expand 4G LTE and 5G technology for voice and broadband service in the aftermath of Hurricane Irma and Hurricane Maria.<sup>2</sup> In 2020, the Bureau authorized mobile support for several providers in the Territories and reminded all support recipients of their obligations, including the reporting and certification requirements due on January 30, 2023.<sup>3</sup> However, we conclude that a brief extension of time is necessary and warranted for these requirements to allow for additional development of the Commission's data system for reporting and certifications. This system and technical development will improve the recipients' filing experience when submitting the mobile network coverage data pursuant to Section 54.1514(a), and allow better data integration with the ongoing Broadband Data Collection. Additionally, in conjunction with the system development, the Bureau will release the data specifications associated with the submission of the mobile network coverage reporting and certification. Accordingly, on our own motion, the Bureau waives the deadline provided in Section 54.1514(a) and announces the revised reporting deadline as March 31, 2023. We find a limited extension is in the public interest.

For these reasons, all Stage 2 Mobile support recipients will have until March 31, 2023 to file the required mobile network coverage report, certification, and applicable support data pursuant to Section 54.1514(a).

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<sup>1</sup> 47 CFR § 54.1514(a) (Stage 2 mobile network coverage report and certification for 66% milestone).

<sup>2</sup> *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, Order, 34 FCC Rcd 9109, 9163, para. 102 (2019).

<sup>3</sup> *Wireline Competition Bureau Authorizes Stage 2 Mobile Support for Viya in the U.S. Virgin Islands*, 35 FCC Rcd 11555 (rel. Oct. 16, 2020); *Wireline Competition Bureau Authorizes Stage 2 Mobile Support for Certain Providers Participating in the Uniendo a Puerto Rico Fund and the Connect USVI Fund*, Public Notice, 35 FCC Rcd 6321 (rel. June 15, 2020) (authorizing AT&T, PRTC, and T-Mobile in Puerto Rico and AT&T in USVI); *Wireline Competition Bureau Authorizes Stage 2 Mobile Support for T-Mobile in Puerto Rico*, Public Notice, 35 FCC Rcd 10303 (rel. Sept. 15, 2020).

For additional information, contact Dangkhua Nguyen, of the Wireline Competition Bureau, Telecommunications Access Policy Division, at [Dangkhua.nguyen@fcc.gov](mailto:Dangkhua.nguyen@fcc.gov).

- FCC -



# PUBLIC NOTICE

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DA 23-65

Released: January 24, 2023

## ROBOCALL ENFORCEMENT NOTICE TO ALL U.S.-BASED VOICE SERVICE PROVIDERS

### FCC Enforcement Bureau Notifies All U.S.-Based Providers of Apparently Illegal Robocall Traffic from PhoneBurner Inc. and MV Realty PBC, LLC

File No. EB-TCD-22-00033721

By the Chief, Enforcement Bureau:

The Enforcement Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) issues this Public Notice to notify all U.S.-based voice service providers about substantial amounts of apparently unlawful telephone solicitation calls to phone numbers on the National Do Not Call (DNC) Registry<sup>1</sup> from PhoneBurner Inc. (PhoneBurner) and MV Realty PBC, LLC. (MV Realty). In these calls, MV Realty operators offered cash to homeowners in a purported exchange for giving MV Realty an exclusive right to list the homeowner's property for sale. **Pursuant to section 64.1200(n)(2) of the Commission's rules, we hereby provide written notice to all U.S.-based voice service providers<sup>2</sup> to take steps to effectively mitigate apparently illegal traffic<sup>3</sup> from PhoneBurner and MV Realty.<sup>4</sup> We consider blocking the traffic to be an example of effective mitigation.**

*Purpose.* Protecting individuals and entities from the dangers of unwanted and illegal robocalls is the Commission's top consumer protection priority. As part of the Commission's multi-pronged approach to combatting illegal robocalls, the Commission has taken steps to encourage voice service providers to

<sup>1</sup> Federal Trade Commission, National Do Not Call Registry, <https://www.donotcall.gov/>.

<sup>2</sup> For the purposes of this document, the term "voice service provider" has a broad meaning that includes any entity originating, carrying, or terminating voice calls through time-division multiplexing (TDM), Voice over Internet Protocol (VoIP), or commercial mobile radio service (CMRS). See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 7614, 7615 n.3 (2020).

<sup>3</sup> The Bureau believes that PhoneBurner and MV Realty engaged in the following illegal conduct: Making unlawful "telephone solicitations" in violation of 47 CFR § 64.1200(f)(15); leaving prerecorded voicemail telemarketing messages to consumers without consent in violation of 47 U.S.C. § 227(b) and 47 CFR § 64.1200(a); making calls to phone numbers on the DNC Registry in violation of 47 U.S.C. § 227(c) and 47 CFR § 64.1200(c)(2); knowingly transmitting misleading or inaccurate caller identification information in violation of 47 U.S.C § 227(e)(1).

<sup>4</sup> 47 CFR § 64.1200(n)(2). Each notified provider must promptly investigate the identified traffic. Each notified provider must then promptly report the results of its investigation to the Enforcement Bureau, including any steps the provider has taken to effectively mitigate the identified traffic or an explanation as to why the provider has reasonably concluded that the identified calls were not illegal and what steps it took to reach that conclusion.

mitigate suspected illegal robocalls.<sup>5</sup> The Commission permits voice service providers to block traffic from other voice service providers that the Bureau has warned are transmitting suspected illegal robocalls.<sup>6</sup> Additionally, section 64.1200(n)(2) of the Commission's rules requires voice service providers to effectively mitigate robocall traffic when notified by the Bureau of ongoing unlawful call activity.<sup>7</sup>

*Background.* The USTelecom's Industry Traceback Group (Traceback Consortium)<sup>8</sup> traced a substantial volume of apparently unlawful telephone solicitation<sup>9</sup> calls to PhoneBurner and MV Realty; the calls were placed to homeowners whose phone numbers were on the DNC Registry. In these calls, MV Realty operators offered homeowners one-time cash payments, purportedly in exchange for the homeowner granting MV Realty exclusive listing rights to sell the homeowner's home at some future date.<sup>10</sup> This traffic is identified in Attachment A.

PhoneBurner is "a cloud-based power dialer and outreach solution"<sup>11</sup> headquartered in California.<sup>12</sup> PhoneBurner employs software and a virtual portal that enables its clients to place robocalls, leave

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<sup>5</sup> See 47 CFR § 64.1200(k); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 7614, 7622, para. 19 (2020) (*July 2020 Call Blocking Order*) (establishing safe harbor for blocking traffic from bad-actor upstream voice service providers); *Advanced Methods to Target and Eliminate Unlawful Robocalls; Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876, 4887-88, paras. 34-46 (2019) (*2019 Call Blocking Order*) (blocking based on reasonable analytics with consumer opt-out and consumer whitelists); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9709, para. 9 (2017) (*2017 Call Blocking Order*) (blocking of certain categories of calls highly likely to be illegal).

<sup>6</sup> *July 2020 Call Blocking Order*, 35 FCC Rcd at 7628-29, para. 36-39; see 47 CFR § 64.1200(k)(4).

<sup>7</sup> 47 CFR § 64.1200(n)(2).

<sup>8</sup> USTelecom's Industry Traceback Group is the registered industry consortium selected pursuant to the TRACED Act, to conduct tracebacks to identify suspected bad actors. *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, DA 22-870 (EB 2022) (*2022 Consortium Selection Order*); see also TRACED Act § 13(d).

<sup>9</sup> A "telephone solicitation" refers to the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message: i) To any person with that person's prior express invitation or permission; (ii) To any person with whom the caller has an established business relationship; or (iii) By or on behalf of a tax-exempt nonprofit organization." 47 CFR § 64.1200(f)(15).

<sup>10</sup> Consistent with the Commission's goals of preventing unlawful robocalls, the Commission collaborated with the Office of the Attorney General of Florida pursuant to a memorandum of understanding. On November 29, 2022, the Office of the Attorney General of Florida filed a complaint against MV Realty and its corporate leadership for operating the "complex and deceptive scheme that attempts to skirt existing Florida law with the goal of swindling consumers out of their home equity." *Office of the Attorney General, State of Florida, Department of Legal Affairs v. MV Realty PBC, LLC, Et al.* (Fla. 13<sup>th</sup> Cir. Ct. Nov. 29, 2022), [http://www.myfloridalegal.com/newsrel\\_nsf/newsreleases/E9E4A2F7281415CE85258909007259EC](http://www.myfloridalegal.com/newsrel_nsf/newsreleases/E9E4A2F7281415CE85258909007259EC).

<sup>11</sup> See PhoneBurner website, Frequently Asked Questions about PhoneBurner, <https://www.phoneburner.com/homepage/faq> (last visited Dec. 15, 2022).

<sup>12</sup> See California Secretary of State business record search listing PhoneBurner's principal address as 42 Foliage Way Ladera Ranch, CA 92694, and mailing address as 1968 S. Coast Hwy. Ste. 1800 Laguna Beach, CA 92651, <https://bizfileonline.sos.ca.gov/search/business>

prerecorded voicemails, and send text messages to thousands of consumers each day.<sup>13</sup> PhoneBurner’s customers hire operators to place calls through a portal that PhoneBurner owns and operates. Once logged into PhoneBurner’s software, these operators can call the numbers that PhoneBurner’s customers specify—in this instance, calls to homeowners. PhoneBurner’s software offers several options. Here, if a homeowner answers the call, PhoneBurner’s portal connects the MV Realty operators to the homeowner. If there is no response, PhoneBurner’s software leaves a prerecorded message and/or a text message using MV Realty’s preselected script.<sup>14</sup> PhoneBurner’s software also enables its customers to make robocalls that include false or misleading caller ID<sup>15</sup>—for example, by allowing its customers to match outbound calling number area codes to those of the recipients of their robocalls.<sup>16</sup>

MV Realty is a realtor based out of Delray Beach, Florida.<sup>17</sup> MV Realty’s robocalls and prerecorded voicemails to phone numbers on the DNC Registry included messages offering homeowners several hundred to several thousands of dollars in exchange for signing a 40-year exclusive listing agreement with MV Realty. At least three states have filed complaints against MV Realty alleging violations of consumer protection laws.<sup>18</sup> The Commission also received a complaint from a homeowner who stated that they received three to five unsolicited voicemails from MV Realty each day.<sup>19</sup> We consider blocking the traffic to be an example of effective mitigation. The Bureau identified an additional 26 complaints

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<sup>13</sup> See PhoneBurner website, Frequently Asked Questions about PhoneBurner, <https://www.phoneburner.com/homepage/faq> (last visited Dec. 15, 2022).

<sup>14</sup> The Commission has previously clarified that the caller must obtain the called party’s prior express consent to be called with an artificial or prerecorded voice message even if a live agent controls the initial artificial or prerecorded voice message using soundboard technology. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14640 (18) (2020).

<sup>15</sup> The Truth in Caller ID Act prohibits “caus[ing] any caller identification service” in connection with any voice service or text messaging service to “knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.” 47 U.S.C § 227(e)(1).

<sup>16</sup> See Declaration of { [redacted] }; Declaration of { [redacted] } [hereinafter Declarations] (on file at EB-TCD-22-00033721).

<sup>17</sup> See Florida Department of State, Division of Corporations, business record search listing MV Realty’s principal address as 219 N. Dixie Blvd. Delray Beach, FL 33444. <http://dos.sunbiz.org/scripts/ficidet.exe?action=DETREG&docnum=G16000100245&rdocnum=G16000100245>

<sup>18</sup> The Florida complaint alleges that the calls deceived consumers by hiding the terms of MV Realty’s “Homeowner Benefit Program,” Consumers were led to enter a misleading contract under which MV Realty filed a 40-year lien on their property that would require the consumer to pay three percent of the property’s value to MV Realty if the property is sold or the consumer wished to cancel the contract. See Press Release, Fla. Office of the Att’y Gen., Attorney General Moody Takes Legal Action Against MV Realty for Swindling Florida Homeowners (Nov. 29, 2022), [http://www.myfloridalegal.com/newsrel\\_nsf/newsreleases/E9E4A2F7281415CE85258909007259EC](http://www.myfloridalegal.com/newsrel_nsf/newsreleases/E9E4A2F7281415CE85258909007259EC)); see also Press Release, Mass. Office of the Att’y Gen., AG Healey Sues Florida Company for Scamming Financially Struggling Residents Into Mortgaging Their Homes in Exchange for Small Cash Payments (Dec. 14, 2022), <https://www.mass.gov/news/ag-healey-sues-florida-company-for-scamming-financially-struggling-residents-into-mortgaging-their-homes-in-exchange-for-small-cash-payments>); Press Release, Pa. Office of Att’y Gen., AG Shapiro Sues Real Estate Brokerage Firm MV Realty Over Misleading Homeowner Benefit Program (Dec. 14, 2022), <https://www.attorneygeneral.gov/taking-action/ag-shapiro-sues-real-estate-brokerage-firm-mv-realty-over-misleading-homeowner-benefit-program/>).

<sup>19</sup> FCC Complaint # 5450806 (Apr. 29, 2022) “I spoke with someone at the number and they said they are from a company called MV Realty. MV Realty group has been calling me and leaving 30 seconds voicemails 3-5 times a day for 3 weeks.”

alleging calls to phone numbers on the DNC Registry which were made to the Federal Trade Commission.<sup>20</sup>

*MV Realty placed thousands of calls to numbers on the DNC registry.* A significant portion of MV Realty's calls were placed to consumers who had their phones actively listed on the DNC registry. The Enforcement Bureau's investigation identified 11,949,374 calls made to DNC registered numbers by PhoneBurner and MV Realty.<sup>21</sup> The Bureau found that 10,926,635 calls were placed to wireless numbers and 1,022,739 calls were placed to landline phone numbers actively listed on the DNC Registry.<sup>22</sup>

The evidence indicates that MV Realty's calls were telephone solicitations. As discussed above, the MV Realty operators offered homeowners cash in exchange for a listing agreement with the company—essentially encouraging homeowners Purchase the company's services. Further, the homeowners' complaints about MV Realty's calls indicate that they did not give consent to be called and did not have an established business relationship with MV Realty.<sup>23</sup> The Bureau's investigation revealed that MV Realty frequently called consumers who repeatedly and affirmatively asked MV Realty to stop calling them.<sup>24</sup> The Bureau spoke to former MV Realty employees who described how they were repeatedly asked by consumers to stop calling. In response to these requests, these employees marked the phone numbers as belonging to consumers who did not wish to be called.<sup>25</sup> MV Realty failed to remove these homeowners from its calling list despite being notified by MV Realty's own employees.<sup>26</sup> As a result, MV Realty called the same consumers repeatedly.<sup>27</sup> These repeated calls appear to violate the Commission's telephone solicitation rules.<sup>28</sup>

Further, PhoneBurner's software left prerecorded voicemail messages with the scripted solicitation when homeowners did not answer MV Realty's calls.<sup>29</sup> These messages independently appear to violate the Telephone Consumer Protection Act of 1991 (TCPA) and the Commission's rules, as they are prerecorded voice telemarketing messages sent to consumers without consent.<sup>30</sup>

*Steps that Voice Service Providers Must Take Following this Public Notice.* Upon receiving this *Public Notice*, voice service providers must promptly investigate the traffic identified in Attachment A.<sup>31</sup> Within 14 days, each provider must report the results of its investigation to the Bureau including any steps that

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<sup>20</sup> FTC Consumer Sentinel report (on file at EB-TCD-22-00033721).

<sup>21</sup> See Call Detail Records (on file at EB-TCD-22-00033721).

<sup>22</sup> Call Detail Record analysis (on file at EB-TCD-22-00033721).

<sup>23</sup> MV Realty also is not a tax-exempt nonprofit organization. See Internal Revenue Service, Tax Exempt Organization Search (Jan. 22, 2023) <https://apps.irs.gov/app/eos/>; see also 47 CFR § 64.1200(f)(15).

<sup>24</sup> See Declarations *supra* note 15.

<sup>25</sup> *Id.* (describing how employees listed the calls' disposition as do not call and how they notified their leadership of the consumers' request.)

<sup>26</sup> See Declaration of {[ ]} (on file at EB-TCD-22-00033721).

<sup>27</sup> *Id.*

<sup>28</sup> 47 CFR § 64.1200(c)(2); see also 47 U.S.C. § 227(c) (directing the Commission to adopt regulations concerning telephone solicitations and the DNC Registry).

<sup>29</sup> See Call Detail Records (on file at EB-TCD-22-00033721).

<sup>30</sup> 47 U.S.C. § 227(b); 47 CFR § 64.1200(a) (prerecorded voice calls to wireless numbers, and prerecorded voice calls to residential numbers that constitute telemarketing, are unlawful). Calls that are telephone solicitations are also telemarketing calls. Compare 47 CFR § 64.1200(f)(15) with 47 CFR § 64.1200(f)(12).

<sup>31</sup> 47 CFR § 64.1200(n)(2).

the provider has taken to effectively mitigate the identified traffic or explain why the provider has reasonably concluded that the identified calls were not illegal and what steps it took to reach that conclusion.<sup>32</sup> **In the event that any voice service provider fails to mitigate this traffic from PhoneBurner and MV Realty or fails to explain to the Bureau why it reasonably concluded this traffic to be legal, the Bureau may take additional enforcement action.**<sup>33</sup>

*Partial Waiver of Reporting Obligation.* Pursuant to section 1.3 of the Commission's rules,<sup>34</sup> the Bureau finds that good cause exists in this instance to waive in part the reporting obligations otherwise required by section 64.1200(n)(2) of the rules. In particular, the Bureau concludes that obligating all U.S.-based voice service providers to generate a written report documenting their investigation of the suspected illegal robocall traffic identified in this *Public Notice* would result in an excessively voluminous record. Accordingly, a voice service provider shall not be required to file a report with the Commission if the provider determines that PhoneBurner or MV Realty are not customers of its services.

Any provider filing a report in response to the aforementioned requirements must do so within 14 days of this *Public Notice* and shall demonstrate its ongoing efforts to mitigate the traffic associated with PhoneBurner or MV Realty. Reports must be filed electronically by email sent to Kristi Thompson, Division Chief, Enforcement Bureau, Telecommunications Consumers Division, at [Kristi.Thompson@fcc.gov](mailto:Kristi.Thompson@fcc.gov); with copies sent to Lisa Zaina, Asst. Chief, Enforcement Bureau, Telecommunications Consumers Division, at [Lisa.Zaina@fcc.gov](mailto:Lisa.Zaina@fcc.gov); and Raul Rojo, Enforcement Bureau, Telecommunications Consumers Division, at 202-418-1336 or by email at [Raul.Rojo@fcc.gov](mailto:Raul.Rojo@fcc.gov). Reports and/or supporting documentation that exceed 5MB must be transmitted by an alternative mechanism; providers must contact Raul Rojo for alternative filing instructions.

*Contact Information.* For further information, please contact Kristi Thompson, Division Chief, Enforcement Bureau, Telecommunications Consumers Division, at 202-418-1318 or by email at [Kristi.Thompson@fcc.gov](mailto:Kristi.Thompson@fcc.gov); Lisa Zaina, Asst. Chief, Enforcement Bureau, Telecommunications Consumers Division, at 202-418-2803 or by email at [Lisa.Zaina@fcc.gov](mailto:Lisa.Zaina@fcc.gov); or Raul Rojo, Enforcement Bureau, Telecommunications Consumers Division, at 202-418-1336 or by email at [Raul.Rojo@fcc.gov](mailto:Raul.Rojo@fcc.gov).

ENFORCEMENT BUREAU  
Loyaan A. Egal  
Chief

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<sup>32</sup> *Id.* We consider blocking the traffic to be an example of effective mitigation.

<sup>33</sup> 47 CFR § 64.1200(n)(2); *see also* 47 CFR § 64.1200(f)(18); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Fourth Report and Order, 35 FCC Rcd 15221, 15231, paras. 26-27 (2020).

<sup>34</sup> 47 CFR § 1.3 (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

ATTACHMENT A

Customer	Date of ITG Notification	Date of Call	Caller ID	Called Number	Description	Violation
MV Realty	Aug 10, 2022 15:36 UTC	Aug 08, 2022 20:50 UTC	[REDACTED]	[REDACTED]	HomeOwner-CashProgram	47 USC 227(b); 47 CFR 64.1200(a)
MV Realty	Aug 10, 2022 14:49 UTC	Aug 08, 2022 18:46 UTC	[REDACTED]	[REDACTED]	HomeOwner-CashProgram	47 USC 227(b); 47 CFR 64.1200(a)
MV Realty	Aug 10, 2022 14:54 UTC	Aug 08, 2022 18:25 UTC	[REDACTED]	[REDACTED]	HomeOwner-CashProgram	47 USC 227(b); 47 CFR 64.1200(a)
MV Realty	Aug 12, 2022 14:27 UTC	Aug 08, 2022 13:02 UTC	[REDACTED]	[REDACTED]	HomeOwner-CashProgram	47 USC 227(b); 47 CFR 64.1200(a)
MV Realty	Aug 09, 2022 18:19 UTC	Aug 10, 2022 15:50 UTC	[REDACTED]	[REDACTED]	HomeOwner-CashProgram	47 USC 227(b); 47 CFR 64.1200(a)
MV Realty	Aug 09, 2022 16:56 UTC	Aug 10, 2022 15:33 UTC	[REDACTED]	[REDACTED]	HomeOwner-CashProgram	47 USC 227(b); 47 CFR 64.1200(a)
MV Realty	Aug 09, 2022 15:23 UTC	Aug 10, 2022 15:29 UTC	[REDACTED]	[REDACTED]	HomeOwner-CashProgram	47 USC 227(b); 47 CFR 64.1200(a)

MV Realty	Jun 03, 2022 16:46 UTC	Sep 30, 2022 19:39 UTC			HomeOwner-CashProgram	47 USC 227(b); 47 CFR 64.1200(a)
MV Realty	Jun 03, 2022 16:46 UTC	Sep 30, 2022 19:40 UTC			HomeOwner-CashProgram	47 USC 227(b); 47 CFR 64.1200(a)
MV Realty	Jun 03, 2022 16:46 UTC	Sep 30, 2022 19:40 UTC			HomeOwner-CashProgram	47 USC 227(b); 47 CFR 64.1200(a)
MV Realty	Jun 03, 2022 16:46 UTC	Sep 30, 2022 19:50 UTC			HomeOwner-CashProgram	47 USC 227(b); 47 CFR 64.1200(a)



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>

DA 23-66

Released: January 24, 2023

## MEDIA BUREAU SEEKS COMMENT ON CLOSED CAPTIONING DISPLAY SETTINGS PROPOSAL

MB Docket No. 12-108

**Comments Due: [30 days after publication in the Federal Register]**  
**Reply Comments Due: [45 days after publication in the Federal Register]**

With this Public Notice, the Media Bureau seeks comment on a proposal in the record of this proceeding that when the Commission is determining whether specific closed captioning display settings are readily accessible, it should consider the following factors: proximity, discoverability, previewability, and consistency and persistence.

In 2015, the Commission proposed rules that would require manufacturers of covered apparatus and multichannel video programming distributors (MVPDs) to make closed captioning display settings readily accessible to individuals who are deaf and hard of hearing.<sup>1</sup> In January 2022, the Media Bureau released a Public Notice seeking to refresh the record on the proposals contained in the *Second Further Notice*.<sup>2</sup> Comments were due February 17, 2022, and reply comments were due March 4, 2022.<sup>3</sup> In response to the *Closed Captioning Display Settings PN*, a coalition of consumer groups proposed that the Commission should require closed captioning display settings to be proximate, discoverable, previewable, and consistent and persistent.<sup>4</sup> The Consumer Technology Association (CTA) expressed concern about

<sup>1</sup> *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 13914, 13932-35, paras. 33-40 (2015) (*Second Further Notice*).

<sup>2</sup> See *Media Bureau Seeks to Refresh the Record on Accessibility Rules for Closed Captioning Display Settings Under the Television Decoder Circuitry Act*, MB Docket No. 12-108, DA 22-20 (Jan. 10, 2022) (*Closed Captioning Display Settings PN*).

<sup>3</sup> See *Announcement of Comment and Reply Comment Dates for Closed Captioning Display Settings Public Notice*, MB Docket No. 12-108, DA 22-53 (Jan. 18, 2022).

<sup>4</sup> Accessibility Advocacy and Research Organizations Comments, MB Docket No. 12-108, at 8-11 (filed Feb. 17, 2022), available at <https://www.fcc.gov/ecfs/document/10218268018374/1> (Consumer Groups 2022 Comments). See also Accessibility Advocacy and Research Organizations Reply Comments, MB Docket No. 12-108, at 1, 5-6, 7-8 (filed Mar. 4, 2022) (Consumer Groups 2022 Reply); Letter from Blake E. Reid, Counsel to TDI, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108, at 2 (Apr. 28, 2022). The following organizations are parties to both the Consumer Groups 2022 Comments and the Consumer Groups 2022 Reply: Telecommunications for the Deaf and Hard of Hearing, Inc.; Association of Late-Deafened Adults; Cerebral Palsy and Deaf Organization; Communication Service for the Deaf; Conference of Educational Administrators of Schools and Programs for the Deaf; Deaf Seniors of America; Hearing Loss Association of America; National Association of the Deaf; National Association of State Agencies of the Deaf and Hard of Hearing; Registry of Interpreters for the Deaf; Turtle Island Hand Talk; Disability and Rehabilitation Research Project on Twenty-First Century Captioning Technology, Metrics and Usability, Gallaudet University; Rehabilitation Engineering Research Center on Universal Interface &

(continued....)

the proposed factors, and asserted that further public comment was necessary.<sup>5</sup> We believe that the Commission would benefit from further comment in this instance, and accordingly, this Public Notice seeks further comment on the 2022 proposal of the Consumer Groups in their comments to rely on these four factors to evaluate whether closed captioning display settings are readily accessible.

Interested parties should focus their comments on the specific issue of whether, if the Commission adopts rules governing the accessibility of closed captioning display settings, it should consider the four factors proposed by the Consumer Groups in 2022 – proximity, discoverability, previewability, and consistency and persistence – in determining whether closed captioning display settings are readily accessible.<sup>6</sup> Should the four factors have the meanings the Consumer Groups proposed in 2022? Should the factors be non-exhaustive, such that the Commission may consider additional factors as particular situations warrant? Commenters should provide any other information relevant to the Commission’s determination of how to proceed on this issue.<sup>7</sup>

*Initial Regulatory Flexibility Analysis.* The *Second Further Notice* included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. § 603, exploring the potential impact on small entities of the Commission’s proposals.<sup>8</sup> We invite parties to file comments on the IRFA in light of this request for further comment.

*Ex Parte Rules.* This matter shall continue to be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>9</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).

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Information Technology Access; and RIT/NTID Center on Access Technology. The following organizations are also parties to the Consumer Groups 2022 Comments: American Association of the DeafBlind; Helen Keller National Center; National Cued Speech Association; and Northern Virginia Resource Center for Deaf and Hard of Hearing Persons.

<sup>5</sup> See Consumer Technology Association Reply Comments, MB Docket No. 12-108, at 6 (filed Mar. 4, 2022) (asserting that adopting the four proposed factors “would first require significant further definition and public comment”); Letter from J. David Grossman, Vice President, Regulatory Affairs, and Brian Markwalter, Senior Vice President, Research & Standards, Consumer Technology Association, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108, at 4 (June 30, 2022) (claiming that the proposal to require these factors “has not been subject to notice and comment – and could not have been predicted when the FCC released either the *Second Further Notice* or recent Public Notice”).

<sup>6</sup> See, e.g., Consumer Groups 2022 Comments at 9-10; Letter from Blake E. Reid, Counsel to TDI, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108, at 3-4 (Sept. 20, 2022). As proposed by Consumer Groups, “proximity” would involve consideration of the number of steps required to access closed captioning display settings, as well as whether closed captioning display settings are available on the same device as the video programming (Consumer Groups 2022 Comments at 9); “discoverability” would involve consideration of whether it is simple and intuitive for viewers to find closed captioning display settings (*Id.* at 9-10); “previewability” would involve consideration of whether viewers can preview the appearance of closed captions on programming on their screen while changing the closed captioning display settings (*Id.* at 10); and “consistency and persistence” would involve consideration of whether access to closed captioning display settings is “consistent . . . across devices and video platforms and across different applications on the same device” and persistent over time. *Id.*

<sup>7</sup> See, e.g., ACA Connects – America’s Communications Association Reply Comments, MB Docket No. 12-108, at 13-14, n.33 (filed Mar. 4, 2022) (arguing that the Commission should not adopt the proposed factors because “locking in one user interface for all devices and platforms would squelch innovation to the detriment of closed captioning consumers,” because “consumers who do not like such interface would suffer a lack of alternatives,” and because “ACA Connects also cannot discern any authority under the TDCA for the Commission to adopt these additional proposed measures”).

<sup>8</sup> *Second Further Notice*, 30 FCC Rcd at 13936, para. 42.

<sup>9</sup> *Id.* at 13936-37, para. 46. See 47 CFR § 1.1200 *et seq.*

Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*Filing Requirements.* All filings responsive to this Public Notice must reference MB Docket No. 12-108. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020).

*People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

*Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

*Additional Information.* For additional information, contact Diana Sokolow, [Diana.Sokolow@fcc.gov](mailto:Diana.Sokolow@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

-FCC-

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 5957279
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**ORDER**

**Adopted: January 23, 2023**

**Released: January 24, 2023**

By the Acting Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider a complaint alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.<sup>1</sup> We find that Clear Rate has responded to the Complainant's complaint and has taken action to resolve the complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.<sup>2</sup> The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>3</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the order.<sup>4</sup> The Commission has also adopted rules to limit the liability of subscribers when an unauthorized carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.<sup>5</sup>

3. We received Complainant's complaint alleging that Clear Rate had changed Complainant's telecommunications service provider without Complainant's authorization. Pursuant to

<sup>1</sup> See Informal Complaint No. 5957279 (filed Jan. 9, 2023); see also 47 CFR §§ 64.1100 – 64.1190.

<sup>2</sup> 47 U.S.C. § 258(a).

<sup>3</sup> See 47 CFR § 64.1120.

<sup>4</sup> See *id.* § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

<sup>5</sup> These rules require the unauthorized carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See *id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. See *id.* §§ 64.1140, 64.1170.

our rules, we notified Clear Rate of the complaint.<sup>6</sup> Clear Rate responded, stating that the Complainant had agreed to and authorized the carrier switch.<sup>7</sup> It also provided two audio recordings—a third party verification recording (TPV) and a recording Clear Rate characterized as a “quality assurance call.” The Division listened to each recording and determined that although the TPV complied with the verification requirements in the slamming rules, the person on the TPV is not the person on the “quality assurance call.”<sup>8</sup>

4. Based on all of the information provided by Complainant and Clear Rate, it appears that Clear Rate has fully absolved Complainant of all charges assessed by Clear Rate in a manner consistent with the Commission’s liability rules.<sup>9</sup> We therefore find that the complaint referenced herein has been resolved.<sup>10</sup>

5. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361 and 1.719 of the Commission’s rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS RESOLVED.

6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kristi Thornton  
Acting Chief  
Consumer Policy Division  
Consumer and Governmental Affairs Bureau

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<sup>6</sup> *Id.* § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

<sup>7</sup> See Clear Rate Response to Informal Complaint No. 5957279 (filed Jan. 12, 2023) (*Clear Rate Response*); see also 47 CFR § 64.1160.

<sup>8</sup> In addition, Clear Rate’s bills for service were addressed to Complainant’s husband who is deceased.

<sup>9</sup> See *Clear Rate Response* at 2 (stating that Clear Rate closed Complainant’s account and that the balance owed is zero).

<sup>10</sup> If Complainant is unsatisfied with the resolution of the complaint, the Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission’s rules, 47 CFR § 1.721. Such filing will be deemed to relate back to the filing date of Complainant’s informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See *id.* § 1.719.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Pacific Data Systems	)	File No.: EB-IHD-22-00033164
	)	NAL/Acct. No.: 202332080003
	)	FRN: 0008295321

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: January 25, 2023**

**Released: January 25, 2023**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. Under the rules and orders of the Federal Communications Commission (FCC or Commission), telecommunications service providers and certain telecommunications providers (collectively, service providers) are required to file Telecommunications Reporting Worksheets (Worksheets) with the Universal Service Administrative Company (USAC) in furtherance of important regulatory programs implemented by the Commission pursuant to the Communications Act of 1934, as amended (Act). USAC and the administrators of Telecommunications Relay Service (TRS) Fund, Local Number Portability (LNP), and the North American Numbering Plan (NANP) rely on information filed in the Worksheets to determine, as prescribed in Commission rules, each service provider’s equitable and accurate contributions responsibilities for the Universal Service Fund (USF) and these other federal funding mechanisms, consistent with the Communications Act and our rules.<sup>1</sup> Likewise, the Commission relies on the information filed in Worksheets to assess equitable accurate federal regulatory fees owed by each service provider.

2. Failure to file timely, complete, and accurate Worksheets undermines the Commission’s efforts to maintain the USF and these other federal programs arising under the Act. The equitable administration of each of these federal payment requirements depends on the timely filing of Worksheets. In this case, Pacific Data Systems (Pacific or Company) failed repeatedly to file a total of 13 Worksheets between August 1, 2019, and February 1, 2022. We propose in this Notice of Apparent Liability for Forfeiture (NAL) a penalty of \$100,000 against Pacific for its willful failure to comply with its obligations to file the Worksheet due on February 1, 2022, in apparent violation of sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission’s rules, and a Commission order.<sup>2</sup>

**II. BACKGROUND**

**A. Legal Framework**

3. The Act codifies Congress’s historical commitment to promote universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that “[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established

<sup>1</sup> See, e.g., 47 U.S.C. § 254(d); 47 CFR § 64.604(c)(5)(iii).

<sup>2</sup> 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B); *Wireline Competition Bureau Releases the 2022 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 36 FCC Rcd 14176, Attach. B, Tbl. 3 (WCB 2021) (2022 Annual Worksheet Instructions).

by the Commission to preserve and advance universal service.”<sup>3</sup> In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services to contribute to the USF based upon their interstate and international end-user telecommunications revenues.<sup>4</sup> The Commission also requires certain providers of interstate telecommunications to contribute to the USF.<sup>5</sup> When a service provider fails to pay its share of obligations to the USF, it undermines the Congressional mandates embodied in section 254(d) of the Act.<sup>6</sup> Delinquent contributors also obtain an unfair competitive advantage over companies that comply with the universal service provisions of the Act and the Commission’s rules.<sup>7</sup>

4. The Commission has established specific procedures to administer the USF. Each service provider required to contribute to the USF is required to file annually an FCC Form 499-A, also known as the Annual Worksheet,<sup>8</sup> and, with certain exceptions, to file quarterly an FCC Form 499-Q, also known as the Quarterly Worksheet.<sup>9</sup> USAC uses the revenue projections submitted in the Quarterly Worksheets to determine each service provider’s monthly universal service contribution obligation, pursuant to the methodology prescribed by Commission rules.<sup>10</sup> A service provider must timely file Quarterly Worksheets by February 1, May 1, August 1, and November 1 of each year, and Annual Worksheets by April 1 of each year.<sup>11</sup> The Commission’s rules explicitly warn service providers that failure to file timely forms or submit timely USF payments potentially subjects them to enforcement action.<sup>12</sup> The Commission’s rules also require that the information contained in the forms must be truthful and that the USF payments must be accurate.<sup>13</sup> The Commission’s equitable contribution scheme relies on the timely, complete, and accurate filing of Annual and Quarterly Worksheets by all service

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<sup>3</sup> 47 U.S.C. § 254(d).

<sup>4</sup> 47 CFR § 54.706(b).

<sup>5</sup> *Id.* § 54.706(a) (“Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms.”). According to its 2022 Annual Worksheet filing, Pacific provides CLEC services. See <https://apps.fcc.gov/cgb/form499/499a.cfm> (last accessed Dec. 7, 2022). A CLEC is a local exchange carrier that provides some or all of the interstate exchange access services used to send traffic to or from an end user. See 47 CFR § 61.26(a)(1).

<sup>6</sup> See *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6637, para. 2 (2012) (*Telseven NAL*), forfeiture issued, Forfeiture Order, 31 FCC Rcd 1629 (2016) (*Telseven Forfeiture Order*).

<sup>7</sup> See *id.*

<sup>8</sup> See, e.g., 47 CFR § 54.711; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2. Within 30 days of beginning to provide service, new service providers must register with the Commission by obtaining an FCC Registration Number (FRN) from the Commission Registration System (CORES) and obtaining a Filer ID from USAC’s E-File system. See, e.g., *2022 Annual Worksheet Instructions*, 36 FCC Rcd at 14199, Attach. 2, Tbl. 2.

<sup>9</sup> See, e.g., 47 CFR § 54.711; *2022 Annual Worksheet Instructions*, 36 FCC Rcd at 14199, Attach. 2, Tbl. 2; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

<sup>10</sup> Individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up based on the Annual Worksheets. See, e.g., 47 CFR § 54.711; *Federal-State Joint Board on Universal Service*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752-53, para. 12 (2001).

<sup>11</sup> See, e.g., *2022 Annual Worksheet Instructions*, 36 FCC Rcd at 14199, Attach. 2, Tbl. 2.

<sup>12</sup> 47 CFR § 54.713(c).

<sup>13</sup> *Id.* §§ 54.711(a), 54.713. An officer of a company completing an Annual Worksheet must certify, in part, as follows: “I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year.” *2022 Annual Worksheet Instructions*, 36 Rcd at 14186, Attach. 1. While the Commission permits revisions to Worksheets in certain circumstances, see *id.* at 14199-14200, that opportunity does not affect the separate requirement to submit accurate information in the first instance to the best of the filer’s knowledge, information and belief. See *id.* at 14186.

providers.<sup>14</sup> A service provider must provide USAC the Worksheets by each filing deadline so that USAC can issue monthly invoices assessing correct USF contribution amounts pursuant to the Commission's rules and orders.<sup>15</sup> A service provider shirking its Worksheet filing obligations therefore frustrates Congress's policy objective to ensure the equitable and non-discriminatory distribution of universal service costs among all service providers.<sup>16</sup>

5. USAC, administrators of other programs arising under the Act, and the Commission rely on the Worksheets service providers file to determine liability for, and subsequent billing and collection of, payments for important federal regulatory cost recovery requirements implemented under the Act.<sup>17</sup> The failure of a service provider to file every Quarterly and Annual Worksheet by each filing deadline could result in USAC relying on a smaller base of USF contributions revenues than would otherwise have been reported. The Worksheet filing obligations are therefore necessary to ensure the integrity of the USF. Furthermore, a contributor's failure to comply with these filing requirements can impede the very purpose for which Congress enacted section 254(d)—to ensure that service providers contribute to USF on an equitable and nondiscriminatory basis. The negative effects on other programs arising under the Act that rely on assessments of the Worksheets are similar. Indeed, a service provider that neglects to submit the most current, accurate revenue information in its Worksheets can evade its federal obligations to contribute fully towards the vital programs linked to the reporting obligations.<sup>18</sup> As a consequence of this failure, other service providers might shoulder an unfair burden of the USF and other federal regulatory programs implemented under the Act.<sup>19</sup>

#### **B. Factual Background**

6. Pacific is a private corporation that is incorporated and headquartered in Guam.<sup>20</sup> The Company has offered telecommunications services in Guam, the Commonwealth of the Northern Marianas (CNMI), and Hawaii since 2004.<sup>21</sup> In 2003, the Commission approved the Company's application for authority to provide international telecommunications resale service under section 214 of

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<sup>14</sup> See 47 CFR § 54.711. The Commission and USAC may review records and documentation underlying revenue reported on a contributor's Worksheets to determine whether the contributor is properly reporting revenue, and thus contributing its fair share to the costs of the universal service program. *See id.* § 54.711(a); *see also id.* § 54.706(e).

<sup>15</sup> *See, e.g.*, 47 CFR § 54.711; *2022 Annual Worksheet Instructions*, 36 FCC Rcd at 14237; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

<sup>16</sup> *See* 47 U.S.C. § 254(d).

<sup>17</sup> The effective administration of the TRS Fund, *see* 47 CFR § 64.604; LNP; *see id.* § 52.32, NANP; *see id.* § 52.17, and federal regulatory fees, *see id.* §§ 1.1154, 1.1157, also rely on the accuracy of the Worksheets.

<sup>18</sup> *See, e.g.*, *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Globalcom, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3479, 3484, para. 12 (2010) (*Globalcom NAL*), *consent decree adopted*, Order, 29 FCC Rcd 2593 (2014); *Local Phone Services, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974, 9977-78, para. 9 (2006) (*LPSI NAL*), *forfeiture issued*, Order of Forfeiture, 23 FCC Rcd 8952 (2008) (proposed forfeiture reduced to account for updated revenue information provided to USAC).

<sup>19</sup> *See, e.g.*, *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12; *LPSI NAL*, 21 FCC Rcd at 9977-78, para. 9.

<sup>20</sup> Response to Letter of Inquiry, from John Day, President, Chief Operating Officer, Pacific Data Systems, to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, at 1, Responses to Questions 1 and 3 (Apr. 6, 2022) (on file in EB-IHD-22-00033164) (LOI Response).

<sup>21</sup> Pacific provides private line, interstate telecommunications services in Guam, CNMI, and Hawaii, and offers long distance and local exchange interstate telecommunications services (voice and data services) in Guam. These services are offered on a standalone basis. *See* LOI Response at 3, Response to Question 15(b-c). In addition to telecommunications services, Pacific provides information technology equipment sales, infrastructure construction, maintenance and support services, and information and business services. *See* LOI Response at 2, Response to Question 13.

the Act.<sup>22</sup> On September 23, 2005, the Guam Public Utilities Commission granted a Certificate of Authority (COA) to Pacific Systems to be a service provider in Guam and provide local exchange services.<sup>23</sup>

7. Pacific filed its first Annual Worksheet in 2003.<sup>24</sup> Between 2003 and 2018, Pacific consistently filed its Annual and Quarterly Worksheets on time.<sup>25</sup> However, between August 1, 2019, and, February 1, 2022, Pacific failed to file any of the 13 Worksheets required by the Commission's rules.<sup>26</sup> Although USAC repeatedly contacted Pacific concerning the Company's missing Worksheet filings, the Company nonetheless failed to comply with its filing requirements.<sup>27</sup>

8. On September 13, 2021, USAC referred this matter to the Enforcement Bureau (Bureau) for investigation of Pacific's repeated failures to file Worksheets.<sup>28</sup> On March 7, 2022, the Bureau issued an LOI to Pacific concerning the Company's compliance with requirements arising under the Act and the Commission's rules.<sup>29</sup> On April 5, 2022, the Company filed its 2020 and 2021 Annual Worksheets, which were respectively due on April 1 of 2020 and 2021.<sup>30</sup> The Company responded to the Bureau's LOI on April 6, 2022.<sup>31</sup> In its LOI Response, Pacific acknowledged the Company's failures to file required Worksheets, but claimed it was impeded by "staff shortages and COVID-19 issues."<sup>32</sup>

### III. DISCUSSION

9. Based on evidence developed through the Bureau's investigation, the Company apparently violated sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders by willfully and repeatedly failing to file the Company's Worksheets due

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<sup>22</sup> *Id.* at 1, Response to Question 8; *International Authorizations Granted*, Public Notice, 18 FCC Rcd 1857, Rep. No. TEL-00636 (IB Feb. 13, 2003).

<sup>23</sup> LOI Response at 2, Response to Question 10(a); *Application of Pacific Data Systems for Certificate of Authority under 12 GCA 12103*, Public Utilities Commission of Guam, Certificate of Authority, Docket 05-06 (Sept. 23, 2005).

<sup>24</sup> See Letter from Fred Theobald, Director of Contributor Operations, Universal Service Administrative Company, to Jeffrey Brown, Investigations & Hearings Division, FCC Enforcement Bureau, at 1 (Jan. 17, 2023) (on file in EB-IHD-22-00033164) (USAC Letter).

<sup>25</sup> See *id.*

<sup>26</sup> Pacific failed to file Quarterly Worksheets due on August 1 and November 1, 2019, all Worksheets due in 2020 and 2021, and its Quarterly Worksheet due on February 1, 2022. After the Bureau issued a Letter of Inquiry (LOI), Pacific filed its 2020 and 2021 Annual Worksheets on April 5, 2022, and revised these Annual Worksheets on April 29, 2022. *Id.*

<sup>27</sup> *Id.* USAC reached out to Pacific, for example: on August 23, 2019, regarding the August 2019 Quarterly Worksheet; on December 10, 2019, regarding the November 2019 Quarterly Worksheet; on May 29, 2020, regarding the May 2020 Quarterly Worksheet; on June 26, 2020, regarding the 2020 Annual Worksheet; on August 20, 2020, regarding the August 2020 Quarterly Worksheet; on November 18, 2020, regarding the November 2020 Quarterly Worksheet; and on February 26, 2021, regarding the February 2021 Quarterly Worksheet. *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> See Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to John Day, President & Chief Operating Officer, Pacific Data Systems (Mar. 7, 2022) (regarding compliance with 47 U.S.C. §§ 159(a), 222, 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157, 1.7001, 1.8002, 52.17, 52.32, 54.706, 54.711, 54.712, 64.604, 64.2009(e), 64.2115) (on file in EB-IHD-22-00033164) (LOI).

<sup>30</sup> USAC Letter; LOI Response at 3, Response to Question 16.

<sup>31</sup> LOI Response at 1.

<sup>32</sup> See *id.* at 11, Response to Question 41(a). Pacific also indicated in its LOI response that it has retained consultants to correct the Company's Worksheet filing compliance issues. See LOI Response at 9, Response to Question 37.

between August 1, 2019, and February 1, 2022.<sup>33</sup> We propose a forfeiture of \$100,000 for Pacific's failure to file its Quarterly Worksheet due on February 1, 2022.

10. Service providers, including local exchange carriers like Pacific, must file Annual Worksheets by April 1 of each year, and Quarterly Worksheets by February 1, May 1, August 1, and November 1 of each year.<sup>34</sup> Pacific failed to file 13 Worksheets as follows: the Quarterly Worksheets due on August 1 and November 1, 2019, all 10 Worksheets due in 2020 and 2021, and the Quarterly Worksheet due on February 1, 2022. The Company claimed in its LOI response it was "unable to complete the filings due to staff shortages and COVID-19 issues that existed at the time."<sup>35</sup> However, the Company did not describe in its LOI response the precise circumstances, severity, or duration of the "staff shortages and COVID-19 issues" it allegedly experienced, and why they consequently were unable to file the required Worksheets on time.<sup>36</sup> Pacific has provided no basis to assess whether any alleged COVID-19 issues were severe enough to impede the Company's Worksheet filing compliance for several years. But even if this was the case, the proper course of action was to seek a waiver of the filing deadlines to obtain a deadline extension, not to ignore major regulatory requirements repeatedly.<sup>37</sup> When USAC repeatedly contacted Pacific to remind the Company of the Worksheet filing requirements, Pacific did not raise any need for extensions of the filing deadlines.<sup>38</sup> Instead, Pacific simply did not file the required Worksheets for several years.

11. We consider each individual failure to file a Worksheet by each filing deadline a separate violation of sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders.<sup>39</sup> We find that the Company apparently violated sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders 13 separate times by willfully failing to file each Worksheet due between August 1, 2019, and February 1, 2022.<sup>40</sup>

#### IV. PROPOSED FORFEITURE

12. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."<sup>41</sup> For the violations at issue here, section 503(b)(2)(B) of

<sup>33</sup> See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B); *2022 Annual Worksheet Instructions*, 36 FCC Rcd 14176; *Wireline Competition Bureau Releases the 2021 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 13671 (WCB 2020) (*2021 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2020 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 1350 (WCB 2020) (*2020 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2019 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 33 FCC Rcd 1801 (WCB 2019) (*2019 Annual Worksheet Instructions*).

<sup>34</sup> E.g., *2022 Annual Worksheet Instructions*, 36 FCC Rcd at 14199, Attach. 2, Tbl. 2.

<sup>35</sup> LOI Response at 11, Response to Question 41(a).

<sup>36</sup> See *id.*

<sup>37</sup> See, e.g., *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, Public Notice, 36 FCC Rcd 7497, 7525 (WCB 2021) (granting request for waiver of Annual Worksheet filing deadline due to Coronavirus); *Schools and Libraries Universal Support Mechanism*, 32 FCC Rcd 7456, 7461-63, paras. 17-21 (WCB 2017) (finding good cause to waive certain rules and deadlines for contributors whose operations were substantially impacted by hurricanes and thus prevented from meeting filing deadlines).

<sup>38</sup> See USAC Letter.

<sup>39</sup> See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B); *2022 Annual Worksheet Instructions*, 36 FCC Rcd 14176; *2021 Annual Worksheet Instructions*, 35 FCC Rcd 13671; *2020 Annual Worksheet Instructions*, 35 FCC Rcd 1350; *2019 Annual Worksheet Instructions*, 33 FCC Rcd 1801.

<sup>40</sup> As explained further below, we propose a forfeiture for only one apparent violation because the other apparent violations occurred outside of the applicable statute of limitations.

<sup>41</sup> 47 U.S.C. § 503(b)(1)(B).

the Act authorizes us to assess a forfeiture against a service provider such as Pacific of up to \$237,268 for each violation or each day of a continuing violation, up to a statutory maximum of \$2,372,677 for a single act or failure to act.<sup>42</sup> In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>43</sup> In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria to consider when determining the appropriate penalty in any given case.<sup>44</sup>

13. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.<sup>45</sup> Under section 1.80 of the Commission’s rules, we may adjust a forfeiture upward for egregious misconduct, ability to pay and relative disincentive, an intentional violation, substantial harm, prior violations of Commission requirements, substantial economic gain, or repeated or continuous violations.<sup>46</sup> We may adjust a forfeiture downward for a minor violation, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.<sup>47</sup> The forfeiture guidelines listed in section 1.80 of the Commission’s rules specifically “are intended as a guide for frequently recurring violations” and not “a complete or exhaustive list of violations.”<sup>48</sup>

14. Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>49</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>50</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>51</sup> We therefore find that the Company’s failures to file a total of 13 Worksheets required between August 1, 2019, and, February 1, 2022, were willful. Given that the Company failed to file 13 Worksheets between August 1, 2019, and, February 1, 2022, we also find that the Company’s apparent filing violations were

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<sup>42</sup> See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(B) of the Act (\$100,000 per violation or per day of a continuing violation and a statutory maximum of \$1,000,000 for a single act or failure to act). See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356 (EB Dec. 23, 2022); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

<sup>43</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

<sup>44</sup> 47 CFR § 1.80(b)(10), Tbl. 1 to para. (b)(10).

<sup>45</sup> See *Commission’s Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17110, para. 53 (1997) (citing 47 U.S.C. § 503(b)(2)(E)) (1997 *Forfeiture Guidelines*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>46</sup> 47 CFR § 1.80(b)(10), Tbl. 3 to para. (b)(10). See also *1997 Forfeiture Guidelines*, 12 FCC Rcd at 17098–99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”).

<sup>47</sup> 47 CFR § 1.80(b)(10), Tbl. 3 to para. (b)(10).

<sup>48</sup> *1997 Forfeiture Guidelines*, 12 FCC Rcd at 17109-10, para. 53.

<sup>49</sup> 47 U.S.C. § 312(f)(1).

<sup>50</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503) . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

<sup>51</sup> See, e.g., *S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

repeated.<sup>52</sup> Section 503(b)(6)(B) of the Act provides that no forfeiture penalty shall be imposed if “the violation charged occurred more than one year prior to the date of issuance of the required notice or notice of apparent liability.”<sup>53</sup> We therefore propose a forfeiture for the Company’s failure to file its Quarterly Worksheet due on February 1, 2022.

15. Section 1.80 of the Commission’s rules specifies a base forfeiture of \$3,000 for failure to file required forms or information.<sup>54</sup> Given the importance of the Worksheet filing requirements, the Commission has consistently applied an upward adjustment and proposed a forfeiture of \$50,000 for each failure of a service provider to file timely or accurate Worksheets.<sup>55</sup> However, given the accumulating record of non-compliance with the requirements to file accurate Worksheets by each filing deadline, service providers failing to comply with these requirements have been provided notice that the Commission could impose substantially higher upward adjustments for prior violations and for repeated or continuous violations.<sup>56</sup> Enforcement actions for the failure to file timely or accurate Worksheets can include upward adjustments up to the statutory maximum forfeiture authorized under section 503(b)(2) of the Act.<sup>57</sup>

16. In assessing a forfeiture amount, we consider the nature, extent, and gravity of the failure to comply with the Worksheet filing requirements to be very serious.<sup>58</sup> The Commission, USAC, and the administrators of the TRS Fund, LNP, and NANP rely on the data reported in Worksheets to determine respectively the accurate amounts that service providers owe for regulatory fees, the USF, and these other important funding mechanisms arising under the Act.<sup>59</sup> When a service provider fails to report its revenues accurately in its Worksheets by each filing deadline, the service provider could prevent the USF, TRS, LNP and NANP administrators and the Commission from fully invoicing the service provider for federal payment obligations implemented under the Act.<sup>60</sup> Pacific’s failure to file its Worksheets between August 1, 2019, and February 1, 2022, had serious implications for the administration of these funding mechanisms. The Commission and the administrators acting on its behalf to assess accurate regulatory fees, and contributions for the USF, TRS Fund, LNP, and NANP, depend on every service provider’s compliance with the periodic Worksheet filing requirements. A service provider’s failure to file its Worksheets impedes the Congressional mandate that each service provider contribute on an equitable and

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<sup>52</sup> Under the Act, 47 U.S.C. § 503(b)(1)(B), any service provider that “willfully or repeatedly” fails to comply with provisions of the Act or Commission rules or orders issued pursuant to the Act shall be liable for a forfeiture penalty.

<sup>53</sup> 47 U.S.C. § 503(b)(6)(B).

<sup>54</sup> 47 CFR § 1.80(b)(10), Tbl. 1 to para. (b)(10).

<sup>55</sup> E.g., *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14707, para. 19 (2015) (*PTT Forfeiture Order*); *ADMA Telecom, Inc.*, Forfeiture Order, 26 FCC Rcd 4152, 4155, 4162, paras. 9, 28 (2011) (*ADMA Forfeiture Order*); *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710, 4720-21, 4727, paras. 26-28, 31, 45 (2006) (*Globcom Forfeiture Order*).

<sup>56</sup> E.g., *Correct Solutions, LLC*, Notice of Apparent Liability for Forfeiture, DA 22-303, 2022 WL 1000385, at \*8, para. 26 (EB Apr. 1, 2022) (*Correct Solutions NAL*) (providing notice of future upward adjustments to \$100,000 or more); *PayG, LLC b/b/a Skyswitch*, Notice of Apparent Liability for Forfeiture, FCC 22-69, at 13, para. 41 (Sept. 14, 2022) (*PayG NAL*) (providing notice of upward adjustments as high as the statutory maximum forfeiture for prior violations and for repeated or continuous violations).

<sup>57</sup> See 47 U.S.C. § 503(b)(2); *PayG NAL* at para. 41.

<sup>58</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>59</sup> See 47 CFR §§ 1.1154, 1.1157, 52.17(a), 52.32, 54.711, 64.604(c)(5)(iii).

<sup>60</sup> See *id.* §§ 52.17(b), 52.32(b), 54.711, 64.604(c)(5)(iii)(B); *Telseven NAL*, 27 FCC Rcd at 6643-44, 6646-48, paras. 15, 23-25, *Telseven Forfeiture Order*, 31 FCC Rcd at 1636, para. 20; *Telrite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7241-42, para. 24 (2008) (*Telrite NAL*), *consent decree adopted*, Order, 27 FCC Rcd 4110 (2012).

nondiscriminatory basis to the USF,<sup>61</sup> and to these other important funding mechanisms arising under the Act. We have also considered the degree of the Company's culpability and repeated violations.<sup>62</sup> The Company has an important obligation to file accurate Worksheets by the filing deadlines every year, and Pacific has apparently failed to comply for nearly three years. The Company is thus highly culpable for its repeated filing failures.

17. Section 1.80 of the Commission's rules provides for an upward adjustment to forfeiture amounts for prior violations of any FCC requirements and for repeated or continuous violations.<sup>63</sup> Consistent with Commission precedent,<sup>64</sup> we apply an upward adjustment for the repeated nature of the Company's violations, including the Company's failures to file a total of 13 Worksheets between August 1, 2019, and February 1, 2022.<sup>65</sup> We thus apply an upward adjustment to the base forfeiture that not only reflects the extent and gravity of the violation, and the substantial harm to federal cost recovery requirements by not filing Worksheets,<sup>66</sup> but also reflects the repeated violations in this case.<sup>67</sup> We thus propose a total forfeiture of \$100,000.

18. Consistent with the Act and the Commission's rules,<sup>68</sup> we have exercised our discretion and considered the specific circumstances related to the Company and the violations it apparently committed, and we therefore find the Company apparently liable for a total proposed forfeiture of one hundred thousand dollars (\$100,000) for willfully and repeatedly failing to comply with the Commission's Worksheet filing requirements.<sup>69</sup>

## V. CONCLUSION

19. We have determined that Pacific apparently violated sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders by willfully and repeatedly failing to file its Worksheets between August 1, 2019, and February 1, 2022.<sup>70</sup> We therefore find that Pacific is apparently liable for a forfeiture of \$100,000.

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<sup>61</sup> See 47 U.S.C. § 254(d).

<sup>62</sup> See *id.* § 503(b)(2)(E); 47 CFR § 1.80, Note to para. (b)(10).

<sup>63</sup> 47 CFR § 1.80(b)(10), Tbl. 3 to para. (b)(10).

<sup>64</sup> *E.g.*, *Correct Solutions NAL* at para. 26 (providing notice of future upward adjustments to \$100,000 or higher forfeitures); *PayG NAL* at para. 41 (providing notice of future upward adjustments up to statutory maximum forfeitures).

<sup>65</sup> See USAC Letter.

<sup>66</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to para. (b)(10); *PTT Forfeiture Order*, 30 FCC Rcd at 14707, para. 19; *ADMA Forfeiture Order*, 26 FCC Rcd at 4155, 4162, paras. 9, 28; *Globcom Forfeiture Order*, 21 FCC Rcd at 4720-21, 4727, paras. 26-28, 31, 45.

<sup>67</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to para. (b)(10); *Correct Solutions NAL* at para. 26; *PayG NAL* at para. 41.

<sup>68</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Note 2 to para. (b)(10).

<sup>69</sup> Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

<sup>70</sup> See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B); *2022 Annual Worksheet Instructions*, 36 FCC Rcd 14176; *2021 Annual Worksheet Instructions*, 35 FCC Rcd 13671; *2020 Annual Worksheet Instructions*, 35 FCC Rcd 1350; *2019 Annual Worksheet Instructions*, 33 FCC Rcd 1801.

**VI. ORDERING CLAUSES**

20. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act<sup>71</sup> and section 1.80 of the Commission's rules,<sup>72</sup> Pacific Data Systems is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one hundred thousand dollars (\$100,000) for its willful violation of sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and a Commission order.<sup>73</sup>

21. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>74</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Pacific Data Systems **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 24 below.

22. In order for Pacific Data Systems to pay the proposed forfeiture, Pacific Data Systems shall notify Pamela Gallant at [Pamela.Gallant@fcc.gov](mailto:Pamela.Gallant@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), Georgina Feigen at [Georgina.Feigen@fcc.gov](mailto:Georgina.Feigen@fcc.gov), David Janas at [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov), and Jeffrey Brown at [Jeffrey.Brown@fcc.gov](mailto:Jeffrey.Brown@fcc.gov) of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, Pacific Data Systems shall send electronic notification of payment to Pamela Gallant at [Pamela.Gallant@fcc.gov](mailto:Pamela.Gallant@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), Georgina Feigen at [Georgina.Feigen@fcc.gov](mailto:Georgina.Feigen@fcc.gov), David Janas at [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov), and Jeffrey Brown at [Jeffrey.Brown@fcc.gov](mailto:Jeffrey.Brown@fcc.gov) on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>75</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159<sup>76</sup> or printed CORES form<sup>77</sup> must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>78</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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<sup>71</sup> 47 U.S.C. § 503(b).

<sup>72</sup> 47 CFR § 1.80.

<sup>73</sup> See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B); *2022 Annual Worksheet Instructions*, 36 FCC Rcd 14176.

<sup>74</sup> 47 CFR § 1.80.

<sup>75</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

<sup>76</sup> FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

<sup>77</sup> Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

<sup>78</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

23. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.<sup>79</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

24. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission’s rules.<sup>80</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Pamela Gallant at [Pamela.Gallant@fcc.gov](mailto:Pamela.Gallant@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), Georgina Feigen at [Georgina.Feigen@fcc.gov](mailto:Georgina.Feigen@fcc.gov), David Janas at [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov), and Jeffrey Brown at [Jeffrey.Brown@fcc.gov](mailto:Jeffrey.Brown@fcc.gov).

25. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.<sup>81</sup> Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we

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<sup>79</sup> See 47 CFR § 1.1914.

<sup>80</sup> *Id.* §§ 1.16, 1.80(f)(3).

<sup>81</sup> 47 U.S.C. § 503(b)(2)(E).

retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.<sup>82</sup>

26. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to John Day, President, Chief Operating Officer, Pacific Data Systems, 121 Robat St, Suite 101, Maite, GU 96910, and by e-mail to [john@pdsguam.com](mailto:john@pdsguam.com).

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal  
Chief  
Enforcement Bureau

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<sup>82</sup> See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
TTY: 888-835-5322

DA 23-69

Released: January 25, 2023

## BROADBAND DATA TASK FORCE ANNOUNCES RECOMMENDED BEST PRACTICES FOR CHALLENGES TO UPDATED BROADBAND SERVICEABLE LOCATION FABRIC

WC Docket Nos. 11-10 and 19-195

By this Public Notice, the Broadband Data Task Force (Task Force) announces recommended best practices for submitting bulk challenges to the most recent version of the Broadband Serviceable Location Fabric (Fabric) data. The Task Force also provides notice that bulk Fabric challenges submitted as much in advance of **March 15, 2023**, as possible are most likely to be reviewed and adjudicated in time to be accounted for in the next iteration of the Fabric (version three) to be released in conjunction with the Broadband Data Collection (BDC) filing window for data as of June 30, 2023 that is due no later than September 1, 2023. Bulk Fabric challenges submitted after March 15, 2023, will still be accepted and reviewed on a rolling basis, however, they would likely be adjudicated as part of a future version of the Fabric.<sup>1</sup>

On December 27, 2022, the Task Force announced that an updated version of the Fabric (version two) would be made available in conjunction with the opening of the BDC filing window on January 3, 2023.<sup>2</sup> Fabric data is associated with a relevant “as-of” date for fixed broadband availability data reporting, and we therefore release each updated iteration of Fabric data in conjunction with the opening of a BDC filing window for reporting broadband availability as-of June 30 or December 31 of each year. Version two of the Fabric data serves as the foundation upon which fixed broadband availability data as of December 31, 2022, must be reported no later than March 1, 2023.<sup>3</sup>

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<sup>1</sup> NTIA, under its authority under the Bipartisan Infrastructure Law, continues “to target June 30 as the date by which [it] will allocate each state and territory’s BEAD Program funding for high-speed Internet service.” <https://ntia.gov/blog/2023/advancing-internet-all>. The Commission continues to accept challenges to the Fabric and broadband availability data on a rolling basis as contemplated by the Broadband DATA Act, the Commission’s rules, and the Bipartisan Infrastructure Law. See Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, §802(b)(5)(C), 134 Stat. 228 (2020) (codified at 47 U.S.C. § 642(b)(5)(C)); 47 CFR § 1.7006(d); Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60102(h)(2)(E)(i), 135 Stat. 429 (2021) (codified at 47 U.S.C. § 642(b)(5)(C)(i)). The results of availability challenges will be updated on the National Broadband Map (NBM) as soon as they are resolved. The results of location challenges to Fabric version two are expected to be reflected in the Map by November 2023.

<sup>2</sup> *Broadband Data Task Force Announces Opening of the Second Broadband Data Collection Filing Window*, WC Docket Nos. 19-195, 11-10, Public Notice, DA 22-1372 (WTB/WCB/OEA Dec. 27, 2022). Version two of the Fabric contains data from additional data sources and other improvements by the FCC and CostQuest, as well as the results of bulk Fabric challenges submitted by state and local governments and broadband providers on or before November 10, 2022.

<sup>3</sup> The FCC will publish the December 31, 2022 broadband availability data, reported and overlaid on to version two of the Fabric, in an update to the NBM in the spring.

As of January 3, 2023, the BDC system only accepts bulk Fabric challenges based upon the data in version two of the Fabric.<sup>4</sup> Any bulk challenges to version one of the Fabric that were filed between November 11, 2022, and January 2, 2023, are being “carried over” and reviewed and adjudicated against version two, and therefore do not need to be refiled; bulk challenges submitted on or after January 3, 2023 however, must be submitted against version two of the Fabric.

Bulk Fabric challengers should submit their challenges to version two of the Fabric as soon as possible and, in any case, **no later than March 15, 2023**, to have the best opportunity to be considered in time for preparation of the next version of the Fabric (version three). Bulk Fabric challenges submitted after March 15, 2023, are unlikely to be considered for version three of the Fabric and will instead be reviewed and adjudicated as part of a future iteration of the Fabric.

Based on our review of the bulk challenges submitted to version one of the Fabric, we reiterate here some of our guidance to assist filers with reviewing Fabric data to assure that filers do not submit challenges seeking to add locations that are already reflected in the Fabric (i.e., “Type 1” Fabric challenges). As we have previously emphasized, the Fabric is a dataset created by analyzing numerous input data sources to derive geographic coordinates for building footprints (i.e., structures) that the FCC has determined are broadband serviceable locations (BSLs). It is therefore important to reiterate that the Fabric is not a database of addresses, and that address data, while included in the Fabric where available, are an unreliable determinant of the precise geographic coordinates of structures where broadband service can be installed.

Preparing a bulk Fabric challenge is fundamentally a geospatial process. Entities therefore should not attempt to upload as a bulk Fabric challenge a list of addresses they have compiled for another purpose (e.g., a list of addresses from a billing system or from an E911 database), though these datasets can serve as a helpful starting point for producing a valid bulk Fabric challenge. As an initial step, challengers can attempt to join this type of address-based data to the address information included in the Fabric in order to associate unique Fabric location IDs with the locations in the prospective challenger’s data.<sup>5</sup> But the challenger should not simply upload as a challenge all of the data it is unable to match to an existing location ID using an address matching join. In other words, the fact that an address is missing from the Fabric does not necessarily indicate that the location is missing from the Fabric.<sup>6</sup>

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<sup>4</sup> The Fabric data currently displayed on the NBM are version one data, which form the foundation upon which ISPs reported their service availability as of June 30, 2022. Individuals submitting location challenges from the NBM will continue to submit challenges to those Fabric data. See FCC, *Which Version of the Fabric Should I Use?* (Jan. 3, 2023), <https://help.bdc.fcc.gov/hc/en-us/articles/11749189297947-Which-Version-of-the-Fabric-Should-I-Use-> (“[i]ndividual challenges to both location and availability data, which are submitted directly using the National Broadband Map challenge interface, will also continue to be based on [version one] of the Fabric until the December 31, 2022, availability data are published.”). Individual challenges from the NBM will be reviewed and aligned with updates CostQuest has made in version two of the Fabric and bulk challenges to version two data.

<sup>5</sup> We have previously provided guidance on how to perform this joining process, including tools for attempted “fuzzy matching” of addresses. FCC, *Broadband Serviceable Location Fabric Overview for Fixed Availability Data Filers* (Sept. 28, 2022), <https://help.bdc.fcc.gov/hc/en-us/articles/7780065291291-Video-Broadband-Serviceable-Location-Fabric-Overview-for-Fixed-Availability-Data-Filers> (May 2023 Fabric Tutorial Video); see also FCC, *Address Matching in Excel* (Sept. 12, 2022), <https://help.bdc.fcc.gov/hc/en-us/articles/6810008518427-Address-Matching-in-Excel-> (last visited Jan. 17, 2023).

<sup>6</sup> We remind challengers that the Commission treats multi-tenant environments as single BSLs in the Broadband Data Collection. *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Third Report and Order, 36 FCC Rcd 1126, 1177, para. 130 (2021). Accordingly, challengers should not seek to add additional units as BSLs. See FCC, *Fabric FAQs* (Jan. 10, 2023), <https://help.bdc.fcc.gov/hc/en-us/articles/7412732399003-Fabric-FAQs> (“[i]n the case of multiple housing units within a single structure on a single parcel, the location will have a single entry or record in the Fabric that corresponds to a set of coordinates within the structure.”); FCC, *Bulk Fabric Challenge FAQs* (Dec. 6, 2022), <https://help.bdc.fcc.gov/hc/en-us/articles/9200359586971-Bulk-Fabric-Challenge-FAQs> (“[y]ou might have an

Rather than simply filing a Type 1 challenge consisting of a list of addresses, the challenger should next proceed to a geospatial analysis of both its address data and the data included in the Fabric. The challenger should start by loading the Fabric data into a geospatial analysis tool.<sup>7</sup> Loading additional datasets—including not only datasets such as billing system data and E911 data, but also additional datasets, such as building footprint imagery data and road data—will allow filers to improve the quality of any challenges.<sup>8</sup> After uploading their data sources, filers should undertake a geospatial process to eliminate locations from a challenge that are likely already designated as BSLs in version two of the Fabric and focus on the remaining locations. For example, filers should eliminate any points that fall within a set buffer distance of an existing location point in the version two Fabric data.<sup>9</sup> Filers should also eliminate any location data that falls on a road or that falls outside of a building footprint.<sup>10</sup> They can then perform a more detailed review of the remaining points to determine whether a Fabric challenge is warranted (and, if so, what category of challenge should be submitted). For any locations included in the challenger’s data that are not included in the version two Fabric data, filers should format challenges as a .csv file. Importantly, when including address information with a bulk Fabric challenge (either as a Type 1 challenge to add a BSL or a Type 2 challenge to change the address data for an existing Fabric location), filers will also need to run their address information through USPS CASS validation to ensure the challenge is not rejected through the FCC’s review process.<sup>11</sup>

As a reminder, entities that had previously entered into a license agreement with CostQuest received an email from CostQuest on or around December 30, 2022, providing them with a link to download version two Fabric data in their covered areas.<sup>12</sup> Entities that have not yet entered into a license agreement with CostQuest for Fabric data (including internet service providers, state, local or Tribal governmental entities, or other entities wishing to use the Fabric data for purposes of participating in the BDC) may do so by following the instructions the Task Force has provided for obtaining access to the Fabric.<sup>13</sup>

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address for an individual unit or substructure that is part of a larger building, such as a condo or apartment, that is already identified as a BSL in the Fabric. If you drop the unit/apartment number from your address and the remaining part of the address (the street number and street name) matches to a location in the Fabric, there is no need to file a challenge.”).

<sup>7</sup> One such tool is QGIS, a free, open-source mapping tool. QGIS, *A Free and Open Source Geographic Information System*, <https://www.qgis.org/en/site/> (last visited Jan. 17, 2023); see also May 2023 Fabric Tutorial Video at 19:15 (providing step-by-step instructions on how to map Fabric data using QGIS).

<sup>8</sup> Open-source satellite imagery data is available from resources such as Google Maps or OpenStreetMap. Google, *Google Maps*, <https://maps.google.com/> (last visited Jan. 17, 2023); OpenStreetMap, *OpenStreetMap*, <https://www.openstreetmap.org/> (last visited Jan. 17, 2023). Road data is available for download from the U.S. Census Bureau. U.S. Census Bureau, *TIGER/Line Shapefiles* (December 5, 2022), <https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-line-file.html>.

<sup>9</sup> If your data for a location did not match to an existing location ID in the Fabric through your address matching process but is in close geographic proximity to an existing BSL point in the Fabric, then you may still want to submit a Fabric challenge. But the category of the challenge may be to, e.g., change the address for the location, rather than to add a BSL to the Fabric.

<sup>10</sup> Geographic coordinates for a Fabric challenge point must fall within a building footprint in order to be upheld as a successful Fabric challenge. As a result, if a set of geographic coordinates submitted by a challenger either falls in the middle of a road or otherwise falls outside of a building footprint, then the challenge is likely to be rejected.

<sup>11</sup> USPS, *CASS*, <https://postalpro.usps.com/certifications/cass> (last visited Jan. 17, 2023).

<sup>12</sup> CostQuest sent an email from [nbfsupport@costquest.com](mailto:nbfsupport@costquest.com) to the Certifying Official identified in the Entity Information page of your BDC system registration providing a link to the updated data file.

<sup>13</sup> See *Broadband Data Task Force Announces the Availability of the Production Version of the Broadband Serviceable Location Fabric*, WC Docket Nos. 11-10, 19-195, Public Notice, DA 22-668 (BDTF/WCB/OEA June 23, 2022). See also FCC, *Access the Fabric*, <https://help.bdc.fcc.gov/hc/en-us/sections/10419330460827-Access->

For additional information and questions regarding the Broadband Data Collection, please visit the BDC website at <https://www.fcc.gov/BroadbandData>.

– FCC –

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[the-Fabric](#) (last visited Jan. 17, 2023). More information about the Fabric may be found in the BDC Help Center at <https://help.bdc.fcc.gov>.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 5925469
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**ORDER**

**Adopted: January 25, 2023**

**Released: January 25, 2023**

By the Acting Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider a complaint alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.<sup>1</sup> We conclude that Clear Rate's actions violated the Commission's slamming rules, and we therefore grant Complainant's complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.<sup>2</sup> The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>3</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the order.<sup>4</sup> The Commission has also adopted rules to limit the liability of subscribers when an unauthorized carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.<sup>5</sup>

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.<sup>6</sup> Under the rules, upon a finding of material misrepresentation during

<sup>1</sup> See Informal Complaint No. 5925469 (filed Dec. 20, 2022); see also 47 CFR §§ 64.1100 – 64.1190.

<sup>2</sup> 47 U.S.C. § 258(a).

<sup>3</sup> See 47 CFR § 64.1120.

<sup>4</sup> See *id.* § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

<sup>5</sup> These rules require the unauthorized carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See *id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. See *id.* §§ 64.1140, 64.1170.

<sup>6</sup> *Id.* § 64.1120(a)(1)(i)(A).

the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.<sup>7</sup> The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.<sup>8</sup>

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without Complainant's authorization.<sup>9</sup> In the complaint, Complainant also alleges that Clear Rate's telemarketer "convinced her [aunt] without her understanding to change her Verizon service that she has had for more than 30 years to their service."<sup>10</sup>

5. Pursuant to our rules, we notified Clear Rate of the complaint.<sup>11</sup> Clear Rate responded, stating that the Complainant agreed to and authorized the carrier switch.<sup>12</sup> It also provided two audio recordings—a third party verification recording (TPV) and a recording Clear Rate characterized as a "quality assurance call."<sup>13</sup> Clear Rate did not provide a recording of the sales call or any other evidence related to the sales call.

6. The Division thoroughly reviewed all the evidence provided by both the Complainant and Clear Rate. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible. We further find that Clear Rate has failed to provide persuasive evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization to change carriers is invalid. As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding."<sup>14</sup> We therefore find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service

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<sup>7</sup> See *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

<sup>8</sup> See *2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id.*

<sup>9</sup> See Informal Complaint No. 5925469.

<sup>10</sup> *Id.* Complainant also stated that Clear Rate "had her aunt's phone service turned off, so she went weeks with no landline, and she has a Pace Maker attached to [the] phone service. It took many hours and lots of trouble to get Verizon to get her service back." *Id.*

<sup>11</sup> 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier). In the notification, we directed Clear Rate to respond to the specific misrepresentation allegation and to provide any evidence to rebut it.

<sup>12</sup> See Clear Rate Response to Informal Complaint No. 5925469 (filed Jan. 18, 2023) (*Clear Rate Response*); see also 47 CFR § 64.1160.

<sup>13</sup> We note that on the TPV recording provided by Clear Rate, the third-party verifier repeats the same question several times, even after the Complainant responds "no," until the verifier receives a "yes" response.

<sup>14</sup> *2018 Slamming Order*, 33 FCC Rcd at 5779, para. 18 (citing *Advantage Forfeiture Order*, 32 FCC Rcd 3723, 3725-30, paras. 7-13 (2017) (finding that the carrier's TPV recordings did not disprove that unlawful misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

provider, as defined by the rules, and we discuss Clear Rate's liability below.<sup>15</sup>

7. Clear Rate must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.<sup>16</sup> We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.<sup>17</sup> Any charges imposed by Clear Rate on the Complainant for service provided after this 30-day period shall be paid by the Complainant to the authorized carrier at the rates the Complainant was paying the authorized carrier at the time of the unauthorized change of their telecommunications service provider.<sup>18</sup>

8. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361, and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that Clear Rate Communications may not pursue any collection against Complainant for those charges.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kristi Thornton  
Acting Chief  
Consumer Policy Division  
Consumer and Governmental Affairs Bureau

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<sup>15</sup> If Complainant is unsatisfied with the resolution of the complaint, the Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 CFR § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See id.* § 1.719.

<sup>16</sup> *See id.* § 64.1160(b). Clear Rate stated that it received \$103.72 from Complainant. *See Clear Rate Response* at 2.

<sup>17</sup> *See id.* § 64.1160(d).

<sup>18</sup> *See id.* § 64.1140, 64.1160.



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
TTY: 1-888-835-5322

DA 23-72

Released: January 25, 2023

## WORLD RADIOCOMMUNICATION CONFERENCE ADVISORY COMMITTEE SCHEDULES ITS SEVENTH MEETING ON APRIL 11, 2023

IB Docket No. 16-185

The World Radiocommunication Conference Advisory Committee (WAC or Advisory Committee) meeting will be held on Tuesday, April 11, 2023, at 11:00 A.M. in the Commission Meeting Room (1.200), 45 L Street, N.E. Washington, D.C. 20002. The meeting is open to the public. A draft agenda of the seventh Advisory Committee meeting is attached.

This seventh Advisory Committee meeting will consider status reports and recommendations from its Informal Working Groups, (IWG-1, IWG-2, IWG-3, and IWG-4), concerning preparation for the 2023 World Radiocommunication Conference (WRC-23). The seventh Advisory Committee meeting will be broadcast live with open captioning over the Internet from the FCC Live web page at [www.fcc.gov/live](http://www.fcc.gov/live). There will be audience participation available; send live questions to [livequestions@fcc.gov](mailto:livequestions@fcc.gov) only during this meeting.

Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need and tell us how to contact you if we need more information. Make your request as early as possible. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

The Commission's WRC-23 website ([www.fcc.gov/wrc-23](http://www.fcc.gov/wrc-23)) contains the latest information on the IWG and WAC meeting agendas and audience participation information, all scheduled meeting dates and updates, and Advisory Committee matters. Comments may be presented at the Advisory Committee meeting or in advance of the meeting by email to: [WRC-23@fcc.gov](mailto:WRC-23@fcc.gov).

For additional information, please contact Dante Ibarra, the Designated Federal Official for the Advisory Committee, [Dante.Ibarra@fcc.gov](mailto:Dante.Ibarra@fcc.gov), telephone: (202) 418-0610.

**AGENDA**

**Seventh Meeting of  
the 2023 World Radiocommunication Conference Advisory Committee  
Federal Communications Commission**

**April 11, 2023; 11:00 A.M. EDT**

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Sixth Meeting
4. IWG Reports and Consideration of Documents
5. Future Meetings
6. Other Business

- FCC -



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
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DA 23-74

Released: January 26, 2023

## AUDIO DIVISION ANNOUNCES AVAILABILITY OF 2020 DECENNIAL CENSUS DATA

The Audio Division, Media Bureau announces the availability of the most recent 2020 U.S. Census Bureau (U.S. Census) decennial census block, population, and cartographic boundary data. The U.S. Census releases census block, population and cartographic boundary data following each decennial census. Effective April 1, 2023, petitioners/applicants submitting filings to the Audio Division<sup>1</sup> must employ the most recent 2020 U.S. Census data available when determining a particular community's population in addition to the population served and overlap of service areas to communities and Urbanized Areas.<sup>2</sup>

In the 2010 U.S. Census, "Urbanized Areas" are defined as a subset of urban areas that contain 50,000 or more people whereas "Urban Clusters" are defined as urban areas that have a population of at least 2,500 people and less than 50,000 people. In the 2020 U.S. Census, the distinction between "Urbanized Areas" and "Urban Clusters" are eliminated. Each user must define thresholds within the urban areas for its own purposes.<sup>3</sup> Accordingly, we will continue to define an "Urbanized Area" as an urban area that contains 50,000 or more people. In the 2020 U.S. Census, there are 511 such "Urbanized Areas," which is a net increase of 12 from the 499 "Urbanized Areas" in the 2010 Census. TIGER Shapefiles for census blocks, community boundaries, and urban areas are now all available for download from the Census Bureau at [https://www2.census.gov/geo/tiger/TIGER\\_RD18/LAYER](https://www2.census.gov/geo/tiger/TIGER_RD18/LAYER).<sup>4</sup>

For additional information, please contact John Gabrysch ([John.Gabrysch@fcc.gov](mailto:John.Gabrysch@fcc.gov)), Rolanda F. Smith, ([Rolanda-Faye.Smith@fcc.gov](mailto:Rolanda-Faye.Smith@fcc.gov)), or Nazifa Sawez ([Nazifa.Sawez@fcc.gov](mailto:Nazifa.Sawez@fcc.gov)) of the Audio Division.

[FCC]

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<sup>1</sup> This requirement only applies to filings submitted to the Audio Division. The Video Division will issue a separate Public Notice at a later date to announce the use of 2020 Census data for television station filings.

<sup>2</sup> See e.g. 47 CFR § 73.7000 "Population."

<sup>3</sup> See *2020 Census Qualifying Urban Areas and Final Criteria Clarifications*, 87 FR 80114 (published Dec. 29, 2022).

<sup>4</sup> The subfolder UAC20 contains a national shapefile for urban areas, and the subfolder TABBLOCK20 contains state-by-state shapefiles for the tabulation blocks used in the 2020 Census.



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
TTY: 888-835-5322

DA 23-75

Released: January 26, 2023

## UPDATED TOWER CONSTRUCTION GUIDANCE FOLLOWING THE DELAY IN THE RECLASSIFICATION OF THE NORTHERN LONG-EARED BAT AS ENDANGERED UNDER THE ENDANGERED SPECIES ACT

On January 24, 2023, the Wireless Telecommunications Bureau (Bureau) of the Federal Communications Commission (Commission) issued updated instructions to the tower industry for considering the potential effects that proposed facilities could have in the northern long-eared bat's (*Myotis septentrionalis*) range as part of an applicant's environmental review.<sup>1</sup> On November 29, 2022, the U.S. Fish and Wildlife Service (Service) announced a final rule to reclassify the northern long-eared bat from being listed as threatened to being listed as an endangered species under the Endangered Species Act (ESA), effective January 30, 2023.<sup>2</sup> On January 26, 2023, the Service announced that it is delaying the effective date of the final rule to March 31, 2023.<sup>3</sup> The Service stated that delaying the effective date's implementation will allow the Service to "finalize conservation tools and guidance documents, thereby preventing confusion and disruption with other Federal agencies under section 7 of the Act."<sup>4</sup>

With this guidance, the Commission informs applicants of this delay in the effective date of the Service's final rule. In light of this delay, and until the Service's final rule becomes effective, applicants should continue to follow the Commission's prior guidance for protection of the northern long-eared bat issued on December 2, 2021.<sup>5</sup> When the Service's final rule becomes effective, we direct applicants to consult with the Service's resources<sup>6</sup> and the applicant's respective field Service office<sup>7</sup> to determine how to proceed with the consultation process for projects that are proposed or in pre-construction status as of that date.

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<sup>1</sup> *Updated Tower Construction Guidance Following the Reclassification of the Northern Long-Eared Bat as Endangered Under the Endangered Species Act*, Public Notice, DA 23-63 (WTB 2023).

<sup>2</sup> Service, Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat, 87 Fed. Reg. 73488 (Nov. 30, 2022) (*Final Rule*).

<sup>3</sup> Service, Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat; Delay of Effective Date, 88 Fed. Reg. 4908 (Jan. 26, 2023).

<sup>4</sup> *Id.*

<sup>5</sup> *Revised Tower Construction Guidance for Protection of Northern Long-Eared Bat under the Endangered Species Act*, Public Notice, DA 21-1501 (WTB 2021).

<sup>6</sup> See Service, *Northern Long-eared Bat*, <https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis> (last visited Jan. 26, 2023) (providing resources on the transition, including a Frequently Asked Questions and webinar slides).

<sup>7</sup> See *Final Rule*, 87 Fed. Reg. at 73494 ("If any private entity is concerned that they may be engaging in an activity that will result in take of a northern long-eared bat, they should coordinate with their respective Service field office.").

The Commission expects to update the tower industry with instructions once the Service provides further information on its final rule and related tools and guidance.

For further information, contact Deborah Spring, Biologist, Wireless Telecommunications Bureau, Competition and Infrastructure Policy Division, [Deborah.Spring@FCC.gov](mailto:Deborah.Spring@FCC.gov).

-FCC-



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DA 23-76

Released: January 27, 2023

## WIRELINE COMPETITION BUREAU RELEASES RESULTS OF TESTS REQUIRED BY SECTIONS 61.50(j) AND 69.803(c) OF THE COMMISSION'S RULES

### WC Docket Nos. 21-17 and 17-144

By this Public Notice, the Wireline Competition Bureau (Bureau) complies with the obligations imposed by the Commission's rules and publicly releases the updated results of the tests the Bureau is required to perform every three years, pursuant to sections 61.50(j) and 69.803(c) of the Commission's rules.<sup>1</sup> These results are based on the Commission's most recent, publicly-available, Form 477 data and further supplement the previous lists the Bureau has released in compliance with the above-referenced rules. The results of the Bureau's analysis are attached to this Public Notice as Appendices A and B. The second supplemental lists, as well as the previous lists from 2017, 2018 and 2020, are available at: <https://www.fcc.gov/general/bds-competitive-and-noncompetitive-lists>.<sup>2</sup>

On May 15, 2017, the Bureau announced the public release of a list of counties served in part or in whole by price cap carriers (price-cap counties) that were deemed competitive, non-competitive, or grandfathered pursuant to the initial competitive market test adopted in the *Price Cap BDS Order*.<sup>3</sup> The

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<sup>1</sup> See *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., 32 FCC Rcd 3459, 3527-29, paras. 145-152 (2017) (*Price Cap BDS Order*); 47 CFR § 69.803(c); *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers et al.*, WC Docket No. 17-144 et al., Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, 10439-40, paras. 103-104 (2018) (*Rate-of-Return BDS Order*); 47 CFR § 61.50(j). In 2021, the Bureau terminated WC Docket Nos. 16-143, 05-25, and RM-10593, and opened WC Docket No. 21-17 for price cap business data services (BDS) issues. See *Wireline Competition Bureau Terminates Price Cap Data Services Proceedings, Closes Docket; Parties Required to Destroy or Return Confidential and Highly Confidential Documents*, WC Docket No. 21-17 et al., Public Notice, 36 FCC Rcd 343 (WCB 2021).

<sup>2</sup> FCC, *BDS Competitive and Noncompetitive Lists* (Jan. 27, 2023), <https://www.fcc.gov/bds-competitive-and-noncompetitive-lists> (*BDS Competitive Market Analysis Lists*). The Commission directed the Bureau to release a public notice listing newly competitive counties for price cap carriers and study areas for rate-of-return carriers and also provide this information on the Commission's website. *Price Cap BDS Order*, 32 FCC Rcd at 3528, para. 151, 47 CFR § 69.803(b)(2); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10440, para. 104; 47 CFR § 61.50(j).

<sup>3</sup> *Wireline Competition Bureau Publicly Releases Lists of Counties Where Lower Speed TDM-Based Business Data Services Are Deemed Competitive, Non-Competitive, or Grandfathered*, WC Docket Nos. 16-143 et al., Public Notice, 32 FCC Rcd 3966, 3966 (WCB 2017) (*2017 County List Public Notice*). A county was deemed competitive in the initial price cap test if either: (1) 50% of locations with BDS demand within the county were within a half mile of a location served by a competitive provider based on data from the 2015 special access data collection; or (2) 75% of the census blocks within the county had access to broadband from a cable operator, based on Form 477 data as of December 2016. 47 CFR § 69.803(b)(1). A grandfathered market is a "county that does not satisfy the competitive market test set forth in § 69.803 for which a price cap carrier obtained Phase II relief pursuant to § 69.711(c)" prior to June 2017. 47 CFR §§ 69.801(e), 69.807(a).

initial price-cap test results were based on data from the 2015 special access data collection and Form 477 data, as of December 31, 2016.<sup>4</sup>

On October 25, 2018, the Bureau released a list of study areas served by rate-of-return carriers (rate-of-return study areas) receiving fixed universal service support that were deemed competitive pursuant to the competitive market test adopted in the *Rate-of-Return BDS Order*.<sup>5</sup> The initial rate-of-return test results were based on Form 477 data, as of June 30, 2017.<sup>6</sup> Rate-of-return carriers electing incentive regulation for their business data service (BDS) offerings serving competitive study areas and price cap carriers serving competitive counties were granted relief from ex ante pricing regulation and tariffing obligations for time division multiplexing (TDM)-based end-user channel terminations with capacity at or below a DS3.<sup>7</sup>

The Commission directed the Bureau to update the results of both tests every three years, based on the most recent Form 477 broadband availability data submitted by cable operators.<sup>8</sup> For the price-cap update, the Commission directed the Bureau to use a modified version of the initial price-cap test based on updated Form 477 data. Under the subsequent price-cap test, a county is deemed competitive if a cable operator reports that 75% of the census blocks within the county have broadband availability.<sup>9</sup> The Commission also directed the Bureau to re-run the rate-of-return test using updated Form 477 data.<sup>10</sup> Under the rate-of-return test, a study area is deemed competitive if 75% of the census blocks within the study area are served by a cable operator offering a minimum of 10 Mbps downstream/1 Mbps upstream broadband service.<sup>11</sup>

The Commission directed the Bureau to update the price-cap and rate-of-return test results every three years, following the 2020 price cap test, using Form 477 data as of the date of the most recent

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<sup>4</sup> 47 CFR § 69.803(b)(1). Pursuant to the initial price-cap market test, 1,879 counties were deemed competitive, 1,276 counties were deemed non-competitive, and 69 counties were in grandfathered markets. *BDS Competitive Market Analysis Lists*.

<sup>5</sup> *Wireline Competition Bureau Publicly Releases List of Study Areas Deemed Competitive If Rate-of-Return Carriers Elect Incentive Regulation For Those Areas*, WC Docket No. 17-144 et al., Public Notice, 33 FCC Rcd 10169 (WCB 2018) (2018 County List Public Notice). A study area is deemed competitive in the rate-of-return test if 75% of the census blocks within the study area are served by a cable operator offering a minimum of 10/1 Mbps broadband service based on Form 477 data. 47 CFR § 61.50(j)(1).

<sup>6</sup> *2018 County Public Notice*, 33 FCC Rcd at 10169. Pursuant to the initial application of the rate-of-return test, the Bureau deemed 16 rate-of-return study areas receiving fixed universal service support to be competitive. *BDS Competitive Market Analysis Lists*.

<sup>7</sup> 47 CFR § 61.50(k)(2); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10440, para. 105; 47 CFR § 69.803(a); *Price Cap BDS Order*, 32 FCC Rcd at 3499, para. 86.

<sup>8</sup> 47 CFR §§ 61.50(j)(2), 69.803(c); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, para. 104; *Price Cap BDS Order*, 32 FCC Rcd at 3528, para. 151.

<sup>9</sup> 47 CFR § 69.803(c)(2); *Price Cap BDS Order*, 32 FCC Rcd at 3527-29, paras. 145-152. As with the initial price cap test, the Bureau used cable broadband connections with a minimum 10/1 Mbps capacity to assess competition.

<sup>10</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, para. 104.

<sup>11</sup> 47 CFR § 61.50(j)(1)-(2); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, paras. 103-104. Given the high sunk costs involved in network deployment, the Commission determined that once a price-cap county or rate-of-return study area is deemed competitive, it would retain its competitive status and not be retested. 47 CFR §§ 61.50(j)(3), 69.803(c)(3); see *Price Cap BDS Order*, 32 FCC Rcd at 3528-29, para. 152; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439, para. 103.

collection.<sup>12</sup> The Bureau now updates the results of both tests using Form 477 data reflecting the availability of broadband service from cable operators as of December 31, 2021.<sup>13</sup> Based on these data, the Bureau, in coordination with the Office of Economics and Analytics, tested price-cap counties that were previously deemed to be non-competitive and retested rate-of-return study areas receiving fixed universal service support that were previously deemed not to be competitive.<sup>14</sup> The Bureau found that 15 price-cap counties that were previously deemed non-competitive now meet the competitive threshold established by the Commission's rules. The price cap-served areas within those counties are therefore deemed competitive, effective immediately.<sup>15</sup> The Bureau also found that five additional rate-of-return study areas receiving fixed universal service support meet the applicable threshold and are therefore deemed competitive, also effective immediately.<sup>16</sup>

The lists of price-cap counties and rate-of-return study areas newly deemed competitive pursuant to the updated test results are attached as Appendices A and B, respectively. Parties wishing to challenge these updated test results may file a petition for reconsideration with the Bureau or an application for review with the Commission.<sup>17</sup> Pending any challenges to these results, the newly deemed-competitive price-cap counties and rate-of-return study areas will not be retested in subsequent three-year updates.<sup>18</sup> These lists supplement the lists of price-cap counties and rate-of-return study areas deemed competitive pursuant to the initial and first supplemental competitive market tests which are also available on the Commission's website.<sup>19</sup>

For further information, please contact Erik Raven-Hansen, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1532 or via email at [Erik.Raven-Hansen@fcc.gov](mailto:Erik.Raven-Hansen@fcc.gov).

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<sup>12</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10440, para. 104. The Commission directed the Bureau to update both tests every three years thereafter. *Id.*; 47 CFR §§ 61.50(j)(2), 69.803(c).

<sup>13</sup> FCC, *Fixed Broadband Deployment Data from FCC Form 477* (Dec. 29, 2022), <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477>.

<sup>14</sup> The Bureau did not test price-cap counties previously deemed competitive or grandfathered pursuant to the initial or supplemental price-cap test or retest rate-of-return study areas previously deemed competitive pursuant to the rate-of-return test, since those areas retain their competitive or grandfathered status. *See* 47 CFR §§ 61.50(j)(3), 69.803(c)(3), 69.807(a); *Price Cap BDS Order*, 32 FCC Rcd at 3528-29, paras. 151-152; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439, para. 103.

<sup>15</sup> *See* 47 CFR § 69.803(c); *Price Cap BDS Order*, 32 FCC Rcd at 3528-29, paras. 151-52.

<sup>16</sup> *See* 47 CFR § 61.50(j)(1)-(2); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, paras. 103-104.

<sup>17</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3528, para. 151; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, para. 104; 47 CFR § 1.106 (petitions for reconsideration); 47 CFR § 1.115 (applications for review); *see also* 47 CFR § 1.115(c) note (“Subject to the requirements of § 1.106, new questions of fact or law may be presented to the designated authority in a petition for reconsideration.”).

<sup>18</sup> *See* 47 CFR §§ 61.50(j)(3), 69.803(c)(3).

<sup>19</sup> *See BDS Competitive Market Analysis Lists*.

**APPENDIX A****Price Cap Counties Deemed Newly Competitive Effective January 27, 2023****FIPS State County or County-Equivalent**

09011	CT	New London County
12061	FL	Indian River County
13105	GA	Elbert County
21173	KY	Montgomery County
22007	LA	Assumption Parish
24001	MD	Allegany County
24013	MD	Carroll County
37011	NC	Avery County
40033	OK	Cotton County
42051	PA	Fayette County
42103	PA	Pike County
42107	PA	Schuylkill County
51595	VA	Emporia city
51730	VA	Petersburg city
54029	WV	Hancock County

**APPENDIX B****Rate-of-Return Study Areas Deemed Newly Competitive Effective January 27, 2023**

<b>SAC</b>	<b>State</b>	<b>Holding Company Name</b>	<b>Fund Type</b>
110737	MA	X5 RTC LLC	ACAM I
170145	PA	BENTLEYVILLE TEL CO	ACAM I
220354	GA	CHICKAMAUGA TEL CORP	ACAM I
300604	OH	COLUMBUS GROVE TEL	ACAM I
300649	OH	ORWELL TEL CO	ACAM I



# PUBLIC NOTICE

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DA No. 23-77

Friday January 27, 2023

Report No. SAT-01696

## Satellite Policy Branch Information

### Actions Taken

The Commission, by its International Bureau, took the following actions pursuant to delegated authority. The effective date of these actions is the release date of this Notice, except where an effective date is specified.

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SAT-STA-20221108-00153	E S2423	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 01/26/2023

Application listed as granted in IBFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

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SAT-STA-20221109-00157	E S2387	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 01/26/2023

Application listed as granted in IBFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

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SAT-STA-20221212-00171	E S2423	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 01/26/2023

Application listed as granted in IBFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

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SAT-STA-20221213-00172	E S2422	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 01/26/2023

On January 26, 2023, the Satellite Division granted, with conditions, special temporary authority for a period of 30 days to Intelsat License LLC to operate Galaxy 12 in a ±0.1 degree East-West station keeping box at the 129.0° W.L. orbital location.

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SAT-STA-20221214-00173	E S2387	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 01/26/2023

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Application listed as granted in IBFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

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**SAT-STA-20221215-00174** E S3069 Space Exploration Holdings, LLC  
Special Temporary Authority  
Granted in Part / Dismissed in Part Effective Date: 01/23/2023

On January 23, 2022, the Satellite Division granted, with conditions, the request of Space Exploration Holdings, LLC (SpaceX), for special temporary authority to operate telemetry, tracking, and command beacons on its Second Generation Starlink satellite constellation, using certain frequencies in the 137-138 MHz (space-to-Earth) and 148-150.05 MHz (Earth-to-space) bands. SpaceX is authorized to conduct these beacon operations for a period of up to 30 days with up to 15 Starlink satellites.

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**SAT-STA-20221219-00177** E Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/26/2023

Application listed as granted in IBFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

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**SAT-STA-20221221-00178** E S3078 Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/26/2023

Application listed as granted in IBFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

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**SAT-STA-20230111-00002** E S2423 Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/26/2023

On January 26, 2023, the Satellite Division granted, with conditions, the request of Intelsat License LLC for special temporary authority for an additional period of 30 days, to operate the Horizons 2 space station in the fixed-satellite service with a new platform bias at the 73.8° W.L. orbital location.

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**SAT-STA-20230111-00003** E Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/26/2023

On January 26, 2023, the Satellite Division granted, with conditions, special temporary authority for an additional period of 30 days, to Intelsat License LLC to continue to conduct telemetry, tracking and command communications with the Galaxy 15 space station outside of its authorized +/- 0.05° east-west station keeping box at the 133.0° W.L. orbital location. Galaxy 15 is authorized to operate telemetry, tracking and command using the following center frequencies: 4198.0 MHz, 4199.875 MHz (space-to-Earth); 6420.5 MHz (Earth-to-space).

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**SAT-STA-20230117-00004** E Intelsat License LLC  
Special Temporary Authority  
Grant of Authority Effective Date: 01/26/2023

On January 26, 2023, the Satellite Division granted, with conditions, the request of Intelsat License LLC for special temporary authority to conduct telemetry, tracking, and command communications with Galaxy 31 during the space station's drift to its permanently-authorized location of 121.0 W.L.

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**SAT-STA-20230123-00008** E  
Special Temporary Authority  
Grant of Authority

Intelsat License LLC

Effective Date: 01/26/2023

On January 26, 2023, the Satellite Division granted, with conditions, the request of Intelsat License LLC for special temporary authority to conduct telemetry, tracking, and command communications with Galaxy 32 during the space station's drift to its permanently-authorized location of 91.0° W.L.

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**INFORMATIVE**

**SAT-MOD-20211214-00191** S3047 Myriota Pty Ltd

The Satellite Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective January 25, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

**SAT-MPL-20200526-00062** S2963 WorldVu Satellites Limited

The Satellite Division has determined that WorldVu Satellites Limited has met the launch and begin operations milestone associated with its grant of U.S. market access for a constellation of non-geostationary orbit space stations, and may release the bond associated with this grant. See 47 CFR §§ 25.164(b)(1), (f), 25.165(d). This determination is without prejudice to any future action concerning bond and milestone requirements related to the modifications requested in IBFS File Nos. SAT-MPL-20200526-00062 and SAT-APL-20210112-00007.

**SAT-MPL-20230120-00007** S2963 WorldVu Satellites Limited

On January 25, 2023, WorldVu Satellites Limited submitted a complete notification to the Commission of its intent to engage in fleet management operations to reposition satellites of its non-geostationary satellite system within their respective orbital planes. WorldVu filed its notification pursuant to section 25.118(f) of the Commission's rules and included the certifications required by that section. Accordingly, WorldVu will be approved to commence the repositioning of its space stations as of February 5, 2023, without further action by the Commission.

For more information concerning this Notice, contact the Satellite Division at 202-418-0719.



# PUBLIC NOTICE

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DA 23-78

Released: January 27, 2023

## **MEDIA BUREAU ANNOUNCES FURTHER EXTENSION OF TIME FOR ENTITIES TO FILE DOCUMENTS INTO THEIR ONLINE PUBLIC INSPECTION FILES AND TO FILE CHILDREN'S PROGRAMMING REPORTS AND TELEVISION LICENSE RENEWAL APPLICATIONS**

On January 6, 2023, the Media Bureau announced an extension of time for filings required to be uploaded into the Commission's Online Public Inspection File (OPIF) system.<sup>1</sup> As a result of ongoing technical issues adversely affecting the responsiveness of the OPIF and Licensing Management System (LMS), we further extend the deadline by which all broadcast, cable, and satellite entities must upload required documents into their OPIF, and extend the deadline for the Form 2100, Schedule H Annual Children's Programming Report and Form 2100, Schedule 303S, Renewal of Broadcast Station License. All of these documents that were due to be placed in an entity's OPIF or filed through LMS since January 1, 2023, must be filed no later than February 28, 2023.<sup>2</sup> Extending these filing deadlines will not significantly impact the public's or the Bureau's review of a licensee's compliance with the Commission's rules. While we are extending OPIF and LMS filing deadlines, we encourage licensees to file all documents as soon as practicable.

For further information: Radio, please contact Albert Shuldiner, Audio Division, Media Bureau, at [Albert.Shuldiner@fcc.gov](mailto:Albert.Shuldiner@fcc.gov); Television, please contact Barbara Kreisman, Video Division, Media Bureau, at [Barbara.Kreisman@fcc.gov](mailto:Barbara.Kreisman@fcc.gov); Cable and Satellite, please contact Stephen Broeckaert, Policy Division, Media Bureau, at [Steven.Broeckaert@fcc.gov](mailto:Steven.Broeckaert@fcc.gov). Press inquiries, please contact Janice Wise at [Janice.Wise@fcc.gov](mailto:Janice.Wise@fcc.gov).

This action is taken by the Chief, Media Bureau, pursuant to authority delegated by sections 0.61 and 0.283 of the Commission's rules.<sup>3</sup>

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<sup>1</sup> *Media Bureau Announces Extension Of Time For Entities To File Documents Into Their Online Public Inspection Files*, Public Notice, DA 23-16 (Jan. 6, 2023).

<sup>2</sup> See 47 CFR §§ 25.601, 25.701, 25.702, 73.3526 73.3527 and 76.1700.

<sup>3</sup> 47 CFR §§ 0.61 and 0.283.



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DA 23-79  
January 28, 2023

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES  
REGION 39 (TENNESSEE) 700 MHZ AND 800 MHZ REGIONAL PLANNING COMMITTEES  
TO HOLD PLANNING MEETINGS**

**PR Docket 93-58 and WT Docket 02-378**

The Region 39 (Tennessee) 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two planning meetings on Thursday, March 9, 2023. Beginning at 9:00 a.m., the RPCs will convene at the Williamson County Public Safety Communications Building, 304 Beasley Dr., Franklin, TN 37064. These meetings will be held virtually, as well as in-person. Due to Covid-19 concerns, please register for this meeting no later than close of business, March 7, 2023 by sending an email to:

- [publicsafetyradio@comcast.net](mailto:publicsafetyradio@comcast.net) – John Johnson, Secretary
- [john.oconnor@memphistn.gov](mailto:john.oconnor@memphistn.gov) – John O'Connor, 700/800 MHz Vice Chair
- [jody.clinard@nashville.gov](mailto:jody.clinard@nashville.gov) – Jody Clinard, 700 MHz Vice Chair
- [jgriggs158@gmail.com](mailto:jgriggs158@gmail.com) – Jesse Griggs, 800 MHz Chair

Your email registration should include your name, agency, email address, phone number and whether you will attend virtually or in-person. If you plan to attend virtually, you will receive the Webex information via email.

The agenda for the 700 MHz RPC meeting includes:

- Introduction/Welcome/Minutes
- Old Business
- New Business
- Application Review Committee Volunteers
- Election of Officers Chair/Vice Chair & appointment of Secretary

The agenda for the 800 MHz RPC meeting includes:

- Introduction/Welcome/Minutes
- Old Business
- New Business
  - 700 MHz State License Channels
- Application Review Committee Volunteers
- CAPRAD Usage
- TACN Expansion Updates
- Adjourn

Both Region 39 RPC meetings are open to the public. All eligible public safety providers in Region 39 may utilize these frequencies. It is essential that eligible public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs. All interested parties wishing to participate in the planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 39 should plan to attend. For further information, please contact:

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Chair, Region 39 800 MHz RPC  
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- FCC -



Federal Communications Commission  
Washington, D.C. 20554

January 27, 2023

**DA 23-80**

*In Reply Refer to:*

1800B3-ATS/AR

Released January 27, 2023

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Lowndes County Christian Academy Inc.  
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In re: **NCE MX Group 59B**

**Elijah Radio**

New NCE FM, Dasher, Georgia  
Facility ID No. 767346  
Application File No. 0000167410

**Big Bend Heritage Music Association,  
Inc.**

New NCE FM, Perry, Florida  
Facility ID No. 767145  
File No. 0000166291

**Georgia Public Telecommunications  
Commission**

New NCE FM, Pelham, Georgia  
Facility ID No. 765562  
Application File No. 0000167018

**Faith and Action Community  
Outreach, Inc.**

New NCE FM, Madison, Florida  
Facility ID No. 762792  
Application File No. 0000165985

**Church Planters of America**

New NCE FM, Quitman, Georgia  
Facility ID No. 768382  
Application File No. 0000167096

**Bemiss Road Baptist Church and  
Lowndes County Christian Academy  
Inc.**

New NCE FM, Valdosta, Georgia  
Facility ID No. 768409  
Application File No. 0000167233

**Petition to Deny**

Dear Counsel and Applicants:

We have before us six mutually exclusive applications filed by Elijah Radio (Elijah), Big Bend Heritage Music Association, Inc. (Big Bend), Georgia Public Telecommunications Commission (GPTC), Faith and Action Community Outreach, Inc. (Faith), Church Planters of America (Church Planters) and Bemiss Road Baptist Church and Lowndes County Christian Academy Inc. (Bemiss) for construction

permits for new noncommercial educational (NCE) FM stations in communities in Florida and Georgia,<sup>1</sup> which the Media Bureau (Bureau) designated as NCE MX Group 59B.<sup>2</sup> On January 23, 2023, the Bureau rescinded its tentative selection of the Big Bend Application and identified the Elijah Application as the new tentative selectee of the group.<sup>3</sup> We also have before us a petition to deny the Big Bend Application filed by GPTC, which the Bureau did not review prior to release of the *NCE MX Group 59B Order*.<sup>4</sup> For the reasons set forth below, on our own motion,<sup>5</sup> we rescind in part the *NCE MX Group 59B Order*, rescind our tentative selection of the Elijah Application, dismiss the GPTC Petition as moot, and refer NCE MX Group 59B to the Commission to conduct a point system analysis.<sup>6</sup>

*Background.* The subject applications were filed during the November 2021, NCE FM filing window.<sup>7</sup> Group 59B originally included two additional applicants, CSN International (CSN) and Inverse Focus Ministry, Inc. (Inverse).<sup>8</sup> The Bureau initially performed a fair distribution analysis of the eight applications and identified Inverse as the tentative selectee in Group 59B.<sup>9</sup> Inverse and CSN, however, subsequently requested dismissal of their applications. Accordingly, the Bureau conducted a second 307(b) analysis and identified Big Bend as the new tentative selectee of this group.<sup>10</sup> However, Big Bend subsequently filed an amendment to its application in which it revised its population data and certified that it was not eligible for a fair distribution preference.<sup>11</sup>

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<sup>1</sup> Application File Nos. 0000167410 (Elijah Application); 0000166291 (Big Bend Application); 0000167018 (GPTC Application); 0000165985 (Faith Application); 0000167096 (Church Planters Application); 0000167233 (Bemiss Application).

<sup>2</sup> *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Education Stations; Opens Window to Accept Settlements and Technical Amendments*, MB Docket No. 20-343, Public Notice, DA 21-1476 (MB Nov. 29, 2021). Group 59, which originally contained 17 applications, was bifurcated as a result of a technical amendment.

<sup>3</sup> *Threshold Fair Distribution Analysis of 1 Group of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 23-59 (MB Jan. 23, 2023) (*NCE MX Group 59B Order*).

<sup>4</sup> Pleading File No. 0000204974 (filed Dec. 9, 2022) (GPTC Petition). Big Bend did not file an opposition to this pleading.

<sup>5</sup> See 47 CFR § 1.108 (Commission may, on its own motion, reconsider any action within 30 days).

<sup>6</sup> See 47 CFR § 73.7002(b). The point system analysis, conducted when the section 307(b) analysis is not determinative, is considered a simplified “hearing” for purposes of 47 U.S.C. § 155(c)(1). See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7420 (2001) (*NCE Order*).

<sup>7</sup> *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB 2021).

<sup>8</sup> See Application File Nos. 0000167809 and 0000167493.

<sup>9</sup> See *Threshold Fair Distribution Analysis of 13 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-477 at 4-5, para. 11 (MB May 2, 2022).

<sup>10</sup> *Threshold Fair Distribution Analysis of 5 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-1166, at 4-5, para. 10 (MB Nov. 9, 2022) (*November 2022 Fair Distribution Order*).

<sup>11</sup> See Big Bend Application, Fair Distribution of Service Section and Attach. “Perry 210 Amendment Purpose.pdf” (filed Dec. 7, 2022).

*Discussion.* In the *NCE MX Group 59B Order*, the Bureau rescinded the tentative selection of Big Bend and conducted a third 307(b) analysis and identified Elijah as the tentative selectee of this group.<sup>12</sup> However, upon release of the Order, counsel for GPTC informed the Bureau that the staff neglected to address the GPTC Petition.<sup>13</sup> Although the GPTC Petition primarily argues that the tentative selection of Big Bend should be rescinded, the petition also noted that the *November 2022 Fair Distribution Order* relied on the incorrect fair distribution exhibit when analyzing the Elijah Application, specifically relying on the exhibit provided in the original application instead of the revised exhibit in the application as amended on January 28, 2022.<sup>14</sup> The *NCE MX Group 59B Order* also mistakenly relied on Elijah's original fair distribution exhibit instead of its revised exhibit. Accordingly, we rescind the *NCE Group MX 59B Order* to the extent it identified the Elijah Application as the new tentative selectee of NCE MX Group 59B and conduct a new fair distribution analysis considering Elijah's revised fair distribution exhibit.<sup>15</sup>

Elijah and GPTC each claims that it is eligible for a fair distribution preference based on combined first and second NCE population totals.<sup>16</sup> The other applicants do not. Accordingly, Big Bend, Faith, Church Planters, and Bemiss are each eliminated. Elijah would provide a combined first and second NCE service to 2,149 people; and GPTC to 6,971 people. The proposals are comparable because neither exceeds the other by at least 5,000 people.<sup>17</sup> Thus, we are unable to designate a tentative selectee under a 307(b) fair distribution analysis, and GPTC and Elijah will proceed to a point system analysis.

The point system analysis, which is conducted when section 307(b) is not determinative, must be conducted by the Commission, as this analysis is considered a simplified "hearing" for purposes of section 155(c)(1) of the Act.<sup>18</sup> Accordingly we have referred the matter to the Commission to make a determination under a point system analysis.<sup>19</sup>

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<sup>12</sup> *NCE MX Group 59B Order* at 4, para. 10.

<sup>13</sup> Email from Margaret L. Miller, Counsel for GPTC, to Albert Shuldiner, Chief, Audio Division (January 23, 2023).

<sup>14</sup> GPTC Petition at 2-3, n. 4. *See also* Elijah Application at Attachs. "1st & 2nd NCE Service, rev 1.pdf" (original fair distribution attachment) and "Engineering Exhibits for 767346 Amendment.pdf" (revised fair distribution attachment filed on January 28, 2022).

<sup>15</sup> An applicant's fair distribution showing must be computed as of the time of filing and cannot be enhanced thereafter. *See* 47 CFR § 73.7003(e) and (f)(3). However, an applicant that subsequently makes engineering changes that would diminish its fair distribution position must amend its application to reflect that diminished position. *See* 47 CFR §§ 1.65 and 73.7003(e). Elijah's revised fair distribution exhibit, which the staff inadvertently did not consider, reflects Elijah's diminished position.

<sup>16</sup> *See* Elijah Application and GPTC Application, Fair Distribution of Service Section, and associated exhibits. Elijah's 60 dBu contour encompasses 16,634 people, and its claimed aggregated first and second NCE service is 2,149 people. GPTC's 60 dBu contour encompasses 19,136 people, and its claimed aggregated first and second NCE service is 6,971 people. Thus, each would provide combined first and second NCE service to at least 10% percent of the population within its respective 60 dBu contour and to more than 2,000 people.

<sup>17</sup> The applicant proposing to provide service to the greatest number of people will only be awarded a construction permit if it will provide such service to at least 10% of the people within the station's 60 dBu contour *and* to at least 5,000 more people than the next best applicant. *See* 47 CFR § 73.7002(b).

<sup>18</sup> *See* 47 CFR § 73.7002(b); *see also* *NCE Order*, 15 FCC Rcd at 7420.

<sup>19</sup> *See Central Florida Educational Foundation, Inc. v/o Joseph E. Dunne, Esq.*, Letter Order, 22 FCC Rcd. 18332, 18334 (MB 2007) (referring the matter to the Commission for consideration where the initial outcome would be altered by the potential for a new points analysis). *See also Comparative Consideration of 24 Groups of Mutually*

*Conclusion/Action.* For the reasons discussed above, **IT IS ORDERED** that the Petition to Deny (Pleading File No. 0000204974) filed by Georgia Public Telecommunications Commission on December 9, 2022, **IS DISMISSED AS MOOT.**

**IT IS FURTHER ORDERED**, that the tentative selection of the application of Elijah Radio (Application File No. 0000167410) for authority to construct a new noncommercial educational FM station at Dasher, Georgia, **IS RESCINDED.**

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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*Exclusive Applications for Permits to Construct New or Modified Noncommercial Educ. FM Stations, Memorandum Opinion and Order, 25 FCC Rcd 12887, 12914 (2010) (“staff should refer only those issues to the Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the particular NCE group, or where a new or novel question or substantial and material question of fact otherwise exists.”).*



# PUBLIC NOTICE

Federal Communications Commission  
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Report No. 3192

DA 23-81  
Released: January 27, 2023

## PETITIONS FOR RECONSIDERATION OF ACTION IN PROCEEDING

### WC Docket No. 12-375

Petitions for Reconsideration have been filed in the Commission's proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of these documents is available for viewing on the ECFS database, <https://www.fcc.gov/ecfs>. Oppositions to Petitions for Reconsideration must be filed within 15 days of the date of publication of this Public Notice in the Federal Register. See section 1.4(b)(1) of the Commission's rules (47 CFR § 1.4(b)(1)). Replies to an Opposition must be filed within 10 days after the time for filing Oppositions has expired.

- 
- Subject:** - In the Matter of Rates for Interstate Inmate Calling Services (WC Docket No. 12-375)
- Filed By:**
- Al Kramer, on behalf of Public Knowledge, and Cheryl A. Leanza, on behalf of United Church of Christ, OC Inc. (Filed 08/27/2021; Corrected 12/15/2022)
  - Glenn S. Richards and Lee G. Petro, on behalf of NCIC Inmate Communications (Filed 08/27/2021)
  - Karen Quinones and Kari Cooke, on behalf of Mayor's Office of Deaf, DeafBlind, & Hard of Hearing (Filed 12/23/2022)
  - David A. O'Connor, on behalf of Hamilton Relay, Inc. (Filed 01/09/23)
  - Glenn S. Richards and Lee G. Petro, on behalf of NCIC Inmate Communications (Filed 01/09/23)
- 

- FCC -

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Spectrum Rules and Policies for the Operation of Unmanned Aircraft Systems	)	WT Docket No. 22-323
	)	
Petition of AIA for Rulemaking to Adopt Service Rules for Unmanned Aircraft Systems Command and Control in the 5030-5091 MHz Band	)	RM-11798 (terminated)
	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: December 23, 2022**

**Released: January 4, 2023**

**Comment Date: (30 days after date of publication in the Federal Register)**

**Reply Comment Date: (60 days after date of publication in the Federal Register)**

By the Commission: Commissioner Starks issuing a statement.

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## I. INTRODUCTION

1. Unmanned aircraft are being used to deliver consumer packages and life-saving medical supplies, facilitate the rapid restoration of power infrastructure after a storm, and aid in first responder missions such as search and rescue and wildfire management, among innumerable other beneficial public and private uses. These operations depend on wireless communications for purposes ranging from flight control communications between a ground-based control station and the unmanned aircraft (UA) (hereinafter referenced collectively in this Notice of Proposed Rulemaking (NPRM) as an unmanned aircraft system or UAS) to the delivery of mission-related payload information from the UA.<sup>1</sup> In this NPRM, we take several steps to promote access by UA operators to licensed spectrum for these purposes.

2. First, we address the 5030-5091 MHz band, which the Commission previously allocated to support terrestrial control links for UAS without adopting service rules. Because technical work regarding UAS is still in a nascent stage, we anticipate that service rules sufficient to facilitate UAS operations will likely require development in phases. We now take the first step to develop such rules. We seek comment on service rules for the 5030-5091 MHz band that will provide UAS operators with access to licensed spectrum with the reliability necessary to support safety-critical UAS communications links. Second, due to the increasing interest in operating UAS using existing terrestrial flexible-use spectrum networks, we seek comment on whether the Commission's rules are adequate to ensure co-existence of terrestrial mobile operations and UAS use or whether changes to our rules are necessary.<sup>2</sup> Third, to further promote the safe integration of unmanned aircraft operations in controlled airspace and facilitate flight coordination, we propose a process for UAS operators to obtain a license in the aeronautical VHF band to communicate with air traffic control and other aircraft. Together, these measures will help to promote the growth and safety of UAS operations.<sup>3</sup>

3. This proceeding implicates the jurisdiction and concerns of multiple federal agencies. The Federal Aviation Administration (FAA) has the jurisdictional responsibility to ensure the safety of aircraft, including UAS, and is tasked by statute with the safe integration of UAS into the National Airspace System.<sup>4</sup> The National Telecommunications and Information Administration (NTIA), which administers the federal use of spectrum, has jurisdictional interests in the 5030-5091 MHz band, including

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<sup>1</sup> More specifically, we use the term unmanned aircraft system(s) (UAS) in this NPRM to reference a UA together with all the associated elements (including communication links and the components that control the UA) that are required for the safe and efficient operation of the UA in the airspace of the United States. As discussed below, we seek comment on our proposal to adopt this definition of “unmanned aircraft system” for the 5030-5091 MHz band service rules.

<sup>2</sup> To this end, we seek comment on the sufficiency of the current flexible-use rules to prevent interference to and from UAS operations, and on whether we can eliminate the current prohibitions on airborne operations applicable to certain of these flexible-use bands.

<sup>3</sup> We note that AURA Network Systems OpCo, LLC and A2G Communications, LLC, have a pending petition for rulemaking requesting rule changes to allow the 450 MHz General Aviation Air-Ground Radiotelephone Service band to be used for a broader range of services, including data communications with UAS. See *Petition for Rulemaking by AURA Network Systems OpCo, LLC and A2G Communications, LLC to Permit the Transmission of Data in Air-Ground Radio Telephone Automated Service Channels Between 454.675-454.975 MHz and 459.675-459.975 MHz*, RM-11912 (filed Feb. 16, 2021) (AURA/A2G Petition). We expect to address the AURA/A2G Petition in another proceeding.

<sup>4</sup> See 49 U.S.C. § 44802. The National Airspace System consists of (1) a network of both controlled and uncontrolled airspace, (2) air navigation facilities, equipment and services, (3) airports and landing areas, (4) aeronautical charts, information and services, (5) rules and regulations, (6) procedures and technical information, and (7) manpower and material. See FAA, *National Airspace System*, [https://www.faa.gov/air\\_traffic/nas/](https://www.faa.gov/air_traffic/nas/) (last visited Sept. 6, 2022).

potentially using the band for federal UAS operations and ensuring the adequate protection of certain other federal uses in and adjacent to the 5030-5091 MHz band. As a part of their respective jurisdictional responsibilities, both the FAA and NTIA have been examining the potential use of the 5030-5091 MHz band for UAS operations, and the FAA has adopted a minimum performance standard for UAS radio equipment operating in the 5040-5050 MHz sub-band of the 5030-5091 MHz band.<sup>5</sup> Accordingly, a whole-of-government approach is needed to ensure that this proceeding addresses the relevant concerns and issues within the responsibility of each stakeholder agency and that our efforts in this area work in complement with those of our federal partners to support and promote the safe and productive operation of UAS. To facilitate this approach, we have consulted with these agencies in the preparation of this NPRM, and will continue to do so as the proceeding advances.

## II. UAS COMMUNICATIONS IN THE 5030-5091 MHZ BAND

### A. Background

4. Because a UA, to the extent its route is not pre-programmed, must be operated remotely, the operator depends critically on wireless communications between a ground-based control station and the UA to control the flight of the UA, including communications to send commands to the aircraft and to receive telemetry and other data from it. UAS also increasingly employ wireless signals for other safety-related purposes, such as to detect and avoid other aircraft. Currently, no spectrum is licensed in the United States exclusively for UAS communications, and operators have generally relied on unlicensed operations or experimental licenses. Neither of these spectrum resources provide the user with any right to protection from harmful interference, and as a result, the reliability of communications using these resources can be uncertain. As UA flights increasingly involve operations with a higher risk profile, such as flights that use large aircraft, carry heavy cargo or human passengers, or travel into the controlled airspace used by commercial passenger aircraft,<sup>6</sup> operators have a growing need for the greater reliability that interference-protected licensed spectrum provides for control-related and other safety-related communications.

5. In 2017, the Commission determined that the 5030-5091 MHz band should be allocated to help address that need.<sup>7</sup> Prior to the 2012 World Radiocommunication Conference (WRC-12), the

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<sup>5</sup> The FAA's actions to integrate UAS into the National Airspace System have also involved many regulatory efforts not specific to the 5030-5091 MHz band. For example, in 2016, the FAA, together with the Office of the Secretary of Transportation, adopted rules authorizing the routine operation of small UAs (those weighing less than 55 pounds), subject to certain restrictions and limitations. See Federal Aviation Administration and Office of the Secretary of Transportation, Department of Transportation, Operation and Certification of Small Unmanned Aircraft Systems, 81 Fed. Reg. 42064 (June 28, 2016) (to be codified at 14 CFR pts. 21, 43, 61, 91, 101, 107, 119, 133, 183). Among other restrictions, the rules did not permit such operations over people or at night without an individual waiver. See *id.* at 42102, 42123. Subsequently, the FAA modified these regulations and authorized routine operations of small UAs over people and operation at night under certain circumstances. See Federal Aviation Administration and Office of the Secretary of Transportation, Department of Transportation, Operation of Small Unmanned Aircraft Systems Over People, 86 Fed. Reg. 4314, 4314-15 (Jan. 15, 2021). At the same time, the FAA also adopted rules establishing requirements for the remote identification of UAs operating in the United States. See Federal Aviation Administration, Remote Identification of Unmanned Aircraft, 86 Fed. Reg. 4390 (Jan. 15, 2021) (*Remote ID Rules*).

<sup>6</sup> The FAA defines "controlled airspace" as "an airspace of defined dimensions within which air traffic control service is provided to [instrument flight rules] flights and to [visual flight rule] flights in accordance with the airspace classification. NOTE: Controlled airspace is a generic term that covers Class A, Class B, Class C, Class D, and Class E airspace." 14 CFR § 1.1 (General Definitions). Controlled airspace is found around some airports and at certain altitudes where air traffic controllers are actively communicating with, directing, and separating all air traffic. See FAA, *Airspace 101: Rules of the Sky*, [https://www.faa.gov/uas/recreational\\_fliers/where\\_can\\_i\\_fly/airspace\\_101/](https://www.faa.gov/uas/recreational_fliers/where_can_i_fly/airspace_101/) (last visited Sept. 6, 2022).

<sup>7</sup> See *Amendment of Parts 2, 15, 80, 90, 97, and 101 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2012)(WRC-12), Other Allocation Issues, and*

(continued....)

5030-5091 MHz band was allocated both internationally and in the United States to the aeronautical mobile-satellite (route) service (AMS(R)S) and the aeronautical radionavigation service (ARNS) on a primary basis.<sup>8</sup> Footnote 5.444 of the Table of Frequency Allocations further provides that the spectrum is to be used for the operation of the international standard system (microwave landing system) for precision approach and landing and gives microwave landing systems priority over other uses of the band.<sup>9</sup> At the 2012 World Radiocommunication Conference, the United States proposed that the 5030-5091 MHz band also be allocated to the aeronautical mobile (route) service (AM(R)S) on a primary basis in order to support terrestrial control links for UAS, in light of (1) the anticipated growth of UAS operations, (2) the limited use of the band worldwide at that time, and (3) the lack of microwave landing system deployment in the United States at 5030-5091 MHz.<sup>10</sup> Consistent with the United States proposal, the 2012 World Radiocommunication Conference allocated the 5030-5091 MHz band internationally to the AM(R)S on a primary basis in all Regions.<sup>11</sup>

6. In 2017, the Commission adopted a Report and Order taking several steps in response to the decisions from the 2012 World Radio Conference.<sup>12</sup> Among other measures, the Commission mirrored the international allocation at 5030-5091 MHz in its domestic allocations, specifically allocating the 5030-5091 MHz band to the AM(R)S on a primary basis for both federal and non-federal use.<sup>13</sup> Under the Commission rules, “AM(R)S” is defined as “[a]n aeronautical mobile service reserved for communications relating to safety and regularity of flight, primarily along national or international civil air routes.”<sup>14</sup> The Commission found that adopting the new AM(R)S allocation would “support the anticipated growth of UAS and promote their safe operation.”<sup>15</sup> The Commission did not adopt any rules

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*Related Rule Updates*, ET Docket No. 15-99, Report and Order, 32 FCC Rcd 2703, 2717, para. 42 (2017) (*WRC-12 R&O*).

<sup>8</sup> See *Amendment of Parts 1, 2, 15, 25, 27, 74, 78, 80, 87, 90, 97, and 101 of the Commission’s Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2007) (WRC-07), Other Allocation Issues, and Related Rule Updates et al.*, ET Docket No. 12-338, et al., Report and Order, Order, and Notice of Proposed Rulemaking, 30 FCC Rcd 4183, 4262, paras. 223-24 (2015) (*WRC-12 NPRM*); 47 CFR § 2.106. Under the Commission’s Table of Frequency Allocations rules, Aeronautical Mobile-Satellite Route Service (AMS(R)S) is defined as “[a]n aeronautical mobile-satellite service reserved for communications relating to safety and regularity of flights, primarily along national or international civil air routes.” 47 CFR § 2.1(c). Aeronautical Radionavigation Service (ARS) is defined as “[a] radio-navigation service intended for the benefit and for the safe operation of aircraft.” *Id.*

<sup>9</sup> See 47 CFR § 2.106, footnote 5.444.

<sup>10</sup> See *WRC-12 NPRM*, 30 FCC Rcd at 4262, para. 225.

<sup>11</sup> See *WRC-12 NPRM*, 30 FCC Rcd at 4263, para. 226.

<sup>12</sup> See generally *WRC-12 R&O*.

<sup>13</sup> See *WRC-12 R&O*, 32 FCC Rcd at 2717, para. 41. The status of “primary” gives AM(R)S priority over any services allocated on a “secondary” basis, see 47 CFR § 2.105(c)(2), but AM(R)S remains subject to the higher priority of MLS provided by Footnote 5.444. See 47 CFR § 2.106, footnote 5.444. The Commission also added Footnote 5.443C to this allocation band limiting its use to internationally standardized aeronautical systems and setting limits for unwanted emissions from AM(R)S stations to adjacent band radionavigation-satellite service (RNSS) downlinks to an EIRP density of -75 dBW/MHz. See *WRC-12 R&O*, 32 FCC Rcd at 2717, para. 41; see also 47 CFR § 2.106, footnote 5.443C.

<sup>14</sup> 47 CFR § 2.1(c). The Commission defines the term “aeronautical mobile service,” in relevant part, as “[a] mobile service between aeronautical stations and aircraft stations, or between aircraft stations[.]” *Id.* An aeronautical station is defined as “[a] land station in the aeronautical mobile service.” *Id.* An aircraft station is defined as “[a] mobile station in the aeronautical mobile service, other than a survival craft station, located on board an aircraft.” *Id.*

<sup>15</sup> See *WRC-12 R&O*, 32 FCC Rcd at 2717, para. 42; see also *id.* at 2704, para. 1 (stating that “AM(R)S use of the 5030-5091 MHz band will support unmanned aircraft systems”).

to license or govern UAS services in the band, however; instead, it stated that “[t]echnical and operational rules relating to altitude, weight, or other requirements will be addressed in the service rules for this band, which will be promulgated in a separate proceeding.”<sup>16</sup>

7. *AIA Petition for Rulemaking.* On February 8, 2018, the Aerospace Industries Association (AIA) filed a petition for rulemaking recommending licensing and service rules for control-and-non-payload communications (CNPC) links in the 5030-5091 MHz band to support UAS operations in the United States (AIA Petition).<sup>17</sup> AIA proposed that individual UAS operators that meet certain qualifications or organizations that employed such operators be able to obtain a non-exclusive, nationwide Commission spectrum license, which would authorize them to use the 5030-5091 MHz band for UAS CNPC subject to a dynamic frequency assignment process.<sup>18</sup> AIA further recommended the Minimum Operational Performance Standards (MOPS) for UAS CNPC links issued by RTCA in 2016 and designated as RTCA DO-362 as a “good starting point for the Commission’s consideration of licensing and operational rules[.]”<sup>19</sup> Noting that the AM(R)S allocation of the band is limited to “communications

<sup>16</sup> See *WRC-12 R&O*, 32 FCC Rcd at 2717, para. 42.

<sup>17</sup> See Petition of AIA for Rulemaking to Adopt Service Rules for Unmanned Aircraft Systems (“UAS”) Command and Control in the 5030-5091 MHz Band, RM-11798 (filed Feb. 8, 2018) (AIA Petition).

<sup>18</sup> See AIA Petition at 6-7, 9-10. In its petition, AIA used the terms “control-and-non-payload” and “command-and-control” (or C2) interchangeably. See, e.g., AIA Petition at 7 (referring to “CNPC links”), 8 (referring to “C2 communications links”). We similarly do so throughout this NPRM.

<sup>19</sup> See AIA Petition at 7. RTCA is a standards development organization that works with the FAA to develop standards that can be used as means of compliance with FAA regulations. See RTCA, *About Us*, <https://www.rtca.org/about/> (last visited Sept. 6, 2022). RTCA Special Committees (SCs) develop Minimum Operational Performance Standards (MOPS) among other standards documents related to aviation. See RTCA, *Standards & Guidance Materials Descriptions*, <https://www.rtca.org/standards/standards-guidance-materials/> (last visited Sept. 6, 2022). According to RTCA’s website, “MOPS provide standards for specific equipment(s) useful to designers, manufacturers, installers and users of the equipment. . . . MOPS provide the information needed to understand the rationale for equipment characteristics and requirements stated, describe typical equipment applications and operational goals, and establish the basis for required performance under the standard. Definitions and assumptions essential to proper understanding are provided as well as installed equipment tests and operational performance characteristics for equipment installations.” *Id.* RTCA MOPS are often referenced as a basis for equipment certification in FAA technical standard orders. See *id.* Technical standard orders establish minimum performance standards for specified materials, parts, and appliances used on civil aircraft. See FAA, *Technical Standard Orders (TSO)*, [https://www.faa.gov/aircraft/air\\_cert/design\\_approvals/tso/](https://www.faa.gov/aircraft/air_cert/design_approvals/tso/) (last visited Sept. 6, 2022).

RTCA’s Special Committee 228 (SC-228), established on May 20, 2013, is working to develop, among other things, Command-and-Control Data Link MOPS for the 5030-5091 MHz band. See RTCA, *SC-228, Minimum Performance Standards for Unmanned Aircraft Systems*, <https://www.rtca.org/content/sc-228> (last visited Sept. 6, 2022). The committee published the first version in September 2016 with the release of DO-362, Command and Control (C2) Data Link Minimum Operational Performance Standards (MOPS) (Terrestrial) (RTCA DO-362). In response, the FAA adopted Technical Standard Order C213, Unmanned Aircraft Systems Control and Non-Payload Communications Terrestrial Link System Radios, effective March 9, 2018. See Federal Aviation Administration, Aircraft Certification Service, Technical Standard Order C213, Unmanned Aircraft Systems Control and Non-Payload Communications Terrestrial Link System Radios (2018) (TSO-C213). TSO-C213 adopted the RTCA DO-362 standard as a minimum performance standard for new models of UAS CNPC Link System radios operating in the 5040-5050 MHz portion of the 5030-5091 MHz band. See TSO-C213 at 1. On December 20, 2022, the FAA issued a revision of TSO-C213, designated TSO-C213a. See Federal Aviation Administration, Aircraft Certification Service, Technical Standard Order C213a, Unmanned Aircraft Systems Control and Non-Payload Communications Terrestrial Link System (2022) (TSO-C213a), available at FAA, *Technical Standard Orders*, <https://drs.faa.gov/browse/TSO/doctypeDetails>. TSO-C213a replaces TSO-C213 going forward, adopting aspects of RTCA DO-362A, the second version of the RTCA MOPS for the 5030-5091 MHz band, as minimum performance standards for CNPC Link Systems designed for operations within any spectrum in the 5030-5091 MHz band. See TSO-C213a at 2; RTCA, Command and Control (C2) Data Link Minimum Operational Performance Standards (MOPS) (Terrestrial), RTCA-DO-362A (2020) (RTCA DO-362A).

relating to safety and regularity of flight,” AIA also advocated for prohibiting any non-UAS use of the 5030-5091 MHz band or any UAS use for “payload communications or other non-safety or non-route services.”<sup>20</sup>

8. The Commission sought public comment on AIA’s petition on April 26, 2018.<sup>21</sup> Eight parties filed comments, and four filed replies.<sup>22</sup> The majority of commenters supported commencement of a rulemaking to license the 5030-5091 MHz band for UAS communications, and several supported aspects of the AIA proposal.<sup>23</sup> Some raised concerns, however, that the proposal was too restrictive in the operations it would support or permit and that the 5030-5091 MHz band would not in any case be able to support all UAS operations; those commenters recommended that the Commission not preclude use of other bands for UAS operations.<sup>24</sup>

9. *Section 374 Report.* Section 374 of the FAA Reauthorization Act of 2018 directs the FAA, the FCC, and NTIA to submit a report to specified committees of the House and Senate on, among other things, “whether [UAS] operations should be permitted, but not required, to operate on [the 5030-5091 MHz band] on an unlicensed, shared, or exclusive basis, for operations within the [UAS Traffic Management] system or outside of such a system.”<sup>25</sup> On November 25, 2019, the Office of Engineering and Technology (OET) and the Wireless Telecommunications Bureau (WTB) (collectively, the Bureaus) sought public comment on this issue and others identified in Section 374 of the FAA Reauthorization Act (*Section 374 Public Notice*).<sup>26</sup> Twenty-three parties filed comments, and eleven filed replies.<sup>27</sup> On August 20, 2020, the Bureaus jointly submitted a report to Congress on behalf of the Commission addressing the matters specified in Section 374.<sup>28</sup> In their report, the Bureaus found that “[t]he 5030-5091 MHz band appears to offer promise for intensive UAS use because it is unencumbered”<sup>29</sup> and “recommend[ed] that the Commission initiate a rulemaking proceeding to develop service and licensing rules enabling UAS use of the 5030-5091 MHz band in collaboration with the FAA and NTIA.”<sup>30</sup>

10. *Refresh Public Notice.* On August 20, 2021, WTB released a public notice to update the record on AIA’s proposal to reflect developments since 2018 and to further develop the record on certain

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<sup>20</sup> AIA Petition at 10.

<sup>21</sup> See *Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed*, Public Notice, Report No. 3089 (CGB Apr. 26, 2018), <https://docs.fcc.gov/public/attachments/DOC-350441A1.pdf>.

<sup>22</sup> Parties that filed comments and reply comments in response to the AIA Petition are listed in Appendix C.

<sup>23</sup> See Elefante Group *AIA Petition* Comments at 1-2 (supporting petition framework as a “starting point”); Integrity Communications *AIA Petition* Comments at 1 (same); Raytheon *AIA Petition* Comments at 1-2 (same); see also Boeing *AIA Petition* Comments at 1; Lockheed Martin *AIA Petition* Comments at 1; RTCA SC-228 *AIA Petition* Comments at 1; AeroVironment *AIA Petition* Reply at 1; Rockwell Collins *AIA Petition* Reply at 1.

<sup>24</sup> See CTIA *AIA Petition* Comments at 7-9; see also AURA *AIA Petition* Comments at 2; Small UAV Coalition *AIA Petition* Comments at 3.

<sup>25</sup> See FAA Reauthorization Act of 2018, § 374, Pub. L. No. 115-254, 132 Stat. 3186, 3313-14 (2018) (Section 374).

<sup>26</sup> See *Wireless Telecommunications Bureau and Office of Engineering and Technology Seek Comment on Unmanned Aerial System Operations in the 960-1164 MHz and 5030-5091 MHz Bands, Pursuant to Section 374 of the FAA Reauthorization Act of 2018*, GN Docket No. 19-356, Public Notice, 34 FCC Red 11038 (WTB/OET 2019) (*Section 374 Public Notice*).

<sup>27</sup> Parties that filed comments and reply comments in the *Section 374* proceeding are listed in Appendix C.

<sup>28</sup> See WTB & OET, Report on Section 374 of the FAA Reauthorization Act of 2018, GN Docket No. 19-356, 1 (2020), <https://docs.fcc.gov/public/attachments/DOC-366460A1.pdf> (*Section 374 Report*). The *Section 374 Report* stated that separate reports to Congress were anticipated from the NTIA and FAA regarding matters under their respective areas of authority. *Section 374 Report* at 2.

<sup>29</sup> *Section 374 Report* at 12.

<sup>30</sup> *Id.* at 1.

aspects of the proposal.<sup>31</sup> The Bureau received 24 comments and four reply comments in response to the *Refresh Public Notice*.<sup>32</sup>

## B. Discussion

11. As reflected in the comments to the AIA Petition and the record in response to the *Refresh Public Notice*, UAS manufacturers and other stakeholders have continued to express strong interest in a proceeding to enable licensing of the 5030-5091 MHz band for UAS CNPC links since the Commission added an AM(R)S allocation in the 5030-5091 MHz band to enable interference-protected UAS communications.<sup>33</sup> The *Section 374 Report* released by WTB and OET in 2020 also supports the commencement of a rulemaking proceeding to adopt service rules enabling UAS operations in the 5030-5091 MHz band.<sup>34</sup> Accordingly, we propose to adopt a band plan and service rules in the 5030-5091 MHz band to enable UAS operators to use interference-protected CNPC links. We seek comment on our proposal and on options to make the band available for this purpose. We further seek comment on the costs and benefits of any such options, including the costs and benefits of the specific band plan and service rules options discussed below. UAS platforms offer potential benefits in particular to disadvantaged, remote and rural communities, including delivery of essential goods or medical and other critical supplies in hard-to-reach areas, as well as innovative agricultural uses. We seek comment on measures that will facilitate UAS use and promote equity for these underserved populations. We encourage stakeholders to develop and submit consensus recommendations on service rules for the 5030-5091 MHz band, including recommendations on the issues and proposals discussed below.

12. We do not intend to mandate that all UAS CNPC occur exclusively in the 5030-5091 MHz band. Other licensed bands, including the flexible-use bands where mobile networks are already deployed nationwide and the 450 MHz General Aviation Air-Ground band, are being explored as platforms for UAS operations, including UAS CNPC. Commenters in this proceeding broadly support the availability of these bands as resources to help meet the rapidly growing spectrum access needs of the UAS community.<sup>35</sup> In addressing the 5030-5091 MHz service rules, we do not propose to mandate that all CNPC occur within the band, nor do we intend that the future rules adopted in this proceeding for 5030-5091 MHz will necessarily govern any UAS operations in other bands. Rather, through this proceeding, we seek to provide UAS operators with access to an additional spectrum resource that may complement other spectrum resources that are currently available or in development. The 5030-5091 MHz band is a limited resource, and the demand for protected UAS CNPC may well exceed the capacity of the band as UAS operations increase over time.<sup>36</sup> Further, while existing networks operating in other bands such as flexible-use bands may provide sufficient reliability for many UAS use cases, authorization of the 5030-5091 MHz band for UAS use offers an opportunity to apply standards and rules designed to

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<sup>31</sup> See *Wireless Telecommunications Bureau Seeks to Refresh the Record on Unmanned Aircraft Systems Use of the 5 GHz Band*, RM-11798, Public Notice, 36 FCC Rcd 12706 (WTB 2021) (*Refresh Public Notice*).

<sup>32</sup> Parties that filed comments and reply comments in response to the *Refresh Public Notice* are listed in Appendix C.

<sup>33</sup> See, e.g., AIA *Refresh PN* Comments at 1-3; ASRI *Refresh PN* Comments at 1, 4; AURA *Refresh PN* Comments at 1; AeroVironment *Refresh PN* Comments at 1; CDA *Refresh PN* Comments at 1; EEI *Refresh PN* Comments at 1; FPL *Refresh PN* Comments at 4; Qualcomm *Refresh PN* Comments at 1.

<sup>34</sup> *Section 374 Report* at 1, 12.

<sup>35</sup> See *infra* n.255.

<sup>36</sup> See Letter from John W. Kuzin, Vice President, Spectrum Policy & Regulatory Counsel, Qualcomm, to Marlene Dortch, Secretary, FCC, RM-11798 (filed Mar. 15, 2022) (Qualcomm Mar. 15, 2022 *Ex Parte*). Qualcomm performed simulations that purport to show that, as the number of UAS per “cell” increases, both uplink data throughput and uplink latency increase to levels that may exceed acceptable target values. See *id.*, Attach. at 12-17. To combat these capacity issues in the 5030-5091 MHz band, Qualcomm suggests that terrestrial mobile networks in other bands could be utilized for lower altitude operations and offloaded to the 5030-5091 MHz band above a certain height threshold. See *id.*, Attach. at 22.

meet even the most safety-critical communications needs.<sup>37</sup> In addition, as we discuss below, technical standards have already been developed for the 5030-5091 MHz band specifically to support reliable UAS CNPC, whereas work is still nascent to establish or demonstrate the reliability of CNPC standards or operations in other bands. As a result, the 5030-5091 MHz band has the potential to be available for safety-critical aviation needs more quickly than licensed spectrum in these other bands. We tentatively conclude that, while other spectrum bands are available for UAS communications, licensing the 5030-5091 MHz band specifically for UAS CNPC will have important public interest benefits. We seek comment on this tentative conclusion and the extent to which the 5030-5091 MHz band may offer unique advantages over other bands in supporting UAS CNPC.

### 1. Band Plan

13. Below, we seek comment on an appropriate band plan for communications to support the growth and safety of UAS operations. For the purpose of this band and its service rules, and consistent with the FAA definitions of the terms, we propose to define UAS as an unmanned aircraft (UA) and its associated elements (including communication links and the components that control the UA) that are required for the safe and efficient operation of the UA in the airspace of the United States, and to define a UA as an aircraft operated without the possibility of direct human intervention from within or on the aircraft.<sup>38</sup> We seek comment on these proposed definitions and on any alternatives. We further identify two broad UAS use cases for purposes of determining the appropriate band plan and service rules – non-networked operations, generally occurring within radio-line-of-sight<sup>39</sup> of the UAS operator, and network-supported operations, which rely on network infrastructure to go beyond radio-line-of-sight of the operator. Non-networked operations involve flights within a sufficiently localized area that can rely on direct wireless links between the UAS operator’s controller and the UA and therefore do not require any supporting network infrastructure. Such operations may include, for example, tower or other site inspections, public safety operations, or localized surveillance. In contrast, network-supported operations rely on deployed network infrastructure, such as cell towers and sites, to relay information between the operator and the UA and may therefore extend far beyond the range of direct wireless links between operator and UA.<sup>40</sup> While UAS operations have in the past been predominantly non-networked operations, there is growing interest in and exploration of network-supported operations, such as for package delivery, mapping, search-and-rescue, long-range infrastructure inspections (e.g., involving

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<sup>37</sup> See, e.g., ASRI *Refresh PN* Comments at 1 (asserting that the 5030-5091 MHz band is central to successful UAS development and advancement, “particularly for larger UAS operating in [FAA]-controlled airspace”).

<sup>38</sup> See 14 CFR § 1.1; accord 49 U.S.C. § 44801(11), (12) (defining “unmanned aircraft” and “unmanned aircraft system”). While our rule proposal thus focuses use of the band on communications for the operation of a type of aircraft, which meets the definition of a part 87 aviation service, see 47 CFR § 87.5, we note that a network-based communications service offered to operators of UAS would typically also be a commercial service providing access to wide-area networks, in contrast to the largely if not entirely non-commercial and non-network-based services regulated under part 87. See generally 47 CFR pt. 87. Below, we seek comment on the regulatory treatment of these services, including their placement in the organization of our rules. See, e.g., *infra* paras. 70-73.

<sup>39</sup> References to “line-of-sight” herein correspond to radio-line-of-sight. This is in contrast to FAA rules, which consider whether UAS operations are within visual-line-of-sight rather than radio-line-of-sight. See 14 CFR § 107.31. We focus on whether a UA is beyond-radio-line-of-sight in this context because the suitability of the different licensing approaches we consider below (direct link connections as opposed to network-based connections) appears to depend to a greater extent on whether an operation is within radio-line-of-sight of the operator than on whether or not an operation is in visual sight of the operator. A UA that is beyond-visual-line-of-sight but within radio-line-of-sight can still be controlled by a direct wireless link between the controller’s radio and the UA.

<sup>40</sup> See, e.g., CTIA *Refresh PN* Comments at 11 (“To the extent this band is to be used for [beyond-line-of-sight], the spectrum will either need to be deployed on existing nationwide infrastructure, or brand-new infrastructure that can accommodate UAS flight over long distances.”). Such operations have also relied on satellite-based connections or, in some cases, autonomous aircraft that do not require radio control.

railroad tracks, power distribution infrastructure, or pipelines) and long-range surveillance flights.<sup>41</sup> We find substantial support in the response to the *Refresh Public Notice* for both use cases.<sup>42</sup> We seek comment on whether any other UAS use cases should be considered in determining the appropriate band plan and service rules.

14. Hereinafter, we use the term Non-Networked Access (NNA) to indicate spectrum or licenses (e.g., NNA blocks) that would be governed by service rules appropriate to support non-networked communications.<sup>43</sup> Likewise, we use the term Network-Supported Service (NSS) in connection with spectrum or licenses to indicate that the relevant spectrum or licenses would be governed by service rules appropriate to support the provision of network-based services.<sup>44</sup> Further, we propose to use NNA and NSS in the rules to designate the spectrum allocated for non-networked and network-supported use cases, respectively.

15. AIA suggests that RTCA's terminology for these two use cases should be used.<sup>45</sup> RTCA uses the term "point-to-point" for non-networked communications links and the term "Command-and-Control Communications Service Providers" to describe network-supported services.<sup>46</sup> We tentatively find that our proposed terminology is more descriptive of the use cases we seek to support, and that the use of the term point-to-point, which has been long used in Commission rules and orders to reference systems providing a data communication link between two fixed stations, may itself contribute to confusion in this context.<sup>47</sup> We seek comment on the proposed terminology, and on alternatives.

16. To accommodate both NNA and NSS in the 5030-5091 MHz band, we propose to partition the band, to dedicate different segments of spectrum in the band for each use case, and to license each of these segments in a manner that is appropriate to support the relevant use cases. We seek comment broadly on the placement of NNA and NSS spectrum to ensure efficient, reliable, and safe use of the band. We seek comment on whether to make spectrum available for multi-purpose uses, e.g., expansion bands for temporary NNA or NSS use. For example, an NSS licensee operating a network in one of the NSS license blocks might request and receive a temporary assignment from a multi-purpose spectrum block to temporarily supplement the network provider's spectrum capacity in a particular cell site in order to provide more capacity to an active UAS operation in that cell. We seek comment on our proposals and on alternatives.

17. We specifically propose to dedicate at least 10 megahertz of spectrum for NNA operations, and seek comment on this proposal. AIA and AURA support initially dedicating 10 megahertz for this purpose, and we find no support for dedicating less than 10 megahertz.<sup>48</sup> AIA argues that 10 megahertz will be sufficient to promote deployment while preserving the opportunity for an

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<sup>41</sup> See, e.g., Small UAV Coalition *Section 374 Report* Comments at 2-4 (discussing recent tests and studies involving beyond-visual-line-of-sight operations); T-Mobile *Section 374 Report* Comments at 2 (stating that T-Mobile has been selected to work with three state and local departments of transportation to explore how its LTE network can be used to support advanced drone operations, including beyond-visual-line-of-sight flying).

<sup>42</sup> See, e.g., AIA *Refresh PN* Comments at 5; EEI *Refresh PN* Comments at 5 (supporting licensing for beyond-radio-line-of-sight operations); L3H *Refresh PN* Comments at 18; RTCA *Refresh PN* Comments at 3.

<sup>43</sup> We seek comment elsewhere on whether the scope of permitted services should encompass types of communications other than CNPC.

<sup>44</sup> Network-supported operations will require a different licensing approach than non-networked access due to the need in the former case to provide the regulatory framework and incentives to support the investment in and deployment of substantial network infrastructure.

<sup>45</sup> See AIA *Refresh PN* Comments at 5.

<sup>46</sup> See *id.* at 5.

<sup>47</sup> See, e.g., 47 CFR pt. 101, subpts. H, I.

<sup>48</sup> See, e.g., AIA *Refresh PN* Comments at 17; AURA *Refresh PN* Comments at 6.

incremental approach to licensing the band that will better accommodate developing industry standards.<sup>49</sup> We seek comment on AIA's argument. We seek comment on the placement of the NNA spectrum within the band and whether, consistent with AIA's proposal, we should place 5 megahertz blocks at the bottom (5030-5035 MHz) and top (5086-5091 MHz) of the band for NNA use. Alternatively, should we locate the dedicated NNA blocks somewhere internal in the band rather than at the band edges? If so, should we designate the spectrum at the edges of the band for NSS?

18. An analysis by RTCA based in part on the use of an "online filter-design tool" finds that filters that sufficiently protect services in the adjacent bands "would necessitate guardbands unusable by terrestrial CNPC at both ends of the 5030-5091 MHz bands, reducing the 61 MHz of usable passband width to 42-52 MHz depending on the case."<sup>50</sup> It further states, however, that "[c]ustom filter designs could probably provide larger usable passbands than those obtained using the online tool, possibly at the cost of increased size and weight."<sup>51</sup> We seek comment on this analysis, and whether fixed guard bands at one or both ends of the band are warranted to protect services in the spectrum adjacent to the 5030-5091 MHz band, including (1) radionavigation-satellite service (RNSS) downlinks in the 5010-5030 MHz band, (2) aeronautical mobile telemetry (AMT) downlinks to support flight testing in the 5091-5150 MHz band, and (3) the Aeronautical Mobile Airport Communications System (AeroMACS) in the 5000-5030 MHz and 5091-5150 MHz bands. Alternatively, does the need to protect adjacent band services argue for dedicating the edge spectrum to something other than NNA assignments, such as satellite?<sup>52</sup> Below, we discuss more generally whether any measures beyond appropriate power and out-of-band-emissions limits are needed to protect these adjacent band services.

19. We further seek comment on whether, instead of designating separate upper and lower NNA blocks, we should place all dedicated NNA spectrum together in one contiguous block. Is placement of the NNA spectrum into two or more separate blocks useful for technical or other reasons? Conversely, would providing the spectrum in a single contiguous block reduce interference challenges (e.g., by potentially reducing the adjacency of NNA and NSS blocks) or better support certain channelizations of the band or important use cases that may require channel bandwidths of more than 5 megahertz? Further, with regard to any technical standards that commenters may recommend applying to services or equipment in the 5030-5091 MHz band, we seek comment on whether these standards require the use of contiguous spectrum.<sup>53</sup>

20. With regard to the remaining spectrum in the band, we seek comment on how to structure it consistent with the goal of dedicating a segment of spectrum for exclusive use NSS licenses. We seek comment on how much of the spectrum to dedicate for NSS operations, and how we should license any remaining spectrum. For the spectrum that we dedicate to NSS operations, we seek comment on the placement of the NSS blocks and on the appropriate block size for NSS licenses to promote investment and competition and support the current and evolving bandwidth needs of NSS services.<sup>54</sup> In the current

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<sup>49</sup> See AIA *Refresh PN* Comments at 7-8; see also AURA *Refresh PN* Comments at 8 (asserting that 10 megahertz will "accomplish the Commission's goal of effectively promoting deployment").

<sup>50</sup> RTCA DO-362A, Appx. T at T.5, T.6.

<sup>51</sup> *Id.* at T.6.

<sup>52</sup> For example, in its analysis, RTCA asserts that although any guard bands at the edge of the 5030-5091 MHz band "would be unusable by terrestrial CNPC links, they could still be used by satellite-based CNPC if a satellite system is built to take advantage of the AMS(R)S allocation." *Id.* at T.1. We further discuss the protection of adjacent-band services below.

<sup>53</sup> For example, L3H asserts that RTCA DO-362 requires CNPC uplinks or downlinks to operate within a contiguous channel. See L3H *Refresh PN* Comments at 15.

<sup>54</sup> See, e.g., AIA *Refresh PN* Comments at 17 (arguing that frequency band partitioning and channelization schemes should not impede future use of the spectrum by advanced radio technologies).

record, AIA proposes 5 to 10 megahertz blocks, and Wisk supports 10 megahertz blocks.<sup>55</sup> We seek comment on these options and on any other appropriate block sizes. Below, we seek comment on the appropriate scope of permissible services, including whether to restrict communications in the 5030-5091 MHz band to CNPC, or permit transmissions of other types of communications. What size spectrum blocks would be necessary to support CNPC services? What block size would be appropriate if we permit NSS licensees to support non-CNPC communications? Would the flexibility of larger block sizes (such as 10 or 20 megahertz) better facilitate mixed CNPC and non-CNPC use?

21. While we anticipate that a significant portion of this remaining spectrum would be designated for NSS, we seek comment on whether we should use a portion of the spectrum for opportunistic use by both NNA or NSS licensees (multi-purpose use). Should we instead use a portion of the spectrum to increase the amount of spectrum dedicated to NNA operations? To the extent we dedicate spectrum for NSS licenses, we also seek comment on making that spectrum available for NNA operations on an interim, opportunistic basis. Under this approach, NNA users, in addition to having access to dedicated NNA spectrum, could use frequencies in a dedicated NSS block in geographic areas where the NSS licensee has not yet deployed an operating network. Once a network is deployed and operational in a particular area, NNA users would no longer have opportunistic access to the spectrum in that area. This approach would enable the NSS spectrum in an area to be used productively prior to the issuance of NSS licenses and deployment of networks, while providing NSS licensees with complete exclusivity once their systems are deployed. We seek comment on the costs and benefits of this approach, including its technical and economic feasibility, and on alternative approaches to NNA opportunistic access or alternative methods of ensuring productive usage of dedicated NSS spectrum prior to network deployment.

22. With these issues and questions in mind, we seek comment broadly on an appropriate band plan for the 5030-5091 MHz band. As one possible option for structuring the band overall, we invite comment on:

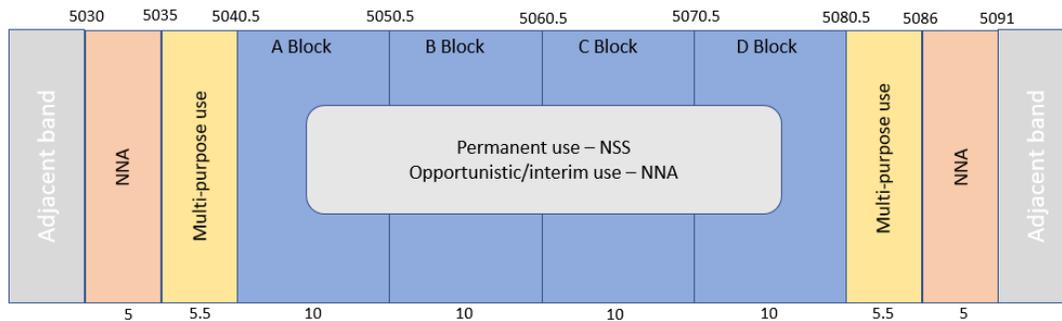
- Dedicating 10 megahertz of spectrum for NNA operations, with 5 megahertz blocks at the bottom (5030-5035 MHz) and top (5086-5091 MHz) of the band.
- Dedicating 40 megahertz of spectrum for NSS operations, divided into 4 licensed blocks of 10 megahertz each, with NNA opportunistic access as described above.
- Making the remaining 11 megahertz available for temporary, opportunistic use by either NNA users or NSS licensees (multi-purpose use).

This potential option is illustrated in Figure 1; however, we seek comment on alternative band plans including plans that designate the edge spectrum for some purpose other than NNA operations (such as for NSS operations) or that provide different amounts of spectrum for NNA, NSS, and/or multi-purpose use than those presented in the depicted example.

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<sup>55</sup> See AIA *Refresh PN* Comments at 17 (asserting that a 5 megahertz block is sufficient to permit a provider to serve a decent-sized market and provide operational experience controlling out-of-band emissions and in-band interference); AURA *Refresh PN* Comments at 8-9 (recommending blocks of at least five megahertz to provide “the industry with sufficient bandwidth to tailor internal network requirements and to safely serve a variety of UAS use cases”); Wisk *Refresh PN* Comments at 6 (supporting 10 megahertz blocks); see also Qualcomm *Refresh PN* Comments at 2 (proposing that, for the “network mode” of UAS communications, the Commission license either four 10.25 megahertz blocks or two 20.5 megahertz blocks).

Figure 1. UAS 5030-5091 MHz Band Plan



23. We further invite comment on alternative approaches to allocating the 5030-5091 MHz band for the support of UAS. For example, AIA proposes that we allocate and license the 51 megahertz between 5035 MHz and 5086 MHz on a geographic area basis in a phased, incremental manner over a period of years—e.g., allocating and licensing only 5 megahertz in the first year, and then licensing additional spectrum over the following years with blocks and geographic areas sized according to user demand and service provider applications.<sup>56</sup> AIA suggests that such an incremental approach would help the Commission to accommodate different UAS markets defined by different UAS missions that are expected to emerge over time.<sup>57</sup> We seek comment on this possible approach, and more generally on whether we should allocate only a portion of the band at this time and defer allocation of the remainder of the band. We further seek comment on whether we should preserve part of the band at this time for experimental use, or for potential future satellite-based CNPC that relies on the AMS(R)S allocation in the band.

24. As another alternative, Qualcomm recommends that the Commission allocate 20 megahertz for direct UA-to-UA communications, including communications between the aircraft to facilitate detect and avoid (DAA) operations, and communications to broadcast Remote ID information.<sup>58</sup>

<sup>56</sup> See Letter from Karina Perez Molina, Director, Unmanned and Emerging Aviation Technologies, Aerospace Industries Association, to Marlene Dortch, Secretary, FCC, RM-11798 (filed Feb. 1, 2022) (AIA Feb. 1, 2022 *Ex Parte*) (filing notice of presentation to Ethan Lucarelli), Attach. at 6-7.

<sup>57</sup> See Letter from Karina Perez, Director, Unmanned and Emerging Aviation Technologies, Aerospace Industries Association, to Marlene Dortch, Secretary, FCC, RM-11798 (filed Sept. 14, 2021) (AIA Sept. 14, 2021 *Ex Parte*), at 1; AIA Feb. 1, 2022 *Ex Parte*, Attach. at 6-7 (arguing that “[a] phased implementation preserves large sections of the band for future licensing or use,” with the opportunity to open the band to new uses and updated technologies and standards).

<sup>58</sup> See Qualcomm *Refresh PN* Comments at 1. DAA involves a range of still-developing technologies to enable UAS or their operators to detect other aircraft or property and avoid collisions. See, e.g., S. Ramasamy & R. Sabatini, *A Novel Approach to Cooperative and Non-Cooperative RPAS Detect-and-Avoid*, SAE Technical Paper 2015-01-2470, 1 (Sept. 15, 2015), available at <https://www.sae.org/publications/technical-papers/content/2015-01-2470/> (last visited Sept. 6, 2022). DAA can rely on transmissions in a variety of ground-based or aircraft-based implementations, for example non-cooperative detection methods such as on-board sensors or cooperative methods that involve the communication between UAS to facilitate cooperative collision avoidance. See *id.* Remote ID, as required by FAA rules that became effective on April 21, 2021, is the ability of UAS in flight to broadcast identification and location information that can be received by other parties. See FAA, *UAS Remote Identification*, [https://www.faa.gov/uas/getting\\_started/remote\\_id/](https://www.faa.gov/uas/getting_started/remote_id/) (last visited Sept. 6, 2022). We note that FAA rules currently require Remote ID to be broadcast using devices authorized under the Commission’s part 15 rules. See 14 CFR § 89.320(g).

Qualcomm proposes that the remaining 41 megahertz of spectrum be licensed in two 20.5 megahertz blocks or four 10.25 megahertz blocks to network providers for the provision of NSS CNPC services and for payload transmissions to the extent that capacity is not needed for CNPC.<sup>59</sup> We seek comment on this option and on Qualcomm's assertion that supporting the functionalities of DAA and Remote ID broadcasts will require 20 megahertz of 5030-5091 MHz band spectrum.<sup>60</sup> We also seek comment on the compatibility of UA-to-UA transmissions and UA broadcast with CNPC links between a ground control station and a UA. If they are not compatible, should a portion of the band be designated exclusively for UA-to-UA or UA broadcast transmissions, and if so, how much spectrum should be designated for this purpose?<sup>61</sup>

25. We seek comment on whether we should establish any internal guard bands, such as between the NNA and NSS blocks, or whether we can rely on appropriate technical rules to ensure that UAS operations in one block do not cause harmful interference to UAS operations in adjacent spectrum blocks. We request that parties proposing guard bands provide detailed technical justification and specify the width and placement of the proposed guard bands. We further seek comment on whether fixed guard bands at one or both ends of the band are warranted to protect services in the spectrum adjacent to the 5030-5091 MHz band, including (1) radionavigation-satellite service (RNSS) downlinks in the 5010-5030 MHz band, (2) aeronautical mobile telemetry (AMT) downlinks to support flight testing in the 5091-5150 MHz band, and (3) the Aeronautical Mobile Airport Communications System (AeroMACS) in the 5000-5030 MHz and 5091-5150 MHz bands. Below, we discuss more generally whether any measures beyond appropriate power and out-of-band-emissions limits are needed to protect these adjacent band services.

## 2. Dynamic Frequency Management System

26. To address the complexities involved in coordinating shared interference-protected access to the 5030-5091 MHz band, we propose that access to the band be managed by one or more dynamic frequency management systems (DFMS). We use the term DFMS to describe a frequency coordination system that, in response to requests from UAS operators for frequency assignments in NNA spectrum, would determine and assign to the requesting operator, through an automated (non-manual) process, temporary use of certain frequencies for a particular geographic area and time period tailored to the operator's submitted flight plan. For the duration of the assignment, the operator would have exclusive and protected use of the assigned frequencies within the assigned area and timeframe, after which the frequencies would be available in that area for assignment to another operator. We contemplate that each DFMS would be administered by a private third party, which we refer to as a DFMS administrator. We further contemplate that each system would be capable of coordination-related activities across the entire 5030-5091 MHz band. While we contemplate that NSS licensees would be responsible for the use and coordination of frequencies within the scope of their licenses, requiring a DFMS to be capable of coordination across the entire band would enable a DFMS to provide dynamic access to any portions of the 5030-5091 MHz band that are, in the initial order or subsequently, assigned for NNA use, as well as to implement opportunistic access to portions of the band that are assigned for NSS use as appropriate. We tentatively conclude that these systems could (1) facilitate the efficient and intensive use of a limited spectrum resource for interference-protected CNPC; (2) give UAS operators access to reliable CNPC for operations where those communications links are safety-critical; (3) enable UAS operators to gain spectrum access in a timely, efficient, and cost-effective manner; (4) enforce compliance with frequency assignments through access controls, checking existing frequency

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<sup>59</sup> See Qualcomm *Refresh PN* Comments at 2.

<sup>60</sup> See Qualcomm *Refresh PN* Comments at 8 (asserting that 20 megahertz will be needed for "broadcasting of detection information by UAVs for 'remain well clear' messaging and collision avoidance, [broadcast Remote ID], and potentially other important safety and security use cases").

<sup>61</sup> See, e.g., AIA Feb. 1, 2022 *Ex Parte*, Attach. at 5, 7 (suggesting that allocating some portion of the band for UAS vehicle-to-vehicle (V2V) communications would "provide situational awareness for UAS that cannot use ADS-B due to the Remote ID (RID) rule" but that 20 megahertz for V2V would be "an oversupply").

assignments, providing updates in authorized databases, and other mechanisms; (5) protect critical communications inside the band and in adjacent spectrum; (6) support opportunistic use in unused portions of spectrum sub-bands designated for exclusive use licenses; and (7) promote rapid evolution of the use of the band in response to technological, market, or regulatory changes, such as if the Commission deploys spectrum in the band incrementally or, in the future, finds that modifying the access rules in a particular sub-band is in the public interest to better meet market demand. We seek comment on our proposal and its costs and benefits.

27. The record and past Commission experience further lead us to tentatively conclude that the DFMS approach we propose is feasible and practical. The record reflects support from a number of parties for the use of such a system to manage shared access to the 5030-5091 MHz band.<sup>62</sup> In addition, the Commission has successfully relied on automated dynamic frequency management systems in other bands, including the Spectrum Access System (SAS) that was adopted in the 3.55-3.7 GHz band (3.5 GHz band) to coordinate spectrum access to the Citizens Broadband Radio Service (CBRS), allowing incumbent radar systems, licensed services, and licensed-by-rule services to coexist in the band.<sup>63</sup> Several parties in the record state that aspects of the SAS can be leveraged or incorporated in the development and deployment of a DFMS.<sup>64</sup> The support in the current record for the use of a DFMS, along with the success of the 3.5 GHz band SAS and the potential to build on the SAS experience and technology, lead us to tentatively conclude that a DFMS solution can feasibly be implemented to enable near-term use of the band with the benefits discussed above. We seek comment on our tentative conclusion, and the extent of interest in providing such DFMS services in the 5030-5091 MHz band. In addition to the specific questions below, what other aspects of the 3.5 GHz band SAS approach would be appropriate here, and what aspects should be changed? How should the Commission supervise the operations of the DFMS?

28. We propose to permit more than one DFMS to operate in the band, each providing access to frequencies nationwide, and to require coordination and communication between them to ensure that the assignments of one DFMS are consistent with the assignments of the others. This approach would provide the benefits of competition to DFMS services, including promoting technological innovation in such services, encouraging responsiveness to market demands through tailored and differentiated services, helping to prevent discriminatory conduct based on potential conflicts of interest, and placing competitive pressure on fees and service quality.<sup>65</sup> Further, the use of multiple competitive administrators was successfully implemented in the 3.5 GHz band, where the Commission has, to date, authorized six SASs for full commercial operations in the band.<sup>66</sup> We seek comment on this proposal.

29. *DFMS requirements and responsibilities.* We seek comment on the appropriate regulatory framework to establish for a DFMS, including its requirements and responsibilities and the

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<sup>62</sup> See AIA *Refresh PN* Comments at 4, 7; AURA *Refresh PN* Comments at 8; Boeing *Refresh PN* Comments at 5; DSA *Refresh PN* Comments at 3; Federated Wireless *Refresh PN* Comments at 2-3; FPL *Refresh PN* Comments at 4; L3H *Refresh PN* Comments at 3; WInnForum *Refresh PN* Comments at 3-4; Wisk *Refresh PN* Comments at 3; Xcel *Refresh PN* Reply at 5.

<sup>63</sup> See 47 CFR pt. 96; see also, generally, *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959 (2015) (3.5 GHz R&O).

<sup>64</sup> See DSA *Refresh PN* Comments at 2-3; Federated Wireless *Refresh PN* Comments at 3-7; WInnForum *Refresh PN* Comments at 5; see also AIA *Refresh PN* Comments at 8 (stating that the SAS as used in the 3.5 GHz band does not meet all the requirements for aviation use, having been designed for use by fixed, ground-based networks, but finding that some aspects of the concept could be incorporated).

<sup>65</sup> See, e.g., 3.5 GHz R&O, 30 FCC Rcd at 4063-64, 4066, paras. 354, 357, 366.

<sup>66</sup> *Wireless Telecommunications Bureau and Office of Engineering and Technology Approve Four Spectrum Access System Administrators for Full Scale Commercial Deployment in the 3.5 GHz Band and Emphasize Licensee Compliance Obligations in the 3650-3700 MHz Band Under Part 96*, GN Docket No. 15-319, Public Notice, 35 FCC Rcd 117, 117, para. 1 (WTB/OET 2020) (certifying CommScope, Federated Wireless, Inc., Google, and Sony, (continued....))

requirements and responsibilities of a DFMS administrator. We seek comment on whether and to what extent we can draw on the requirements and responsibilities governing the SAS and SAS administrators in the 3.5 GHz band.<sup>67</sup> For example, we seek comment on whether to follow our policy for the 3.5 GHz SASs and establish only the minimum high-level requirements necessary to ensure the effective development and operation of fully functional DFMSs, leaving other requirements to be addressed by the DFMS administrators and multi-stakeholder groups.<sup>68</sup> If we follow this policy, what high-level requirements should we establish? Below, we explore in greater detail a potential regulatory framework for DFMSs, and the extent to which aspects of the DFMS requirements and operation should be specified in our rules.

30. One of the most important responsibilities of the DFMS would be to ensure that UAS operators receiving 5030-5091 MHz assignments and operating consistent with their assignments are protected from harmful interference and that they do not cause harmful interference to other protected operations in the band and adjacent bands, including protected federal operations.<sup>69</sup> In light of the many challenges of ensuring appropriate protection and reliability for all authorized UAS operations in the band, which could involve highly diverse and evolving operations with different risk profiles, altitudes, flight speeds, and spectrum needs in a shared spectrum environment, and could potentially involve the need for mid-flight alterations to flight plans and other operational complications, we seek comment on whether the Commission should simply establish an appropriate high-level requirement on the DFMS, such as a requirement to provide protected access to spectrum appropriate to cover a submitted and valid request, to the extent such spectrum is available, and defer to the DFMS administrators, or potentially a multi-stakeholder group, to determine the appropriate means of doing so. To the extent the Commission should codify more detailed requirements, we seek comment on all measures the Commission should adopt to facilitate the ability of the DFMS to provide reliable, interference-protected assignments, including any necessary specifications, requirements, responsibilities, authority, processes, or remedies. We further seek comment on the interference mitigation techniques that can be employed by UAs, such as geo-fencing.<sup>70</sup>

31. At a minimum, we propose to require that a DFMS administrator adopt procedures to immediately respond to requests from Commission staff for information they store or maintain and to

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Inc. as SAS Administrators); *Wireless Telecommunications Bureau and Office of Engineering and Technology Approve Spectrum Access System Administrator Amdocs for Full Scale Commercial Deployment in the 3.5 GHz Band*, GN Docket No. 15-319, Public Notice, 35 FCC Rcd 3687, 3687, para. 1 (2020 WTB/OET) (certifying Amdocs, Inc. as a SAS Administrator); *Wireless Telecommunications Bureau and Office of Engineering and Technology Approve Spectrum Access System Administrator Key Bridge Wireless for Full Scale Commercial Deployment in the 3.5 GHz Band*, GN Docket No. 15-319, Public Notice, 36 FCC Rcd 4880, 4880, para. 1 (WTB/OET 2021) (certifying Key Bridge Wireless LLC as a SAS Administrator). On May 1, 2021, the Commission gave conditional approval to three additional parties as SAS Administrators, subject to further testing and review before final certification. See *Wireless Telecommunications Bureau and Office of Engineering and Technology Conditionally Approve Three Spectrum Access System Administrators for the 3.5 GHz Band*, GN Docket Nos. 17-258, 15-319, Public Notice, 36 FCC Rcd 8255 (WTB/OET 2021) (conditionally approving Fairspectrum LLC, Nokia, and RED Technologies). See also, e.g., *DSA Refresh PN Comments* at 5 (recommending that the Commission “continue its policy of authorizing multiple commercial dynamic spectrum management system administrators,” and asserting that competition among these providers “will spur greater innovation and reduce costs”).

<sup>67</sup> See 47 CFR pt. 96 subpt. F (Spectrum Access System); see also *3.5 GHz R&O*, 30 FCC Rcd at § III.H.

<sup>68</sup> We discuss a potential role for a multi-stakeholder group in greater detail below.

<sup>69</sup> See *infra* Section II.B.9 (seeking comment on measures necessary to protect federal Microwave Landing Systems in the 5030-5091 MHz band and various out-of-band services).

<sup>70</sup> Geo-fencing is a technique of defining a virtual geographic boundary (defined by coordinates) around an area. Depending on the implementation, when a UA approaches the boundary, the UA or its controller could receive a transmission to change course to avoid the area.

comply with any Commission enforcement instructions they receive, as well as to securely transfer all the information in the DFMS to another approved entity in the event it does not continue as the DFMS Administrator at the end of its term. We seek comment on these proposals. In addition, what requirements should we impose on the DFMS or DFMS administrator with regard to retention of records and information, including registration and assignment records? Should we require retention of all such information for at least five years? What requirements should we adopt to ensure data security in DFMS operations, including the security of end-to-end communications between operators and a DFMS and the security of information stored by a DFMS?

32. What requirements, if any, should be imposed on NNA operators in the band to help ensure the DFMS's ability to provide interference-protected access or to promote more robust or efficient use of the spectrum? Should these requirements be high-level, with additional development through a DFMS administrator or multi-stakeholder group, or should they be more detailed? What information should we require operators to provide to the DFMS regarding ground stations and unmanned aircraft stations? Should that information be provided prior to any requests, with an assignment request, or on an ongoing or periodic basis during an operation? For example, should we require operators to provide ground station geographic location, effective isotropically radiated power (EIRP), and/or antenna patterns? Assuming a DFMS has the necessary information about the ground station, is information about the location or transmitter characteristics of the UA unnecessary to prevent harmful interference? Should we require an active UAS relying on an NNA assignment in the band to provide a DFMS with the UA information that must be broadcast under the Remote ID rule or some subset or variation of that information?<sup>71</sup> Should an operator be required to provide the DFMS specific information about the UA, including its manufacturer, model, or other technical or identifying information? Should an operator be required to affirmatively communicate to the DFMS, in real time or within a certain period of time of the relevant event, the initiation and termination of the flight or, alternatively, the initiation and termination of the operator's use of the assigned frequencies? Are there other circumstances or information (aside from the request) that the operator should be required by rule to communicate to the DFMS? Should any requirements be imposed on UAS operators relying on NSS networks to facilitate the DFMS's ability to provide interference-protected NNA assignments?

33. We further seek comment on whether to mandate that a UAS operator register with a DFMS as a precondition to requesting NNA frequency assignments, and if so, what requirements we should impose with respect to such registration. Should the Commission simply require registration and leave the details to be developed by, for example, the DFMS administrators or a multi-stakeholder group? To the extent the Commission should codify further details, what information should be included with registration? Should UAS operators be required to register ground and UA stations? Should we impose requirements with regard to if and when registration should be updated and, if so, what is the appropriate duration of the initial registration term and the renewal term? Under what circumstances should the Commission or the relevant DFMS administrator revoke a UA operator's registration? While we envision that any registration requirements would apply only to operators seeking NNA assignments, we seek comment on whether to require operators relying on a network service in NSS spectrum to register with a DFMS.

34. We also seek comment on what requirements, if any, we should impose with respect to the submission of UAS operator requests for NNA assignments, and conversely what, if any, details of the request process should be left to be developed by a multi-stakeholder group. For example, should we impose specifications of what information should be included in a request, and if so, what data should we require? Should requests include the relevant ground and unmanned aircraft stations that will be used in the operation, and if so, how should these be identified? To the extent we permit mobile ground stations,

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<sup>71</sup> The FAA's rules for Remote ID require most UAS operating in United States airspace to have Remote ID capability. *See Remote ID Rules* at 4403-04; 49 CFR § 89.101. Remote ID capability includes the broadcast of information such as the identity, location, and altitude of a drone in flight, including its control station or take-off location. *See* 14 CFR § 89.305.

should requests provide a specification of the route of the mobile ground station over time and the times at which the station will reach specific locations in order to enable frequency assignment to consider the range coverage of the station as a function of time? Should we require submission of a flight plan, and if so, what information should the flight plan include, and in what format? For example, should it specify time of use, and flight positions and flight altitude over the course of the flight plan, as suggested by AIA?<sup>72</sup> Should an operator be required to submit requests no more than a certain specified time period in advance of a flight?<sup>73</sup>

35. As a general matter, should a DFMS grant a frequency assignment for the duration and other parameters requested, provided the unassigned spectrum is available to meet the request? Alternatively, should limits or restrictions be placed on what can be granted? For example, should a limit be placed on the maximum duration of an assignment to prevent monopolization of the spectrum by one or a few parties with flights of long or indefinite duration?<sup>74</sup> Should a limit be placed on the number of simultaneous temporary frequency assignments allowed by the DFMS to reduce the potential for harmful interference?

36. As several parties have noted, operators may need to revise their assignments after a flight has commenced (e.g., where the flight needs to deviate from its anticipated flight path and UAS CNPC transmissions for the revised flight would not be covered by the original assignment, or where a flight takes longer than provided under the assignment). We seek comment on any rules we should adopt to enable or facilitate the filing and timely processing of such requests for revised assignments or to otherwise address an operator's mid-flight need for revised assignment. Do we need to adopt any rule to address cases where the revised request cannot be granted consistent with other previously granted assignments?

37. In the 3.5 GHz band, SASs may require fixed stations to implement reassignment to new frequencies, reduction of the permitted transmitting power level, or cessation of operations, as necessary to avoid or eliminate harmful interference and implement spectrum access priorities.<sup>75</sup> We note, however, that the 5030-5091 MHz band presents challenges to such an approach that are not present in the 3.5 GHz band. First, whereas the 3.5 GHz stations under SAS control are all fixed stations (i.e., stations operating from a fixed location), facilitating a SAS's ability to communicate with such stations and determine their location, we seek comment below on permitting UAS ground stations in the NNA portion of the 5030-5091 MHz band to be mobile stations (e.g., hand-held controllers).<sup>76</sup> Second, active management of spectrum access during an ongoing UAS operation could introduce significant safety hazards, such as if a DFMS were to require automatic cessation or powering-down of a UAS CNPC link while a flight was ongoing, resulting in a mid-operation loss of control.<sup>77</sup> Given such challenges, is an active management

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<sup>72</sup> See AIA *Refresh PN* Comments at 9.

<sup>73</sup> See AIA Petition at 14 (indicating that RTCA DO-362 "anticipates" that requests will be made no more than 20 minutes in advance of a flight). *But see* RTCA *Refresh PN* Comments at 4 (stating that "[i]n some circumstances, requests for channel assignments for flights could be made days in advance").

<sup>74</sup> See, e.g., dronelife, *Heavy Lift Tethered Drone Flies for a Week: Zenith AeroTech Celebrates 108 Hours of Uninterrupted Flight*, <https://dronelife.com/2021/06/10/heavy-lift-tethered-drone-flies-for-a-week-zenith-aerotech-celebrates-108-hours-of-uninterrupted-flight/> (last visited Sept. 6, 2022).

<sup>75</sup> See 47 CFR § 96.39(c)(2).

<sup>76</sup> See *infra* para. 58 & n.112.

<sup>77</sup> For this reason, some parties in the record oppose mechanisms that would automatically revoke an assignment after the duration of assignment has expired. See EEI *Refresh PN* Comments at 8 ("Frequency assignments should not be revoked during flights because it would create potential safety concerns."); L3H *Refresh PN* Comments at 5-6 (suggesting that use of an assignment beyond its duration should be subject to post-flight investigation and enforcement, but that "[r]evocation of a frequency channel should never occur during a UAS flight"). *But see* RTCA *Refresh PN* Comments at 5 (stating that automatic revocation of an assignment without confirmation from

(continued....)

approach feasible and appropriate, and if so, what regulatory requirements should be adopted to enable or implement such an approach? If not feasible, what approaches or mechanisms will be available to the DFMS to ensure the reliability of communications? In particular, given that the proposed assignments would be limited in both frequency, time, and geography, what requirements, procedures, penalties, or other measures should be in place to prevent or address (1) flights that use unauthorized frequencies; (2) flights that occur outside an authorized time period, such as a flight that exceeds its authorized duration; or (3) flights that occur outside an authorized area. If a DFMS's role is merely to reserve appropriate spectrum for UAS flights, and a DFMS takes no other active measures to ensure or enforce compliance with the assignments or the protection of operations, will spectrum access be sufficiently reliable for mission critical purposes?

38. *Fees.* Under the 3.5 GHz rules, an SAS administrator is authorized to charge users “a reasonable fee” for the provision of its services, and the Commission “can require changes to those fees if they are found to be unreasonable.”<sup>78</sup> We propose to adopt a similar provision authorizing the administrator of a DFMS to charge reasonable fees for its provision of services, including registration and channel assignment services, and to permit parties to petition the Commission to review fees and require changes if they are found to be excessive. To encourage efficient use of the limited spectrum resource and discourage any attempt at warehousing, we seek comment on specifically authorizing reasonable usage-based fees, and on standards and approaches for establishing the amounts of such fees.

39. *Selection process.* We seek comment on the process for selecting the DFMS administrators, and whether the 3.5 GHz SAS approval process could serve as a model.<sup>79</sup> Under the approach for SAS approval, the Commission delegated authority to WTB and OET to administer the process and provided that (1) the Bureaus would issue a Public Notice requesting proposals from entities desiring to administer a SAS; (2) applicants would be required, at a minimum, to demonstrate how they plan to meet the Commission's rules governing SAS operations, demonstrate their technical qualifications to operate a SAS, and provide any additional information requested by WTB and OET; (3) based on these applications, WTB and OET would determine whether to conditionally approve any of the applicants; and (4) any applicants that received conditional approval would be required to demonstrate that their SASs meet all the requirements in the rules and any other conditions the Bureaus deemed necessary, and at a minimum, to allow their systems to be tested and analyzed by Commission staff.<sup>80</sup> We seek comment on adopting this approach. In particular, we seek comment on facilitating the potential selection of multiple DFMSs through an application and certification process by which any entity found to meet the requirements can be the administrator of such a system, and we seek comment on what eligibility requirements should be set and whether (or to what extent) they should be codified or established through a separate process. We also seek comment on whether we should provide a testing or trial phase for DFMS technology prior to the submission of applications, to facilitate or inform the requirements of the application process. Following the SAS model, we propose to delegate jointly to WTB and OET the

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the UAS operator “should happen only after the frequency assignment manager has followed documented, disclosed and agreed upon . . . safety procedures”).

<sup>78</sup> See 47 CFR § 96.65(a), (b).

<sup>79</sup> See *3.5 GHz R&O*, 30 FCC Rcd at 4067, paras. 369-73; see also, e.g., *Wireless Telecommunications Bureau and Office of Engineering and Technology Conditionally Approve Seven Spectrum Access System Administrators for the 3.5 GHz Band*, GN Docket No. 15-319, Public Notice, 31 FCC Rcd 13355, 13356-59, paras. 7-10 (WTB/OET 2016).

<sup>80</sup> See *3.5 GHz R&O*, 30 FCC Rcd at 4067, paras. 371-72; see also 47 CFR §§ 0.241(j), 0.331(f) (jointly delegating to the Chiefs of OET and WTB authority to administer the SAS and SAS Administrator functions, and “to develop specific methods that will be used to designate SAS Administrators; to designate SAS Administrators; to develop procedures that these SAS Administrators will use to ensure compliance with the requirements for SAS operation; to make determinations regarding the continued acceptability of individual SAS Administrators; and to perform other functions as needed for the administration of the SAS”).

authority to administer the selection process and make the selection. We seek comment on what role the FAA and NTIA should have in setting up the process, reviewing applications, and making the selection.

40. *Coordination with flight authorization.* In addition to spectrum access, i.e., authorization to transmit, UAS operators also need approved or otherwise authorized access from the FAA to conduct flights in the airspace of the United States. For example, under part 107, UAS operators are authorized to fly in uncontrolled airspace below 400 feet above the ground (AGL) and in accordance with part 107 of the FAA's rules without specific airspace authorization, whereas part 107 flights in controlled airspace generally require a specific airspace authorization from air traffic control.<sup>81</sup> Under the UAS Traffic Management (UTM) program, however, the FAA has been developing a separate ecosystem of requirements, services, and other features to enable the traffic management of low-altitude UAS operations, including systems for automating the flight approval process.<sup>82</sup> One result of the program has been the deployment of the Low Altitude Authorization and Notification Capability (LAANC) system, through which UAS operators can apply to LAANC service providers to receive a near real-time airspace authorization for operations under 400 feet in controlled airspace around airports.<sup>83</sup>

41. We seek comment on whether and how frequency assignments should be coordinated with airspace authorization for low altitude, high altitude, and terminal (departure/arrival) operations. For example, should a DFMS be required to determine that a requesting party has any necessary flight authority as a condition of granting a spectrum assignment request? If so, we seek comment as to whether and how a DFMS would interact with air traffic control or the relevant UTM systems (such as LAANC), or otherwise obtain information regarding airspace approvals, authorizations, or availability.

42. *Alternative approaches to dynamic spectrum access.* We seek comment on other options to enable dynamic spectrum access to the 5030-5091 MHz band. Some parties suggest that we adopt some form of cognitive radio solution, in which UAS radios would directly detect and identify available spectrum channels.<sup>84</sup> They argue that a centralized system like the DFMS will be complex and labor intensive to use, will be inefficient in spectrum assignments and vulnerable to spectrum warehousing, and will have difficulty ensuring link protection and responding quickly to developments such as changes in flight plans while a UA is already in flight.<sup>85</sup> We seek comment on these concerns and whether they can be addressed by a DFMS, and we seek comment on the feasibility, costs, and benefits of alternative options as compared to the DFMS discussed above, and whether such alternatives would be sufficiently reliable to support even the most safety-critical uses such as flights in controlled airspace. We further seek comment on whether there are existing technologies that could be applied or adapted to implement these alternative approaches, and on any standards work or other studies regarding the safety and reliability of links under such systems.

43. We note that the Commission has, in two cases, adopted a variation of the DFMS approach in which, for a particular device to access the relevant spectrum band, automated and periodic

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<sup>81</sup> See FAA, *Small Unmanned Aircraft Systems (UA) Regulations (Part 107)*, <https://www.faa.gov/newsroom/small-unmanned-aircraft-systems-uas-regulations-part-107> (last visited Sept. 6, 2022) (stating that part 107 “[o]perations in Class G airspace are allowed without air traffic control (ATC) permission” while such “[o]perations in Class B, C, D and E airspace need ATC authorization.”).

<sup>82</sup> See FAA, *Unmanned Aircraft System Traffic Management*, [https://www.faa.gov/uas/research\\_development/traffic\\_management](https://www.faa.gov/uas/research_development/traffic_management) (last visited Sept. 6, 2022); see also NASA, *Aeronautics Research*, <https://www.nasa.gov/utm> (last visited Sept. 6, 2022).

<sup>83</sup> See FAA, *UAS Data Exchange (LAANC)*, [https://www.faa.gov/uas/programs\\_partnerships/data\\_exchange/](https://www.faa.gov/uas/programs_partnerships/data_exchange/) (last visited Sept. 6, 2022).

<sup>84</sup> See L3H Refresh PN Comments at 13 (asserting that cognitive radios would have benefits and are “worthy of further consideration”); SSC Refresh PN Comments at 4-5 (proposing a system including “multiple types of evidence” to determine availability including database query and optional device-based sensing).

<sup>85</sup> See, e.g., SSC Refresh PN Comments at 9-11.

queries of spectrum availability are made to a central database by the device itself. In the 6 GHz band, the Commission adopted a system that allows unlicensed access to temporarily unused portions of the band while protecting incumbent services through a database of incumbent operations that certain unlicensed devices must query to determine available channels for their coverage area.<sup>86</sup> Similarly, in the TV bands, the Commission established a TV white space database that is queried by an unlicensed device seeking access to the bands and that authorizes operations only on unused spectrum throughout the unlicensed device's coverage area.<sup>87</sup> We seek comment on whether a similar system could be adopted for NNA operations in the 5030-5091 MHz band, under which 5030-5091 MHz radios would be required to directly and periodically query a central database for available channels. Given that the 6 GHz and white space systems are implemented to enable unlicensed devices to access spectrum without interference protection, we seek comment on whether this type of system could be suitable to implement interference protection for UAS NNA operations. Could such a system be implemented in a manner that provides an assignment of protected spectrum that covers all applicable stations in a particular UAS NNA operation (e.g., both the operator's control station and the associated airborne radio) and ensures protected access for the duration of an entire UAS flight plan? Alternatively, could such a device query function be added to the DFMS as a second and optional means of receiving authorization from the DFMS for use cases where such authorization is sufficient? If the Commission adopts rules providing for the establishment of such a system, should we require that the system database be updated in real time with relevant parameters of the NNA systems currently in operation? We further seek comment on whether any such system and any tool used to perform the interference analysis should be certified and approved for use by the Commission and/or other appropriate authorities prior to operation.

44. In the event that we adopt rules providing for the establishment and operation of a DFMS or some other coordination system or process, there may be a significant period of time before such coordination system is operational in the band and some operators may want protected access to the band during this interim period. While such operators may currently apply for special temporary authority to use the band, these authorizations do not provide interference protection.<sup>88</sup> Accordingly, we seek comment on whether to establish some method by which operators can get temporary protected access to frequencies in the 5030-5091 MHz band, or a portion of the band, during this interim period. Should we provide that parties may apply during this period for licenses comparable to grants of part 5 special temporary authority (STA) (e.g., a duration of no more than 6 months) but with rights of interference protection, and subject to pre-application coordination through a frequency coordinator group and to termination in the event a DFMS becomes operational? Should such uses have the same opportunity for renewal as part 5 STAs? Moreover, we seek comment on an interim frequency management process through which parties could obtain limited, short-term access to spectrum, such as access suitable for a single flight or event.

### 3. Multi-stakeholder Group

45. We seek comment on a possible role for a multi-stakeholder group to help develop the requirements and processes applicable to the DFMSs, as well as to study standards and interference issues associated with UAS operations in the band. There are aviation-specific considerations that may affect how spectrum access should be managed, and it may be beneficial for stakeholders versed in such

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<sup>86</sup> See *Unlicensed Use of the 6 GHz Band et al.*, ET Docket No. 18-295, et al., Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852 (2020) (*6 GHz R&O*).

<sup>87</sup> See generally 47 CFR pt. 15, subpt. H. See also, generally, *Amendment of Part 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap and Duplex Gap, and Channel 37, et al.*, ET Docket No. 14-65, et al., Report and Order, 30 FCC Rcd 9551 (2015).

<sup>88</sup> See 47 CFR § 1.931(b)(1); *Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules et al.*, ET Docket No. 10-236, et al., Report and Order, 28 FCC Rcd 758, 760, para. 3 (2013).

considerations (e.g., members of the aviation industry, the UAS standards-making community, frequency managers, and network operators) to assist in the development of requirements and processes. In the context of the 3.5 GHz band, the Commission encouraged the informal creation of a multi-stakeholder group to develop various implementation details to facilitate development of CBRS, and this approach proved highly successful.<sup>89</sup> This informal reliance on multi-stakeholder group activities has been adopted in other contexts as well, including the implementation of Automated Frequency Coordination (AFC) systems in the 6 GHz band.<sup>90</sup> Further, several parties in the record support a role for a multi-stakeholder group to further develop requirements for the DFMS and the 5030-5091 MHz band, although some advocate the designation of a more formal, governing body to serve in this role.<sup>91</sup> We seek comment on whether, consistent with the successful approach in the 3.5 GHz band, we should encourage a multi-stakeholder group to address implementation issues in the 5030-5091 MHz band, but without the Commission formally designating such a group or imposing a formal process for how the group reaches its determinations or recommendations. If such a multi-stakeholder group were to be formed by third parties, what selection procedures might be desirable to ensure that the group appropriately reflects the diversity of UAS stakeholders? What role might federal agency stakeholders have in this process? We seek comment on these and any additional procedures or approaches that a multi-stakeholder group might implement, particularly in light of the positive experience with the 3.5 GHz band stakeholder group.

46. Assuming there is a role for a multi-stakeholder group, we seek comment on the appropriate extent of that role and the responsibilities it might most usefully undertake. We seek comment on the matters a multi-stakeholder group should address with consensus standards or other determinations, or with the development of recommendations to one or more of the stakeholder agencies. We further seek comment on the matters that the Commission should address independently of any multi-stakeholder group and the rules it should adopt to establish a basic regulatory framework to govern the 5030-5091 MHz band and the DFMSs.

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<sup>89</sup> See *3.5 GHz R&O*, 30 FCC Rcd at 4081, paras. 416, 417 (finding that a multi-stakeholder group could be instrumental in developing answers to some of the novel technical questions raised by the CBRS rules, declining to formally designate a group or adopt a specific process for reviewing and responding to their recommendations, but encouraging any such group to work to share their findings with the Commission and to incorporate their work, to the extent feasible, into the development of the 3.5 GHz band SAS and citizens band radio service devices). To serve as a multi-stakeholder group for this purpose, the Wireless Innovation Forum (WInnForum) created the Spectrum Sharing Committee, which, *inter alia*, collaborated with relevant government agencies to develop 10 standards for the 3.5 GHz band addressing a range of CBRS and SAS technical and operational issues. See, e.g., WInnForum *Refresh PN* Comments at 1-2.

<sup>90</sup> See *6 GHz R&O*, 35 FCC Rcd at 3918-19, paras. 174-80 (encouraging the formation of a multi-stakeholder group to provide a forum for the industry to study technical and operational issues raised by 6 GHz band unlicensed access and work cooperatively towards solutions); see also *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2467, para. 333 (2020).

<sup>91</sup> Compare Federated Wireless *Refresh PN* Comments at 7-8 (recommending that the Commission follow the approach taken in the 3.5 GHz band and rely on cross-industry stakeholder groups to develop consensus standards for the performance of a shared access system for the 5030-5091 MHz band), with AIA *Refresh PN* Comments at 13, 18 (recommending that the Commission and FAA jointly authorize an independent governing board to oversee the band), and ASRI *Refresh PN* Comments at 8 (supporting the establishment of a “governing body formed from the UAS user community with FAA and Commission participation to oversee the frequency management system”). See also L3H *Refresh PN* Comments at 2, 5-6 (proposing that the FCC and FAA collaborate with industry to establish a “UAS Spectrum Committee” responsible for establishing policies, procedures, and standards for assignment of frequencies and procedures for processing frequency requests, as well as policies and procedures for releasing channels following the end of flight). While AIA proposes establishment of a formal “governing body,” it also discusses a potential role for “standards development organizations” to determine standards for such matters as the returning of frequency assignments. See AIA *Refresh PN* Comments at 10, 13.

#### 4. Scope of Permissible Services

47. In considering the appropriate scope of services to permit in the band, we begin with the services permitted by the underlying allocation. As discussed above, the Commission added an AM(R)S allocation in the 5030-5091 MHz band to support UAS communications. AM(R)S is reserved exclusively for communications relating to the safety and regularity of flight, primarily along national or international civil air routes.<sup>92</sup> Consistent with the scope of the allocation and the expressed purpose for its incorporation, we propose to permit only CNPC and to define CNPC as any UAS transmission that is sent to or from the UA component of the UAS and that supports the safety or regularity of the UA's flight.<sup>93</sup> We seek comment on these proposals and on alternatives that would be consistent with the allocation and its purpose. Should we alternatively define CNPC to cover any communications to or from a UA other than payload communications, and to define payload as information sent to achieve mission objectives?<sup>94</sup> RTCA DO-362A, which provides MOPS for UAS CNPC in the 5030-5091 MHz band, states that "payload communications," for purposes of the standard, "specifically include communications associated with the UA mission payloads, which do not contain safety-of-flight information," and clarifies that "[s]afety-of-flight information is any information/data sent to or received from the UA that is necessary to ensure the UAS is operated/operating in a manner that protects people and/or property from harm due to unintentional events."<sup>95</sup> We seek comment on whether to adopt these or similar terms to define the scope of permissible CNPC. NTIA proposes that we limit the band to a subset of CNPC, specifically communications for the control of the UA and other "safety-critical functions," in order to limit UAS use to "essential services."<sup>96</sup> RTCA DO-362A similarly provides that CNPC includes "[d]ata and information sent to/from the Pilot Station and the UA for the control of the UA and other safety-critical functions."<sup>97</sup> We seek comment on this option, on the costs and benefits of limiting the band to only the "safety-critical" communications, on what types of communications would be considered "safety-critical," and what, if any, types of non-payload but safety-related communications would not be considered "safety-critical." More generally, should we restrict communications to a subset of CNPC?

48. Conceivably, the same data from a UA may be both for the purpose of achieving flight mission objectives and for flight safety-related purposes, for example, video transmissions relied upon both as surveillance data and to assist in flight guidance, or UA telemetry data with respect to local weather conditions such as turbulence and wind shear. We seek comment on whether such dual-purpose communications should be permissible if one of the purposes falls within the permissible scope.<sup>98</sup> Would it better serve the public interest to only include communications that are exclusively for purposes of flight safety or regularity?

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<sup>92</sup> See 47 CFR §§ 2.1, 2.106.

<sup>93</sup> See ASRI *Refresh PN* Comments at 5-6 (arguing that band access should be dedicated to "UAS safety and regularity of flight communications"); AURA *Refresh PN* Comments at 6; Boeing *Refresh PN* Comments at 8; RTCA *Refresh PN* Comments at 7 (recommending that "payload and non-safety or non-route related information should not be sent over systems using this band").

<sup>94</sup> See NTIA *Refresh PN* Comments at 3 (proposing that the scope of services "does not include any messages sent to achieve mission (payload) objectives"); AIA *Refresh PN* Comments at 11.

<sup>95</sup> See RTCA DO-362A, § 1.1.

<sup>96</sup> See NTIA *Refresh PN* Comments at 3; see also L3H *Refresh PN* Comments at 2 (arguing that the Commission should prohibit "non-safety-of-life communications in the 5030-5091 MHz band, with the exception of Health & status reports generated by the UAV and sent to the PIC for the sole purpose of ensuring flight reliability and integrity").

<sup>97</sup> RTCA DO-362A, Appx. A.

<sup>98</sup> See Wisk *Refresh PN* Comments at 6 (stating that Wisk "does not support the use of the band for payload data *except* as required for the safe operation of the payload, and in the case of UAM, safety related communications with the passengers.") (emphasis added).

49. We seek comment on whether, instead of a general definition of scope or, potentially, as a clarifying and non-exclusive supplement to a general definition, we should specify certain categories of communications that are covered, such as (1) telecommands to the UA; (2) telemetry from the UA that is relied upon for flight guidance or other flight safety-related purposes, such as geo-fencing to protect sensitive areas, i.e., Microwave Landing System sites, radio astronomy sites, adjacent licensees, etc.; (3) DAA-related transmissions; (4) video transmissions from the UA relied upon for flight guidance or other flight safety-related purposes; (5) Air Traffic Control communications relayed via the UA; and (6) remote identification transmissions. We seek comment on whether any of these categories should be narrowed, broadened, eliminated, replaced, or supplemented with other categories.<sup>99</sup> We seek comment on whether permissible communications should be restricted to communications between the control station and the UA station, i.e., excluding broadcast from the UA or UA-to-UA communications. We further seek comment on whether we should establish priorities among different categories of CNPC, or leave the rules flexible on this matter, with such prioritization potentially to be considered and developed through appropriate standards development by multi-stakeholder groups.<sup>100</sup> Commenters should also consider the impact of these potentially covered communications on the capacity of the band, i.e., whether the addition of these categories of communications allows for sufficient spectrum to support the core purpose of the band, CNPC links.

50. We note that the regulatory definition of AM(R)S limits the allocation to communications “relating to safety and regularity of flight, *primarily along national or international civil air routes.*”<sup>101</sup> As the allocation does not require that communications be exclusively for flights along such air routes, we propose not to restrict the scope of permissible CNPC services to such communications. We seek comment on this proposal and the extent to which operations outside civil air routes will need access to the 5030-5091 MHz band for CNPC (as opposed to being able to rely on other spectrum solutions that may or may not provide the same level of reliability or air safety assurance). Assuming some measure is necessary or appropriate to reflect the focus on flights primarily along national or international civil air routes, we seek comment on whether it would be sufficient to ensure that the applicable rules and technical standards provide the necessary reliability and safety to support the use of the band for such flights.

51. We also seek comment on whether we should restrict NNA to CNPC but permit NSS licensees a broader scope such as a scope permitting UAS payload communications or permitting both UAS and non-UAS communications, provided that licensees ensure the safety and reliability of CNPC and ensure that communications associated with the safety of flight always have both priority and

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<sup>99</sup> AURA, for example, asserts that categories that can be supported consistent with the AM(R)S allocation include (1) UAS flight control and configuration messages; (2) high priority detect-and-avoid messages; (3) ATC communications; (4) flight safety telemetry messages; (5) other flight safety messages; (7) routine telemetry messages; and (7) air traffic services other than ATC communications. *See AURA Refresh PN Comments at 6; cf. RTCA, Minimum Aviation System Performance Standards for C2 Link Systems Supporting Operations of Unmanned Aircraft Systems in U.S. Airspace, RTCA DO-377A (2021) (RTCA DO-377A), Appx. E at E.3, Fig. E-2 (describing the categories of non-payload internal and external information exchange between a control station and a UA as (1) Aircraft Control telecommands; (2) Aircraft Control telemetry; (3) NavAids Setting Changes; (4) NavAids Display Data; (5) ATC Voice Relay; (6) Target Data (DAA); (7) Weather Radar Data; (8) Non-Payload Video; and (9) C2 Link Management).*

<sup>100</sup> AIA, for example, describes a prioritization of CNPC under the International Civil Aviation Organization (ICAO) Annex 10 Volume VI Part I Standards and Recommended Practices (SARPs) to be applied in both the Forward and Return directions of a “C2 Link System.” *See AIA Refresh PN Comments at 11-12.* This scheme prioritizes data as follows: (1) UAS flight control and configuration messages; (2) high priority DAA messages; (3) ATC communications including distress calls and urgency messages; (4) flight safety telemetry messages including low priority DAA messages; (5) other flight safety messages; (6) routine telemetry messages; (7) air traffic services other than ATC communications; and (8) other communications related to safety and regularity of flight. *See id.*

<sup>101</sup> 47 CFR § 2.1(c) (emphasis added).

preemption over other communications.<sup>102</sup> We see at least two potential distinctions between NNA and NSS operations that may argue for a broader NSS scope of service. First, NSS operations will require deployment of networks that will necessitate a very substantial investment, in contrast to NNA operations that can occur without any network deployment. We seek comment on whether permitting a broader scope of services is necessary to provide adequate financial incentives to support network buildout in NSS spectrum. Second, network technologies may be better positioned than direct-link systems to implement a successful prioritization of CNPC. We seek comment on this possibility, and to what extent current or developing network technologies or architectures are capable of ensuring the safety and priority of CNPC information over that associated with other traffic and whether these technologies or architectures will be compatible with other authorized operations in the band and/or with the TDD requirements of RTCA DO-362A. We seek comment on whether such an expansion of scope would be permissible under section 303(y) of the Communications Act, which places certain limits on the Commission’s authority to “allocate electromagnetic spectrum so as to provide flexibility of use.”<sup>103</sup>

52. If we conclude that NSS licensees should be permitted a broader scope of permissible communications on an ancillary basis, we seek comment on adding an appropriate allocation if necessary, on what type of allocation should be adopted to support the broader scope, on whether to subject the allocation to secondary status under the AM(R)S allocation and to the limitations applicable to the AM(R)S allocation, and on any measures we should adopt to ensure that the primary use of the spectrum is for CNPC. Should we rely on appropriate multi-stakeholder groups to develop the details of requirements to implement prioritization and preemption? Should any mechanisms for implementing preemption and prioritization be subject to specific review and approval by the Commission, the FAA, and/or an appropriate third-party group?

## 5. Eligibility Restrictions

53. We propose that any entity be eligible to obtain a 5030-5091 MHz NSS license other than those precluded by section 310 of the Communications Act and those that are barred under 47 U.S.C. § 1404 from participating in auctions.<sup>104</sup> We seek comment on this proposal and whether eligibility should be more restricted. We further seek comment on how, in this context, we interpret section 310(b), which imposes restrictions on who can hold or be granted a “broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license.”<sup>105</sup> Under the various authorization proposals discussed herein, would a licensee be considered as holding a “common carrier[,] aeronautical en route or

<sup>102</sup> The standard document RTCA DO-377A appears to endorse further consideration, to the extent permitted under the relevant spectrum allocation, of permitting networks (as opposed to direct links) to provide both CNPC and payload if the relevant spectrum allocations support both, stating that “if a UAS designer selects . . . (a) a C2 Link System architecture that relies on external entities to provide the communication link, e.g., networked terrestrial radios or SATCOM and (b) there is sufficient bandwidth in the link, it may be beneficial to use a single link to transmit both C2 and payload information; provided that the link is able to ensure the safety and priority of C2 information over that associated with the payload(s).” See RTCA, Minimum Aviation System Performance Standards for C2 Link Systems Supporting Operations of Unmanned Aircraft Systems in U.S. Airspace, RTCA DO-377A (2021) (RTCA DO-377A), Appx. A, at A.6.3; see also RTCA DO-377A, Appx. J (“Command and Control and Payload on Same Link”), at J.1 (providing “information related to using a common, or shared, link to support both Command and Control (C2) and payload information exchanges.”) (emphasis in original).

<sup>103</sup> See 47 U.S.C. § 303(y). Specifically, the provision provides that the Commission has authority to “allocate electromagnetic spectrum so as to provide flexibility of use” if (1) such use is consistent with international agreements to which the United States is a party; (2) such use would not deter investment in communications services and systems, or technology development; and (3) such use would not result in harmful interference among users. *Id.*

<sup>104</sup> See 47 U.S.C. § 310; *id.* § 1404; see also 47 CFR § 96.5 (applying similar restrictions to Priority Access Licensees in the 3.5 GHz band).

<sup>105</sup> See 47 U.S.C. § 310(b). Section 310(b) provides that these types of licenses may not be granted to or held by aliens, representatives of aliens, foreign corporations or corporations with specified levels of foreign ownership. *Id.*

aeronautical fixed radio station license”<sup>106</sup> If so, how should we evaluate any foreign-ownership holdings?

54. We also seek comment on whether to provide that any entity is eligible to operate NNA stations using assignments from a DFMS other than those precluded by section 310 from holding station licenses. Given our proposal elsewhere to license NNA stations by rule, we seek comment on whether section 310 ownership restrictions, which apply to “station licenses,” apply to operators of stations licensed by rule. We further seek comment, if section 310 does not apply to operators of licensed-by-rule stations, on whether NNA station operators, or the parties receiving assignments from a DFMS for such operation, should be subject to eligibility restrictions comparable to those imposed by section 310 on station licensees.

55. NTIA recommends that, to be eligible for a license for 5030-5091 MHz UAS operations, an applicant be required to certify that it has the requisite FAA remote pilot certification or, in the case of an organization, to certify that it will only utilize individuals with this qualification for its UAS operations in the band.<sup>107</sup> Compliance by 5030-5091 MHz operators with applicable FAA remote pilot regulations will be critical to the safe operation of UAS in the 5030-5091 MHz band, and we seek comment on the best approach to achieve this goal, and on NTIA’s proposal as one option. To the extent that we adopt a licensed-by-rule model for NNA as proposed, however, UAS operators will not be required to submit individual license applications, and accordingly, there will be no individual license applications in which UAS operators could make the proposed certifications.<sup>108</sup> Further, provision of network-based NSS would likely involve a network provider’s provision of CNPC services to other entities, and thus, it is likely the relevant UAS operator will be neither a licensee nor an employee of a licensee. Accordingly, we seek comment on whether requiring license applicants to certify that they have the requisite FAA remote pilot certification or will utilize operators with such qualifications is a practical option in either the NNA or NSS context.

56. We further seek comment on the costs and benefits of conditioning either NNA or NSS eligibility on a certification that the party has the necessary FAA remote pilot certification or compliance with other FAA requirements. We seek comment on whether it provides a significant regulatory benefit to specifically limit eligibility in this manner, given that UAS operators using 5030-5091 MHz spectrum will in any case be subject directly to FAA rules and enforcement and would not be able to lawfully operate unless they comply with all applicable FAA requirements. We also seek comment on any administrative concerns from having the Commission potentially be required to interpret and enforce the regulatory regime of another agency. Although Boeing supports such incorporation, it notes that “the FAA is still working to develop a remote pilot certification program for operators of large UAS.”<sup>109</sup> CTIA similarly notes that “FAA rules and regulations are evolving and it is unclear at this juncture what kind of certification, if any, the FAA will require for different types of UAS users.”<sup>110</sup> Does the varied and evolving nature of these requirements further argue against importing them into the Commission’s licensing regime?

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<sup>106</sup> 47 U.S.C. § 310(b).

<sup>107</sup> See NTIA *Refresh PN* Comments at 3; see also, e.g., EEI *Refresh PN* Comments at 5-6 (arguing that, to address public safety and security issues, the licensing framework should ensure that individual operators of CNPC links are properly qualified); Wisk *Refresh PN* Comments at 3 (arguing that license eligibility should be conditioned on operator’s ability to meet FAA safety and performance requirements).

<sup>108</sup> See AIA *Refresh PN* Comments at 6 (arguing against license eligibility requirements if stations will be licensed by rule); see also Boeing *Refresh PN* Comments at 5 (arguing that a license applicant certification that they have the requisite FAA remote pilot certification would be a helpful precaution only “to the extent the Commission proposes a licensing model that includes individual licensing of UAS operators”).

<sup>109</sup> Boeing *Refresh PN* Comments at 5.

<sup>110</sup> CTIA *Refresh PN* Comments at 8.

57. To the extent that there should be some mechanism in addition to the FAA's enforcement authority to adequately ensure that use of the 5030-5091 MHz band will be consistent with FAA requirements, we seek comment on whether we can instead rely on the DFMS and NSS licensees to ensure that UAS operators have the necessary FAA approvals. For example, to address NNA users, users registering with a DFMS could be required to make the requisite certification as a condition of registration. Alternatively, we might impose a more general requirement on a DFMS to adopt measures that reasonably ensure that operators have the requisite FAA remote pilot authority, and defer to the DFMS administrator (or a multi-stakeholder group) on specific mechanisms to implement this requirement. We seek comment on these and other alternatives.

#### 6. Non-Networked Access (NNA) Service Rules

58. *Licensing rules.* We seek comment on the licensing regime or mechanism we should adopt to enable authorization of NNA operations in the 5030-5091 MHz band and the costs and benefits of any proposed approach. Because we anticipate a large number of operators seeking temporary use of the band, with an even greater number of ground and aircraft stations, we propose to reduce the administrative burdens on such operators and the Commission by adopting a licensing approach that would not require individual licensing of these numerous operators and/or stations. Specifically, we propose to implement a licensed-by-rule authorization for aircraft and ground stations in the band, as recommended by AIA and others.<sup>111</sup> Under this framework, operators would not be required to apply for individual spectrum licenses for themselves or their mobile or ground stations in order to conduct NNA operations in the band. Instead, parties using rule-compliant stations and operating in compliance with the rules would only need to obtain the requisite temporary frequency assignment from the DFMS in order to transmit in the band in the requested location, frequency, and timeframe. We further propose to permit the stations used by the operator on the ground to send and receive signals to the UA to be either fixed stations or mobile stations (such as hand-held controllers).<sup>112</sup> We seek comment, however, on whether to require all NNA ground stations in the band to be fixed stations, and on the costs and benefits of permitting the use of mobile ground stations. To what extent would prohibiting such stations facilitate coordination in the NNA portion of the band, or reduce the likelihood of harmful interference, failures to comply with assignments, or challenges with administering or policing the system? If we do not permit mobile ground stations, should we differentiate "portable" stations, i.e., stations that can be moved but are not intended to be used while in motion?

59. Section 307(e) of the Act authorizes the Commission to adopt a licensed-by-rule approach for certain specific categories of services, including the "citizens band radio service," and also expressly delegates to the Commission the discretion to define the scope of the term "citizens band radio service."<sup>113</sup> In the Commission's rules, the citizens band radio service is defined as "any radio service or other specific classification of radio stations used primarily for wireless telecommunications for which the FCC has determined that it serves the public interest, convenience and necessity to authorize by rule the operation of radio stations in that service or class, without individual licenses, pursuant to 47 U.S.C.

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<sup>111</sup> See AIA *Refresh PN* Comments at 5-6 (proposing a framework under which the "pilot/operator would not be the spectrum license holder" and stations would be licensed by rule to use channels assigned on a flight-by-flight basis); *id.* at 13; Qualcomm *Refresh PN* Comments at 8; Wisk *Refresh PN* Comments at 3.

<sup>112</sup> As used in this NPRM, the term "mobile station" refers to a station "intended to be used while in motion or during halts at unspecified points." 47 CFR § 87.5 (mobile service); *accord* 47 CFR § 2.1 (defining "mobile station" as "[a] station in the mobile service intended to be used while in motion or during halts at unspecified points"); see 47 U.S.C. § 153(34) ("The term 'mobile station' means a radio-communication station capable of being moved and which ordinarily does move.").

<sup>113</sup> 47 U.S.C. § 307(e)(1), (e)(3). The authority provides an exception to the statutory requirement under section 308 of the Act that, aside from cases of emergencies, the Commission may grant station licenses "only upon written application . . ." *Id.* § 308(a).

307(e)(1).<sup>114</sup> Pursuant to this authority, the Commission has provided for licensing by rule of an array of services through inclusion in the citizens band radio service, including the Family Radio Service, the Low Power Radio Service, the Medical Device Radiocommunication Service, the Wireless Medical Telemetry Service, the Dedicated Short-Range Communications Service On-Board Units, and the Part 96 General Authorized Access tier of the 3.5 GHz band.<sup>115</sup> We tentatively find that licensing by rule of NNA stations would serve the public interest, convenience, and necessity, and accordingly, we propose to implement licensing by rule by including NNA within the scope of the citizens band radio service.<sup>116</sup> We seek comment on our tentative conclusion and proposal, on the scope of our authority under Section 307(e) to adopt a licensed-by-rule approach to UAS operations, and on alternative licensing approaches we might adopt that would not require individual licensing of operators or stations in the band.

60. Section 307(e)(1) also expressly authorizes licensing by rule in “the aviation radio service for aircraft stations” but does not provide an equivalent grant of authority to adopt licensing by rule for aviation service ground stations.<sup>117</sup> We seek comment on whether we nevertheless have authority in this case to adopt licensing by rule for both aircraft and ground stations in the aviation service. Section 307(e)(3) provides the Commission authority to define “aircraft station” for purposes of section 307(e). We seek comment on whether this provision provides us the authority to define “aircraft station” to include UAS ground stations and whether such an action would serve the public interest.

61. *Technical requirements.* We seek comment on appropriate technical requirements to govern 5030-5091 MHz NNA equipment and operations. In the current record, NTIA, AIA, and many other parties support adoption of the technical requirements in the RTCA DO-362A standard for this purpose.<sup>118</sup> RTCA DO-362A contains Minimum Operational Performance Standards (MOPS) for terrestrial-based (i.e., non-satellite) CNPC point-to-point or point-to-multipoint links in the 5030-5091 MHz band, including power limits, emission limits, and frequency accuracy requirements.<sup>119</sup> The FAA recently issued a Technical Standard Order (TSO) establishing minimum performance standards in the 5030-5091 MHz band based on requirements in RTCA DO-362A.<sup>120</sup> Accordingly, and in consideration of the current record, we propose to adopt the RTCA DO-362A standard or technical requirements based on that standard to govern NNA equipment and operations and seek comment on this proposal.<sup>121</sup> We

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<sup>114</sup> 47 CFR § 95.303.

<sup>115</sup> See *3.5 GHz R&O*, 30 FCC Rcd at 4011, paras. 159-61.

<sup>116</sup> We note that, while most services that fall under the citizens band radio service category are included in part 95 of the Commission’s rules, the rules for 3.5 GHz General Authorized Access (GAA) stations, which are licensed by rule, are located in part 96. See 47 CFR § 96.1(b).

<sup>117</sup> 47 U.S.C. § 307(e)(1).

<sup>118</sup> See NTIA *Refresh PN* Comments at 2; see also AIA *Refresh PN* Comments at 10-11; ASRI *Refresh PN* Comments at 5-6; Boeing *Refresh PN* Comments at 2, 6; NUAIR *Refresh PN* Comments at 1; Wisk *Refresh PN* Comments at 2.

<sup>119</sup> See RTCA DO-362A §§ 1.1, 1.1.2, 1.4; see also *id.* at Executive Summary. Formally, RTCA DO-362A provides the standards for “CNPC Link Systems,” which are defined as “[t]he combination of airborne and ground UAS radios, antennas, and cabling between them that support the data and information exchanges between the UA and the [control station] for the purposes of managing and controlling the flight and operation of a UA.” *Id.* §§ 1.4, 1.9.

<sup>120</sup> See TSO-C213a; see also *supra* n.19; Boeing *Refresh PN* Comments at 6 (stating that “radios that comply with FAA Technical Standard Order . . . requirements, likely based on RTCA DO-362, will be necessary to ensure aviation safety under the AM(R)S service.”).

<sup>121</sup> See RTCA DO-362A. We note that RTCA SC-228 has been working on a revision of the standard, to be designated DO-362B. See RTCA Special Committee 228, Terms of Reference, Minimum Performance Standards for Unmanned Aircraft Systems, 5 (June 23, 2022), <https://www.rtca.org/wp-content/uploads/2022/06/SC-228-TOR-Rev-15-Approved-2022-06-23.pdf> (SC-228 June 2022 Terms of Reference). Below, we seek comment on streamlining the process by which the Commission’s rules can be updated to reflect such a revision. See *infra* para. 74.

seek comment on the adequacy of the RTCA DO-362A specified equipment and operational performance requirements, including both transmitter power and receiver input power, and required minimum coupling loss (separation distance) between ground and airborne CNPC radios and emissions from other licensed radio services.<sup>122</sup>

62. We seek comment on an appropriate measure of CNPC link reliability to assess RTCA DO-362A and other standards, on the specific anticipated level of CNPC link reliability through radios compliant with the RTCA DO-362A standard, and on any available data that confirms that reliability. We note that some parties have already constructed 5030-5091 MHz UAS radios compliant with RTCA DO-362 and some have also obtained experimental license authorization from the Commission for their operation in the 5030-5091 MHz band.<sup>123</sup> We seek comment on any current or past operation of equipment compliant with RTCA DO-362 or RTCA DO-362A, on the results of any such operations, and on the extent to which they support or raise issues or concerns about incorporation of the standard as the governing technical framework for the 5030-5091 MHz band. We also seek comment on whether parties have deployed experimental UAS equipment in the 5030-5091 MHz band in reliance on any other technical standard. Is there any benefit to requiring formal experimental trials or testing for 5030-5091 MHz band equipment?

63. We also seek comment on any costs or disadvantages in imposing the RTCA DO-362A standard. For example, we seek comment on whether and to what extent imposition of this standard may limit the scope of UAS operations that can make use of links in the band. We also seek comment on whether any such limitations are a result of hard constraints codified in the standard on the scope of UAS operations that may occur consistent with the standard specifications, or instead are a consequence of practical constraints, such as if the standard requires the development and installation of radio equipment that may be too heavy for some UA to carry. For example, the standard provides the standards for CNPC Link Systems, which are limited to communications between a UA and a control station.<sup>124</sup> We seek comment on whether application of the standard to the band would preclude use of the band for UA-to-UA or broadcast transmissions for purposes such as DAA or Remote ID. Or would transmissions such as Remote ID broadcasts be compatible with communications between ground stations and aircraft so long as the broadcast transmissions complied with the requirements of section 2.2.1 of RTCA DO-362A that are applicable to aircraft stations?<sup>125</sup> Some have also asserted that application of the standard may restrict permissible operations to flights transitioning in and out of Class A airspace.<sup>126</sup> We seek comment on the extent to which requiring compliance with RTCA DO-362A would strictly or effectively limit operations in this manner.

64. Canada states that some technical incompatibilities have been identified between RTCA DO-362A and a proposed standard by the European Organization for Civil Aviation Equipment

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<sup>122</sup> We note that the Commission has recently issued a Notice of Inquiry regarding potential measures that may promote improvements in receiver performance. *See Promoting Efficient Use of Spectrum through Improved Receiver Interference Immunity Performance*, ET Docket No. 22-137, Notice of Inquiry, FCC 22-29 (Apr. 21, 2022). Comments regarding UAS-related receiver performance may also be submitted in that docket.

<sup>123</sup> *See, e.g.,* L3H *Refresh PN* Comments at 7 (stating that certain requirements of the standard were “successfully demonstrated in prototype CNPC C Band radios”); uAvionix *Refresh PN* Comments at 1 (stating that uAvionix has obtained experimental licenses for 5030-5091 MHz band radio development in two locations, Bigfork, Montana, and Grand Forks, North Dakota, and that (as of October 12, 2021) flight tests had already begun at Bigfork using radios designed to comply with RTCA DO-362A).

<sup>124</sup> *See* RTCA DO-362A, § 1.2 (“[T]his CNPC Link System MOPS document addresses only the CNPC Link System, which is part of a larger system that seeks to exchange information between a UA and its Control Station”).

<sup>125</sup> *See* RTCA DO-362A, § 2.2.1.

<sup>126</sup> *See* CTIA *AIA Petition* Comments at 9. Class A airspace is the airspace from 18,000 feet mean sea level (MSL) up to and including flight level (FL) 600. *See* FAA, *Airspace Classification*, [https://aspm.faa.gov/aspmhelp/index/Airspace\\_Classification.html](https://aspm.faa.gov/aspmhelp/index/Airspace_Classification.html) (last visited Sept. 6, 2022).

(EUROCAE) for satellite-based CNPC in the same band, designated draft ED-265, and asserts that adoption of the RTCA DO-362A standard without addressing the incompatibilities may create difficulties in managing the operation of CNPC links in support of international UAS operations.<sup>127</sup> We seek comment on these concerns, the nature of the incompatibilities, and what, if any, measures, requirements, or restrictions are necessary to address them.<sup>128</sup> We note that RTCA has been considering the “ED-265/DO-362 interference issue.”<sup>129</sup> We seek comment on any determinations that have been made regarding these incompatibilities and whether the issue is adequately addressed in the current RTCA DO-362A version of the standard or will be addressed in a future version. If revisions to RTCA DO-362A are necessary or appropriate to address these issues, we seek comment on whether the next version of the standard is anticipated to be backwardly compatible with RTCA DO-362A, and if not, whether adoption of final rules should be deferred until these issues are resolved in a new version of the standard. We seek comment on whether any coordination or other requirements are necessary to ensure adequate protection of foreign satellite-based CNPC services in the band, particularly insofar as they may operate near United States jurisdictional boundaries. We also note that footnote 5.443C of the Table of Frequency Allocations limits the use of the 5030-5091 MHz band to “internationally standardized aeronautical systems.”<sup>130</sup> We seek comment on whether this provision requires the Commission to adopt a standard that is compatible with the EUROCAE standard, and whether RTCA DO-362A would meet our obligations under footnote 5.443C.

65. If we incorporate the RTCA DO-362A standard into our rules, we seek comment on whether to do so through adoption of a general requirement that, to be certified for use under or operated under the NNA rules, all radio equipment must comply with the requirements of RTCA DO-362A, rather than to separately incorporate the various technical requirements of RTCA DO-362A (e.g., power, frequency stability, and emission limitations) into the service rules.<sup>131</sup> If we adopt a general requirement to comply with RTCA DO-362A, we propose to also separately codify requirements for power and emission bandwidth based on the RTCA DO-362A standard, to provide clarity and ease of reference in the rules.<sup>132</sup> If, alternatively, we do not have a requirement of general compliance with RTCA DO-362A, but require compliance with only selected provisions of the standard, which provisions or requirements from RTCA DO-362A should we impose? Which specific provisions of RTCA DO-362A are necessary for compatible use of the 5030-5091 MHz band? Should the Commission’s technical framework require compliance more broadly with section 2, the Equipment Performance Requirements and Test Procedures

<sup>127</sup> See Canada Refresh PN Comments at 1; see also *EUROCAE Open Consultation, ED-265*, <https://www.eurocae.net/news/posts/2019/may/eurocae-open-consultation-ed-265/> (last visited Sept. 6, 2022).

<sup>128</sup> While Canada does not describe the nature of the incompatibility to which it refers, and no other commenter discusses incompatibilities between the RTCA DO-362A standard and the EUROCAE standard, discussions before ICAO have focused on the difference in TDD time frames between the two standards; RTCA DO-362A terrestrial links relies on a 50 ms time frame to minimize latency, while the satellite-based links under ED-265 would use a 300 ms time frame. See, e.g., ICAO, C2 Link 5 GHz Band Planning – Status Update – RPAS Panel WG2, at 3-4 (Oct. 2021), [https://www.icao.int/safety/FSMP/MeetingDocs/FSMP%20WG12/IP/FSMP-WG12-IP01\\_C%20Band%20Planning\\_20210924.pptx](https://www.icao.int/safety/FSMP/MeetingDocs/FSMP%20WG12/IP/FSMP-WG12-IP01_C%20Band%20Planning_20210924.pptx) (last visited Sept. 6, 2022); see also *id.* at 5 (“[G]iven the different TDD time frames, the potential for Air-to-Air and Ground-to-Ground interference between the terrestrial and satellite equipped UA and ground systems exists.”).

<sup>129</sup> RTCA-228, Summary of Plenary #30 RTCA Paper No. 183-21/SC228-089, 2 (July 16, 2021), <https://www.rtca.org/wp-content/uploads/2021/08/228sum30.pdf> (summary of the thirtieth plenary meeting of RTCA SC-228); see also SC-228 June 2022 Terms of Reference at 2 (stating that in the Phase Three update of RTCA DO-362A, the standard will be “harmonized with C-band satcom usage internationally, if required”).

<sup>130</sup> 47 CFR § 2.106, footnote 5.443C.

<sup>131</sup> See Appendix A (Proposed Rules).

<sup>132</sup> See Appx. A, §§ 88.101, 88.103; see also RTCA DO-362A, §§ 2.2.1.6.1.1.1 (C Band ARS Radio Transmitter Output Power (High-Power Mode)), 2.2.1.6.1.1.2 (C Band ARS Radio Transmitter Output Power (Low-Power Mode)), 2.2.1.5.2 (Channel Width), 2.2.1.5.5 (Video Channels), § 2.2.1.5.6 (Non-Video Channels).

applicable to the link system radios, or both sections 2 and 3, the latter of which includes performance standards for the link system when installed in a UA and ground location?<sup>133</sup> Alternatively, is it sufficient, for purposes of establishing the baseline technical framework, to require compliance with the specific frequency capture range (which includes a frequency accuracy standard), power limits, and emission limits stipulated by the standard?<sup>134</sup>

66. RTCA states that emission limit requirements should also require equipment compliance with the 50 ms Time Division Duplex (TDD) requirements specified under section 2.2.1.3 of the standard.<sup>135</sup> It asserts that use of non-TDD systems or TDD systems with different time length frames operating in the 5030-5091 MHz band within the same radio horizon as RTCA DO-362A compliant equipment will cause unacceptable levels of interference.<sup>136</sup> We seek comment on RTCA's assertion and recommendation, and whether adoption of the standard for NNA will necessarily require all equipment in the band, including equipment in neighboring NSS blocks, to use RTCA DO-362A compliant TDD equipment to avoid harmful interference to NNA operations.

67. We seek comment on whether any of the general technical requirements in subpart D of part 87 should apply to NNA equipment. NTIA proposes, for example, that in addition to meeting the out-of-band emissions limits in RTCA DO-362A, we should also require equipment to meet the out-of-band emissions limit specified in section 87.139(c).<sup>137</sup> RTCA argues, however, that the current requirements of section 87.139(c) are less stringent than those in RTCA DO-362A, and that the Commission should just require compliance with the latter.<sup>138</sup> L3H asserts that it is not clear whether section 87.139 is applicable, as it applies only to communications using certain specific Emissions Designators and the RTCA DO-362A mandatory modulation makes no reference to these designators.<sup>139</sup> We seek comment on NTIA's proposal, on whether section 87.139(c) may, under its existing terms, apply to UAS communications anticipated in the 5030-5091 MHz band, and whether such application is in the public interest. We further seek comment on whether we need to specify authorized emission classes and

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<sup>133</sup> See RTCA DO-362A, §§ 2, 3. Section 3 requirements are imposed out of recognition that “[s]ome CNPC Link System attributes and performance may be affected by factors resulting from integration into the UAS.” RTCA DO-362A, § 3.

<sup>134</sup> See NTIA *Refresh PN* Comments at 2; RTCA *Refresh PN* Comments at 6; see also RTCA DO-362A §§ 2.2.1.4 (frequency capture range), 2.2.1.6.1 (power limits), 2.2.1.6.2 (emission/output power spectral density limits). RTCA flags the section 2.2.1.6 power and emission limits (stating that these requirements have been made “more stringent” than in the original RTCA DO-362 standard) but recommends we require compliance with transmitter EIRP and EIRP spectral density emissions requirements under section 3.2.1.42. See RTCA *Refresh PN* Comments at 6.

<sup>135</sup> See RTCA *Refresh PN* Comments at 6. See also AIA *Refresh PN* Comments at 11 (supporting a requirement that transmitters comply with the 50 ms TDD requirements of RTCA DO-362A § 2.2.1.3).

<sup>136</sup> See RTCA *Refresh PN* Comments at 6.

<sup>137</sup> See NTIA *Refresh PN* Comments at 2. Section 87.139(c) of the Commission's rules provides that “[f]or aircraft station transmitters first installed after February 1, 1983, and for aeronautical station transmitters in use after February 1, 1983, and using H2B, H3E, J3E, J7B or J9W, the peak envelope power of any emissions must be attenuated below the peak envelope power of the transmitter (pX) as follows: (1) When the frequency is removed from the assigned frequency by more than 50 percent up to and including 150 percent of the authorized bandwidth of 3.0 kHz, the attenuation must be at least 30 dB. (2) When the frequency is removed from the assigned frequency by more than 150 percent up to and including 250 percent of the authorized bandwidth of 3.0 kHz, the attenuation must be at least 38 dB. (3) When the frequency is removed from the assigned frequency by more than 250 percent of the authorized bandwidth of 3.0 kHz for aircraft transmitters the attenuation must be at least 43 dB. For aeronautical station transmitters with transmitter power up to and including 50 watts the attenuation must be at least  $43 + 10\log_{10} pX$  dB and with transmitter power more than 50 watts the attenuation must be at least 60 dB.” 47 CFR § 87.139(c).

<sup>138</sup> See RTCA *Refresh PN* Comments at 6.

<sup>139</sup> See L3H *Refresh PN* Comments at 9.

designators for this service, such as has been done with aviation services.<sup>140</sup> If so, we seek comment on what classes and designators are appropriate, and whether we should use one of the types of assignable emissions already defined in, for example, section 87.137 of the rules.<sup>141</sup> We propose emission designators of G8D for data and G8F for video and seek comment on their appropriateness for operations subject to RTCA DO-362A.<sup>142</sup>

68. We seek comment on any other requirements we should impose on NNA equipment. For example, what requirements should we adopt to facilitate a DFMS's ability to communicate with or otherwise control such equipment in the execution of the DFMS's responsibilities? Should equipment be required to enable the DFMS to make direct (machine-to-machine) frequency assignments to the UAS equipment, in order to ensure that assignments are accurately programmed? Should this capability be available at all times, or only pre-flight? To the extent DFMS communications or control signals are intended to affect operating parameters of the UA, should such communications or control signals be required to occur exclusively through communications between the DFMS and the relevant ground control station or stations, rather than through direct communications with a UA station? In the 3.5 GHz band, fixed stations must respond automatically to SAS directions to modify certain operational parameters such as frequency or power limit.<sup>143</sup> Should requirements be adopted for NNA equipment to provide the DFMS with similar control? We further seek comment on whether to impose requirements to ensure interoperability between NNA and NSS network services. Potentially, UA flights that initially rely on a network service may extend into areas where no network has been deployed. What requirements, if any, should we adopt to facilitate operations that can seamlessly switch between network service for CNPC and NNA assignments for that purpose?

69. We note that RTCA has also adopted another standard applicable to CNPC in the 5030-5091 MHz band, designated RTCA DO-377A, Minimum Aviation System Performance Standards for C2 Link Systems Supporting Operations of Unmanned Aircraft Systems in U.S. Airspace (RTCA DO-377A).<sup>144</sup> Whereas RTCA DO-362A describes minimum performance standards for the ground and airborne radios used for a direct link, focusing on certain design characteristics of these radios such as power and emissions limits, RTCA DO-377A describes the minimum performance of an overall "C2 Link System," defined as a system used to send information exchanges between a control station and an unmanned aircraft and to manage the connection between them, and which can be comprised of one or many Air/Ground links and Ground/Ground links.<sup>145</sup> RTCA DO-377A can be applied to systems relying on a direct connection or systems relying on network functionality for the connection, and focuses on system requirements, including system performance, safety, and security requirements.<sup>146</sup> To the extent that RTCA DO-377A applies to NNA operations, we seek comment on whether we should adopt rules

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<sup>140</sup> See 47 CFR § 87.131.

<sup>141</sup> See 47 CFR § 87.137 (providing the assignable emissions for part 87 services and corresponding emission designators and authorized bandwidths).

<sup>142</sup> See 47 CFR § 2.201; see also Appx. A, § 88.105.

<sup>143</sup> See 47 CFR § 96.39(c)(2).

<sup>144</sup> See RTCA DO-377A. Like RTCA DO-362A, RTCA DO-377A is a revision of the original version of the standard, RTCA DO-377.

<sup>145</sup> See RTCA DO-377A, §§ 1.2, 3.2.1.

<sup>146</sup> See, e.g., RTCA DO-377A at 1.1.2. Although it appears that RTCA DO-377A's performance standards can be applied to any C2 Link System, we note that commenters in this proceeding have generally described the requirements of RTCA DO-377A in the context of network-based CNPC. See, e.g., AIA *Refresh PN* Comments at 6 (asserting that network providers of CNPC must "meet[] aviation performance levels and the safety requirements (in DO-377A) that govern a proposed network of [ground stations] and services"); *id.* at 8 (stating that RTCA DO-377A "guides the implementation of ground networks"); uAvionix *Refresh PN* Comments at 1; Wisk *Refresh PN* Comments at 2 n.5 ("DO-377A provides a basis for the safety, performance, and security standards that a CNPC network should meet . . .").

requiring compliance with the standard.<sup>147</sup> Alternatively, should we limit our requirements, as AIA recommends, to technical requirements based on RTCA DO-362A and leave system performance, safety, and security requirements, such as those in RTCA DO-377A, to be considered by a multi-stakeholder group or addressed by the FAA?<sup>148</sup>

70. *Application of Part 87 Aviation Service Rules and Part 1 Wireless Radio Service Rules.* We seek comment on where to locate the new NNA services rules within the organization of the Commission's rules. Some parties argue that the new service should be located in part 87,<sup>149</sup> which "states the conditions under which radio stations may be licensed and used in the aviation services."<sup>150</sup> We seek comment on this option. We note, however, that the new services may not entirely fit within the scope of "aviation services," which are defined as "[r]adio-communication services for the operation of aircraft."<sup>151</sup> For example, we seek comment above on whether to permit non-CNPC traffic, such as payload communications, which would be communications to achieve mission objectives and not for the "operation of aircraft." In addition, it may be appropriate to locate the new NNA and NSS service rules together, and we anticipate that NSS licenses will differ from traditional aviation services in a number of other ways. For example, unlike licenses in traditional aviation services, we anticipate that NSS licenses will provide exclusive rights to spectrum.<sup>152</sup> Further, we expect that NSS licenses will be used for the provision of commercial wireless network services and will therefore raise a number of issues more comparable to those involved in the regulation of commercial network services than the regulation of traditional aviation services, such as considerations of promoting service competition and network build-out, as well as possible license auction issues. In addition, the current part 87 rules were not adopted with UAS in mind, and many of the rules in part 87, even in sections otherwise generally applicable to part 87 services, may be unnecessary or inappropriate to apply to UAS communications or to the 5030-5091 MHz services specifically.<sup>153</sup> Locating the rules in a new rule part may therefore provide greater clarity and ease of reference in determining the rules applicable to the band. Finally, locating the rules for the 5030-5091 MHz band in a new rule part would not be inconsistent with its allocation for AM(R)S. Whether or not the rules are in part 87, the band will remain protected aviation spectrum allocated for AM(R)S and rules under this allocation can be adopted to achieve the safety and reliability appropriate for

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<sup>147</sup> While we do not anticipate that wide-area networks will be deployed in reliance on NNA assignments because of the highly transient nature of the relevant spectrum rights, we do not propose to prohibit operators from using their temporary assignments with fixed network infrastructure. Potentially, parties might use these transient spectrum rights in connection with limited infrastructure deployment, such as a string of ground stations deployed over a particular and frequently used flight path. We invite commenters to discuss whether and to what extent the minimum performance standards of RTCA DO-377A would apply in such cases.

<sup>148</sup> See AIA *Refresh PN* Comments at 8, 13-14 (advocating that "the basis of initial service rules" should be "found in RTCA DO-362A" and "aviation-specific requirements based on DO-377A should be developed "by members of the UAS standards-making community"); WInnForum *Refresh PN* Comments at 3 (advocating that the Commission establish rules with "the minimum necessary technical restrictions to provide adequate protection against harmful interference"). Above, we address in further detail the potential reliance on a multi-stakeholder group to further develop recommendations or standards for DFMS and CNPC operation in the 5030-5091 MHz band.

<sup>149</sup> See, e.g., AIA Petition at ii.

<sup>150</sup> 47 CFR § 87.1(b).

<sup>151</sup> 47 CFR § 87.5.

<sup>152</sup> See 47 CFR § 87.41(b) (providing that frequencies are available for part 87 aviation services "on a shared basis only and will not be assigned for the exclusive use of any licensee").

<sup>153</sup> See, e.g., CTIA *AIA Petition* Comments at 15 (arguing that part 87 rules were "designed for *manned* aircraft," that "there are critical differences among *manned* aircraft and *unmanned* aircraft," including different risk considerations, that "regulations for each should be appropriate," and that a new rule part for UAS would be "more workable than attempting to retrofit rules intended for manned aviation to accommodate UAS.") (emphasis in original). We seek comment below on the extent to which the substance of specific part 87 requirements should be applied to NNA operations.

communications “relating to the safety and regularity of flight,” regardless of where the rules are located.<sup>154</sup> Accordingly, we seek comment on whether we should locate the new UAS rules in a new rule part rather than in part 87, as reflected in Appendix A.<sup>155</sup> We further seek comment on alternative options for the appropriate home for the new rules.

71. Whether we locate the rules for the 5030-5091 MHz band in part 87, a new rule part, or elsewhere, we seek comment on whether and to what extent the generally applicable rules in subparts B through F of part 87 should apply to or be incorporated into the new NNA service, either in their current form or with modifications.<sup>156</sup> We ask commenters that argue for application of these general part 87 rules to be specific as to which provisions they recommend should be applied, and what, if any, modifications they propose. We anticipate that many of these provisions will be unnecessary, superseded, or otherwise inappropriate as a result of the specific requirements we adopt for the new service. For example, section 87.41 (Frequencies) in subpart B provides rules for the request and coordination of specific frequencies. Given the proposal for frequency management by a DFMS, is this provision entirely superseded, or is there an aspect of this provision that should apply to NNA assignments?

72. As another example, section 87.89 requires that, with certain exceptions, operators of licensed aviation service stations “must hold a commercial radio operator license or permit.”<sup>157</sup> The operator license requirement is distinct from and wholly independent of the requirement that each station be licensed and requires individuals seeking an operator license to demonstrate, by passing a formal examination, sufficient knowledge of the relevant radio technologies.<sup>158</sup> The operator license requirement stems from section 318 of the Act, which requires operators of transmitting equipment of licensed stations to hold an operator’s license, except where the Commission finds that the public interest, convenience, or necessity will be served by waiving such requirement.<sup>159</sup> Some parties in the record have suggested that the Commission adopt operator license requirements for all UAS operators that use 5030-5091 MHz radio equipment, or at least impose the equivalent knowledge requirements on such operators.<sup>160</sup> Others have argued against such a requirement. For example, some assert that the Commission should defer to the FAA as the expert agency over aircraft pilot qualifications and rely on the FAA’s regulations establishing the testing and certification of UAS operators instead of establishing its own UAS operator licensing or

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<sup>154</sup> See 47 CFR § 2.1 (definition of AM(R)S).

<sup>155</sup> See *supra* Appx. A.

<sup>156</sup> See 47 CFR pt. 87, subpts. B (Applications and Licenses), C (Operating Requirements and Procedures), D (Technical Requirements), E (Frequencies), F (Aircraft Stations). Above, we discuss in greater detail possible technical requirements, including possible application of the general part 87 technical provisions in subpart D.

<sup>157</sup> 47 CFR § 87.89(a); see also FCC, *Commercial Radio Operator License Program*, <https://www.fcc.gov/commercial-radio-operator-license-program> (last visited Sept. 6, 2022) (“FCC rules require that licensees of [aviation service] stations permit only persons holding the appropriate FCC-issued commercial operator license to perform specified transmitter operation, maintenance and repair duties.”). We note that this part 87 requirement is subject to the general waiver of the operator license requirement for *subscribers* of a Wireless Radio Service. See 47 CFR § 1.903(c); see also *id.* § 1.907 (providing that part 1 Wireless Radio Services include, *inter alia*, part 87 services). Given that NNA assignments are intended to provide operators with direct access to spectrum, however, it appears unlikely that many UAS operators that rely on NNA assignments will be doing so as subscribers of a Wireless Radio Service.

<sup>158</sup> See FCC, *Examinations*, <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/commercial-radio-operator-license-program/examinations> (last visited Sept. 6, 2022).

<sup>159</sup> 47 U.S.C. § 318.

<sup>160</sup> See, e.g., AIA Petition at 9. AIA proposes that operators be required to pass a test incorporating “Element 3” of the Commission’s operator license examination. See AIA Petition at 9. Element 3 covers knowledge of the electronic fundamentals and techniques required to adjust, repair, and maintain radio transmitters and receivers. See FCC, *Examinations*, <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/commercial-radio-operator-license-program/examinations#block-menu-block-4> (last visited Sept. 6, 2022).

permit requirement.<sup>161</sup> Some also suggest that requiring all operations to be performed by licensed UAS operators might unintentionally prohibit autonomous UAS operations that do not require human operators.<sup>162</sup> We seek comment on whether, in addition to the station license (which, as discussed, we propose to provide through licensing by rule), we should require UAS operators using a NNA assignment in the 5030-5091 MHz band to have an individual operator license. Conversely, would it be in the public interest to forgo any such operator licensing or permitting requirements as unnecessary or inappropriate in light of FAA regulation of and authority over UAS remote pilot qualifications, or for other reasons?

73. We also seek comment on whether the new service should be subject to rules under part 1, subpart F governing “Wireless Radio Service” applications and proceedings.<sup>163</sup> The “Wireless Radio Services” are already defined to include licensed-by-rule services such as those under parts 95 and 96, as well as public and private part 87 aviation services, although not all of these subpart F provisions apply to licensed-by-rule services, such as those requirements governing license applications.<sup>164</sup> Accordingly, we seek comment on whether NNA services, even if licensed by rule, should be included in and subject to the subpart F rules for Wireless Radio Services to the same extent as other licensed-by-rule services.

74. *Streamlined procedures to update incorporated standards.* We anticipate that any technical standard developed by a standards organization that we incorporate by reference into our rules will be subject to ongoing revisions as parties gain more experience and the UAS industry continues to rapidly evolve. For example, RTCA DO-362A, which we consider above, is a 2020 revision of the RTCA DO-362 standard issued by RTCA in 2016, and RTCA Special Committee 228 (SC-228) is already working on a second revision.<sup>165</sup> Accordingly, we anticipate that the rules will need to be revisited in the future to reflect important and beneficial standard updates. In the past, the Commission has found it in the public interest to streamline the process for incorporating updates to a previously adopted standard, by delegating rulemaking authority to one or more Bureaus for this purpose.<sup>166</sup> To help ensure that the rules for 5030-5091 MHz UAS operations continue to reflect the most current version of any incorporated standard for 5030-5091 MHz UAS operations, we invite comment on whether we should adopt a comparable delegation of rulemaking authority in this case. Specifically, we seek comment on whether to delegate joint rulemaking authority to WTB and OET to incorporate into the Commission’s rules, after consultation with the FAA and NTIA, and notice and an opportunity for public comment, any updated version of a previously incorporated technical standard applicable to UAS

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<sup>161</sup> See CTIA *AIA Petition* Comments at 19-20; Small UAV Coalition *AIA Petition* Comments at 7.

<sup>162</sup> See Small UAV Coalition *AIA Petition* Comments at 6.

<sup>163</sup> See 47 CFR pt. 1, subpt. F (Wireless Radio Services Applications and Proceedings). The term “Wireless Radio Services” or WRS is defined as “[a]ll radio services authorized in parts 13, 20, 22, 24, 26, 27, 30, 74, 80, 87, 90, 95, 96, 97 and 101 of this chapter, whether commercial or private in nature.” 47 CFR § 1.907. Thus, WRS is an umbrella designation covering a wide range of terrestrially-based licensed wireless services.

<sup>164</sup> See 47 CFR § 1.907 (definition of “Wireless Radio Services”).

<sup>165</sup> See, e.g., SC-228 June 2022 Terms of Reference at 5 (indicating that DO-362B has a due date of October 2023).

<sup>166</sup> See, e.g., *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, WT Docket 01-309, Report and Order, 18 FCC Rcd 16753, 16779, para. 63 (2003); *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, First Report and Order, 23 FCC Rcd 3406, 3441, para. 87 (2008); *Access to Telecommunication Equipment and Services by Persons with Disabilities; Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Handsets*, CG Docket No. 13-46, WT Docket Nos. 07-250, 10-254, Report and Order and Order on Reconsideration, 32 FCC Rcd 9063, 9092, Appx. B (2017) (expanding rulemaking delegation codified at section 20.19(k)); see also *Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, GC Docket Nos. 10-51, 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8643, para. 49 (2013).

operations in the 5030-5091 MHz band.<sup>167</sup> Similar to limitations the Commission has placed in some earlier delegations of rulemaking authority to update standards, should we limit this delegated authority to the incorporation of standard updates that do not raise major compliance issues?<sup>168</sup>

## 7. Network Supported Service (NSS) Service Rules

75. We seek comment on the license terms and service rules we should adopt for NSS licenses. We seek comment in particular on issuing exclusive use, geographic area defined licenses for a specific term of years, with rights of renewal, subject to specific performance (network coverage) obligations. We seek comment on appropriate technical and operational requirements and on the assignment process rules.

76. *Geographic area licenses.* Consistent with our approach in several other bands that has promoted the deployment of wide area networks for a variety of fixed and mobile services,<sup>169</sup> we propose to license NSS spectrum blocks in the 5030-5091 MHz band for exclusive use on a geographic area basis. Geographic area licensing provides certainty to licensees and promotes efficient spectrum use, among other things, and will give licensees siting flexibility that will promote the deployment of wide area networks in the 5030-5091 MHz band. Geographic area licensing will also help to facilitate rapid assignment of licenses, utilizing competitive bidding when mutually exclusive applications are received.<sup>170</sup> We seek comment on this approach, on its costs and benefits, and on alternative licensing approaches. If a party opposes using geographic licensing, it should explain its position, describe the licensing scheme it supports, and identify the costs and benefits associated with its alternative licensing proposal.

77. We further seek comment on the appropriate geographic license area or areas for NSS licenses to support NSS UAS operations and facilitate investment, including investment by small entities, and robust spectrum use. We seek comment on whether we should adopt larger license areas such as Regional Economic Area Groupings (REAG) or nationwide markets to facilitate NSS uses that may often involve flight over long distances, adopt a more granular scheme such as Partial Economic Areas (PEA), which would provide more flexibility to serve a smaller area but still permit parties to achieve a larger area through aggregation, or adopt a mix of large and small license areas for different spectrum blocks.<sup>171</sup> While NTIA supports licensing by REAG, AIA argues in its *Refresh PN* comments that license areas corresponding to the Air Route Traffic Control Center (ARTCC) areas or other areas “that make sense in an aviation system context” would be appropriate, and Wisk similarly recommends use of the ARTCC areas to provide “alignment with a general air traffic density basis.”<sup>172</sup> We seek comment on whether to

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<sup>167</sup> While we invite comment on this issue, we note that it involves potential rules regarding agency organization, procedure, or practice, which are not subject to notice-and-comment rulemaking requirements under section 553 of the Administrative Procedure Act. See 5 U.S.C. § 553(b)(A).

<sup>168</sup> Cf. 47 CFR §§ 0.241(a)(1)(ii), 20.19(k)(2).

<sup>169</sup> See, e.g., 47 CFR § 27.6(h), (i), and (m) (AWS-1, AWS-4, and 3.7 GHz Service bands, respectively).

<sup>170</sup> See, e.g., *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 11078, 11098, para. 56 (2020).

<sup>171</sup> REAGs divide the nation, including its territories, into 12 areas, while PEAs divide it into 416 areas. See *Regional Economic Area Groupings*, <https://www.fcc.gov/file/13212/download> (REAG map) (last visited Sept. 6, 2022); *Wireless Telecommunications Bureau Provides Details About Partial Economic Areas*, GN Docket No. 12-268, Public Notice, 29 FCC Rcd 6491, 6491 (WTB 2014).

<sup>172</sup> Compare NTIA *Refresh PN* Comments at 5 (asserting that REAGs “would likely best support such UAS use”), with AIA *Refresh PN* Comments at 14 (supporting ARTCCs or “other geographical areas that make sense in an aviation system context”); Wisk *Refresh PN* Comments at 2 n.6 (supporting ARTCCs “[f]or simplicity and alignment with a general air traffic density basis”). But see AIA Feb. 1, 2022 *Ex Parte*, Attach. at 7 (suggesting that geographic area licenses could also be issued for some blocks on a state-wide or nationwide basis). Each Air Route Traffic Control Center (ARTCC) provides, within a defined region of the country, air traffic services to aircraft

(continued....)

adopt license areas based on a geographic area division of the country that has been developed specifically for aviation purposes, such as the ARTCC areas.

78. *License term.* We propose to issue NSS licenses for an initial 15-year term. AIA and Wisk both support a license term “longer than 10 years,”<sup>173</sup> and we believe that circumstances in the band, including the need to set up a DFMS in the band and integrate its functions with operations in NSS spectrum, as well as the nascent stage of standards development and other technical work regarding NSS networks generally, favor the use of a longer initial license term. We propose to limit subsequent terms to 10 years. We seek comment on these proposals.

79. *Performance (network build-out or coverage) requirements.* The Commission also generally establishes build-out or coverage requirements for licenses, referred to as performance requirements, to ensure that spectrum is intensely and efficiently used and as mandated by the Act for auctioned spectrum.<sup>174</sup> We seek comment on performance requirements that are appropriate for NSS licensees and UAS operation. We seek comment in particular on whether to adopt a population-based performance metric, such as a requirement to cover at least 80 percent of the population in the license area within 12 years of the grant of the license, as the Commission recently adopted for geographic licenses in other bands.<sup>175</sup> We also seek comment on whether to adopt an appropriate interim performance requirement, such as a requirement to cover at least 45 percent of the population in the license area within six years of license grant.<sup>176</sup>

80. While some parties support population-based coverage requirements for NSS licensees,<sup>177</sup> AIA argues that population is not an appropriate benchmark in this context, because “the spectrum will be used by aircraft rather than people on the ground,” including for “crop examination, border surveillance, and travel over sparsely populated areas[.]”<sup>178</sup> AIA argues that such uses require reliable control links for all geographic areas of flight regardless of proximity to population centers, and suggests that a build-out requirement based on “user demand, special diversity and signal strength” would better meet the needs of beyond-radio-line-of-sight UAS operations.<sup>179</sup> We seek comment on AIA’s arguments, and on whether

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operating on an Instrument Flight Rule (IFR) Flight Plan in controlled airspace, principally during the “en route” phase of the flight. See *Air Route Traffic Control Center*, <https://www.cfinotebook.net/notebook/air-traffic-control/air-route-traffic-control-center> (last visited Sept. 6, 2022). There are 22 ARTCC regions covering the United States. See FAA, *ARTCC*, [https://www.faa.gov/about/office\\_org/headquarters\\_offices/ato/service\\_units/air\\_traffic\\_services/artcc](https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/air_traffic_services/artcc) (last visited Sept. 6, 2022); AVweb, *Air Route Traffic Control*, <https://www.avweb.com/flight-safety/faa-regs/air-route-traffic-control/> (last visited Sept. 6, 2022) (displaying a map of the 20 ARTCC areas covering CONUS).

<sup>173</sup> See AIA *Refresh PN* Comments at 14 (stating that the initial term “should be “longer than 10 years to begin with, while the market is in its infancy, to encourage early investment”); Wisk *Refresh PN* Comments at 6.

<sup>174</sup> See 47 U.S.C. § 309(j)(4)(B).

<sup>175</sup> See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2385, para. 93 (2020) (*3.7 GHz R&O*); *Review of the Commission’s Rules Governing the 896-901/935-940 MHz Band*, WT Docket No. 17-200, Report and Order, Order of Proposed Modification, and Orders, 35 FCC Rcd 5183, 5235, para. 129 (2020) (*900 MHz Service Rules R&O*). We note that some parties within the aviation community use the term “performance requirements” to refer to a particular minimum technical or operational standard of performance. See, e.g., AIA *Refresh PN* Comments at 14. We do not seek comment on such requirements here; rather, we use “performance requirements” as the Commission has customarily used it, to refer to deadlines on licensees for meeting certain deployment or coverage milestones.

<sup>176</sup> See *3.7 GHz R&O*, 35 FCC Rcd at 2385, para. 93; *900 MHz Service Rules R&O*, 35 FCC Rcd at 5235, para. 129.

<sup>177</sup> See L3H *Refresh PN* Comments at 16; see also *id.* at 18 (asserting that “[s]imilar to cellular phone service, commercial UAS rollout of terrestrial services is likely to follow population density”).

<sup>178</sup> See AIA *Refresh PN* Comments at 15.

<sup>179</sup> See *id.*

we should either require licensees to meet some criteria other than population, such as geographic area coverage of 25% of the license area at year six and 50% of the license area at year 12.<sup>180</sup> Alternatively, should we provide licensees with the option of meeting either a population-based requirement or some alternative? To the extent commenters recommend alternative build-out requirements, we ask them to propose either specific numerical benchmarks or other specific and objectively verifiable buildout criteria.

81. We seek comment on appropriate rules for compliance demonstration and enforcement. As for compliance demonstration, we propose to adopt a process similar to compliance rules applicable to part 27 licensees, requiring a demonstration of compliance with the performance requirements by filing a construction notification with the Commission within 15 days of the expiration of the applicable benchmark, including electronic coverage maps accurately depicting the boundaries of the licensed area and the boundaries of the actual areas to which the licensee provides service.<sup>181</sup> If a coverage map is used to demonstrate compliance, we seek comment on the appropriate standardized parameters for the propagation model. For example, should there be standardized values for inputs such as cell edge probability, cell loading, and clutter? As for enforcement, we propose that if a licensee fails to meet the final performance requirement, the license authorization will terminate automatically without specific Commission action.<sup>182</sup> If we adopt an interim requirement, we propose that failure to meet the requirement would result in the reduction by two years of both the due date for the final performance requirement and the license term (resulting in a final performance requirement at year 10 and a license term of 13 years).<sup>183</sup>

82. *License Renewal.* We seek comment on the appropriate standard for license renewal. In the *WRS Second R&O*, the Commission adopted a unified regulatory framework for the Wireless Radio Services (WRS) that replaced the existing patchwork of service-specific rules regarding renewal with a single unified standard, and safe harbors for meeting that standard for different service categories, including a safe harbor for geographic licensees providing commercial service.<sup>184</sup> We seek comment on whether the regulatory renewal framework for WRS commercial geographic licensees is appropriate for NSS licensees. If we apply this framework, are there any special factors we need to account for or incorporate in the context of networks for support of UAS operations?

83. *Competitive bidding or other assignment procedures.* In the event that mutually exclusive license applications are received, we propose to assign these exclusive-use licenses through a system of competitive bidding.<sup>185</sup> Consistent with the competitive bidding procedures the Commission has used in previous auctions, we propose to conduct any auction for geographic area licenses for spectrum in the band in conformity with the part 1, subpart Q general competitive bidding rules, subject

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<sup>180</sup> See, e.g., *900 MHz Service Rules R&O*, 35 FCC Rcd at 5235, para. 130.

<sup>181</sup> See 47 CFR §§ 1.946(d), 27.14(k).

<sup>182</sup> See 47 CFR § 1.946(c).

<sup>183</sup> See, e.g., 47 CFR § 27.14(g)(1), (h)(1), (r)(3).

<sup>184</sup> See *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Second Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 8874, 8883-85, paras. 20-23 (2017) (*WRS Second R&O*); see also 47 CFR § 1.949. The renewal standard requires that “[a]n applicant for renewal . . . demonstrate that over the course of the license term, the licensee[] provided and continue[s] to provide service to the public, or operated and continue[s] to operate the licensee to meet [its] private, internal communications needs. See 47 CFR § 1.949(d). The safe harbor for geographic licensees providing commercial service requires an applicant for renewal to demonstrate, in part, that it met its performance requirements and continues to provide service at least at the level required by its performance requirements. See 47 CFR § 1.949(e)(2), (3).

<sup>185</sup> See 47 U.S.C. § 309(j)(1).

to any modification of the part 1 rules that the Commission may adopt in the future.<sup>186</sup> We seek comment on whether any of these rules would be inappropriate or should be modified for an auction of licenses in this band.<sup>187</sup> Our proposal to assign these licenses through competitive bidding assumes that Congress amends section 309(j)(1) of the Communications Act to extend the Commission's authority to award licenses by competitive bidding.<sup>188</sup> We seek comment on alternate assignment procedures in the event that the Commission's statutory authority to auction licenses is not extended.

84. If we provide for the assignment of these licenses through a system of competitive bidding, we also propose to make bidding credits for designated entities available for this band and seek comment on this proposal. If we decide to offer small business bidding credits, we seek comment on how to define a small business. In recent years, for other flexible-use licenses, we have adopted bidding credits for the two larger designated entity business sizes provided in the Commission's part 1 standardized schedule of bidding credits.<sup>189</sup> We propose to use the same definitions here.<sup>190</sup> Accordingly, we propose to define a small business as an entity with average gross revenues for the preceding five years not exceeding \$55 million, and a very small business as an entity with average gross revenues for the preceding five years not exceeding \$20 million.<sup>191</sup> A qualifying "small business" would be eligible for a bidding credit of 15 percent and a qualifying "very small business" would be eligible for a bidding credit of 25 percent.<sup>192</sup> We also seek comment on whether the aviation-safety purpose of the band, the characteristics of these frequencies, or any other factor suggest that we should not make available one or either of these designated entity bidding credits, or that we should adopt different small business size standards and associated bidding credits than we have in the past. Finally, we seek comment on whether we should offer rural service providers a designated entity bidding credit for licenses in this band. Commenters addressing these proposals or advocating for any alternatives should consider what specific details of the licenses or operations in the band may affect whether designated entities will apply for them and whether designated entities should be supported by bidding credits.

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<sup>186</sup> See 47 CFR §§ 1.2101-1.2114.

<sup>187</sup> Consistent with the statutory requirement and our longstanding approach, we propose to use a public notice process to solicit public input on certain details of auction design and the auction procedures. See 47 U.S.C. § 309(j)(3)(E)(i); *3.5 GHz R&O*, 30 FCC Rcd at 4009, para. 153; *Auction of Priority Access Licenses for the 3550-3650 MHz Band; Comment Sought on Competitive Bidding Procedures for Auction 105; Bidding in Auction 105 Scheduled to Begin June 25, 2020*, AU Docket No. 19-244, Public Notice, 34 FCC Rcd 9215 (2019).

<sup>188</sup> See 47 U.S.C. § 309(j)(1).

<sup>189</sup> See, e.g., *3.7 GHz R&O*, 35 FCC Rcd at 2374-76, paras. 65-68. While the Commission is not required to adopt bidding credits for a particular service, the part 1 rules provide that the Commission may do so by adopting small business or rural service provider bidding credits in the service-specific rules for a band. See 47 CFR § 1.2110(f)(1). Any caps with respect to available bidding credits are adopted on an auction-by-auction basis. *Id.* §§ 1.2110(f)(2)(ii) (cap on designated entity bidding discount), 1.2110(f)(4)(ii) (cap on rural service provider discount).

<sup>190</sup> The standardized schedule of bidding credits provided in section 1.2110(f)(2)(i) of the rules defines small businesses based on average gross revenues for the preceding three years. In December 2018, Congress revised the standard set out in the Small Business Act for categorizing a business concern as a "small business concern," by changing the annual average gross receipts benchmark from a three-year period to a five-year period. Thus, as a general matter, a federal agency cannot propose to categorize a business concern as a "small business concern" for Small Business Act purposes unless the size of the concern is based on its annual average gross receipts "over a period of not less than 5 years." 15 U.S.C. § 632(a)(2)(C)(ii)(II), *as amended by* Small Business Runway Extension Act of 2018, Pub. L. 115-324 (Dec. 17, 2018); see 13 CFR § 121.903(a)(1)(ii). For consistency with the statutory requirements, we therefore propose to adopt the Small Business Act's revised five-year average gross receipts benchmark for purposes of determining which entities qualify for small business bidding credits.

<sup>191</sup> See 47 CFR § 1.2110(f)(2)(i)(B), (C).

<sup>192</sup> See *id.*

85. AIA proposes that the Commission directly select NSS licensees from the submitted license applications based on criteria to be established by the FAA or by a multi-stakeholder group to ensure that applicants meet aviation performance levels and minimum performance standards established in RTCA DO-377A.<sup>193</sup> We seek comment on AIA's proposal or alternative approaches for selecting the NSS licensees and whether such approaches would be consistent with our statutory obligation under section 309(j) of the Act to use competitive bidding to resolve mutually exclusive applications, and with our general responsibility for licensing of spectrum uses under Title III of the Communications Act.<sup>194</sup>

86. Regardless of the assignment mechanism, we seek comment on whether NSS licensees should be subject to a particular limit on the amount of NSS spectrum they can aggregate in the 5030-5091 MHz band, such as a limit of 20 megahertz. To the extent that NSS spectrum is assigned on geographic market basis, are limits on 5030-5091 MHz spectrum aggregation necessary to ensure competition for network-based CNPC services?

87. *Technical requirements.* We seek comment on appropriate technical requirements and parameters for NSS licenses. As an initial matter, the appropriate technical requirements may depend in part on the types of operations likely to be carried out in the band and the network architectures necessary to support such operations. Accordingly, we seek comment on what operations commenters anticipate the NSS licensees will be used to support. Will they include Advanced Air Mobility, package delivery services, or infrastructure inspection? Are they likely to be predominantly operations above, or below, a certain altitude, or to involve predominantly large or predominantly small UA? Will they involve autonomous operations, and if so, to what extent and for what purposes will such autonomous operations likely require network-based CNPC? For those anticipated operations, we seek comment on what type of network architectures will likely be needed in the band to support such uses. Will they necessarily be like the terrestrial cellular networks, or will there be other architectures, and if so, of what nature? To the extent that parties have already developed or plan to deploy network infrastructure to support UAS NSS operations, we seek comment on what type of network architectures they have developed or plan to deploy for this purpose.

88. We seek to adopt technical rules that will promote efficient use of spectrum and provide licensees as much flexibility as possible in terms of the services they wish to provide, while also providing adequate protection of licensees in the band or adjacent bands. We seek comment on requirements that will achieve these goals in the context of spectrum intended to support network-based UAS CNPC with the level of reliability needed for safety-critical aviation purposes. In particular, we seek comment on whether the RTCA DO-362A standard or equivalent technical parameters, which we propose above for NNA operations, should also apply to NSS licenses. Would adopting similar requirements for NSS help to ensure compatibility between NNA and NSS operations? We ask that commenters discuss the adequacy of the RTCA DO-362A specified equipment and operational performance requirements for NSS operations, including both transmitter power and receiver input power, and required minimum coupling loss (separation distance) between ground and airborne CNPC radios and emissions from other licensed radio services. We also seek comment on whether to require NSS licensees to comply with RTCA DO-377A, which addresses the minimum performance, safety, and security standards for a CNPC link system overall, whether that system relies on a network or a direct link.<sup>195</sup> As noted above, AIA recommends that we require UAS equipment to comply with RTCA DO-362A, but leave the requirements in RTCA DO-377A to be considered by the FAA or an appropriate group of

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<sup>193</sup> See AIA *Refresh PN* Comments at 6; AIA Feb. 1, 2022 *Ex Parte*, Attach. at 6.

<sup>194</sup> See 47 U.S.C. § 309(j)(1).

<sup>195</sup> See *supra* para. 69; see also, e.g., Wisk *Refresh PN* Comments at 2 n.5 (“DO-377A provides a basis for the safety, performance, and security standards that a CNPC network should meet . . .”).

stakeholders.<sup>196</sup> We seek comment on whether to take this approach for NSS licensees. To the extent that NSS licensees are permitted to support communications other than CNPC, we seek comment on whether those services should be subject to the same technical requirements as apply to CNPC.

89. Because the RTCA DO-362A standard is focused on point-to-point or point-to-multipoint (i.e., non-networked) link performance rather than network services, and RTCA DO-377A on establishing the minimum performance, security, and safety standards of a system rather than mitigating interference impacts on other systems, we seek comment on whether application of either of these standards sufficiently address the impact of wide area network operations, including cellular networks, on other services in-band or in adjacent bands. We further seek comment on whether applying these standards, or specific parameters drawn from these standards, to network-based services in the band may unnecessarily restrict the range of services or operations in the band. We seek comment on whether there are any additional or alternative technical requirements that we should consider for NSS licenses and on the extent to which communications under these technical requirements would have sufficient reliability for safety-critical aviation purposes. To the extent that parties argue for alternative technical requirements, we ask that they be specific as to what requirements they propose be adopted in the rules.

90. We note that work is ongoing to develop technical standards for reliable UAS communications over mobile networks. For example, RTCA SC-228 is currently working on a joint standard with EUROCAE Working Group 105 “for use of Cellular commercial networks for [command-and-control] Links used for type certificated UAS.”<sup>197</sup> CTIA states that the 3<sup>rd</sup> Generation Partnership Project (3GPP) “is addressing how commercial wireless [Long Term Evolution (LTE)] technologies can satisfy key performance indicators . . . for UAS, and support various UAS use cases.”<sup>198</sup> We seek comment on these efforts, on the scope, status, and anticipated completion date of any other current or planned studies or standards development work regarding the reliability of UAS communications over LTE or other mobile network technologies, and on whether these studies or standards will address or apply to UAS network-based communications in the 5030-5091 MHz band. If not, we seek comment on whether the development of these studies or standards may nevertheless be helpful in determining the appropriate requirements for networks in the 5030-5091 MHz band. We further seek comment on the extent to which any of these studies or standards are being or will be coordinated with the aviation community or the FAA to ensure that they provide sufficient reliability for all UAS use cases, including aviation flights where communications is safety-critical. We also seek comment on the extent to which mobile networks using LTE or other mobile network technologies can be implemented in the 5030-5091 MHz band consistent with the RTCA DO-362A standard.

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<sup>196</sup> See *AIA Refresh PN* Comments at 8, 13-14; see also *RTCA Refresh PN* Comments at 7 (recommending that the Commission impose no altitude limits on usage in the 5030-5091 MHz band, but indicating that “[t]he FAA may wish to impose limitations based on the types of UA flight operations” (citing DO-362A, Appx. H and DO-377A, Appx. A)); *WinnForum Refresh PN* Comments at 3 (advocating that the Commission establish rules with “the minimum necessary technical restrictions to provide adequate protection against harmful interference”). Above, we address in greater detail the potential reliance on a multi-stakeholder group to further develop recommendations or standards for UAS or DFMS operations in the 5030-5091 MHz band.

<sup>197</sup> SC-228 June 2022 Terms of Reference at 5 (indicating a targeted completion date of January 2023); see also *id.* at 2 (indicating that Phase Three of standards development will “[c]onsider new licensed bands that are made available for use for [command-and-control] Links,” including but not limited to “Cellular Networks”), 8 (indicating that the new document will “enable a common standard for avionics using standardized cellular services offered worldwide”).

<sup>198</sup> *CTIA Refresh PN* Comments at 11; see also *id.* at 13 (“Allowing the commercial mobile industry to continue working with standards-setting bodies such as 3GPP to develop standards to support UAS will be an effective and efficient approach to the expeditious development of UAS wireless standards that can be deployed, nationwide and worldwide.”). The 3<sup>rd</sup> Generation Partnership Project (3GPP) is an umbrella organization consisting of standards organizations that develop protocols for cellular telecommunications, including the Long-Term Evolution standard (LTE). See 3GPP, *About 3GPP*, <https://www.3gpp.org/about-3gpp> (last visited Sept. 6, 2022).

91. As an alternative to requiring NSS compliance with the RTCA DO-362A standard generally, are there certain specific requirements of RTCA DO-362A that we should minimally impose, to ensure compatibility with NNA operations or for other purposes? For example, as we noted earlier, RTCA asserts that all equipment in the band must comply with the 50 ms Time Division Duplex (TDD) requirements specified under section 2.2.1.3 of the RTCA DO-362A standard to ensure that UAS operations in the band are compatible with each other.<sup>199</sup> We seek comment on whether, even if we do not require general compliance with RTCA DO-362A, we should mandate compliance with the TDD requirements under section 2.2.1.3. Further, we seek comment on whether we should, at a minimum, require NSS equipment to comply with the power limits and out-of-band emission limits established in the standard to ensure that such equipment is compatible with AeroMACS.<sup>200</sup>

92. We seek comment on any other technical issues that need to be addressed to enable the deployment of NSS networks. For example, in order to prevent harmful interference between geographic area licensees, such licensees are typically subject to market boundary power strength limitations.<sup>201</sup> Because the networks deployed by geographic area licensees are terrestrial in nature, these limitations were developed using certain technical assumptions—i.e., that natural and manmade terrestrial obstacles attenuate signals, reducing the potential of harmful interference between users in adjacent license service areas.<sup>202</sup> Obstacles such as hills, trees, buildings, and other natural and manmade structures attenuate emissions, lessening the interference impact between licensees. UAS operations typically fly above many of these obstacles and, depending on the UA altitude and its distance to the service area boundary border, a UA may be in direct line-of-sight with adjacent license areas and users, greatly increasing the potential for harmful interference. As we anticipate adopting geographic area-based licenses for NSS spectrum, we request comment on an appropriate field strength limit to protect NSS licensees given this increased potential for harmful interference. We seek comment on other necessary technical specifications, such as out-of-band emission limits, and ask that any proposals include technical justifications and analysis, such as UA altitude assumptions, power levels, antenna assumptions, the increasing interference effects resulting from the increasing number of transmitting UA (aggregate effects), and the victim receiver characteristics such as receiver sensitivity, and adjacent and non-adjacent channel rejection.

93. *Application of requirements from aviation service and wireless radio service rules.* As with NNA service rules above, we seek comment on whether and to what extent the NSS service rules should incorporate or be subject to the rules generally applicable to aviation services under subparts B through F of part 87 of the Commission's rules, either in their current form or with modifications.<sup>203</sup> We also seek comment on whether the NSS service should be subject to rules under part 1, subpart F governing Wireless Radio Service applications and proceedings.<sup>204</sup> In particular, we seek comment on

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<sup>199</sup> See RTCA *Refresh PN* Comments at 6; see also AIA *Refresh PN* Comments at 11 (supporting a requirement that transmitters comply with the 50 ms TDD requirements of RTCA DO-362A § 2.2.1.3).

<sup>200</sup> See, e.g., L3H *Refresh PN* Comments at 10 (“The Output Power restrictions identified RTCA DO-362A § 2.2.1.6.1.1 & 2.2.1.6.1.2 in addition to the C Band Airborne Radio Transmitter PSD Limits specified in RTCA DO-362A § 2.2.1.6.2 should protect AeroMACS from potentially harmful interference from UAS.”); see also RTCA DO-377A at § 3.3.1.2 (“Based on the analysis in DO-362A . . . , the use of C-Band CNPC LOS radii of the C2 Link for surface operations will be compatible with AeroMACS in airports where AeroMACS is available.”).

<sup>201</sup> See 47 CFR § 27.55.

<sup>202</sup> For example, geographic area licensees' service area power limits in sections 22.913(b) and 27.55(d) and (e) of the Commission's rules are measured at a height 1.6 meters above ground level to estimate the height of a mobile (UE) taking into account terrain obstacles. See 47 CFR §§ 22.913(b), 27.55(d), (e).

<sup>203</sup> See 47 CFR pt. 87, subpts. B (Applications and Licenses), C (Operating Requirements and Procedures), D (Technical Requirements), E (Frequencies), F (Aircraft Stations).

<sup>204</sup> See 47 CFR pt. 1, subpt. F (Wireless Radio Services Applications and Proceedings). The term “Wireless Radio Services” is currently defined as “[a]ll radio services authorized in parts 13, 20, 22, 24, 26, 27, 30, 74, 80, 87, 90, 95, 96, 97 and 101 of this chapter, whether commercial or private in nature.” 47 CFR § 1.907.

whether to allow partitioning and disaggregation of NSS licenses in secondary market transactions as well as spectrum leasing, including whether we should consider any competitive impacts associated with such transactions.<sup>205</sup> Allowing these secondary market transactions would be consistent with the licensing paradigm governing most geographic area licenses and are potentially an effective way to improve spectral efficiency and facilitate targeted network deployments, particularly if the Commission adopts a long license term or large license area. We seek comment on whether these factors support application of the full range of secondary market options to 5030-5091 MHz NSS licensees, or if secondary market rules should either be more restrictive or completely inapplicable due to special considerations of the 5030-5091 MHz band.

94. We anticipate that NSS licenses will be used to provide mobile network services to UAS operators on a commercial basis. Accordingly, we also seek comment on whether and to what extent we should incorporate regulations that regulate commercial mobile networks in other bands, such as the requirements generally applicable to part 27 flexible-use licensees. For example, should we incorporate or apply the requirements of sections 27.52 (RF safety), 27.56 (antenna structure height for the protection of air safety), or 27.64 (protection from interference)?<sup>206</sup>

95. *Other requirements.* We seek comment on any other service rules we should adopt for NSS licensees. For example, to ensure that UA flights are supported in the event they need to cross license area boundaries, should we adopt a roaming requirement? If anything more than market forces is necessary to address this issue, should the current roaming requirements under section 20.12(e) of the Commission's rules, requiring commercial mobile data service providers to offer roaming arrangements to other such providers on commercially reasonable terms and conditions, be extended to NSS licensees for this purpose?<sup>207</sup> If these requirements are sufficient, how and where should we integrate them in the context of NSS service rules? If they are insufficient, what additional rules are needed to ensure that UAS operate continually and safely across licensing areas? We also seek comment on whether to adopt an interoperability requirement, for example, requiring NSS equipment to be capable of operating over any part of the 5030-5091 MHz band dedicated to NSS operations, or requiring support for the entire band. We further seek comment on whether to impose requirements to enable seamless switching between NNA and NSS services to support flights that may need to rely on both modes of spectrum access. Should we require NSS licensees to provide any other information, including the manufacturer, model, or other details regarding the UAs that will be flown? We seek comment on any requirements or other measures that would promote intensive use of the band. For example, we seek comment on how we might facilitate use of NSS for both low and high altitude uses, and whether we should require NSS licensees to support both low and high altitude uses or should take other steps to ensure that both low and high uses are supported.

96. *Satellite-based networks.* As discussed above, the 5030-5091 MHz band is allocated internationally and domestically for AMS(R)S, which would support the provision of CNPC services over satellite. AIA's petition for rulemaking, however, did not request or propose that any provision be made for satellite services in the band, and no party in the current record has proposed such an option.<sup>208</sup> It also appears that RTCA's work on CNPC MOPS in the 5030-5091 MHz band has, up to now, largely focused

<sup>205</sup> See 47 CFR pt. 1, subpt. X (spectrum leasing), § 1.950 (partitioning and disaggregation).

<sup>206</sup> See 47 CFR §§ 27.52, 27.56, 27.64.

<sup>207</sup> See 47 CFR § 20.12(e).

<sup>208</sup> See, e.g., AIA *Refresh PN* Comments at 13 (stating the licensees in spectrum for network service will be "[t]errestrial station owners"); see also *id.* at 5 (distinguishing between beyond-line-of-sight operations in the past, which were based on satellite-support, and "the future of terrestrial CNPC links" that would involve "multiple, remote [Ground Radio Stations] on a network providing long-range, continuous C2 link coverage and remote operation, without reliance on or the disadvantages of satellite communications links."); RTCA *Refresh PN* Comments at 8 (asserting that the Ku and Ka fixed satellite services bands are already being considered for CNPC links and have significant capacity).

on terrestrial rather than satellite services in the band.<sup>209</sup> We nevertheless seek comment on whether to authorize NSS licensees, at their discretion, to provide network-supported service for UAS CNPC through either a satellite or terrestrial network, or alternatively, whether the Commission should provide that certain NSS licenses are dedicated exclusively to satellite-based service.<sup>210</sup> We seek comment on whether and to what extent there is interest in the United States in providing a satellite service for CNPC in the 5030-5091 MHz band, on the costs and benefits of permitting NSS licensees to deploy satellite services for network-supported CNPC, and on the advantages and disadvantages of a satellite option over terrestrial networks in this context. For example, would satellite be a feasible and desirable means of deploying a CNPC-focused network with the ubiquitous coverage needed to support long-range operations, particularly those operations that may occur in remote areas and over oceanic regions or other large bodies of water?

97. Assuming we permit NSS licensees to deploy satellite-based service, we seek comment on how to permit and integrate the provision of such services and on the appropriate service rules. We seek comment on the application of the Commission's part 25 rules, which govern satellite communications, to such services, and the extent to which the rules applicable to terrestrial NSS networks should also apply to satellite-based NSS networks. We further seek comment on how the DFMS and other proposals discussed above would work for satellite communications. For example, how would a DFMS implement opportunistic access to spectrum in which satellite operations might be deployed? We also seek comment on how to ensure that any such satellite services are compatible with both terrestrial NSS and NNA operations in the band and other in-band and adjacent-band services, and on the circumstances, requirements, coordination processes, and/or restrictions necessary to ensure compatibility and to provide the reliability intended for CNPC in this band. For example, should we permit an NSS licensee to deploy a satellite service only if the NSS license is nationwide or the licensee in question has aggregated all geographic area licenses in a particular block throughout the nation? Are guard bands necessary between blocks with satellite deployments and blocks used for terrestrial networks or operations? Footnote 5.443D of the Table of Frequency Allocations provides that services under the satellite allocation in the 5030-5091 MHz band are subject to coordination under ITU Radio Regulations (R.R.) No. 9.11A, and that the use of this frequency band by the AMS(R)S is limited to internationally standardized aeronautical systems.<sup>211</sup> We seek comment on what rules, if any, we should adopt to implement the requirements under footnote 5.443D.

98. *High-Altitude Platform Stations.* We seek comment on whether to permit NSS licensees to deploy High-altitude Platform Stations (HAPS). The Commission's rules define a "High Altitude Platform Station" as "[a] station located on an object at an altitude of 20 to 50 km and at a specified, nominal, fixed point relative to the Earth."<sup>212</sup> Potentially, these stations could be used by NSS licensees as a long-range relay of CNPC between two or more stations, and RTCA DO-362A includes extensive

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<sup>209</sup> While the RTCA DO-362A MOPS focuses on "a 'terrestrial' based (i.e., not satellite-based) CNPC Link System" in the 5030-5091 MHz band, *see* RTCA DO-362A, § 1.1, it also includes discussion of a satellite system design compatible with the terrestrial system in an Appendix. *See* RTCA DO-362A, Appx. G (C Band Satellite Link Compatibility). In addition, the Terms of Reference for SC-228 (Rev 15) dated June 23, 2022, indicates that a planned update of RTCA DO-362A, to be designated DO-362B, will "[i]ncorporate changes required to harmonize SATCOM compatibility with EUROCAE Standard." *See* SC-228 June 2022 Terms of Reference at 5.

<sup>210</sup> *See also supra* section B.1 (Band Plan) (seeking comment on preserving a portion of the band for satellite CNPC).

<sup>211</sup> *See* 47 CFR § 2.106, footnote 5.443D. ITU R.R. No. 9.11A provides that "for a station for which the requirements to coordinate is included in a footnote to the Table of Frequency Allocations referring to this provision, the provisions of Nos. 9.12 to 9.16 are applicable." ITU R.R. No. 9.11A. ITU R.R. No. 9.6 in turn provides that "[b]efore an administration notifies to the Bureau or brings into use a frequency assignment in any of the cases listed below [including the cases covered by 9.11A], it shall effect coordination, as required, with other administrations identified under No. 9.27." ITU R.R. No. 9.6.

<sup>212</sup> 47 CFR § 2.1(c); *see also* ITU R.R. No. 1.66A.

analysis of such an option, which it refers to as a “High-altitude Relay System.”<sup>213</sup> We seek comment on whether and to what extent there is current interest in deploying HAPS as all or part of a network solution for CNPC, on the technical feasibility and commercial viability of the use of HAPS to provide all or part of a network service in the 5030-5091 MHz band, and on the costs and benefits of permitting HAPS for this purpose.<sup>214</sup> To the extent it is feasible and economic, are there limitations on the circumstances or uses to which it can be applied? For example, would it be available only to provide relay between two or more UA, or could it also provide relay between UA and stations on the ground? We also seek comment on what technical or other requirements or restrictions are needed either to ensure that NSS use of HAPS to provide network service would be compatible with other operations and services or for other reasons. For example, we seek comment on whether, consistent with the definition of HAPS in the Commission’s rules, we should specify an altitude floor and/or ceiling on the use of such stations.<sup>215</sup> Given the potential footprint of a HAPS-based service, should we permit an NSS licensee to deploy HAPS only if the NSS licensee holds a nationwide market or holds all geographic area licenses on a particular block nationwide? We further seek comment on whether permitting such systems warrants any revisions to the proposals or options for the NSS rules. In addition, because the HAPS acting as network relays for UA communications would also themselves be UA, we seek comment on whether an NSS licensee’s operation of such stations may require CNPC (during ascent, descent, or otherwise), whether and to what extent such stations should be permitted to use NNA assignments for CNPC, and if so, what changes to our NNA proposals or other rules are needed.<sup>216</sup> We note that No. 4.23 of the ITU Radio Regulations provides that “[t]ransmissions to or from high altitude platform stations shall be limited to bands specifically identified in Article 5 (WRC-12).”<sup>217</sup> At present, Article 5 does not specifically identify the 5030-5091 MHz band for this purpose.<sup>218</sup> We seek comment on whether, if we restricted such stations to deployments below the 20 km floor for HAPS as defined in the ITU Radio Regulations, permitting HAPS in the band could nonetheless be consistent with No. 4.23 or if, to permit such use, we would need to seek

<sup>213</sup> See, e.g., RTCA DO-362A, Appx. U (C Band High Altitude Relay System). In its comment, RTCA refers to this option as a “High-Altitude Platform/Relay System.” RTCA *Refresh PN* Comments at 5.

<sup>214</sup> The record does not reflect any current interest in using HAPS for the provision of network-based CNPC in the band. In comments submitted in 2018 in response to the AIA Petition, the Elefante Group did indicate that it planned to deploy what it described as “persistent, unmanned stratospheric airborne platforms (‘STRAPS’) . . . to provide stratospheric-based communications service,” and that it was interested in using direct links in the 5030-5091 MHz band for command-and-control “[d]uring ascent and descent” of the stations. Elefante Group *AIA Petition* Comments at 1-2. Once in place, however, the stations were intended to provide “5G solutions in urban and rural markets” rather than CNPC services in the 5030-5091 MHz band. *Id.* In a subsequent filing in another proceeding, the Elefante Group further indicated, in regard to its plans to deploy STRAPS, that due to “unforeseen developments,” it was “unable to state with certainty its ability at this time to” deploy these platforms. See Elefante Group Comments, WT Docket No. 20-133, at 2 (filed Aug. 5, 2020).

<sup>215</sup> 47 CFR § 2.1(c).

<sup>216</sup> RTCA asserts that the necessary duration of an assignment to support such HAPS relays may be significantly longer than assignments for other types of UA flights. See RTCA *Refresh PN* Comments at 5 (asserting that because the HAPS relay scenario will involve a UA that “loiters for months at altitude > 60Kft., the ‘end of flight’ would be much longer after the beginning of the flight than for non-[HAPS] flights” and that “[c]ontinuous usage of the spectrum would be needed throughout the flight to support internal control messages being sent to/from the [HAPS] UA”).

<sup>217</sup> ITU R.R. No. 4.23.

<sup>218</sup> Article V of the ITU Radio Regulations reflects the frequency allocation decisions made by the World Radio Councils (WRC) to date. See ITU R.R., Article V; see also 47 CFR § 2.106. At three WRCs collectively (WRC-97, WRC-200, and WRC-12), spectrum for HAPS was designated in the 47/48 GHz, 2 GHz, 27/31 GHz and 6 GHz bands, and after study for WRC-19, additional spectrum was identified: 31-31.3 GHz and 38-39.5 GHz globally, and in Region 2 (including US), 21.4-22 GHz and 24.25-27.5 GHz. See *Wireless Telecommunications Bureau Seeks to Supplement the Record on 70/80/90 GHz Bands Notice of Proposed Rulemaking*, WT Docket No. 20-133, Public Notice, DA 21-1263, n.15 (WTB Oct. 8, 2021).

a revision to the bands in which HAPS is permitted under ITU R.R., Article V. We seek comment on whether there is any other legal constraint or consideration to address in permitting such use.

## 8. Equipment Authorization

99. To ensure that equipment in the new band has the level of reliability and safety required of aviation equipment, we propose to impose equipment authorization requirements similar to those under sections 87.145 and 87.147 of the Commission's rules to all equipment intended for use in the 5030-5091 MHz band. Section 87.145 requires that each transmitter must be certificated for use in the relevant service, and section 87.147 establishes a specific equipment authorization process for part 87 equipment, which, for the frequencies in the 5030-5091 MHz band among others, requires coordination with the FAA.<sup>219</sup> We note that 5030-5091 MHz UAS radio equipment must independently satisfy any applicable FAA requirements,<sup>220</sup> and we anticipate that this coordination process will ensure that the 5030-5091 MHz equipment authorizations by the Commission and the FAA are consistent and that all equipment approved for use in the band will meet both agencies' requirements. We seek comment on our proposals.

## 9. Protection of Other Services

### a. Microwave Landing Systems

100. The Microwave Landing System (MLS) is a radio guidance system that was intended to be installed at airports to aid aircraft in landing when, e.g., the airports are visually obscured by bad weather, and that provided certain technical improvements over the original Instrument Landing System.<sup>221</sup> Footnote 5.444 of the Table of Frequency Allocations provides that in the band 5030-5150 MHz, the requirements of MLS have priority over other uses of this frequency band.<sup>222</sup>

101. These systems were rendered obsolete by more recent instrument-landing solutions, including GPS-based solutions like the Wide Area Augmentation System, and a search of ULS reveals no active MLS in use by non-federal licensees.<sup>223</sup> Further, according to NTIA's most recent summary of federal use of the 5030-5250 MHz band, "[t]he FAA does not anticipate utilizing MLS installations at airports."<sup>224</sup> NTIA also notes, however, that "[t]he Air Force has a number of assignments in the 5030-5091 MHz band for a transportable version of the MLS, an all-weather precision landing system for tactical purposes and has installed these systems at several Air Force bases."<sup>225</sup> It states that "the Air Force will continue to use MLS into the foreseeable future in order to provide landing guidance to military aircraft."<sup>226</sup>

102. We seek comment on what measures we should adopt to protect federal MLS services from harmful interference by UAS communications in the 5030-5091 MHz band. Should we establish exclusion zones around the Air Force bases with MLS deployments, with a process to add or eliminate

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<sup>219</sup> See 47 CFR §§ 87.145(a), 87.147(d).

<sup>220</sup> See, e.g., TSO-C213a.

<sup>221</sup> See *Section 374 Report* at 5.

<sup>222</sup> See 47 CFR § 2.106, footnote 5.444; see also 47 CFR § 87.173(b) (authorizing MLS over the frequencies 5030-5150 MHz). The rules also permit deployment of "radionavigation land test" stations at 5031 MHz but only for the testing of MLS airborne receiving equipment. See 47 CFR § 87.475(c)(2).

<sup>223</sup> See *Section 374 Report* at 5 (stating the systems are obsolete and "no longer in use"); FCC, *Advanced License Search*, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp> (search restricted to frequency range of 5030 and 5091 MHz); see also NTIA Spectrum Compendium, 5030-5250 MHz, Feb. 2021, at 11, <https://www.ntia.doc.gov/files/ntia/publications/compendium/5030.00-5250.00-02092021.pdf> (NTIA Spectrum Compendium (5030-5025 MHz)).

<sup>224</sup> NTIA Spectrum Compendium (5030-5025) at 11.

<sup>225</sup> *Id.* at 9.

<sup>226</sup> *Id.* at 11.

exclusion zones to the extent federal MLS stations are deployed or deactivated? AIA proposes that the Commission codify the locations at which MLS operations are conducted and establish a coordination mechanism to enable UAS CNPC operations near those MLS stations.<sup>227</sup> We seek comment on this option, the specifics of any such coordination mechanism, and how this or any option would address the deployment of new federal MLS stations, particularly in the case of NSS licensees that may have already deployed networks in the area of the new deployment.

103. Because we find no current licensed non-federal MLS systems in operation, and given that the FAA does not anticipate the future use of these systems at airports, we seek comment on whether any measures are necessary to protect non-federal MLS. We also seek comment on whether to provide that no future non-federal MLS licenses (including MLS radionavigation land test licenses at 5031 MHz) will be granted in the 5030-5091 MHz band by amending sections 87.173(b) and 87.475 of our part 87 rules to remove the 5030-5091 MHz band as a band that can be used for non-federal MLS.<sup>228</sup> We seek comment on the costs and benefits of this option. Would eliminating the potential for future non-federal MLS in the 5030-5091 MHz band help to ensure a stable spectral environment that may facilitate the use of the band for UAS CNPC? Would it facilitate the use of the band for other communications, to the extent such communications may be permitted? Given the development and widespread adoption of alternative solutions for instrument-based landing and the apparent abandonment of MLS, is there any need to preserve the option in our rules for licensing of non-federal MLS in this band?

#### **b. Out-of-band Services**

104. *Radioastronomy.* Footnote US211 of the Table of Frequency Allocations currently provides that in a number of frequency bands that includes the 5000-5250 MHz band, “applicants for airborne or space station assignments are urged to take all practicable steps to protect radio astronomy observations in the adjacent bands from harmful interference[.]”<sup>229</sup> To address the potential impact on radio astronomy observations from UAS transmissions in the 5030-5091 MHz band, NTIA requests that Footnote US211 continue to apply to any services authorized in the 5030-5091 MHz band.<sup>230</sup> NTIA also recommends that the Commission require coordination of UAS operations within the National Radio Quiet Zone (NRQZ).<sup>231</sup> NTIA further recommends that “additional criteria” be developed to minimize UAS impact to particular radio astronomy sites, particularly from low-altitude operations, but does not elaborate or propose particular criteria.<sup>232</sup> As a further measure, NTIA recommends that the requirements

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<sup>227</sup> See AIA Petition at 18; see also AURA AIA Petition Comments at 6; Boeing AIA Petition Comments at 11; Lockheed Martin AIA Petition Comments at 4-5.

<sup>228</sup> We note that removing the frequencies for non-federal MLS operations from our service rules would not affect federal authority to utilize the band for MLS, or the need to protect such services.

<sup>229</sup> See 47 CFR § 2.106, footnote US211. For certain of these bands, the obligation is limited by Footnote US74, which provides that in the specified bands, the radio astronomy service shall be protected from unwanted emissions only to the extent that such radiation exceeds the level which would be present if the offending station were operating in compliance with the technical standards or criteria applicable to the service in which it operates. See 47 CFR § 2.106, footnote US74. The 5030-5091 MHz band, however, is not one of the bands to which Footnote US74 applies. *Id.*

<sup>230</sup> See NTIA Refresh PN Reply at 1.

<sup>231</sup> See NTIA Refresh PN Comments at 2. The National Radio Quiet Zone (NRQZ) is a fixed 13,000 square mile rectangular area that covers portions of Virginia, West Virginia, and Maryland and that provides interference protection to radio astronomy operations of the National Radio Astronomy Observatory at Green Bank, West Virginia, and the Naval Radio Research Observatory at Sugar Grove, West Virginia. See, e.g., 47 CFR §§ 1.924(a), 97.3(a)(33); *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket 02-353, Report and Order, 18 FCC Rcd 25162, 25175, para. 34 (2003).

<sup>232</sup> See NTIA Refresh PN Reply at 2.

for licensees in the band include passing a test or similar effort to promote awareness of radio astronomy sites.<sup>233</sup>

105. We seek comment on whether additional measures are necessary to protect radio astronomy and on NTIA's recommendations in this regard. We propose, consistent with NTIA's recommendations, to continue to apply the requirements of Footnote US211 in the 5030-5091 MHz band, to prohibit UAS operations within the NRQZ without prior coordination with the NRQZ administrator and, in the case of NNA operations relying on DFMS assignments, to require the submission of a concurrence from the NRQZ administrator with any request to a DFMS for frequency assignment within the NRQZ. We seek comment on these proposals. We note that section 1.924(a) of the Commission's rules establishes required procedures for licensees and applicants that seek to construct or operate new or modified fixed stations to coordinate their deployments in the NRQZ.<sup>234</sup> Should we apply these licensee/applicant procedures for the NRQZ to all UAS operations relying on the 5030-5091 MHz band in the NRQZ? To the extent we require NRQZ administrator concurrence for licensed-by-rule operations, we seek comment on the appropriate procedures to apply. To the extent measures beyond coordination and concurrence requirements for UAS operations are warranted, we seek comment on what other measures are practicable.

106. *AeroMACS*. AeroMACS is a broadband aeronautical mobile (route) service system that will enable communications for surface operations at airports between aircraft and other vehicles and between other critical fixed assets.<sup>235</sup> The Commission has allocated both the 5000-5030 MHz and 5091-5150 MHz bands for such use but has not yet established service rules in either band.<sup>236</sup>

107. We seek comment on whether any special measures are necessary to ensure compatibility between UAS operations in the 5030-5091 MHz band and AeroMACS. AIA indicates that RTCA is currently working on a revision to the AeroMACS technical standard, RTCA DO-346, that will ensure that future AeroMACS deployments will be compatible with CNPC links that are in compliance with RTCA DO-362A, and that no other special limitations on 5030-5091 MHz operations beyond compliance with RTCA DO-362A are necessary.<sup>237</sup> More recently, RTCA's Program Management Committee (PMC) held its June 2022 meeting approving RTCA DO-346A with these revisions.<sup>238</sup> We seek comment

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<sup>233</sup> See *id.*

<sup>234</sup> See 47 CFR § 1.924(a) (establishing procedures for the NRQZ).

<sup>235</sup> See *Amendment of the Commission's Rules to Promote Aviation Safety et al.*, WT Docket No. 19-140 et al., Notice of Proposed Rulemaking, 34 FCC Rcd 4984, 4997, para. 34 (2019) (*Aviation NPRM*).

<sup>236</sup> See *id.* at 4997, para. 35.

<sup>237</sup> See AIA *Refresh PN* Comments at 11 (stating that RTCA is acting on adjacent channel protections and recommends that no special limitation on 5030-5091 MHz operations are necessary to protect future AeroMACS deployments); see also L3H *Refresh PN* Comments at 10 (asserting that 5030-5091 MHz service compliance with the power restrictions and power spectral density limits in RTCA DO-362A should protect AeroMACS from harmful interference from UAS); RTCA *Refresh PN* Comments at 7 (stating that agreements are in the final implementation stages among RTCA special committees to modify the AeroMACS MOPS so that AeroMACS systems "are compatible with DO-362A compliant CNPC radios that operate in the 5030-5091 MHz band"); Wisk *Refresh PN* Comments at 5 (asserting that AeroMACS standard revision "will address the adjacent band compatibility requirements and FCC service rules can be based on or refer to this standard for adjacent band interference limits"); RTCA DO-377A, § 3.3.1.2 ("Based on the analysis in DO-362A . . . , the use of C-Band CNPC LOS radios for the C2 Link for surface operations will be compatible with AeroMACS in airports where AeroMACS service is available. It is understood that there will be an update to the AeroMACS radios, which will ensure that all AeroMACS airborne and ground radios emissions will not degrade the C Band C2 Link."); see also RTCA DO-362A, Appx. T at T.3 (specifying spatial separation, antenna orientations, and filtering criteria to protect AeroMACS operations).

<sup>238</sup> See <https://www.rtca.org/news/standards-oversight-committee-acts-on-emerging-technologies-and-safety-oversight-2/>.

on whether the revised AeroMACS standard and compliance with the power and out-of-band emission limits of RTCA DO-362A are adequate measures to protect AeroMACS operations from harmful interference from 5030-5091 MHz UAS operations, and whether the revisions to the AeroMACS standard require specific service rules for the 5030-5091 MHz band. Should we adopt exclusion zones around airports with AeroMACS deployments, or prohibit use of a certain amount of spectrum at the edge of the 5030-5091 MHz band in the vicinity of such airports?

108. *Radionavigation-satellite service.* The 5010-5030 MHz band also includes an allocation for the radionavigation-satellite service (RNSS) (space-to-Earth) for potential future use.<sup>239</sup> Footnote 5.443C of the Table of Frequency Allocations addresses requirements in the 5030-5091 MHz band for the protection of RNSS downlinks.<sup>240</sup> Specifically, it provides that “[u]nwanted emissions from the aeronautical mobile (R) service in the frequency band 5030-5091 MHz shall be limited to protect RNSS system downlinks in the adjacent 5010-5030 MHz band” and that “[u]ntil such time that an appropriate value is established in a relevant ITU-R Recommendation, the e.i.r.p. density limit of -75 dBW/MHz in the frequency band 5010-5030 MHz for any AM(R)S station unwanted emission should be used.”<sup>241</sup> As CNPC services would be part of the AM(R)S allocation, this requirement applies to such services in the 5030-5091 MHz band. We propose to require 5030-5091 MHz operations to comply with the specific EIRP spectral density limit specified in Footnote 5.443C and seek comment on that proposal. Footnote 5.443C further limits AM(R)S use of the 5030-5091 MHz band to “internationally standardized aeronautical systems.”<sup>242</sup> We seek comment on codifying this requirement as a service rule and on whether any other measure is necessary to implement the restriction. We further seek comment on whether any other special measures applicable to the 5030-5091 MHz band, such as a guard band at the bottom edge of the 5030-5091 MHz band, should be adopted to protect RNSS system downlinks.<sup>243</sup>

109. *Flight testing.* The 5091-5150 MHz band is also allocated for aeronautical mobile telemetry communications from aircraft stations, subject to the technical parameters in ITU Resolution 418 (WRC-12) intended to ensure compatibility with other services.<sup>244</sup> According to NTIA, federal agencies currently use this allocation in the 5091-5150 MHz band to support flight testing.<sup>245</sup> We seek comment on whether measures beyond generally applicable out-of-band emissions limits are necessary to ensure that 5030-5091 MHz operations are compatible with such services.

### c. Canadian and Mexican Coordination

110. International agreements with Mexico and Canada do not address the use of the 5030-5091 MHz band for UAS communications.<sup>246</sup> In the event of any adjustments made to the agreements with Mexico or Canada regarding use of the 5030-5091 MHz band, we note that our proposed rules, and

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<sup>239</sup> See 47 CFR § 2.106.

<sup>240</sup> See 47 CFR § 2.106, footnote 5.443C.

<sup>241</sup> See *id.* Section 3 of the RTCA DO-362A standard requires the use of the EIRP density limit of -75 dBW/MHz as specified in Footnote 5.443C. See RTCA DO-362A § 3.2.1.4.6; see also *id.*, Appx. T: Protecting Adjacent Band Systems Against Interference From Terrestrial C Band CNPC Links, at T.4.

<sup>242</sup> 47 CFR § 2.106, footnote 5.443C.

<sup>243</sup> See also *supra* para 18. We note that Appendix T of RTCA DO-362A includes an analysis of the maximum allowable power spectral density (PSD) for UAS ground radio stations (GRS) and airborne radio stations (ARS) required to protect RNSS systems. See RTCA DO-362A, Appx. T.

<sup>244</sup> 47 CFR § 2.106, footnote US444B (referencing ITU R.R., Resolution 418 (Rev. WRC-12), titled “Use of the band 5091-5250 MHz by the aeronautical mobile service for telemetry applications”).

<sup>245</sup> See NTIA Spectrum Compendium (5030-5025 MHz) at 1, 9.

<sup>246</sup> See FCC, *Canadian Agreements by Frequency*, <https://www.fcc.gov/canadian-agreements-frequency>; (last visited Sept. 6, 2022); FCC, *Mexican Agreements by Frequency*, <https://www.fcc.gov/mexican-agreements-frequency>. (last Sept. 6, 2022).

any rules that may ultimately become effective pursuant to this proceeding, may need to be modified to comply with those agreements. We seek comment on whether we should adopt an interim measure to address UAS communications in the 5030-5091 MHz band that may cause harmful interference to operations in Mexico or Canada during the period prior to any adjustments made to the agreements between the United States, Mexico, and/or Canada regarding use of the band. If so, what should this interim measure provide?

### III. AIRBORNE USE OF FLEXIBLE-USE SPECTRUM

111. Beyond the development of the 5030-5091 MHz band for UAS operations, the use of flexible-use spectrum<sup>247</sup> and existing networks as platforms for UAS offers promise because these existing networks provide significant coverage with low latency, high throughput, and dedicated and secure communications. The use of such existing infrastructure may provide the added benefit of a near-term, low-cost option in comparison to building a dedicated network for UAS operations.

112. There is considerable interest in using existing terrestrial mobile networks for UAS communications, including command and control, telemetry, and payload communications. Because these networks were not designed for UAS use, however, the integration of UAS into terrestrial mobile networks may not be a seamless transition. The Commission's terrestrial mobile service rules generally do not consider airborne use, and whether within a network or across adjacent networks, the potential for increased interference is probable when UAS are introduced.

113. While the Commission remains committed to allowing flexibility in the use of existing spectrum and networks, we are uncertain about the potential interference impacts of UAS use. Therefore, we seek comment on the adequacy of current rules to ensure co-existence of existing terrestrial wireless networks and UAS and on the regulatory solutions that may be necessary to facilitate and encourage such use. Our action is consistent with WTB and OET's recommendation in the *Section 374 Report* to conduct further review of the flexible-use bands for UAS.<sup>248</sup>

#### A. Background

114. Federal agencies, industry stakeholders, and standards bodies have undertaken significant work to facilitate use of UAS, including development of flexible-use spectrum as a platform. As interest in and demand for UAS services grows, this initial work will form the foundation for the additional research and testing that is necessary to evaluate the need for further regulatory action by the Commission, where appropriate.

115. *FAA Programs.* As noted, the FAA has engaged in a variety of initiatives to safely integrate UAS into the National Airspace System, some of which considered the use of various spectrum bands as platforms for UAS. Among these initiatives, in 2017, the FAA established the UAS Integration Pilot Program (IPP) to permit state, local, and Tribal governments to partner with private sector entities, such as UAS operators or manufacturers, to accelerate safe UAS integration.<sup>249</sup> IPP participants evaluated several operational concepts, including night-time operations, flights over people and beyond-visual-line-of-sight operations, package delivery, detect-and-avoid technologies, and link reliability.<sup>250</sup> The IPP program concluded in October 2020 after which the FAA launched a new program called BEYOND,

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<sup>247</sup> The term "flexible-use spectrum" or "flexible-use bands," refers to services or spectrum bands for which the Commission's rules do not prescribe specific uses or applications.

<sup>248</sup> *Section 374 Report*, at 1.

<sup>249</sup> See FAA, UAS Integration Pilot Program, [https://www.faa.gov/uas/programs\\_partnerships/completed/integration\\_pilot\\_program/](https://www.faa.gov/uas/programs_partnerships/completed/integration_pilot_program/) (last visited Sept. 6, 2022).

<sup>250</sup> *Id.*

which is intended to continue the work of UAS integration.<sup>251</sup> The FAA also chartered the Unmanned Aircraft Systems Beyond Visual Line-of-Sight Operations Aviation Rulemaking Committee (BVLOS ARC) in June 2021 to review insights gained from these and other activities and to provide recommendations regarding performance-based regulatory requirements that will enable the integration of beyond-visual-line-of-sight operations in the National Airspace System.<sup>252</sup> In March 2022, the BVLOS ARC issued a Final Report, making over 70 recommendations regarding regulatory changes to facilitate such operations.<sup>253</sup> The BVLOS ARC Final Report noted that “[r]eliable and continuous access to spectrum is essential to the continued growth of the UAS industry” and that it is critical for all available communications technology to be enabled.<sup>254</sup>

116. *Stakeholder Interest in UAS on Flexible-Use Spectrum.* Manufacturers, service providers, and public and private UAS operators support using a wide range of bands for UAS operations in addition to spectrum bands dedicated to aeronautical use,<sup>255</sup> and research is underway to study the potential of flexible-use spectrum for UAS uses. For example, in accordance with its Part 5 Program Experimental Radio License rules, the Commission in August 2021 approved the North Carolina State University Innovation Zone<sup>256</sup> for use by the Aerial Experimentation and Research Platform for Advanced Wireless (AERPAW).<sup>257</sup> The AERPAW testbed is the first research platform to study the use of 5G wireless technology as a platform for UAS.<sup>258</sup> Several mobile service providers and other stakeholders currently are developing network-based UAS applications that would operate over commercial networks

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<sup>251</sup> See FAA, BEYOND, [https://www.faa.gov/uas/programs\\_partnerships/beyond/](https://www.faa.gov/uas/programs_partnerships/beyond/) (last visited Sept. 6, 2022). As part of the BEYOND program, the FAA is continuing its partnerships with eight of the nine IPP participants, which continue to test and refine varying UAS operational concepts. *Id.*

<sup>252</sup> U.S. Department of Transportation, Federal Aviation Administration, Aviation Rulemaking Committee Charter, UAS Beyond Visual Line-of-Sight Operations Aviation Rulemaking Committee (June 8, 2021).

<sup>253</sup> See generally Unmanned Aircraft Systems Beyond Visual Line of Sight Aviation Rulemaking Committee, *Final Report* (March 10, 2022) (BVLOS ARC Final Report) [https://www.faa.gov/regulations\\_policies/rulemaking/committees/documents/media/UAS\\_BVLOS\\_ARC\\_FINAL\\_REPORT\\_03102022.pdf](https://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/UAS_BVLOS_ARC_FINAL_REPORT_03102022.pdf).

<sup>254</sup> *Id.* at 61.

<sup>255</sup> See Airbus UM Section 374 Report Comments at 3-4; Boeing Section 374 Report Comments at 8-9; CTA Section 374 Report Comments at 3; CTIA Section 374 Report Comments at 10-13; Florida Power & Light Section 374 Report Comments at 1; Motorola Solutions, Inc. (Motorola Solutions) Section 374 Report Comments at 4 (“Provided that aeronautical mobile service is not specifically prohibited under the FCC’s rules or in the table of allocations, UAS control links should be permitted in existing mobile allocations available for both private radio and commercial operations.”); Phirst Section 374 Report Comments at 3-4; Small UAV Coalition Section 374 Report Comments at 5-6; T-Mobile Section 374 Report Comments at 4-6; Verizon Section 374 Report Comments at 2-5; Aircraft Owners and Pilots Association (AOPA) Section 374 Report Reply at 3 (stating that the “leveraging of cellular spectrum and infrastructure is a potential solution that the FCC should further explore”); Spectrum Financial Partners, LLC (SFP) Section 374 Report Reply at 3-6.

<sup>256</sup> 47 CFR § 5.313. Innovation Zones are intended to provide opportunities for qualified participants to test new technologies and prototype networks – such as those that can support 5G technologies – in a specified geographic area.

<sup>257</sup> “FCC Announces Two New Innovation Zones and Amends One Existing Innovation Zone for Program Experimental Licenses,” Public Notice, FCC 21-92, at 1 (Aug. 6, 2021). The North Carolina State Innovation Zones are managed by the National Science Foundation-funded Platforms for Advanced Wireless Research (PAWR) Project Office. Platforms for Advanced Wireless Research, <https://advancedwireless.org> (last visited Sept 6, 2022).

<sup>258</sup> See Platforms for Advanced Wireless Research, <https://advancedwireless.org/nsf-names-third-pawr-wireless-research-platform-in-north-carolinas-research-triangle/> (Sept., 18, 2019); AERPAW: Aerial Experimentation and Research Platform for Advanced Wireless, <https://aerpaw.org/> (last visited Sept. 6, 2022).

using flexible-use spectrum<sup>259</sup> and are testing UAS operations on their networks for interference and other performance issues.<sup>260</sup> Verizon, for example, has stated that it is “actively testing how the use of its commercial mobile network to support drone deployments affects its own networks, neighboring licensees in adjacent geographies, and neighboring licensees in adjacent bands to ensure the avoidance of harmful interference.”<sup>261</sup> To this end, Verizon—through its subsidiary Skyward—and the FAA have entered into a three-year Memorandum of Agreement to research the use of Verizon’s network for command-and-control (C2) purposes and beyond-visual-line-of-sight operations.<sup>262</sup>

117. *UAS Standards.* Standards bodies, such as 3GPP,<sup>263</sup> are conducting ongoing studies to determine the extent of interference that may be caused by UAS operations within a terrestrial network, and to develop, as necessary, techniques to manage and mitigate the increased risk of harmful interference posed by UAS.<sup>264</sup> As noted, 3GPP is developing updates to its standards to enable LTE wireless networks in flexible-use bands to support UAS applications.<sup>265</sup> To this end, as part of Release 15 of the technical standard for Long Term Evolution (LTE), 3GPP concluded a study item on the use of LTE for UAS, in which it proposed various interference mitigation strategies.<sup>266</sup>

118. The Commission’s Technological Advisory Council’s (TAC)<sup>267</sup> Communication Strategies for Unmanned Aircraft working group was tasked with studying spectrum issues for UAS.<sup>268</sup> Areas of review included the availability and sufficiency of spectrum for uses such as command-and-

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<sup>259</sup> See, e.g., CTA *Section 374 Report* Comments at 7-8; T-Mobile *Section 374 Report* Comments at 2; Verizon *Section 374 Report* Comments at 3-4, 7; CTIA *Section 374 Report* Reply at 5-6; UPS *Section 374 Report* Reply at 3-4.

<sup>260</sup> See Verizon *Section 374 Report* Comments at 7.

<sup>261</sup> *Id.*

<sup>262</sup> Verizon, *Skyward and Federal Aviation Administration to test cellular-connected drones* (June 24, 2021), <https://www.verizon.com/about/news/skyward-federal-aviation-administration-test-drones>.

<sup>263</sup> The 3rd Generation Partnership Project (3GPP) is an umbrella organization consisting of standards organizations that develop protocols for mobile telecommunications, including the Long-Term Evolution standard (LTE). See <https://www.3gpp.org/about-3gpp/about-3gpp> (last visited Sept. 6, 2022).

<sup>264</sup> In addition, in 2017, the American National Standards Institute (ANSI) established the Unmanned Aircraft Systems Standardization Collaborative (UASSC) as a coordinating body to accelerate the development of the standards and conformity assessment programs needed to facilitate the safe integration of UAS into the U.S. national airspace. Most recently, in June 2022, ANSI released an update to its Gaps Progress Report, which tracks efforts by standards developing organizations and others to address identified gaps where additional standardization work is needed. See ANSI, *Gaps Progress Report Available: ANSI UASSC Standardization Roadmap for Unmanned Aircraft Systems* (June 14, 2022), <https://www.ansi.org/news/standards-news/all-news/2022/06/14-22-gaps-progress-report-available-ansi-uassc-standardization-roadmap-for-uas>.

<sup>265</sup> See *supra* para. 90. See, e.g., 3GPP, *UAS-UAV*, (Nov. 18, 2019), <https://www.3gpp.org/uas-uav>.

<sup>266</sup> See 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Study on Enhanced LTE Support for Aerial Vehicles (Release 15) 3GPP TR 36.777 V15.0.0 (2017-12). <https://portal.3gpp.org/desktopmodules/Specifications/SpecificationDetails.aspx?specificationId=3231>

<sup>267</sup> The FCC’s Technological Advisory Council (TAC) provides technical advice to the FCC. The TAC is organized under the authority of the Federal Advisory Committee Act. The current TAC, which is the FCC’s 5th Technological Advisory Council, was formed on October 21, 2010. The TAC is comprised of a diverse array of leading experts that helps the FCC identify important areas of innovation and develop informed technology policies supporting America’s competitiveness and job creation in the global economy. <https://www.fcc.gov/general/technological-advisory-council>.

<sup>268</sup> See Technological Advisory Council – 2019, *Documents and White Paper Releases, 2019 TAC Working Groups and Charter*, <https://www.fcc.gov/technological-advisory-council-2019>.

control, payload, identification, and collision avoidance.<sup>269</sup> The working group issued a series of reports in 2019, which concluded that flexible-use mobile networks using 3GPP technologies can satisfy communications requirements for low-altitude UA, but noted that interference remains a concern and an area for further study.<sup>270</sup> The ITU has also studied spectrum issues for UAS,<sup>271</sup> and IEEE has formed a technical committee related to aerial robotics and UAS.<sup>272</sup>

119. As discussed above, the RTCA is working with the FAA to develop industry-endorsed standards to enable UAS. In addition to developing MOPS for line-of-sight C2 transmissions for the 5030-5091 MHz band, RTCA Special Committee 228 is currently conducting work regarding cellular network standards for UAS.<sup>273</sup>

### **B. Applicable Spectrum Bands**

120. The flexible-use spectrum landscape for potential UAS use is varied, consisting of bands that prohibit airborne use (in the Table of Frequency Allocations or by rule) and bands that are silent on airborne operation. For example, Parts 22 and 96 explicitly prohibit the airborne use of Cellular Radiotelephone Service and CBRS spectrum.<sup>274</sup> Likewise, the Table of Frequency Allocations precludes aeronautical mobile use for several other spectrum bands, including all or portions of the 1670-1675 MHz, 1.4 GHz, 2.3 GHz (Wireless Communications Service), and 3.7 GHz bands.<sup>275</sup> Other flexible-use bands, however, are silent regarding airborne operations.<sup>276</sup> We seek comment on the spectrum bands that might be utilized for UAS, as well as the spectrum bands that would not be suitable for such operation (e.g., frequency bands with co-channel or adjacent channel services that require protection).

121. To inform our review, commenters should indicate the flexible-use bands in which they are currently operating or testing UAS. In addition, we ask commenters to detail the flexible-use band(s) that they may be interested in using for UAS in the future, including bands with and without explicit rules or allocations prohibiting airborne use. We also ask commenters to identify the type of communication

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<sup>269</sup> See Technological Advisory Council – 2019, *June 21, 2019 - Meeting of the Technological Advisory Council (TAC)*, (June 21, 2019), <https://www.fcc.gov/technological-advisory-council-2019>.

<sup>270</sup> See Technology Advisory Council, *Unmanned Aircraft Systems Working Group presentations*, (Mar. 26, 2019), <https://transition.fcc.gov/oet/tac/tacdocs/meeting32619/TAC-Presentations-3-26-19.pdf>; (June 21, 2019), <https://www.fcc.gov/oet/tac/tacdocs/meeting62119/TACPpresentations6-21-19.pdf>; (Dec. 4, 2019), <https://www.fcc.gov/oet/tac/tacdocs/meeting12419/TAC-Presentations-12-4-19.pdf>.

<sup>271</sup> The ITU developed Report ITU-R M.2171 (12/2009), titled, “Characteristics of unmanned aircraft systems and spectrum requirements to support their safe operation in non-segregated airspace.” The report addresses the anticipated needs of both terrestrial and satellite spectrum requirements for UAS.

<sup>272</sup> According to the IEEE Aerial Robotics and Unmanned Aerial Vehicle Committee’s website, “The technical committee will promote exchanges among researchers from academia, industry and government. The purpose is to identify the technologies and technical approaches to advance and mature the field of aerial robotics. Exchanges include conferences, workshops, special sessions in conferences and publications to promote discussion on technical and applicative problems. Envisioned will be on-line and printed resources to disseminate knowledge including cross-disciplinary information like aerodynamics, propulsion, communications, controls and sensors.” See <https://ieee-aerialrobotics-uavs.org/>.

<sup>273</sup> See *supra* para. 90 & n.195.

<sup>274</sup> 47 CFR § 22.925 (prohibiting on airborne operation on 800 MHz Cellular Radiotelephone Service (Cellular) frequencies); 47 CFR § 96.39(h) (Citizens Broadband Radio Service Device (CBSD) general requirements).

<sup>275</sup> 47 CFR § 2.106.

<sup>276</sup> See, e.g., 47 CFR pt. 24, Personal Communication Services, subpt. E, Broadband PCS; 47 CFR pt. 27 Miscellaneous Wireless Communications Services, 698-746 MHz band, 1695-1710 MHz, 1710-1755 MHz, 1755-1780 MHz, 1915-1920 MHz, 1995-2000 MHz, 2000-2020 MHz, 2110-2155 MHz, 2155-2180 MHz and 2180-2200 MHz bands.

contemplated, e.g., command and control, telemetry, or payload (video, etc.) for the desired band, as well as the type of technology or infrastructure needed to support such use.

### C. Sufficiency of Existing Rules

122. Certain entities maintain that our existing service and technical rules for the various flexible-use bands are sufficient to address the potential for harmful interference from UAS operations.<sup>277</sup> While our existing rules promote optimal flexibility for licensees, these rules are largely focused on terrestrial operations and were not designed with airborne operations in mind. Although studies are underway to develop techniques to manage and mitigate the increased risk of harmful interference posed by UAS, at this time it is unclear whether these mitigation techniques and standards enhancements would be sufficient to protect existing wireless users and adjacent service area/band licensees from harmful interference caused by UAS use. Further, the functionality exhibited by UAs may necessitate revising our rules to enable UAS operation on existing flexible-use networks. In light of these interference concerns, we seek comment on whether modifications to our rules to protect existing terrestrial and other airborne operations are warranted.

123. *Interference mitigation.* Use of flexible-use spectrum by UAS can raise interference problems for co-channel and potentially adjacent-channel operations—particularly the high-density use that is expected to occur in the future. The impact of UAs on mobile networks is different than conventional mobile devices due to the high altitude and high mobility of UAs. The higher altitude of UAs means that they (1) can see and be seen by more base stations than a conventional mobile device; and (2) have more favorable propagation conditions than propagation experienced by terrestrial operations. In addition, this high mobility, coupled with moving velocities up to 100 miles per hour under current FAA restrictions, can result in base station handoff issues and other network issues as described in detail below.<sup>278</sup> These factors underlie two scenarios in which harmful interference can occur in the presence of UAS operating on flexible-use spectrum—downlink interference and uplink interference.

124. In the downlink—communications from the base station to UAs—the UAs may operate at an altitude that is within line of sight of multiple base stations and, as a result, the UAs can receive downlink interference from those base stations. Accordingly, UAs may experience more downlink interference than terrestrial user equipment because the enhanced propagation conditions and greater line-of-sight cause downlink interference resulting from the multiple base stations visible to, and attempting to connect to, the UA. The increased downlink interference leads to increased resource utilization levels in the network and eventually degrades the downlink performance of both airborne and terrestrial equipment.<sup>279</sup>

125. At the same time, in the uplink—communications from the UA to the base station—the same UA can also cause interference to these multiple line-of-sight base stations. Uplink interference could increase as more UAs are introduced into the network. This interference may also increase depending on the UA's intended uses. For example, UAs may generate more uplink traffic than is typical of conventional mobile devices due to the use of data rate-intensive applications, such as video streaming and data streaming; such applications increase spectrum demand and present an increased risk of uplink

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<sup>277</sup> See, e.g., CTIA *Section 374 Report* Comments at 14-17; Verizon *Section 374 Report* Reply Comments at 3-4; Letter from Jackie McCarthy, Assistant Vice President, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, FCC at 2-3 (Dec. 20, 2019).

<sup>278</sup> See 14 CFR § 107.51(a) (noting that the groundspeed of the small unmanned aircraft may not exceed 87 knots (100 miles per hour)).

<sup>279</sup> See, e.g., Xingqin Lin et al., “The Sky is Not the Limit: LTE for Unmanned Aerial Vehicles,” *IEEE Communications Magazine*, Vol. 56, No. 4, 205 (April 2018) (The Sky is Not the Limit: LTE for Unmanned Aerial Vehicles); Siva D. Muruganathan et al., “An Overview of 3GPP Release-15 Study on Enhanced LTE Support for Connected Drones,” *IEEE Communications Standards Magazine*, Vol. 5, No. 4, 140 (December 2021).

interference. The increased uplink interference from UAs affects the throughput performance of terrestrial user equipment: as the number of UAs operating in a network increases, uplink resource utilization in the network also increases and at a greater rate than terrestrial-only operation. Eventually, the uplink performance of both UA and terrestrial equipment in the network is degraded.

126. To support use of UAS in terrestrial mobile networks, in 2017, 3GPP published a technical report (TR36.777) investigating the ability for UAs to be served using terrestrial LTE networks.<sup>280</sup> The report's findings—which were based on the analysis of field trials performed by various companies analyzing LTE commercial network performance with the introduction of UAs—validated that downlink and uplink interference may result from UAS operation.<sup>281</sup> The report proposed various network and UA enhancements to minimize LTE throughput degradation and interference to the network and to UAs and terrestrial devices.<sup>282</sup>

127. TR36.777 confirmed the effect that UAS operations may have on downlink operations. The report observed that UAs uniformly distributed between 1.5 meters and 300 meters above ground level experienced downlink interference as a direct result of the UAs operating in the direct line-of-sight of more cells than terrestrial user equipment.<sup>283</sup> This causes the UAs to receive downlink intercell interference from multiple cells.<sup>284</sup> The resulting increase in resource utilization to provide for the introduction of UAs further decreases the spectral efficiency in the network and degrades downlink throughput performance of both UAs and terrestrial user equipment.<sup>285</sup>

128. The report similarly validated impacts on uplink interference. To this end, it also was observed that since the UAs experience line-of-sight propagation conditions to more cells than terrestrial devices, the UAs would cause interference to more cells in the uplink than a typical terrestrial device.<sup>286</sup> The uplink interference caused by UAs degrades the throughput performance of terrestrial devices.<sup>287</sup> The increase in resource utilization level further increases interference in the network, which in turn degrades the uplink throughput performance of both UAs and terrestrial user equipment.<sup>288</sup>

129. The report suggested several potential solutions to mitigate both uplink and downlink interference. Many of the solutions can be implemented by network providers independently and do not require an update to the 3GPP standard. To mitigate downlink interference, the report proposed the following solutions:

- *Full-Dimensional MIMO (FD-MIMO)* – This solution would use multiple antennas at the eNodeB (base station) transmitter to mitigate the interference in the downlink to UAs.<sup>289</sup> FD-MIMO can also limit the mean terrestrial user equipment (UE) packet throughput loss.<sup>290</sup>

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<sup>280</sup> 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Study on Enhanced LTE Support for Aerial Vehicles (Release 15) 3GPP TR 36.777 V15.0.0 (2017-12) (TR36.777 Report). While the TR36.777 Report uses the term “aerial user equipment” or “aerial vehicles,” for purposes of uniformity, we refer to aerial user equipment or vehicles as unmanned aircraft or UA.

<sup>281</sup> See generally TR36.777 Report.

<sup>282</sup> See generally TR36.777 Report.

<sup>283</sup> TR36.777 Report at 12.

<sup>284</sup> *Id.*

<sup>285</sup> *Id.* at 13.

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> See TR36.777 Report at 15.

<sup>290</sup> *Id.*

- *Directional Antenna at UAs* – Interference in the downlink can be mitigated by equipping UAs with a directional antenna instead of an omnidirectional antenna.<sup>291</sup> A directional antenna can be used to mitigate the interference in the downlink to UAs by decreasing the interference power coming from a broad range of angles.<sup>292</sup>
- *Receive Beamforming at UAs* – The UAs are assumed to be equipped with more than two receive antennas to mitigate the interference in the downlink to UAs.<sup>293</sup> Downlink interference mitigation can be achieved in this case by using receive beamforming at UAs.<sup>294</sup> In this solution, multiple cells belonging to the same site are coordinated and data is jointly transmitted to the UAs.<sup>295</sup>
- *Intra-site Joint Transmission Coordinated Multi-point Operation (JT CoMP)* – In this solution, multiple cells are coordinated and data is jointly transmitted to the UAs.<sup>296</sup>
- *Coverage Extension* – In this solution, coverage extension techniques via downlink shared channels, physical broadcast channels, and physical downlink shared channels are used to enhance synchronization and initial access for UAs.<sup>297</sup> Because the UA is synchronized with the network, downlink interference is mitigated.<sup>298</sup>
- *Coordinated Data and Control Transmission* – In this solution, multiple cells belonging to the same or different sites are coordinated.<sup>299</sup> Data, common signal/channels (e.g., synchronization signal and Physical Broadcast Channel (PBCH)), and control channels can be jointly transmitted to the UAs.<sup>300</sup> The coordinated cells could construct a larger cell for UAs, and terrestrial user equipment is served by physical cells without coordination,

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<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> The TR36.777 Report details how this solution helps to mitigate downlink interference. From the results of the UAS testing done to support the study, it was observed that when the UA UE ratio is increased from 0% to 50% and when intra-site JT CoMP is employed in the case with 50% UA UE ratio, the mean packet throughput of all user equipment can be improved by 33.4% at low offered traffic load in a UMa-AV (Urban Macro base stations mounted above buildings with UAs) scenario. TR36.777 Report at 15. When the UA UE ratio remained fixed at 50% in UMa-AV scenario, employing intra-site JT CoMP can improve the mean packet throughput for all user equipment by 58.5% at low offered traffic load compared to the case where intra-site JT CoMP is not employed. TR36.777 Report at 15.

<sup>297</sup> The TR36.777 Report explains how this solution helps to mitigate downlink interference. From the results of the UAS testing done to support the study, it was observed that a noticeable fraction of the UA UE in RMa-AV (Rural Macro base stations located on top of towers with UAs) and UMa-AV (Urban Macro base stations mounted above buildings with UAs) are not in coverage for synchronization and initial access. TR36.777 Report at 16. With LTE Rel-13 coverage extension techniques, the UAs in RMa-AV and UMa-AV can achieve synchronization and initial access with 100% coverage probability. TR36.777 Report at 16.

<sup>298</sup> *Id.*

<sup>299</sup> According to the TR36.777 Report, this solution helps to mitigate downlink interference as it was observed that the coordinated cells could construct a larger cell for UAs, and at the same time, terrestrial user equipment are served by physical cells without coordination. TR36.777 Report at 16. For the case of high resource utilization for PDSCH (Physical Downlink Shared Channel), throughput for UAs is improved and the impact on terrestrial devices is reduced. TR36.777 Report at 16.

<sup>300</sup> *Id.*

simultaneously.<sup>301</sup> A dedicated downlink resource within the Physical Downlink Shared Channel (PDSCH) region of the coordinated cells can be reserved for these coordinated transmissions.<sup>302</sup>

130. The report proposed the following techniques to mitigate uplink interference:

- *User Equipment Specific Fractional Pathloss Compensation Factor* – In this solution, an enhancement to the existing open loop power control mechanism is considered where a device-specific fractional pathloss compensation factor is introduced.<sup>303</sup>
- *User Equipment Specific Power Output Parameter* – Configuring a lower power output for UAs compared to terrestrial devices improves terrestrial uplink user equipment throughput performance.<sup>304</sup> Such a configuration, however, reduces UA uplink throughput.<sup>305</sup>
- *Closed Loop Power Control* – In this solution, the target received powers for the UAs are adjusted.<sup>306</sup> By applying closed loop power control, mean terrestrial user equipment uplink throughput improvement can be improved.<sup>307</sup>
- *Full-Dimensional MIMO (FD-MIMO)* – By using FD-MIMO with multiple antennas at the eNB receiver interference in the uplink can be mitigated.<sup>308</sup> In addition, FD-MIMO can limit the mean terrestrial user equipment packet throughput loss.<sup>309</sup>

131. In addition to TR 36.777, 3GPP made changes to Technical Standard TS36.331 to help address UA interference to the base station. In LTE networks, measurement reports are messages sent from a UA to a base station that help the base station make network decisions.<sup>310</sup> The changes to TS36.331 included measurement report triggers for two reporting events: H1 (above) and H2 (below) UA height thresholds sent from the UA to the base station to help the base station see the UA and to deal with

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<sup>301</sup> *Id.*

<sup>302</sup> *Id.*

<sup>303</sup> From the results of the UAS testing done to support the study, it was observed that with the introduction of a user equipment specific fractional pathloss compensation factor, it is possible to configure UAs with a different factor compared to the fractional pathloss compensation factor configured to the terrestrial devices. TR36.77 Report at 16-17. It was observed that with the UA ratio fixed at 50% in UMA-AV scenario, applying different fractional path loss compensation factors for UAs and terrestrial devices can result in significant user equipment packet throughput gains for terrestrial devices and significant user equipment packet throughput losses for UAs. TR36.777 Report at 16-17. Applying height dependent fractional pathloss compensation factors for UAs can result in significant user equipment packet throughput gains for terrestrial devices and notable UE packet throughput gains for UAs. TR36.777 Report at 16-17.

<sup>304</sup> TR36.777 Report at 17.

<sup>305</sup> *Id.*

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

<sup>310</sup> See Haotian Deng *et al.*, Mobility Support in Cellular Networks: A Measurement Study on Its Configurations and Implications. 2018 Internet Measurement Conference (IMC '18), Boston, MA, ACM, (Oct. 31, 2018) <https://dl.acm.org/doi/10.1145/3278532.3278546>.

potential interference.<sup>311</sup> 3GPP is also making additional enhancements to integrate UAS into LTE networks that do not relate to interference.<sup>312</sup>

132. While the 3GPP TR 36.777 report concluded that it is feasible to use existing LTE networks to provide UA connectivity, the report and its findings have their limitations. The 3GPP quantitative analyses for Release 15 evaluated only the self-network performance impact of various potential solutions to interference detection and mitigation.<sup>313</sup> Moreover, the technical solutions identified do not eliminate the interference from UAs, they merely reduce the levels of interference.<sup>314</sup> The report also noted that interference challenges become more visible when the density of UAs increases.<sup>315</sup> Beyond these limitations, the report did not evaluate the interference potential and impact on neighboring wireless networks or other radio services in the vicinity of UAS operation, nor did it evaluate the costs associated with the proposed technical solutions. As a result, there are open questions about the level of interference that licensees may experience and deem acceptable from neighboring licensees deploying UAS, the mitigation measures that may be necessary, and the costs licensees are willing to absorb to protect themselves from interference. Thus, the current 3GPP studies, while a valuable start, point to the need to address additional UAS interference issues.

133. Given that it appears that UAS operations within a single terrestrial mobile network will likely result in an increased level of intra-network interference and decreased network efficiency, it is also likely that adjacent markets and networks will be affected by UAS operations. While we seek to provide licensees with as much flexibility as possible to deploy a wide range of services and applications, including UAS, the increased risk of harmful interference from such operations is a concern. Neighboring licensees, whether they deploy or decide not to deploy UAS/airborne technologies, will be impacted and may be required to implement protections for their own networks. A difficult situation may arise for all parties when adjacent licensees—both of which are operating within the Commission’s rules—reach an impasse regarding interference, and the failure to reach a resolution may detrimentally affect operations for one or both licensees.

134. We seek comment on how licensees deploying UAS technologies could protect licensees in neighboring markets and neighboring spectrum bands from interference. Some flexible-use licensees planning to deploy airborne technology (e.g., UAS) may believe that such use is not problematic from an interference standpoint because they may assume that (1) all licensees will deploy the same technology, (2) all terrestrial networks are equally prepared to protect themselves, and (3) other potentially incompatible airborne technologies will not also be deployed. While this best-case scenario may turn out to be true as the market for airborne services develops, our rules must be expansive enough to account for

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<sup>311</sup> See 3GPP TS 36.331 V16.7.0 (2021-12) 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Evolved Universal Terrestrial Radio Access (E-UTRA); Radio Resource Control (RRC); Protocol specification (Release 16) (Section 5.5.4 - Measurement report triggering).

<sup>312</sup> In Release 16, 3GPP completed a study into the potential requirements and use cases for Remote Identification of Unmanned Aerial Systems. See <https://www.3gpp.org/uas-uav>. The study also looked at the extent to which the 3GPP system can enable UAS components to establish the connectivity between each other and UAS Traffic Management (UTM) for both line-of-sight connectivity and non-line-of-sight connectivity, and on the detection and reporting of unauthorized UAs towards the UTM. See <https://www.3gpp.org/uas-uav>. In Release 17, 3GPP specifies additional capabilities which support UAS applications and requirements such as UA user authentication, UA tracking, and UA remote identification, among others. See 3rd Generation Partnership Project; Technical Specification Group Services and System Aspects; Uncrewed Aerial System (UAS) Support in 3GPP; Stage 1 (Release 17) 3GPP TS 22.125 V17.6.0 (2022-03) (Section 5 – Requirements for Remote Identification of UAS (includes tracking), and Section 7.3 - Positioning performance requirements). <https://portal.3gpp.org/desktopmodules/Specifications/SpecificationDetails.aspx?specificationId=3545>.

<sup>313</sup> See generally TR36.777 Report.

<sup>314</sup> See generally *id.*

<sup>315</sup> See *id.* at 20.

the increased potential for harmful interference. Our rules should, at a minimum, set out a framework for UAS operations that is broad enough to account for varying interference scenarios. For these reasons, we seek comment on whether our rules can accommodate UAS operations while also protecting co-channel and adjacent band operations, including satellite operations, where permitted. In addition, we seek comment on changes to our rules that may be necessary to accommodate these scenarios.

135. For example, the power limitations for mobile devices vary depending on the service. For the PCS band, the limit is 2 Watts EIRP.<sup>316</sup> Hand-held stations operating in the 698-757 MHz, 776-788 MHz, 805-806 MHz, and 600 MHz uplink band are limited to 3 Watts ERP.<sup>317</sup> Are these and other power limitations for mobile devices in the flexible-use bands appropriate for UAS operation? Considering the increased interference potential of UAS, should the power limitations for UAs be lower than for terrestrial devices?

136. Additionally, for many services, a licensee's predicted or measured median field strength limit must be calculated and may not be exceeded at any given point along its service area boundary.<sup>318</sup> These limits were developed considering only terrestrial devices.<sup>319</sup> With the introduction of UAS, how will licensees ensure these boundary limits are not exceeded? Are the current limits<sup>320</sup> sufficient to protect the boundary of a neighboring licensee on the same or adjacent channel block? Can a UAS report and store power control and location metrics to ensure boundary limits are not exceeded?<sup>321</sup>

137. As noted, the higher the altitude at which UAs are operating, the greater the number of line of sight paths between a UA and surrounding base stations, and thus the greater the potential impact on adjacent networks. We seek comment on the altitudes that are being considered for UA operations involving flexible-use spectrum. Will operations on these bands likely be limited to low altitudes such as 400 feet AGL, or is it anticipated that UAS use on flexible-use bands will include operations at higher altitudes such as 10,000 feet AGL or greater? Given the increased potential for interference at high altitudes, should the Commission impose altitude restrictions on UAS operations using flexible-use spectrum?

138. Further, it is not clear whether existing out-of-band emissions rules adequately account for the favorable line-of-sight propagation conditions associated with UAS. Should such rules be modified to account for UAS operations in flexible-use spectrum, and if so, how? We seek comment on these and other technical rules that should be evaluated and perhaps revised to facilitate the use of flexible-use bands for UAS.

139. To inform our analysis regarding whether rule revisions may be necessary, we seek technical studies and analyses regarding the potential for UAS operations to cause interference to adjacent channel, adjacent band, or adjacent market operations. Among other issues, these studies and analyses should address how licensees deploying UAS technologies plan to protect terrestrial or satellite licensees in neighboring markets or spectrum bands from harmful interference. We request comment on the challenges and issues that carriers have experienced when testing or deploying UAS operations relative to the carrier's own terrestrial wireless network. What solutions have carriers developed or are carriers

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<sup>316</sup> 47 CFR § 24.232(c).

<sup>317</sup> 47 CFR § 27.50(b)(10), (c)(10).

<sup>318</sup> See, e.g., 47 CFR §§ 24.236, 27.55(a).

<sup>319</sup> In general, the geographic area licensees' service area power limits in sections 22.913(b) and 27.55(d) and (e) of the Commission's rules that are measured at a height 1.6 meters above ground level to estimate the height of a mobile (UE) taking into account terrain obstacles. See 47 CFR §§ 22.913(b), 27.55(d), (e).

<sup>320</sup> See 47 CFR §§ 24.236, 27.55(a).

<sup>321</sup> See 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Study on Enhanced LTE Support for Aerial Vehicles (Release 15) 3GPP TR 36.777 V15.0.0 (2017-12). Section 7.1 Potential enhancements for interference detection.

developing to address those challenges, specifically, the hardware, software, processes required, as well as the costs entailed in deploying such solutions? What UAS altitude and UA density assumptions have been used to analyze deployment challenges and protection of neighbors? Are these solutions to be implemented applicable to the UA, or are they network-based? For licensees employing LTE, can the solutions identified in the 3GPP TR36.777 Report be applied to resolve interference issues within the network and to adjacent networks? Given that flexible-use spectrum licensees may deploy networks other than LTE, what additional interference issues may be encountered and what are the technical solutions that could be applied, given that there may be varying levels of compatibility with airborne technologies? We note that some areas, such as Quiet Zones require the application of more stringent measures to reduce the potential for interference;<sup>322</sup> how will licensees continue to protect such areas when operating at higher altitudes?<sup>323</sup> Are there network-based solutions being developed that could prevent individual UAs from approaching or entering such noise-sensitive locations or other restricted areas that would mitigate the potential for UAs to cause interference or endanger safety of life and property in such areas? We also seek comment on any other regulatory matters that may be affected by UAS operations. For example, will UAS/airborne technologies affect other regulatory requirements like 911 location accuracy?

140. *Different Use Cases.* Our regulatory approach with respect to flexible-use bands is to provide licensees with sufficient flexibility to choose the services that they wish to provide. Licensees could offer a wide range of services and applications, ranging from “conventional” C2 and payload offerings to UTM management services. This ability of licensees to engage in a wide range of use cases creates additional technical uncertainty when deploying UAS operations. We seek comment on the airborne use cases that commenters are considering for flexible-use spectrum. Is there a need for specific rules to permit different applications? Further, should licensees that incorporate UAS operations be required to meet different limitations than what currently exist?

141. One application being explored is the use of UAs as airborne base stations.<sup>324</sup> HAPS systems can potentially be used to provide both fixed broadband connectivity for end users and transmission links between the mobile and core networks for backhauling traffic. As noted, the Commission’s rules—as well as ITU Radio Regulations—define HAPS as radio stations located on an object at an altitude of 12-31 miles (20-50 kilometers) and at a specified, nominal, fixed point relative to the Earth.<sup>325</sup>

142. We note that the Commission is currently considering whether HAPS or other stratospheric-based services could be used in any portion of the 71-76 GHz, 81-86 GHz, 92-94 GHz, and 94.1-95 GHz (70/80/90 GHz) bands to provide or support broadband Internet access.<sup>326</sup> Are there

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<sup>322</sup> Section 1.924 of the Commission’s rules identifies areas in which it is necessary to restrict transmissions to minimize impact on radio astronomy or other facilities that are highly sensitive to interference. 47 CFR § 1.924; *see also supra* para. 105.

<sup>323</sup> *See, e.g.*, 47 CFR § 27.1134 (Protection of Federal Government operations).

<sup>324</sup> *See, e.g.*, Steve McCaskill, *Aerial base station delivers 4G coverage from the Earth's stratosphere* (Oct. 20, 2020), <https://www.techradar.com/news/aerial-base-station-delivers-4g-coverage-from-the-earths-stratosphere>; Miriam McNabb, *AeroVironment to Develop High Altitude Solar Drones* (Jan. 3, 2018), <https://dronelife.com/2018/01/03/aerovironment-develop-high-altitude-solar-drones>.

<sup>325</sup> 47 CFR § 2.1; *accord* ITU R.R., Article 1.66A (2020); *see supra* para. 98.

<sup>326</sup> *See* “Wireless Telecommunications Bureau Seeks To Supplement the Record on 70/80/90 GHz Bands Notice Of Proposed Rulemaking,” Public Notice, DA 21-1263 (WTB Oct. 8, 2021). This public notice was issued to supplement the record in the rulemaking on *Modernizing and Expanding Access to the 70/80/90 GHz Bands*. *Modernizing and Expanding Access to the 70/80/90 GHz Bands*, WT Docket No. 20-133, Notice of Proposed Rulemaking, 35 FCC Rcd 6039 (2020) (seeking comment on, among other things, potential rule changes for non-Federal users to facilitate the provision of wireless backhaul for 5G, as well as the deployment of broadband services to aircraft and ships).

flexible-use bands that could potentially accommodate such use?<sup>327</sup> Would such use be compatible with “conventional” UAS and terrestrial, flexible-use operations given the potential impact that such high altitude use could have on other operations in the band? If so, what rule changes or regulatory considerations would be necessary to permit such uses?

143. Other examples of airborne base station platforms include the use of tethered UAS, which typically are UAs physically connected to the ground via cables that provide power and data links to the UAs.<sup>328</sup> We are aware that there has been research and development in the use of tethered UAS as temporary base stations, particularly as part of disaster recovery efforts.<sup>329</sup> What issues are raised by the use of tethered UAS temporary base stations? If the station is essentially functioning as a conventional base station, should the existing rules applicable to the particular band be applied? Or is it necessary to apply other service and technical parameters, e.g., antenna height and power output? What additional concerns are raised where tethered UAS base stations as well as HAPS are deployed? Further, what would be the impact of a mobile airborne base station on airborne user equipment (i.e., UAS)? What changes or additions to our rules are necessary to address such concerns?

144. *Elimination of Rules Which Impede UAS.* In its Final Report, the BVLOS ARC recommended that the Commission reconsider the restrictions on airborne use that apply to certain spectrum bands.<sup>330</sup> The *BVLOS ARC Final Report* noted that beyond-visual-line-of-sight operations require that spectrum bands with appropriate characteristics are sufficiently available to meet the needs of numerous users operating in a variety of operating environments.<sup>331</sup> Similarly, the TAC has noted that the Commission should reassess the technical basis for prohibiting use of certain terrestrial mobile bands above ground level.<sup>332</sup> To the extent that measures can be identified that resolve or mitigate the impact of UAS use on adjacent operations, we seek comment on whether current prohibitions on airborne operations should be removed. For example, the Cellular Radiotelephone Service airborne use prohibition in section 22.925 was put in place specifically because of the heightened risk of interference by airborne mobiles to cellular networks. Can such operations be protected in the presence of UAS use? If solutions are developed that effectively mitigate the increased potential for harmful interference posed by UAS use, should UAS operations be permitted in Cellular Radiotelephone Service or other bands? Are there certain noise-restricted bands that must retain the prohibition regardless of any UAS

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<sup>327</sup> We observe that the Commission has previously granted experimental authorizations for high-altitude testing using flexible-use spectrum. See, e.g., Physical Science Laboratory/New Mexico State University, Special Temporary Authorization, OET Experimental Licensing System File No.: 0020-EX-CM-2022; Loon, LLC, Special Temporary Authorization, OET Experimental Licensing System File No.: 0609-EX-CN-2020.

<sup>328</sup> See Mustafa A. Kishk et al., *On the 3-D Placement of Airborne Base Stations Using Tethered UAVs*, IEEE Transactions on Communications (Aug. 2020), <https://ieeexplore-ieee.org/fcc.idm.oclc.org/stamp/stamp.jsp?tp=&arnumber=9091128>.

<sup>329</sup> See, e.g., *Take a look at AT&T's 'Flying COWs' — drones that returned cell service to Hurricane Ida-hit Louisiana*, Business Insider (Sept. 4, 2021), <https://www.businessinsider.com/flying-cows-bring-cell-service-to-areas-impacted-natural-disasters-2021-8>; *COMSOvereign Delivers First Tethered Drone-Based LTE Network* (Dec. 21, 2020), <https://www.prnewswire.com/news-releases/comsovereign-delivers-first-tethered-drone-based-lte-network-301196568.html>; Monica Allevan, “*T-Mobile applies for extension to test UAS in Washington*,” FierceWireless (Feb. 12, 2019), <https://www.fiercewireless.com/wireless/t-mobile-applies-for-extension-to-test-uas-bellevue-redmond>.

<sup>330</sup> *BVLOS ARC Final Report* at 61.

<sup>331</sup> *Id.*

<sup>332</sup> Technical Advisory Council, Unmanned Aircraft Systems Working Group March 26, 2019 Presentation at 25-35, <https://transition.fcc.gov/oet/tac/tacdocs/meeting32619/TAC-Presentations-3-26-19.pdf>.

interference mitigation measures?<sup>333</sup> If a commenter seeks to eliminate or modify an existing prohibition, the commenter should specifically explain why the airborne use would not cause harmful interference to a co-channel or adjacent channel licensee's operations.

145. *Canadian and Mexican Coordination.* The use of UAS will likely have an impact in areas beyond United States borders. There are several agreements that address use of the flexible-use bands in the border regions between the United States, Canada, and Mexico.<sup>334</sup> These agreements do not contemplate UAS use. Because UAS operation in these bands would increase the interference potential in the border regions, commenters should be aware that UAS use may not be permitted in border areas until such time as the agreements are updated to accommodate such use, or agreements on such use are reached with both countries. We seek comment on how to address issues arising from UAS use in the border regions pending any changes to existing agreements.

#### D. UAS Impact on Spectrum Rights

146. The Commission's rules largely presume that wireless networks are terrestrial in nature, which raises questions regarding the extent of spectrum rights granted as part of existing commercial authorizations. Pursuant to the Communications Act and the Commission's rules, the Commission grants licensees the right to operate radio systems on a particular radio frequency.<sup>335</sup> In some services, such as those with allocations prohibiting aeronautical mobile use, it can be presumed that a licensee only has rights with respect to ground-based operations.<sup>336</sup> Likewise, other services have technical rules which suggest that only terrestrial networks were contemplated for those services.<sup>337</sup> By contrast, rules for geographic market-based licenses define market areas according to geographic boundaries, but they are silent as to the vertical scope of such markets.<sup>338</sup> The Commission has never explicitly stated what it believes to be the vertical limit of a licensee's spectrum rights, leaving a question as to the "ceiling" of license areas and the attendant protections associated with these geographic markets. As the interference discussion above highlights, however, market boundaries become crucial at higher altitudes.

147. The ability of a licensee to exercise or protect its spectrum rights with respect to adjacent licensees becomes relevant in the context of UAS use, given that the operation of UAs well within the

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<sup>333</sup> There are restrictions on aeronautical or airborne mobile use in or adjacent to noise-restricted bands. For example, in the 1670-1675 MHz band, aeronautical mobile is prohibited to protect radio astronomy operations. See 47 CFR § 2.106, footnotes US211, US342.

<sup>334</sup> See, e.g., Canada Agreements By Frequency, <https://www.fcc.gov/canadian-agreements-frequency>, (700 MHz Commercial Land Mobile Agreement with Canada, Understanding Concerning Cellular Radio Systems in the bands 824-825 MHz, 845-849 MHz, 869-870 MHz, and 890-894 MHz, Personal Communications Service (PCS)-Broadband); Mexico Agreements By Frequency, <https://www.fcc.gov/mexican-agreements-frequency>, (Cellular (Protocol 4), Personal Communication Service (PCS)-Broadband 8).

<sup>335</sup> 47 U.S.C. § 303; 47 CFR § 1.903.

<sup>336</sup> Several allocations in the Table of Frequency Allocations, including 1670-1675 MHz, 2305-2310 MHz, 2495-2690 MHz and 3550-3700 MHz bands, permit primary non-Federal mobile, except aeronautical mobile, operations. 47 CFR § 2.106.

<sup>337</sup> For example, PCS service rules specify maximum antenna height and output power of base stations. 47 CFR § 24.232. In the Cellular Radiotelephone Service, license areas are determined by a licensee's Cellular Service Area Boundary (SAB), which is the area around a base station transmitter within which a subscriber can receive a specific signal level. See 47 CFR § 22.911. The license area defined by this service contour is, in essence, a dome around the transmitter. *Id.*

<sup>338</sup> See, e.g., 47 CFR §§ 24.202, 27.6. A geographic market licensee generally may construct a transmitter tower anywhere within a particular geographic area's boundary (subject to certain interference protection and other technical requirements) and does not need to apply for prior Commission approval of specific transmitter locations. See, e.g., 47 CFR § 27.11(a) ("Applications for individual sites are not required and will not be accepted, except where required for environmental assessments, in accordance with §§ 1.1301 through 1.1319 of this chapter."); 47 CFR § 90.663.

boundaries of one license area can affect and be affected by base stations located inside the boundaries of another license area—more so than for conventional mobile operation. UAs will have line-of-sight connectivity to base stations both within the geographic market area where the UA is flying, as well as base stations in other adjacent geographic areas. The potential for a UA to establish a network connection with a base station in an adjacent market causes a tension between Commission policies: (1) a licensee’s authorization generally provides the licensee exclusive use of the spectrum within its licensed market area; and (2) historically, our rules consider mobile devices to be operating under the authority of the licensee whose transmitter is providing service. UA operation creates a tension between these two policies because a UA can be served by a transmitter that is well outside of the licensee’s market boundary.<sup>339</sup> The greater line-of-sight of UAs could extend the reach of a transmitter further into an adjacent market, thus muddling the concept of license exclusivity.

148. This aspect of UAS use raises questions regarding how and under what circumstances a licensee is able to enforce rights under its license.<sup>340</sup> For example, it may be difficult to determine UAS operation as a cause of interference to a network because such operation is intermittent and because the effect may vary depending on the position and movement of the UA. Moreover, even if UAS operation is determined to be a cause of interference, the offending licensee is likely to be operating within the Commission’s rules regarding conventional mobile operations. This poses questions regarding the circumstances under which the “victim” licensee, i.e., the licensee experiencing harmful interference, may seek relief from the Commission where both entities are compliant with service rules.

149. Accordingly, we seek comment on whether the Commission should identify a vertical limit at which flexible-use licenses may be used to support UAS on an exclusive or primary basis. Use beyond this limit would be on a non-primary basis. “Non-primary” in this context would mean that a licensee would be required to cure harmful interference to an adjacent licensee caused by its UAS operation even if it is operating within the rules.<sup>341</sup> First, is it appropriate to establish a vertical limit for primary UAS operations in our rules? If we adopt a limit, what should that limit be? What factors should the Commission consider regarding a vertical limit for licensed UAS operations?

150. Second, we seek comment on how to determine whether a licensee should be required to cure harmful interference caused by its non-primary operations to adjacent licensees even if it is operating within the service rules for the license. How should we determine whether an entity should be obligated to take corrective measures, as there may be scenarios in which it could be difficult to determine fault? We request comment on how licensees should be able to enforce their license rights. What interference resolution mechanism would be appropriate?

#### **IV. LICENSING UAS OPERATORS FOR VHF COMMUNICATIONS**

151. The aeronautical VHF band (117.975 MHz -137 MHz) is used by aviation for air traffic control and advisory communications among other aviation-safety purposes.<sup>342</sup> In some instances, to ensure the safety of the National Airspace System, the FAA requires operators of UAS to communicate

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<sup>339</sup> In the current mobile environment this happens to a limited extent at a market boundary. Currently, base stations situated along a market boundary can serve a conventional mobile located close to the boundary in the adjacent market; this is beneficial to both licensees as it permits continued service and seamless handoff across boundaries. UA, however, could be served by base stations well within the adjacent market boundary due to a greater line-of-sight.

<sup>340</sup> See Technological Advisory Committee, UAS Working Group March 26, 2019 Presentation, <https://transition.fcc.gov/oet/tac/tacdocs/meeting32619/TAC-Presentations-3-26-19.pdf> (last visited June 14, 2022).

<sup>341</sup> “Non-primary” status would not mean that a licensee would not have interference protection for its own operation. The non-primary status would only convey responsibility for curing interference even if that licensee is operating within rules.

<sup>342</sup> See 47 CFR § 87.173(b); *Review of Part 87 of the Commission’s Rules Concerning the Aviation Radio Service*, WT Docket No. 01-289, Third Report and Order, 25 FCC Rcd 7610, 7612, para. 3 (2010).

with air traffic control (ATC) facilities when operating on or in the vicinity of an airport or operating in controlled airspace over the VHF traffic control and advisory frequencies.<sup>343</sup> To meet this requirement, operators may use a VHF station integrated into the UA itself whereby the UAS operator's control station connects with the UA using a non-VHF channel and the UA completes the connection to ATC over the normal VHF channels. This approach is commonly referred to as ATC relay.<sup>344</sup> Implementation of ATC relay in UA technology is still nascent and UAS operators have, therefore, continued to rely on ground-based VHF stations. The part 87 aviation service rules governing the use of the aeronautical VHF band do not, however, provide a licensing mechanism for the operator of a UAS to obtain a ground-based station license.<sup>345</sup> Accordingly, UAS operator requests for such authorization are currently handled by special temporary authority on a case-by-case basis. We propose to establish a mechanism by which UAS operators may apply for a regular license for this purpose, with appropriate requirements, restrictions, and conditions to maintain the integrity of the band and service legitimate needs for flight coordination.

152. Although aeronautical VHF stations are generally licensed by rule under part 87 if the aircraft does not make international flights or communications,<sup>346</sup> we do not propose to authorize ground-based VHF stations under a licensed-by-rule approach. Rather, under our proposal, we would require operators to file a license application with the Commission for an individual license covering their VHF station. According to the FAA, there were over 200,000 private aircraft registered in the United States as of 2020 and were over 7,000 commercial aircraft as of 2019, numbers which are expected to remain relatively stable to the year 2040.<sup>347</sup> In contrast, the recreational UAS fleet is expected to grow from the current 1.32 million units to approximately 1.48 million units by 2024.<sup>348</sup> The FAA also forecasts that, by the year 2024, the commercial UAS fleet will likely be twice as large as the current fleet of approximately 385,000 UAS.<sup>349</sup> Given the potential number of UAS operators, we have concerns that a licensed-by-rule

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<sup>343</sup> See 14 CFR §§ 91.126 Operating on or in the vicinity of an airport in Class G airspace, 91.183 IFR communications; *see also, e.g.*, Supplemental Statement of BNSF Railway Co., FCC File No. 0008476737, at 1 (filed Dec. 20, 2018), *available at* (last visited June 14, 2022) (stating that “[t]he ability for BNSF to have active participation on the proposed aviation channels is of major importance to the FAA” and that “the FAA has requested BNSF obtain an aircraft stations license from the FCC” that will be “used to communicate directly to ATC”); *see also* FAA Order JO 7210.3CC – Facility Operation and Administration, at 5-5-3(b), [https://www.faa.gov/air\\_traffic/publications/atpubs/foa\\_html/chap5\\_section\\_5.html](https://www.faa.gov/air_traffic/publications/atpubs/foa_html/chap5_section_5.html) (last visited June 14, 2022) (providing that the “Operations Supervisor/Controller-in-Charge (OS/CIC) should ensure . . . if known, that the controller has a method of contacting the appropriate UAS [pilot-in-command]”).

<sup>344</sup> For example, the technical standard RTCA DO-362A would potentially provide for the use of CNPC links in the 5030-5091 MHz band to support the link between operator and UA for purposes of ATC relay. *See* RTCA DO-362A, § 1.1. and B.3.1.2.

<sup>345</sup> This issue does not arise for pilots aboard manned aircraft, who use stations for VHF communications under subpart F of part 87 of the Commission's rules. *See* 47 CFR pt. 87, subpt. F. Subpart F authorizes aircraft stations, which, as mentioned earlier, are defined as stations “located on board an aircraft.” 47 CFR §§ 87.5, 87.185(a). Because ground stations are not “located on board an aircraft,” they are not covered by subpart F.

<sup>346</sup> *See* 47 CFR § 87.18(b).

<sup>347</sup> *See* FAA, *FAA Aerospace Forecast: Fiscal Years 2020-2040* at 26, 32, [https://www.faa.gov/data\\_research/aviation/aerospace\\_forecasts/media/FY2020-40\\_FAA\\_Aerospace\\_Forecast.pdf](https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2020-40_FAA_Aerospace_Forecast.pdf) (last visited June 14, 2022) (*FAA Aerospace Forecast*). While the private aircraft fleet is expected to slightly decrease, the number of flight hours is expected to increase. *Id.* at 26, 27. The commercial fleet is expected to grow by approximately 1% per year. *Id.* at 32.

<sup>348</sup> *Id.* at 49.

<sup>349</sup> *Id.* at 52.

approach applied to these operators' stations in the VHF band could endanger this critical and limited amount of aeronautical spectrum and the safety of the National Airspace System.

153. In addition, given the wide availability of inexpensive, off-the-shelf VHF hand-held radios that can be easily operated without training, we are concerned about the greater potential for parties to obtain and use ground stations on a licensed-by-rule basis to contact ATC, because they may not have adequate training for such communications. We are further concerned that licensed-by-rule operators would be difficult to identify during communications with ATC or afterwards in the event of problems. We tentatively conclude that ground stations for VHF communications should not be licensed by rule, and seek comment on our analysis and tentative conclusion.<sup>350</sup>

154. While we typically do not individually license aircraft stations operating on VHF for domestic flights and communications, we seek comment on licensing ATC relay operations. As discussed above, ATC relay implementation is currently in its nascent stage, however we expect relay operations to increase with a corresponding increase in UA operations near airports and in controlled airspace. Given that ATC relay and ground-based VHF stations will both be used to communicate with ATC, are there inherent differences between ground radio operators and relay operators for the purpose of the communications? Is there a reason to expect operators using ATC relay stations are better trained for such communications? Are there other licensing related issues that we should consider that make relay systems unique?

155. We seek to adopt a licensing mechanism that addresses these concerns and maintains the integrity of the band while also meeting the legitimate needs of certain UAS operators for communications in the VHF band. To achieve these goals, we propose several measures below. We seek comment on these measures, and on any alternative approaches that would provide a regular licensing mechanism that meets the Commission's goals.

156. First, we propose to individually license ground stations for UAS operator communication with control towers and other aircraft pilots under a new category of licensed station, an *Unmanned Aircraft Operator VHF Ground Station*, and to define the new station as "a station on the ground providing unmanned aircraft pilot radio communication relating to safety and regularity of flight on air traffic control, flight service station, unicom, or multicom frequencies."<sup>351</sup> Individual licensing will enable the Commission to identify authorized operators, identify unauthorized users, and aid in resolving instances of harmful interference. Accordingly, under this proposal, parties will be required to submit individual license applications. We propose that parties use the FCC Form 605, which is used generally for, *inter alia*, authorizations for stations in the "aircraft service," and we seek comment on whether any modifications to the form are necessary or helpful to facilitate its use for this purpose.<sup>352</sup>

157. Second, we propose to provide that these stations may operate over all air traffic control, flight service station, aeronautical advisory station (unicom), and aeronautical multicom station

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<sup>350</sup> We also note that section 307(e) of the Act expressly limits licensing by rule in the aviation service to aircraft stations and, as discussed, we seek to adopt a licensing mechanism for VHF ground stations. See 47 U.S.C. § 307(e).

<sup>351</sup> A flight service station is part of a network of stations providing weather briefings and information on flight facilities and monitoring the navigational radio net. See *Review of Part 87 of the Commission's Rules Concerning the Aviation Radio Service*, WT Docket No. 01-289, Report and Order and Further Notice of Proposed Rule Making, 18 FCC Rcd 21432, 21459, para. 56, n.209 (2003). A unicom station is an aeronautical station used for advisory and civil defense communications primarily with private aircraft. 47 CFR § 87.5. A multicom station is an aeronautical station used to provide communications to conduct the activities being performed by, or directed from, private aircraft. *Id.*

<sup>352</sup> FCC Form 605 provides a quick-form application for authorization for, among others, stations in the "aircraft service" generally. See FCC Form 605, <https://www.fcc.gov/fcc-form-605>.

(multicom) channels authorized for use by aircraft.<sup>353</sup> We seek comment on which specific channels to cover for this purpose.<sup>354</sup>

158. Third, we propose to permit mobile stations (stations intended to be used while in motion or during halts at unspecified points), and we further seek comment on whether to permit non-mobile stations as well. To the extent parties support the inclusion of non-mobile stations, we seek comment on whether coverage of such stations for communications between two non-mobile sites (i.e., the operator's fixed VHF station and air traffic control) is consistent with the aeronautical mobile and aeronautical mobile (route) allocations applicable to the air traffic control frequencies.<sup>355</sup>

159. Fourth, we propose to require that license applications include an endorsement from the FAA. An endorsement must be included in a written document issued by the FAA, such as a Certificate of Approval (COA). We propose to provide that a license will not be issued without an FAA endorsement. We further propose that the approved license will be subject to any restrictions or conditions specified on the FAA endorsement. While licenses under part 87 are normally issued for 10 years, we seek comment on whether to provide that license terms for these stations will be the lesser of 10 years or the duration of the FAA endorsement, if any is specified. We further seek comment on whether a party seeking license renewal should be required to submit a new FAA written endorsement.

160. Finally, we propose to adopt a clarification of section 87.18 that will make clear that licensing by rule continues to apply to UAS aircraft stations, such as the VHF stations used for ATC relay. As discussed above, while we seek comment on whether the concerns that underlie our proposal that a UAS operator's ground-based VHF stations should be individually licensed warrant the same approach for UAS aircraft stations, we are not proposing at this time to require individual licensing for those UAS aircraft stations used for VHF communications. To avoid any confusion as to the continued application of licensing by rule to such stations that might result from our proposal to license a UAS operator's ground-based VHF station individually, we propose to clarify in section 87.18(b) that licensing by rule applies to aircraft stations, whether "manned or unmanned."

161. We believe these steps will help to promote the safe integration of UAS into the National Airspace System, while maintaining the integrity of the aeronautical VHF band. We request comment on these proposals and alternatives. We seek comment on whether a provision enabling UAS operators to license ground-based stations to communicate over the aeronautical VHF band is necessary or if instead we should continue to address requests for authorization for ground-based stations on a case-by-case basis. If providing a mechanism for licensing of ground-based VHF stations is warranted, we seek comment on whether the proposed rules adequately address this need or unduly restrict the ability of UAS operators to communicate with ATC or with manned aircraft. Conversely, we seek comment on whether the proposal is too broad, and whether we should further restrict the circumstances under which UAS operators may obtain licensed ground stations to use the aeronautical VHF band. We also request comment on whether the FAA's planned integration of the Next Gen Data Communications system into the 136-137 MHz band or other innovations have any current or future effect on this need, including whether they may alter the frequencies that a future UAS operator needs to use to communicate with ATC or otherwise warrant modifications to our proposal.<sup>356</sup>

162. We further seek comment on the appropriate technical and operational requirements for the new category of station, and whether we should generally require such stations to comply with the technical and operational requirements applicable to aircraft stations licensed in the same frequency, or if

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<sup>353</sup> See 47 CFR § 87.173(b); see also 47 CFR subpts. G, H.

<sup>354</sup> See 47 CFR §§ 87.173(b), 87.187(a), 87.187(y)(2) (flight service station frequencies).

<sup>355</sup> See 47 CFR § 2.106. For example, the aeronautical mobile service allocation covers "mobile service between aeronautical [i.e., ground] stations and aircraft stations, or between aircraft stations," and does not expressly encompass service between two fixed stations. 47 CFR § 2.1.

<sup>356</sup> See, e.g., *Aviation NPRM*, 34 FCC Rcd at 4995-96, paras. 31-32.

any additional or alternate requirements should be adopted. In particular, we note that, under section 87.89 of the Commission's rules, operators of aviation service stations are generally required to hold a commercial radio operator license or permit, and that the operator license or permit requires passing a requisite knowledge test.<sup>357</sup> The rule also specifies, however, that no operator license is required to "[o]perate a VHF telephony transmitter providing domestic service or used on domestic flights."<sup>358</sup> We seek comment on whether a UAS operator's VHF communications with ATC would constitute the operation of a VHF telephony transmitter providing domestic service or used on domestic flights, and if so, whether we should create an exception to this provision and provide that UAS operators that operate a licensed Unmanned Aircraft Operator Ground VHF Station must have a commercial radio operator license. Should we specify an alternative permit or training requirement for such operators?

163. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all,<sup>359</sup> including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations<sup>360</sup> and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals in this NPRM may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

## V. PROCEDURAL MATTERS

164. *Ex Parte Presentations.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>361</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing

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<sup>357</sup> See 47 CFR § 87.89; FCC, *Commercial Radio Operator License Program*, <https://www.fcc.gov/commercial-radio-operator-license-program> (last visited July 15, 2022).

<sup>358</sup> 47 CFR § 87.89(d)(4).

<sup>359</sup> Section 1 of the Communications Act of 1934, as amended, provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

<sup>360</sup> The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

<sup>361</sup> 47 CFR § 1.1200 *et seq.*

oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

165. *Comment Period and Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Parties may file by any of the following methods:

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): <https://www.fcc.gov/ecfs/>. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
  - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554.
  - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788, 2788-89 (OS 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

166. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

167. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>362</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>363</sup> Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact the rule and policy changes addressed in this *NPRM*. The IRFA is set forth in Appendix B.

168. *Paperwork Reduction Act Analysis.* This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific

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<sup>362</sup> 5 U.S.C. § 603.

<sup>363</sup> *Id.* § 605(b).

comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

169. *Additional Information.* For additional information on this proceeding, contact Peter Trachtenberg, Mobility Division, Wireless Telecommunications Bureau, at 202-418-7369, or by email at Peter.Trachtenberg@fcc.gov.

#### **VI. ORDERING CLAUSES**

170. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4, 301, 303, 307-310, 316, 318, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 301, 303, 307-310, 316, 318, and 332, that this Notice of Proposed Rulemaking IS HEREBY ADOPTED.

171. IT IS FURTHER ORDERED that the Petition for Rulemaking filed by the Aerospace Industries Association in the Commission's rulemaking proceeding RM-11798 IS GRANTED to the extent specified herein, that RM-11798 is incorporated into this proceeding, WT Docket No. 22-323, and that RM-11798 is TERMINATED.

172. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****Proposed Rules**

The Federal Communications Commission proposes to amend Parts 1 and 87 of Title 47 of the Code of Federal Regulations (CFR) and to add a new Part 88 to Title 47 of the CFR, as follows:

**PART 1 – PRACTICE AND PROCEDURE**

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

AUTHORITY: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

2. Section 1.901 is revised to read as follows:

**§ 1.901 Basis and purpose.**

The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 151 et seq. The purpose of the rules in this subpart is to establish the requirements and conditions under which entities may be licensed in the Wireless Radio Services as described in this part and in parts 13, 20, 22, 24, 27, 30, 74, 80, 87, 88, 90, 95, 96, 97, and 101 of this chapter.

3. Section 1.907 is amended to revise the definitions of “Private Wireless Services” and “Wireless Radio Services” to read as follows:

**§ 1.907 Definitions.**

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*Private Wireless Services.* Wireless Radio Services authorized by parts 80, 87, 88, 90, 95, 96, 97, and 101 of this chapter that are not Wireless Telecommunications Services, as defined in this part.

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*Wireless Radio Services.* All radio services authorized in parts 13, 20, 22, 24, 26, 27, 30, 74, 80, 87, 88, 90, 95, 96, 97 and 101 of this chapter, whether commercial or private in nature.

\*\*\*\*\*

**PART 87 – AVIATION SERVICES**

4. The authority citation for Part 87 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

5. Section 87.3 is amended by adding subsection (g) to read as follows:

**§ 87.3 Other applicable rule parts.**

\* \* \* \* \*

(g) Part 88 contains rules governing the use of the 5030-5091 MHz band by unmanned aircraft systems.

6. Section 87.5 is amended by adding in alphabetical sequence a definition of “unmanned aircraft operator VHF ground station” to read as follows:

**§ 87.5 Definitions.**

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*Unmanned Aircraft Operator VHF Ground Station.* A station on the ground providing unmanned aircraft pilot radio communication relating to safety and regularity of flight on air traffic control, flight service station, unicom, or multicom frequencies.

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7. Section 87.18 is amended as follows:
  - a. By adding the words “(manned or unmanned)” after “An aircraft station” in the first sentence of paragraph (b); and
  - b. By adding paragraph (c).The addition reads as follows:

**§ 87.18 Station license required.**

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(c) Notwithstanding paragraph (a) of this section, Unmanned Aircraft Operator VHF Ground Stations are not licensed by rule and must be licensed by the FCC either individually or by fleet for communications on air traffic control, flight service station, unicom, or multicom frequencies in accordance with § 87.49.

8. Section 87.49 is added to read as follows:

**§ 87.49 Application for an Unmanned Aircraft Operator VHF Ground Station license.**

A person may apply for an Unmanned Aircraft Operator VHF Ground Station license to communicate on air traffic control, flight service station, unicom, or multicom frequencies if written approval is first obtained from the Federal Aviation Administration (FAA). The applicant must provide, with the license application, a copy of the written approval from the FAA, such as a Certificate of Waiver or Authorization (COA), approving the applicant’s use of the specific frequencies requested in connection with unmanned aircraft activity. License grant will be subject to any conditions, coordination, or restrictions imposed by the FAA in its written approval.

9. A new part 88 is added to read as follows:

**PART 88 –UNMANNED AIRCRAFT CONTROL SERVICES****Subpart A – GENERAL RULES**

§ 88.1 Scope.

§ 88.3 Application of Other Rule Parts.

§ 88.5 Definitions.

**Subpart B – NON-NETWORKED ACCESS**

§ 88.25 Scope.

§ 88.27 Authorization.

§ 88.29 Frequencies.

§ 88.31 Non-Networked Access Use.

Subpart C – (reserved)

Subpart D – TECHNICAL REQUIREMENTS

§ 88.101 Transmitter power.

§ 88.103 Bandwidth of emission.

§ 88.105 Types of emission.

§ 88.107 Acceptability of transmitters for licensing.

§ 88.109 Authorization of equipment.

§ 88.111 Performance standards.

§ 88.113 RF Safety.

§ 88.115 Incorporation by Reference.

Subpart E – DYNAMIC FREQUENCY MANAGEMENT SYSTEMS

§ 88.135 DFMS Requirements.

§ 88.137 DFMS Administrators.

§ 88.139 DFMS Administrator Fees.

AUTHORITY: 47 U.S.C. 154(i), 303, 307.

**Subpart A – GENERAL RULES**

**§ 88.1 Scope.**

This part sets forth the regulations governing the use of the 5030-5091 MHz band by unmanned aircraft systems. The regulations in this part do not govern unmanned aircraft systems communications services in any bands other than the 5030-5091 MHz band.

**§ 88.3 Application of other rule parts.**

- (a) Except as expressly provided under this part, part 87 of this chapter shall not apply to unmanned aircraft systems communications in the 5030-5091 MHz band.
- (b) Non-Networked Access (NNA) devices, as defined in this part, are considered part of the Citizens Band Radio Service, as defined in § 95.303 of this chapter. Except for § 95.303, the rules of part 95 of this chapter shall not apply to such devices.

**§ 88.5 Definitions.**

The following terms and definitions apply only to the rules in this part.

*Control and Non-payload Communications (CNPC).* Any unmanned aircraft system (UAS) transmission that is sent to or from the unmanned aircraft (UA) component of the UAS and that supports the safety or regularity of the UA's flight.

*DFMS Administrator.* An entity authorized by the Federal Communications Commission (Commission or FCC) to operate a DFMS in accordance with the rules and procedures set forth in subpart E of this part.

*Dynamic Frequency Management System (DFMS).* An automated frequency coordination system operating in the 5030-5091 MHz band that, in response to frequency assignment requests from UAS operators, assigns to the requesting operator, through an automated (non-manual) process, temporary use of certain frequencies for a particular geographic area and time period tailored to the operator's submitted flight plan.

*Ground Station.* A land or mobile station not on board a UA that is part of a UAS and for communication with an unmanned aircraft station.

*NNA device.* A ground station or unmanned aircraft station authorized under this part and designed to communicate using NNA assignments consistent with subparts B and D of this part.

*NNA user.* An authorized user of spectrum in the 5030-5091 MHz band operating on an NNA basis, as set forth in subpart B of this part.

*Non-Networked Access (NNA).* Temporary, interference-protected access to the 5030-5091 MHz band pursuant to a frequency assignment from a DFMS and consistent with subpart B of this part.

*Unmanned aircraft (UA).* An aircraft operated without the possibility of direct human intervention from within or on the aircraft.

*Unmanned aircraft station.* A mobile station authorized under this part and located on board a UA.

*Unmanned aircraft system (UAS).* A UA and its associated elements (including an unmanned aircraft station, communication links, and the components not on board the UA that control the UA) that are required for the safe and efficient operation of the UA in the airspace of the United States.

## **Subpart B – NON-NETWORKED ACCESS**

### **§ 88.25 Scope.**

Transmissions over an NNA assignment may include any form of CNPC.

### **§ 88.27 Authorization.**

- (a) Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, and otherwise meets the technical, financial, character, and citizenship qualifications that the Commission may require in accordance with such Act is eligible to be an NNA user and operate NNA devices under this part.
- (b) NNA devices, including ground stations and unmanned aircraft stations, are licensed by the rules in this part and do not need an individual license issued by the Commission. Even though an individual license is not required, an NNA device licensed by the rules in this part must comply with all applicable operating requirements, procedures, and technical requirements found in this part.
- (c) NNA users must register with a DFMS and comply with its instructions and the rules in this part.
- (d) NNA users may transmit in the 5030-5091 MHz band only using NNA devices compliant with the rules of this part, and only pursuant to and consistent with the terms of a frequency assignment from a Commission-approved DFMS.

**§ 88.29 Frequencies.**

The 5030-5035 MHz and 5086-5091 MHz bands are allocated for CNPC use to NNA users.

**§ 88.31 Non-Networked Access use.**

- (a) NNA users registered with a DFMS may submit a request for temporary assignment of frequencies for CNPC limited to the duration and geographic coverage necessary to support a single submitted UAS flight plan. Requests may also be made either prior to or during the relevant operation to modify an assignment. Such requests must be made to the same DFMS responsible for the original assignment.
- (b) If frequencies meeting the request are available, the DFMS shall assign them on an exclusive but temporary basis. The scope of the assignment shall be tailored in both duration and geographic coverage to ensure interference-free communications for the entire submitted UAS flight plan.
- (c) When registering with or using the services of a DFMS, an NNA user shall comply with all instructions of the DFMS Administrator, including those regarding registration, requests and other submissions to the DFMS, and operational use of NNA assignments.
- (d) An NNA user operating under a DFMS assignment must provide indication to the DFMS, within 5 minutes of the event, when a flight has commenced and when it has terminated.
- (e) NNA users are prohibited from engaging in UAS operations using NNA assignments within the National Radio Quiet Zone (NRQZ) without prior coordination with the NRQZ administrator. Any request to a DFMS for frequency assignment within the NRQZ must include submission of a Letter of Concurrence from the NRQZ administrator, and NNA users submitting such a request shall comply with all conditions enumerated in the Letter of Concurrence. NNA users are urged to take all practicable steps to protect radio astronomy observations in the 5000-5250 MHz band.

**Subpart C – [Reserved]****Subpart D – TECHNICAL REQUIREMENTS****§ 88.101 Transmitter power.**

The power of the transmitter is defined as the average envelope measured during the duration of the burst transmission bounded by the first preamble symbol to the last midamble symbol, measured at the transmitter's radio frequency (RF) output port with a 50 ohm load attached. The power must be determined by direct measurement at the transmitter output terminals. The maximum power of a transmitter must not exceed the values listed in paragraphs (a) and (b) of this section.

- (a) For an Airborne Radio Transmitter:
  - (1) High Power Mode: 10 watts.
  - (2) Low Power Mode: 100 mW.
- (b) For a Ground Radio Transmitter: 10 watts.

**§ 88.103 Bandwidth of emission.**

The authorized bandwidth is the maximum occupied bandwidth authorized to be used by a station. Equipment must be tunable in 2.5 kHz steps within the range 5030-5091 excluding center frequencies

5030 MHz and 5091 MHz. The authorized bandwidth is limited to multiples of 5 kHz according to the following:

- (a) One In-flight Emergency Video Channel having a width of 500 kHz.
- (b) Two takeoff and Landing Video Channels of 250 kHz width per channel.
- (c) Non-Video Channels may operate on up to 250 kHz-wide channels in multiples of 5 kHz.

**§ 88.105 Types of emission.**

The assignable emission designators in multiples of 5 kHz up to 500 kHz are as follows:

- (a) G8D – for data
- (b) G8F – for video

**§ 88.107 Acceptability of transmitters for licensing.**

Each transmitter utilized for operation under this part and each transmitter marketed as set forth in § 2.803 of this chapter must be certificated by the Commission following the procedures set forth in part 2, subpart J of this chapter.

**§ 88.109 Authorization of equipment.**

An applicant for certification of equipment must notify the Federal Aviation Administration (FAA) of the filing of a certification application. The letter of notification must be mailed to: FAA, Office of Spectrum Policy and Management, ASR-1, 800 Independence Ave., SW, Washington, DC 20591 prior to the filing of the application with the Commission.

- (a) The notification letter must describe the equipment, and give the manufacturer's identification, antenna characteristics, rated output power, emission type and characteristics, the frequency or frequencies of operation, and essential receiver characteristics if protection is required.
- (b) The certification application must include a copy of the notification letter to the FAA. The Commission will not act until it receives the FAA's determination regarding whether it objects to the application for equipment authorization. The FAA should mail its determination to: Office of Engineering and Technology Laboratory, Authorization and Evaluation Division, 7435 Oakland Mills Rd., Columbia, MD 21046. The Commission will consider the FAA determination before taking final action on the application.

**§ 88.111 Performance standards.**

Transmitters operating in the 5030-5091 MHz band must comply with and operate in accordance with technical standard *RTCA-DO-362A* (incorporated by reference, see § 88.115).

**§ 88.113 RF safety.**

Licensees and manufacturers are subject to the radio frequency radiation exposure requirements specified in §§ 1.1307(b), 1.1310, 2.1091, and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions and

technical information showing the basis for this statement must be submitted to the Commission upon request.

**§ 88.115 Incorporation by reference.**

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Federal Communications Commission (FCC) and at the National Archives and Records Administration (NARA). Contact FCC at: 45 L Street NE, Reference Information Center, Room 1.150, Washington, DC 20554, (202) 418-0270, For information on the availability of this material at NARA, visit [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html) or email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov). The material may be obtained from the following source:

- (a) RTCA, 1150 18th Street NW, Suite 910, Washington, DC 20036, email: [info@rtca.org](mailto:info@rtca.org) or <http://RTCA.org>.
  - (1) RTCA-DO-362A, Command and Control (C2) Data Link Minimum Operational Performance Standards (MOPS) (Terrestrial), dated December 17, 2020 (RTCA-DO-362A), IBR approved for § 88.111.
  - (2) [Reserved]
- (b) [Reserved]

**Subpart E – DYNAMIC FREQUENCY MANAGEMENT SYSTEMS**

**§ 88.135 DFMS requirements.**

- (a) DFMS must provide a process for NNA users to register with the system for the purpose of submitting frequency assignment requests and obtaining frequency assignments.
- (b) A DFMS must be capable of processing frequency assignment requests nationwide and across the entire 5030-5091 MHz band. However, a DFMS may only grant assignments for spectrum within those frequencies specified under § 88.29.
- (c) In response to frequency assignment requests from a registered NNA user, a DFMS shall determine and provide, through an automated (non-manual) process, an assignment of frequencies for a particular geographic area and time period tailored to the NNA user's submitted flight plan, to the extent that frequencies are available to meet the request and grant of the assignment is otherwise consistent with this part. Assignments must provide protected access to frequencies over a duration and geographic area sufficient to cover the entire submitted flight plan.
- (d) Assignments for operations in the National Radio Quiet Zone (NRQZ) must be accompanied by a Letter of Concurrence from the NRQZ Administrator and may only be granted within the terms and conditions, if any, specified in the Letter of Concurrence.
- (e) Assignments must account for the need to protect other authorized operations.

**§ 88.137 DFMS Administrators.**

The Commission will approve one or more DFMS Administrators to manage access to the 5030-5091 MHz band on a nationwide basis as specified under § 88.135. Each DFMS Administrator is responsible

for the functioning of a DFMS and providing services to operators in the Unmanned Aircraft Control Service. Each DFMS Administrator approved by the Commission must:

- (a) Operate a DFMS consistent with the rules of this part.
- (b) Establish and follow protocols and procedures to ensure compliance with the rules set forth in this part.
- (c) Provide service for a ten-year term. This term may be renewed at the Commission's discretion.
- (d) Securely transfer all the information in the DFMS to another approved entity in the event it does not continue as the DFMS Administrator at the end of its term. It may charge a reasonable price for such conveyance.
- (e) Cooperate to develop a standardized process for coordinating operations with other approved DFMSs, avoiding any conflicting assignments, and maximizing shared use of available frequencies.
- (f) Coordinate with other DFMS Administrators including, to the extent possible, sharing assignment and other information, facilitating non-interference to and from operations relying on assignments from other DFMSs, and other functions necessary to ensure that use of available spectrum is safe and efficient and consistent with this part.
- (g) Ensure that the DFMS shall be available at all times to immediately respond to requests from authorized Commission personnel for any and all information stored or retained by the DFMS.
- (h) Establish and follow protocols to comply with enforcement instructions from the Commission.

**§ 88.139 DFMS Administrator fees.**

- (a) A DFMS Administrator may charge users a reasonable fee for provision of its services, including usage-based fees for frequency assignments.
- (b) The Commission, upon request, will review the fees and can require changes in those fees if they are found to be excessive.

## APPENDIX B

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. The *NPRM* in this proceeding acts, in part, on a February, 2018 petition for rulemaking by the Aerospace Industries Association (AIA), which recommended that the Commission adopt licensing and service rules for control and non-payload communications (CNPC) links in the 5030-5091 MHz band to support unmanned aircraft system (UAS) operations in the United States. In addition, on August 20, 2021, the Wireless Telecommunications Bureau and Office of Engineering and Technology jointly submitted to Congress a report on behalf of the Commission addressing the matters specified in Section 374 of the FAA Reauthorization Act of 2018 (FAA Reauthorization Act). The report included their finding that “[t]he 5030-5091 MHz band appears to offer promise for intensive UAS use because it is unencumbered” and recommended that the Commission initiate a rulemaking proceeding to develop service and licensing rules enabling UAS use of the band in collaboration with the FAA and NTIA.

3. The *NPRM* now proposes and seeks comment on several rule amendments to address the growing need of the operators of UAS for access to licensed spectrum. Together, the proposals and the measures upon which the *NPRM* seeks comment will help further the development and promote the growth and safety of UAS operations.

4. First, the *NPRM* addresses the 5030-5091 MHz band, which the Commission previously allocated to support terrestrial control links for UAS without adopting service rules. Because technical work regarding UAS is still in a nascent stage, the Commission anticipates that service rules sufficient to facilitate UAS operations will likely require development in phases. It now takes the first step to develop such rules. The *NPRM* seeks comment on service rules for the 5030-5091 MHz band that will provide UAS operators with access to licensed spectrum with the reliability necessary to support safety-critical UAS communications links. The Commission’s objective in this proceeding is to provide UAS operators with access to an additional spectrum resource that may complement other spectrum resources that are currently available or in development. Although existing networks operating in other bands such as flexible-use bands may provide sufficient reliability for many UAS use cases, authorization of the 5030-5091 MHz band for UAS use offers an opportunity to apply standards and rules designed to meet the most safety-critical communications needs.

5. Second, due to the increasing interest in operating UAS using existing terrestrial flexible-use spectrum networks, the *NPRM* seeks comment on whether the Commission’s rules are adequate to ensure co-existence of terrestrial mobile operations and UAS use or whether changes to our rules are necessary. To this end, it seeks comment on the sufficiency of the current flexible-use rules to prevent

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

interference to and from UAS operations, and on whether the Commission can eliminate the current prohibitions on airborne operations applicable to certain of these flexible-use bands.

6. Third, to further promote the safe integration of unmanned aircraft operations in controlled airspace and facilitate flight coordination, the *NPRM* proposes a process for UAS operators to obtain a VHF license to communicate with air traffic control and other aircraft. In some instances, to ensure the safety of the National Airspace System, the FAA has required operators of UAS to communicate with air traffic control facilities or nearby manned aircraft over the VHF traffic control and advisory frequencies and to obtain a license from the FCC for this purpose. The part 87 aviation service rules do not, however, provide a mechanism for the operator of a UAS to obtain such a license. UAS operator requests for such authorization are currently handled by special temporary authority on a case-by-case basis. The proposed rule will enable UAS operators to obtain a regular license for this purpose.

**B. Legal Basis**

7. The proposed action is authorized pursuant to Sections 1, 4, 301, 303, 307-310, 316, 318, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 301, 303, 307-310, 316, 318, and 332.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

8. 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 proposed rules, if adopted.<sup>4</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>5</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>6</sup> 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.<sup>7</sup>

9. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>8</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>9</sup> These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.<sup>10</sup>

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<sup>4</sup> See *id.* § 603(b)(3).

<sup>5</sup> See *id.* § 601(6).

<sup>6</sup> See *id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>7</sup> See 15 U.S.C. § 632.

<sup>8</sup> See 5 U.S.C. § 601(3)-(6).

<sup>9</sup> See SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

<sup>10</sup> *Id.*

10. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>11</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>12</sup> Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the United States reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>13</sup>

11. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>14</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>15</sup> indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>16</sup> Of this number there were 36,931 general purpose governments (county,<sup>17</sup> municipal, and town or township<sup>18</sup>) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts<sup>19</sup> with enrollment

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<sup>11</sup> 5 U.S.C. § 601(4).

<sup>12</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>13</sup> See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-ao-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000, for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>14</sup> 5 U.S.C. § 601(5).

<sup>15</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five years, compiling data for years ending with “2” and “7.” See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>16</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2: Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal, and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes Local Governments by Type and State\_2017.

<sup>17</sup> See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>18</sup> See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>19</sup> See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes Special Purpose Local Governments by State Census Years 1942 to 2017.

populations of less than 50,000.<sup>20</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>21</sup>

12. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.<sup>22</sup> 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.<sup>23</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>24</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>25</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>26</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.<sup>27</sup> Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.<sup>28</sup> Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

13. *Satellite Telecommunications*. This industry 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.”<sup>29</sup> Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$35 million or less in annual receipts as small.<sup>30</sup> U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.<sup>31</sup> Of this number, 242 firms had revenue of less than

<sup>20</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>21</sup> This total is derived from the sum of the number of general purpose governments (county, municipal, and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls. 5, 6, and 10.

<sup>22</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>23</sup> *Id.*

<sup>24</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>25</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

<sup>26</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>27</sup> Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26*, Table 1.12 (2021), <https://docs.fcc.gov/pub/ld.lic/attachments/DOC-379181A1.pdf>.

<sup>28</sup> *Id.*

<sup>29</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517410 Satellite Telecommunications,” <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

<sup>30</sup> See 13 CFR § 121.201, NAICS Code 517410.

<sup>31</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517410,

(continued....)

\$25 million.<sup>32</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services.<sup>33</sup> Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees.<sup>34</sup> Consequently using the SBA's small business size standard, a little more than of these providers can be considered small entities.

14. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.<sup>35</sup> 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.<sup>36</sup> Providers of Internet services (e.g. dial-up ISPs) or voice over Internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.<sup>37</sup> The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.<sup>38</sup> U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.<sup>39</sup> Of those firms, 1,039 had revenue of less than \$25 million.<sup>40</sup> Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

15. *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.<sup>41</sup> 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.<sup>42</sup> The SBA small business size standard for this industry classifies businesses

<https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>32</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>33</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/Id.lic/attachments/DOC-379181A1.pdf>.

<sup>34</sup> *Id.*

<sup>35</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>39</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>40</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>41</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing," <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

<sup>42</sup> *Id.*

having 1,250 employees or less as small.<sup>43</sup> U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.<sup>44</sup> Of this number, 624 firms had fewer than 250 employees.<sup>45</sup> Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

16. *Unmanned Aircraft Radio Equipment Manufacturers.* Neither the Commission nor the SBA have developed a small business size standard specifically applicable to unmanned aircraft radio equipment manufacturers. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing is the closest industry with a SBA small business size standard.<sup>46</sup> The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.<sup>47</sup> U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.<sup>48</sup> Of this number, 624 firms had fewer than 250 employees.<sup>49</sup> In addition, the SBA provides a size standard for the Aircraft Manufacturing industry which includes the manufacture of unmanned and robotic aircraft.<sup>50</sup> The SBA small business size standard for this industry classifies businesses having 1,500 employees or less as small.<sup>51</sup> U.S. Census Bureau data for 2017 show that there were 254 firms in this industry that operated for the entire year.<sup>52</sup> Of this number, 227 firms had fewer than 250 employees.<sup>53</sup> Based on these data, we conclude that a majority of manufacturers in this industry are small.

17. *Unmanned Aircraft System Operators.* Neither the Commission nor the SBA have developed a small business size standard specifically applicable to UAS operators. The Commission lacks data on the number of operators in the United States that could be subject to the rules therefore, it is not possible to determine the number of affected small entity operators at this time. We find, however, that the Regulatory Flexibility Analysis of the Federal Aviation Administration (FAA) Remote ID rule is

<sup>43</sup> See 13 CFR § 121.201, NAICS Code 334220.

<sup>44</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

<sup>45</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>46</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

<sup>47</sup> See 13 CFR § 121.201, NAICS Code 334220.

<sup>48</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

<sup>49</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>50</sup> See U.S. Census Bureau, *2022 NAICS Definition*, “336411 Aircraft Manufacturing,” <https://www.census.gov/naics/?input=336411&year=2022&details=336411>.

<sup>51</sup> See 13 CFR § 121.201, NAICS Code 336411.

<sup>52</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 336411, <https://data.census.gov/cedsci/table?y=2017&n=336411&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

<sup>53</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

helpful. In this analysis, the FAA assessed the impact of the rule on small entity non-recreational UAS operators based on an analysis that the Association for Unmanned Vehicle Systems International (AUVSI) performed relating to part 107 waivers.<sup>54</sup> In the analysis, the AUVSI determined that 92 percent of the waivers were issued to entities with fewer than 100 employees. Based on this data, the FAA determined that a majority of entities operating unmanned aircraft for other than recreational purposes are small.<sup>55</sup> Accordingly, based on the FAA's determination, we conclude that a majority of UAS operators are small entities.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

18. The *NPRM* proposes to adopt a band plan and service rules for the 5030-5091 MHz band to enable small and other UAS operators, to access interference-protected spectrum for control-and-non-payload communications (CNPC) links, and seeks comment on various options. We expect the proposals and service rules upon which we seek comment in the *NPRM* will impose new or additional reporting or recordkeeping and/or other compliance obligations on small and other UA operators for access and use of the 5030-5091 MHz band spectrum. At this time however, the Commission cannot quantify the cost of compliance and cannot determine whether small entities will have to hire professionals to comply with the rule changes that may be adopted in this proceeding. With our request for comments on the band plan and service rules, we have also requested that parties file costs analyses to assist with the Commission's assessment of the rules that are under consideration. Below we discuss proposals in the *NPRM* and their potential compliance requirements for small and other entities to operate in the 5030-5091 MHz band.

19. *The Band Plan.* The *NPRM* proposes to partition the 5030-5091 MHz band to accommodate both non-networked radio-line-of-sight — or Non-Networked Access (NNA) — use cases, which can rely on direct communication links between an operator's controller and the unmanned aircraft (UA), and beyond-radio-line-of-sight — or Network-Supported Service (NSS) — use cases, which typically depend on network infrastructure to support communications between the operator and the UA. The *NPRM* proposes to dedicate a minimum of 10 megahertz of spectrum for NNA operations, and seeks comment on various options for the remaining 51 megahertz of spectrum, including dedicating 40 megahertz of spectrum for network-based NSS operations by dividing the spectrum into 4 licensed blocks of 10 megahertz each, and providing 11 megahertz for temporary additional spectrum available to either NNA-based operators or NSS licensees. The *NPRM* further proposes to permit only CNPC in the band, to define CNPC as any UAS transmission that is sent to or from the UA component of the UAS and that supports the safety or regularity of the UA's flight. It further proposes to provide that any entity, other than those precluded by section 310 of the Communications Act, will be eligible to obtain a 5030-5091 MHz NNA station or obtain a 5030-5091 MHz NSS license, and seeks comment on similarly restricting the eligibility of entities to operate NNA stations using assignments from a DFMS.

20. *Dynamic Frequency Management System.* The *NPRM* proposes that access to the band be managed by one or more dynamic frequency management systems (DFMSs). A DFMS would be a frequency coordination system that, in response to requests from registered NNA users, would determine and assign to the requesting user, through an automated (non-manual) process, temporary use of certain frequencies for a particular geographic area and time period tailored to the user's submitted flight plan. The *NPRM* seeks comment on the appropriate regulatory framework to establish for a DFMS, including what requirements should be imposed on UAS operators in the band to help ensure a DFMS's ability to provide interference-free access. Among other possible requirements, the *NPRM* seeks comment on what information the operator should be required to provide regarding ground stations and unmanned aircraft stations, including whether an active UAS in the band should be required to submit information required by FAA's Remote ID rule, or some subset or variation of the information, and whether a UAS should be

<sup>54</sup> See Federal Aviation Administration, Department of Transportation, Remote Identification of Unmanned Aircraft, 86 Fed. Reg. 4390, 4494 (Jan. 15, 2021) (*Remote ID Rule*).

<sup>55</sup> See *id.*

required to communicate to the DFMS, in real time or within a certain period of time of the relevant event, the initiation and termination of the flight or, alternatively, the initiation and termination of the operator's use of the assigned frequencies. Both of these potential rules would likely have reporting implications for small and other UAS operators, if adopted. The *NPRM* also seeks comment on whether to require UAS operators to register with a DFMS as a pre-condition of receiving NNA assignments and to provide certain information with such registration, which could also impact recordkeeping and reporting obligations. The *NPRM* proposes to authorize the administrator of a DFMS to charge UAS operators reasonable fees for its provision of services, including registration and channel assignment services, and to permit parties to petition the Commission to review fees and require changes if they are found to be excessive.

21. *NNA Service Rules.* The *NPRM* proposes to adopt service rules for NNA operations, including rules for licensing and technical requirements, and seeks comment broadly on the licensing regime or mechanism to enable authorization of NNA operations in the 5030-5091 MHz band and the costs and benefits of any proposed approach. For the licensing of stations in NNA spectrum, the *NPRM* proposes to adopt a licensed-by-rule authorization for aircraft and ground stations in the band. For technical requirements, the *NPRM* proposes to adopt the technical standard RTCA DO-362A or technical requirements based on this standard, which contains Minimum Operational Performance Standards for terrestrial-based (i.e., non-satellite) CNPC point-to-point or point-to-multipoint links in the 5030-5091 MHz band, including power limits, emission limits, and frequency accuracy requirements. In both the licensing eligibility and technical standards requirement discussions, we inquire whether to impose certification requirements that would likely be filed with the Commission, thereby impacting reporting requirements for users of the 5030-5091 MHz band.

22. We also seek comment on whether any of the general technical requirements in subpart D of part 87 of the Commission's rules should apply to NNA equipment, and whether to adopt any other requirements on NNA equipment to facilitate a DFMS's ability to communicate with or otherwise control such equipment in the execution of the DFMS's responsibilities. In addition, the *NPRM* seeks comment on the potential application of the generally applicable rules in subparts B through F of part 87, including whether to require each UAS operator using an NNA assignment in the 5030-5091 MHz band to have an operator license or permit. It further seeks comment on whether the new service should be subject to rules under part 1, subpart F governing "Wireless Radio Service" applications and proceedings. The application and/or incorporation of existing rules under part 87 or any other part of the Commission's rules would subject NNA users of the 5030-5091 MHz band to any applicable reporting and recordkeeping requirements under those rules unless explicitly excluded in the final rules.

23. *NSS Service Rules.* The *NPRM* also seeks comment on service rules for NSS licenses, including rules addressing, in particular, whether to issue geographic area defined licenses for a specific term of years, with rights of renewal. More specifically, the *NPRM* seeks comment on rules addressing (1) the geographic area scheme for licenses, (2) the appropriate initial and subsequent license terms, (3) performance requirements, (4) license renewal framework, and (5) technical and operational requirements.

24. For the geographic area of licenses, the *NPRM* seeks comment on whether to adopt larger licenses areas such as Regional Economic Area Groupings, a more granular scheme such as Partial Economic Areas, or a geographic division of the country developed specifically for aviation purposes. The *NPRM* proposes to issue NSS licenses for an initial 15-year term, and to limit subsequent terms to 10 years. The *NPRM* seeks comment on the appropriate standard for license renewal, and on whether the regulatory renewal framework for commercial geographic licensees of wireless radio services under part 1 of the Commission's rules is appropriate for NSS licensees. The *NPRM* also seeks comment on performance requirements, such as a requirement to cover 80 percent of the population within 12 years of license grant, and 45 percent coverage of the population within six years of license grant. For compliance demonstration, the *NPRM* proposes to adopt a process similar to compliance rules applicable to part 27 licensees, requiring licensees to file a construction notification with the Commission within 15 days of the expiration of the applicable benchmark, including submission of electronic coverage maps accurately

depicting the boundaries of the licensed area and the boundaries of the actual areas to which the licensee provides service. For enforcement, the *NPRM* proposes that if a licensee fails to meet the final performance requirement, the license authorization will terminate automatically without specific Commission action, and that failure to meet the interim requirement would result in the reduction by two years of both the due date for the final performance requirement and the license term.

25. In the event that the Commission receives mutually exclusive license applications for NSS licenses, the *NPRM* proposes to assign these exclusive use licenses through a system of competitive bidding. Consistent with the competitive bidding procedures the Commission has used in previous auctions, the *NPRM* proposes to conduct any auction for geographic area licenses for spectrum in the band in conformity with the part 1, subpart Q general competitive bidding rules, subject to any modification of the part 1 rules that the Commission may adopt in the future. For small entities, the *NPRM* seeks comment on whether to make bidding credits available for eligible small businesses and rural service providers.

26. The *NPRM* also seeks comment on appropriate technical requirements for NSS licenses, and whether the technical standard RTCA DO-362A or equivalent technical parameters should also apply to NSS licenses. As an alternative to requiring NSS licensee compliance with the RTCA DO-362A standard generally, the *NPRM* also seeks comment on whether there are certain specific requirements of RTCA DO-362A that the Commission should minimally impose on NSS licensees to ensure compatibility with NNA operations, or for other purposes, such as the Time Division Duplex requirements of the RTCA DO-362A standard. In addition, the *NPRM* seeks comment on adoption of a field strength limit to prevent interference between adjacent geographic area licensees.

27. As with NNA service rules, the *NPRM* seeks comment on whether and to what extent the NSS service rules should incorporate or be subject to the requirements generally applicable to aviation services under subparts B through F of part 87 of the Commission's rules, either in their current form or with modifications, and whether the NSS service should be subject to rules under part 1, subpart F governing wireless radio service applications and proceedings. In particular, the *NPRM* seeks comment on whether to allow partitioning and disaggregation of NSS licenses as well as spectrum leasing. Likewise as mentioned earlier in the NNA service rules discussion, NSS users would be subject to any applicable reporting and recordkeeping requirements under existing Commission's rules incorporated into the requirements for the 5030-5091 MHz band. The *NPRM* also seeks comment on whether to authorize NSS licensees, at their discretion, to provide network-supported service for UAS CNPC through either a satellite or terrestrial network, or alternatively, whether the Commission should provide that certain NSS licenses are dedicated exclusively to satellite-based service. It further seeks comment on whether to permit NSS licensees to deploy High-altitude Platform Stations (HAPS).

28. *Equipment Authorization.* To ensure that equipment in the new band has the level of reliability and safety required of aviation equipment, the *NPRM* proposes to impose equipment authorization requirements similar to those under sections 87.145 and 87.147 of the Commission's rules to all equipment intended for use in the 5030-5091 MHz band. Section 87.145 requires that each transmitter must be certificated for use in the relevant service, and section 87.147 establishes a specific equipment authorization process. Section 87.147 specifically requires an applicant for certification of equipment to notify the FAA of the filing of the application, and provides that the Commission will not act on the application until it receives the FAA's determination regarding whether it objects to the application for equipment authorization.

29. *Protection of Other Services.* The *NPRM* seeks comment on any measures the Commission should adopt to protect federal Microwave Landing System (MLS) deployments in the 5030-5091 MHz band, and on whether to provide that no future non-federal MLS licenses (including MLS radionavigation land test licenses at 5031 MHz) will be granted in the 5030-5091 MHz band. To protect radio astronomy operations, the *NPRM* proposes, consistent with NTIA's recommendations, to continue to apply to the 5030-5091 MHz band the requirements of Footnote US211 of the Table of Frequency Allocations, and to prohibit UAS operations within the National Radio Quiet Zone (NRQZ) without prior

coordination with the NRQZ administrator and submission of a concurrence from the NRQZ administrator with any request to a DFMS for frequency assignment within the NRQZ. The *NPRM* also seeks comment on applying to all UAS operations relying on the 5030-5091 MHz band in the NRQZ the licensee/applicant procedures for the NRQZ under section 1.924(a) of the Commission's rules, which include written notification filing requirements.<sup>56</sup> The *NPRM* further seeks comment on any special measures necessary to ensure compatibility between UAS operations in the 5030-5091 MHz band and AeroMACS and flight testing in adjacent bands. To protect radionavigation-satellite service in the 5010-5030 MHz band, the *NPRM* proposes to require 5030-5091 MHz operations to comply with the specific effective isotropically radiated power (EIRP) spectral density limit specified in Footnote 5.443C of the Table of Frequency Allocations. With regard to Canadian and Mexican coordination, the *NPRM* proposes to provide that all operations in the band are subject to international agreements with Mexico and Canada.

30. *Airborne Use of Flexible-Use Spectrum.* Regarding UAS operations in flexible-use spectrum, the Commission did not make specific proposals and seeks comment on the adequacy of its current rules to ensure co-existence of existing terrestrial wireless networks and UAS, and on the regulatory solutions that may be necessary to facilitate and encourage such use. Thus, at this time the Commission is not in a position to determine what rule changes could result from the questions raised in the *NPRM*, and which of those changes, if any, will result in reporting and/or recordkeeping obligations for small entities.

31. *VHF Licenses for UAS Pilots.* The *NPRM* proposes that the Commission individually license stations for UA pilot communication with control towers and other aircraft pilots under a new category of licensed station, an *Unmanned Aircraft Operator Ground VHF Station*, and to define the new station as "a station on the ground providing unmanned aircraft pilot radio communication relating to safety and regularity of flight on air traffic control, flight service station, unicom, or multicom frequencies." The *NPRM* further proposes to provide that these stations may operate over all air traffic control, flight service station, aeronautical advisory station (unicom) and aeronautical multicom channels authorized for use by aircraft. In addition, the *NPRM* proposes to permit mobile stations (stations intended to be used while in motion or during halts at unspecified points), and seeks comment on whether to permit non-mobile stations as well. Under this proposal, UAS operators would be required to file a license application with the Commission for an individual license covering their VHF station.

#### **E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

32. 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 or reporting requirements under the rule for such 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 such small entities."<sup>57</sup>

33. In this proceeding, the Commission seeks comment on options to license the 5030-5091 MHz band for UAS CNPC. UAS operators have a growing need for the greater reliability of interference-protected licensed spectrum for CNPC, and the licensing of the 5030-5091 MHz band has the potential to provide UAS operators with access to interference-protected communications of sufficient reliability for operations where those communications links are safety-critical. As such access will support the growth of the UAS industry and help to realize its enormous potential economic and social benefits, the Commission anticipates that adoption of licensing rules for the band will have a significant positive economic impact on small and other UAS manufacturers, operators, and other stakeholders.

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<sup>56</sup> See 47 CFR § 1.924.

<sup>57</sup> See 5 U.S.C. § 603(c)(1)-(4).

34. The Commission believes that applying the licensing rules equally to all entities will generally be necessary to protect the safety of life and property in air navigation and promote the efficient and intensive use of spectrum. However, to assist the Commission's evaluation of the economic impact on small entities and to better explore the alternatives in consideration of their economic impact on small entities as well as other factors, the *NPRM* has sought comment broadly on possible alternatives for a band plan and licensing rules, and requests information on the potential costs and benefits of such alternatives to small and other UAS operators. In addition, the *NPRM* has proposed or sought comment on certain specific options that may facilitate small entity access to spectrum in the band.

35. The *NPRM* proposes a band plan to support both NNA and NSS operations. We propose to partition the band, to dedicate different segments of spectrum in the 5030-5091 MHz band for NNA and NSS, and to license each of these segments in a manner that is appropriate to support the relevant use cases in order to accommodate both NNA and NSS users. We are also considering whether to make available spectrum for multi-purpose uses, e.g., expansion bands for temporary NNA or NSS use, and seek comment on this alternative. We seek comment on whether we should use a portion of the 51 megahertz for opportunistic use by both NNA or NSS licensees (multi-purpose use) or whether we should increase the amount of spectrum dedicated to NNA operations.

36. To the extent we dedicate spectrum for NSS licenses, we also seek comment on making that spectrum available for NNA operations on an interim, opportunistic basis. We seek comment on the costs and benefits of this approach, including its technical and economic feasibility, and on alternative approaches to ensuring productive usage of dedicated NSS spectrum prior to network deployment, which will help inform the Commission on the impact for small entities before adopting final rules. Further, as alternative approach to allocating spectrum in the band, we seek comment on alternative approaches to allocating the 5030-5091 MHz band for the support of UAS, including whether we should (1) allocate only a portion of the band at this time and defer allocation of the remainder of the band or (2) preserve part of the band at this time for experimental use, or for potential future satellite-based CNPC that relies on the AMS(R)S allocation in the band.

37. Ensuring the ability of the DFMS to provide interference-free access and promote robust and efficient use of the spectrum will most likely require the adoption of rules for NNA operators, including small operators. We seek comment on such requirements, including: (1) whether to require operators to provide ground station geographic location, effective isotropically radiated power (EIRP), and/or antenna patterns; (2) whether to require an active UAS relying on an NNA assignment in the band to provide a DFMS with the UA information that must be broadcast under the Remote ID rule or some subset or variation of the information; (3) whether a UAS operator should be required to affirmatively communicate to the DFMS, in real time or within a certain period of time of the relevant event, the initiation and termination of the flight or, alternatively, the initiation and termination of the operator's use of the assigned frequencies; and (4) whether there are other circumstances or information (aside from the request) that a UAS operator should be required by rule to communicate to the DFMS.

38. Interactions between the DFMS and UAS operators involving frequency assignment may require the Commission to adopt a registration process. Rather than propose a mandatory registration requirement before frequency assignments can be requested, we seek comment from small and other UAS operators on whether such a requirement is needed, and if so, what requirements should be imposed regarding registration. We seek comment on whether the Commission should simply require registration and leave the details to be developed such as by the DFMSs or a multi-stakeholder group. We believe that allowing small UAS operators and other commenters to address this issue, including with cost data analysis, is the better approach to inform the Commission on the economic and other impacts for these operators. Similarly, regarding the submission of frequency requests, we consider what requirements, if any, should be imposed with respect to the submission of UAS operator requests for NNA frequency assignments, and alternatively what, if any, details of the request process should be left to be developed by a multi-stakeholder group. We also consider in the *NPRM* how to assist small and other operators if the need to revise their assignments arises after a flight has commenced by seeking comment on what, if

any rules we should adopt to enable or facilitate the filing and timely processing of requests by the DFMS for revised assignments, or to otherwise address an operator's mid-flight need for revised assignment.

39. As part of the DFMS frequency coordination system, we have proposed and seek comment on allowing the DFMS administrator to charge reasonable fees for its provision of services, including registration and frequency assignment services, to UAS operators receiving the services. The Commission has taken steps to minimize the economic impact on small and other UAS operators by proposing to authorize UAS operators to petition the Commission to review DFMS fees and require changes if they are found to be unreasonable or excessive. Additionally, to encourage efficient use of the limited spectrum resource and discourage any attempt at warehousing which would likely disadvantage small UAS operators, we seek comment on specifically authorizing reasonable usage-based fees.

40. We also seek comment on potential alternatives to the DFMS proposal to enable dynamic spectrum access to the 5030-5091 MHz band, on the feasibility, costs, and benefits of alternative options as compared to the DFMS, and on whether such alternatives would be sufficiently reliable to support even the most safety-critical uses such as flights in controlled airspace.

41. The *NPRM* also proposes to implement licensing of NNA stations using licensed-by-rule authorization for both aircraft and ground stations in the band. Licensing by rule would reduce the burden on small entities and other UAS operators of obtaining direct access to protected spectrum for CNPC, as they would not be required to obtain individual spectrum licenses for themselves or their aircraft or ground UAS stations in order to operate in the 5030-5091 MHz band. In addressing the license rules for NSS operations, the *NPRM* seeks comment on issuing licenses on an exclusive geographic area basis. The *NPRM* also seeks comment on several options that may help to reduce the burden to small entities of obtaining and using such licenses or otherwise facilitate small entity access to this spectrum. First, while the *NPRM* seeks comment on defining license areas using large geographic areas such as Regional Economic Area Groupings (REAGs) (which divide the nation into twelve regional areas), it also seeks comment on using a more granular scheme, such as Partial Economic Areas (PEA), which may be more affordable or better tailored for small entities.

42. Second, the *NPRM* proposes certain measures to facilitate small entity participation in any competitive bidding process conducted for these licenses. Specifically, the *NPRM* proposes to conduct a competitive bidding process in the event that it receives mutually exclusive license applications. In order to promote and reduce the costs of participation for small service providers, the *NPRM* proposes to make bidding credits available for this band. A bidding credit of 15 percent for a qualifying "small business," defined as an entity with average gross revenues for the preceding five years not exceeding \$55 million, and a bidding credit of a 25 percent for a qualifying "very small business," defined as an entity with average gross revenues for the preceding five years not exceeding \$20 million have been proposed in the *NPRM*.<sup>58</sup> These proposed small business definitions and bidding credits are consistent with recent competitive bidding processes used by the Commission for assignment of licenses. The *NPRM* also seeks comment on whether to offer rural service providers a bidding credit for licenses in this band which would provide another opportunity for small providers who would qualify as rural providers to reduce their the costs of participation.

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<sup>58</sup> The standardized schedule of bidding credits provided in section 1.2110(f)(2)(i) of the rules defines small businesses based on average gross revenues for the preceding three years. In December 2018, Congress revised the standard set out in the Small Business Act for categorizing a business concern as a "small business concern," by changing the annual average gross receipts benchmark from a three-year period to a five-year period. Thus, as a general matter, a federal agency cannot propose to categorize a business concern as a "small business concern" for Small Business Act purposes unless the size of the concern is based on its annual average gross receipts "over a period of not less than 5 years." 15 U.S.C. § 632(a)(2)(C)(ii)(II), *as amended by* Small Business Runway Extension Act of 2018, Pub. L. 115-324 (Dec. 17, 2018); *see* 13 CFR § 121.903(a)(1)(ii). For consistency with the statutory requirements, we therefore propose to adopt the Small Business Act's revised five-year average gross receipts benchmark for purposes of determining which entities qualify for small business bidding credits.

43. Third, the *NPRM* seeks comment on whether to allow partitioning and disaggregation of NSS licenses in secondary market transactions as well as spectrum leasing. Allowing these secondary market transactions could provide small entities with additional options for access to this spectrum, and may be an effective way to facilitate targeted network deployments, including by small entities.

44. In the *NPRM*, the Commission seeks comment on UAS operations on flexible-use spectrum using existing networks as platforms, which may offer small and other UAS operators a near term, low-cost option rather than requiring them to build-out a dedicated network for UAS operations. However, because existing terrestrial networks were not designed for UAS use, the Commission's terrestrial mobile service rules generally do not consider airborne use, and the introduction of UAS operations may result in increased interference. In light of the considerable stakeholder interest in UAS on flexible-use spectrum, and the Commission's commitment to allow flexibility in the use of existing spectrum and networks to the extent feasible, the Commission explores flexible-use as a potential option for UAS operations and seeks comment on the adequacy of its current rules to ensure co-existence of existing terrestrial wireless networks and UAS as well as on the regulatory solutions that may be necessary to facilitate and encourage such use. The Commission expects to more fully understand the feasibility of allowing UAS operations on flexible-use spectrum and the economic impact on small entities following its review of comments filed in response to the *NPRM*.

45. We also discuss adding a provision to part 87 of the Commission's rules to enable UAS operators to file an application with the Commission to obtain an individual VHF license under a new category of licensed station to address a need by some small and other UAS operators to communicate with ATC facilities in accordance with FAA rules. As mentioned in the prior section, in some instances the FAA requires UAS operators to communicate with ATC or with nearby manned aircraft over the VHF traffic control and advisory frequencies and to obtain a license from the Commission for this purpose. In the absence of provisions in the Commission's rules to provide such a license, the Commission handles such requests from UAS operators by granting special temporary authority on a case-by-case basis. The addition of the proposed licensing provision to part 87 will provide certainty of process and a more permanent operating authorization for small entities as compared to the special temporary authority the Commission uses for UAS operators to comply with the FAA's requirements. We anticipate that this proposal will help to facilitate the growth and safety of UAS operations by small and other entities.

46. Finally, the Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the *NPRM*, including costs and benefits information and alternative proposals. The Commission's evaluation of the comments filed in this proceeding will shape the final alternatives it considers, the final conclusions it reaches, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities as a result of any final rules that are adopted.

#### **F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

47. Proposed UAS service rules for the 5030-5091 MHz band would, in part, overlap with and, depending on the UAS equipment requirements established in this proceeding, may be inconsistent with the FAA's Technical Standard Order (TSO) C213a, which establishes minimum performance standards for UAS radios in the 5030-5091 MHz band.

**APPENDIX C****List of Commenters*****AIA PETITION COMMENTS AND REPLIES***Comments

CTIA  
Elefante Group  
Integrity Communications Solutions Inc. (Integrity Communications)  
Lockheed Martin Corporation (Lockheed Martin)  
Raytheon Company (Raytheon)  
RTCA Special Committee SC-228 WG2  
Small UAV Coalition  
The Boeing Company (Boeing)

Replies

Aerospace Industries Association (AIA)  
AeroVironment, Inc. (AeroVironment)  
CTIA  
Rockwell Collins, Inc. (Rockwell Collins)

***SECTION 374 COMMENTS AND REPLIES***Comments

AIA  
Airbus Urban Mobility (AUM)  
Aireon LLC (Aireon)  
American Petroleum Institute (API)  
AURA Networks (AURA)  
Boeing  
Commercial Drone Alliance (CDA)  
Consumer Technology Association (CTA)  
CTIA  
Federated Wireless, Inc. (Federated Wireless)  
Florida Power and Light Company (FPL)  
General Atomics Aeronautical Systems, Inc. (GA-ASI)  
GPS Innovation Alliance (GPSIA)  
Iridium Communications Inc. (Iridium)  
Lockheed Martin  
Motorola Solutions, Inc. (Motorola)  
Phirst Technologies, LLC (Phirst)  
Small UAV Coalition  
T-Mobile USA, Inc. (T-Mobile)  
uAvionix Corporation (uAvionix)  
WiMAX Forum

Replies

Aircraft Owners and Pilots Association (AOPA)  
AUM  
AURA  
Aviation Spectrum Resources, Inc. (ASRI)  
Boeing  
Federated Wireless  
National Public Safety Telecommunications Council (NPSTC)  
Raytheon  
Spectrum Financial Partners (SFP)  
United Parcel Service, Inc. (UPI)  
Verizon

***REFRESH PUBLIC NOTICE COMMENTS AND REPLIES***Comments

AIA  
AeroVironment  
AURA  
ASRI  
Boeing  
Canada's Notification Authority and Enquiry Point, Technical Barriers and Regulations Division  
(Canada)  
Commercial Drone Alliance (CDA)  
CTIA  
Dynamic Spectrum Alliance (DSA)  
Edison Electric Institute (EEI)  
Federated Wireless  
FPL  
L3Harris Technologies (L3H)  
MatrixSpace Inc. (MatrixSpace)  
National Telecommunications and information Administration (NTIA)  
Northeast UAS Airspace Integration Research (NUAIR)  
Northern Plains Unmanned Aircraft Systems Test Site (NPUASTS)  
Qualcomm Incorporated (Qualcomm)  
RTCA, Inc. (RTCA)  
Shared Spectrum Company (SSC)  
Small UAV Coalition  
uAvionix  
Wireless Innovation Forum (WinnForum)  
Wisk Aero LLC (Wisk)

Replies

Federated Wireless  
NTIA  
Small UAV Coalition  
Xcel Energy Services Inc. (Xcel Energy)

**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS**

Re: *Spectrum Rules and Policies for the Operation of Unmanned Aircraft Systems; Petition of AIA for Rulemaking to Adopt Service Rules for Unmanned Aircraft Systems Command and Control in the 5030-5091 MHz Band*, Notice of Proposed Rulemaking, WT Docket No. 22-323, RM-11798 (terminated)

I'm pleased to see us move toward unleashing more spectrum for unmanned aircraft systems (UAS).

As I've said before, this is an area where the United States can clearly lead with the right regulatory support. U.S. companies and research universities continue to incubate drone technologies at FAA-designated testing sites across the country—including in Nevada, where I previously visited a testbed to learn about the industry's vision and growing challenges. In 2021, we helped drive drone development through the establishment of FCC "Innovation Zones." We followed it up by refreshing the record on a path forward for drones in the 5030-5091 MHz band—which is the focus of our action today. As I said back then, "these systems cannot truly flourish without Commission action governing the operation of UAS in licensed spectrum," and getting there "will require careful work with our federal partners." Today, after close collaboration with NTIA and the FAA, we're proposing service and licensing rules to support robust, reliable, and safe UAS deployments in the 5 GHz band. That's real progress.

Of course, even as far as the Commission's role is concerned, securing a vibrant future for UAS isn't about just one frequency band. That's why I'm pleased to see us incorporate other critical issues related to drone operations into this notice of proposed rulemaking. Consistent with industry and academic interest and ongoing standards-setting efforts, we're exploring 5G as a UAS platform and the broader use of cellular bands for drone applications. We're also proposing a way to license drone communications with air traffic control.

UAS technologies pose plenty of potential, and their promise goes well beyond just package deliveries. They can aid disaster relief, protect critical infrastructure, enhance smart applications and precision agriculture, improve public safety, and even help us build more safely and efficiently. We're right to continue supporting their development, even as we also explore the unique policy challenges posed by their operation.

I am grateful to the Commission staff who developed this item. It has my full support.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Data Breach Reporting Requirements ) WC Docket No. 22-21

NOTICE OF PROPOSED RULEMAKING

Adopted: December 28, 2022

Released: January 6, 2023

Comment Date: 30 days after publication in the Federal Register  
Reply Comment Date: 60 days after publication in the Federal Register

By the Commission:

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I. INTRODUCTION

1. The Commission first adopted a rule in 2007 requiring telecommunications carriers and interconnected Voice over Internet Protocol (VoIP) providers to notify customers and federal law enforcement of breaches of customer proprietary network information (CPNI) in the carriers’ possession.<sup>1</sup> In the almost decade and a half since that time, data breaches nationwide have increased in both frequency and severity in all industries.<sup>2</sup> In the telecommunications industry, the public has suffered an

<sup>1</sup> See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) (*2007 CPNI Order*); 47 CFR § 64.2011.

<sup>2</sup> Identity Theft Resource Center, *Identity Theft Resource Center to Share Latest Data Breach Analysis With U.S. Senate Commerce Committee; Number of Data Breaches in 2021 Surpasses All of 2020* (Oct. 6, 2021), <https://www.idtheftcenter.org/identity-theft-resource-center-to-share-latest-data-breach-analysis-with-u-s-senate-commerce-committee-number-of-data-breaches-in-2021-surpasses-all-of-2020/>; see also IAPP, *U.S. State Data Breach Lists*, <https://iapp.org/resources/article/u-s-state-data-breach-lists/> (last visited Jan. 4, 2023) (compilation of the numerous states agency-maintained databases listing breaches reported in their states).

increasing number of security breaches of customer information in recent years.<sup>3</sup> Federal and state data breach laws covering other areas have evolved since 2007.<sup>4</sup> Those developments combined with our specific experience suggest opportunities for improvement in our own breach notification rule. The time is ripe. Today, we begin the process to update and strengthen our data breach rule to provide greater protections to the public.

## II. BACKGROUND

2. *Privacy of Telecommunications Customer Information.* Section 222 of the Communications Act of 1934, as amended (the Act), requires telecommunications carriers to protect the privacy and security of information about their customers to which they have access as a result of their unique position as network operators.<sup>5</sup> Section 222(a) requires carriers to protect the confidentiality of proprietary information of and relating to their customers.<sup>6</sup> Section 222(c)(1) provides that a carrier may only use, disclose, or permit access to CPNI that it has received by virtue of its provision of a telecommunications service: (1) as required by law; (2) with the customer's approval; or (3) in its provision of the telecommunications service from which such information is derived, or services necessary to or used in the provision of such telecommunications service.<sup>7</sup> The Act defines CPNI as "(A)

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<sup>3</sup> See, e.g., *AT&T Services, Inc.*, Order, 30 FCC Rcd 2808 (2015) (reaching \$25 million settlement of investigation into three breaches); Selena Larson, *Verizon data of 6 million users leaked online*, CNN Business (July 12, 2017), <https://money.cnn.com/2017/07/12/technology/verizon-data-leaked-online/index.html>; T-Mobile, *Notice of Data Breach: Keeping you safe from cybersecurity threats* (Sep. 7, 2021), <https://www.t-mobile.com/brand/data-breach-2021> (providing notice that in August 2021 T-Mobile discovered a breach that occurred in July 2021); CNET, *T-Mobile hack: Here's what we know about the massive data breach* (Aug. 28, 2021), <https://www.cnet.com/tech/t-mobile-hack-heres-what-we-know-about-the-massive-data-breach/>; Lorenzo Franceschi-Bicchierai, *Company that Routes Billions of Text Messages Quietly Says It Was Hacked*, Motherboard Tech by Vice (Oct. 4, 2021), <https://www.vice.com/en/article/z3xpm8/company-that-routes-billions-of-text-messages-quietly-says-it-was-hacked> (last visited Jan. 4, 2023) (reporting that Syniverse, a telecommunications infrastructure provider for mobile service, disclosed that its databases has been breached on several occasions since 2016, impacting potentially millions of cellphone users worldwide); see also *TerraCom, Inc. and YourTel America, Inc.; Apparent Liability for Forfeiture*, File No.: EB-TCD-13-00009175, NAL/Acct. No.: 201432170015, Notice of Apparent Liability For Forfeiture, 29 FCC Rcd 13325 (2014) (*TerraCom NAL*) (proposing to find that two companies failed to protect customer information and proposing forfeiture of \$10 million).

<sup>4</sup> See, e.g., American Recovery and Reinvestment Act, Pub. L No. 111-5, 123 Stat. 258, §§ 13400-13402 (2009); Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. Law 111-203, 124 Stat. 1376, §1093 (2010); Cal. Civ. Code §§ 1798.82 (amended 2020); Del. Code § 12B-102 (amended 2017); Wash. Rev. Code § 19.252.01 (amended 2019).

<sup>5</sup> 47 U.S.C. § 222. See also *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, et al.*, CC Docket Nos. 96-115, et al., Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, 14419-20, paras. 12-14 (1999) (*1999 CPNI Reconsideration Order*) (denying petitions for reconsideration and forbearance seeking different treatment for wireless providers under the Commission's CPNI rules, concluding that "there is nothing in the statute or its legislative history to indicate that Congress intended the CPNI requirements in section 222 should not apply to wireless carriers").

<sup>6</sup> 47 U.S.C. § 222(a).

<sup>7</sup> 47 U.S.C. § 222(c)(1). Section 222(b) provides that a carrier that receives or obtains proprietary information from other carriers in order to provide a telecommunications service may only use such information for that purpose and may not use that information for its own marketing efforts. 47 U.S.C. § 222(b). Section 222(d) delineates certain exceptions to the general principle of confidentiality, including permitting a carrier to use, disclose, or permit access to CPNI obtained from its customers to protect telecommunications services users "from fraudulent, abusive, or unlawful use of, or subscription to" telecommunications services. 47 U.S.C. § 222(d). Subsequent to the adoption of section 222(c)(1), Congress added section 222(f). Section 222(f) provides that for purposes of section 222(c)(1), without

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information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.”<sup>8</sup> The Commission has explained that CPNI includes (but is not limited to) information such as the phone numbers called by a consumer; the frequency, duration, and timing of such calls; the location of a mobile device when it is in active mode (i.e., able to signal its location to nearby network facilities); and any services purchased by the consumer, such as call waiting.<sup>9</sup>

3. The Commission first promulgated rules implementing section 222 in 1998.<sup>10</sup> In addition to adopting restrictions on the use and disclosure of CPNI, the Commission adopted a set of rules designed to ensure that telecommunications carriers establish effective safeguards to protect against unauthorized use or disclosure of CPNI.<sup>11</sup> In 2007, the Commission amended its CPNI rules to, among other things, require carriers<sup>12</sup> to notify law enforcement and customers of security breaches involving CPNI.<sup>13</sup> The Commission defined “breach” for this purpose as one that occurs “when a person, without authorization or exceeding authorization, has intentionally gained access to, used, or disclosed CPNI.”<sup>14</sup> The Commission’s rules require a telecommunications carrier to notify law enforcement of a breach of its customers’ CPNI no later than seven business days after a reasonable determination of a breach by sending electronic notification through a central reporting facility to the United States Secret Service (Secret Service) and the Federal Bureau of Investigation (FBI).<sup>15</sup> The rules permit a telecommunications

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the “express prior authorization” of the customer, a customer shall not be considered to have approved the use or disclosure of or access to (1) call location information concerning the user of a commercial mobile service or (2) automatic crash notification information of any person other than for use in the operation of an automatic crash notification system. 47 U.S.C. § 222(f).

<sup>8</sup> 47 U.S.C. § 222(h)(1).

<sup>9</sup> *2007 CPNI Order*, 22 FCC Rcd at 6930, para. 5; *see also AT&T, Inc.*, File No.: EB-TCD-18-00027704, Notice of Apparently Liability for Forfeiture and Admonishment, 35 FCC Rcd 1743, 1757, paras. 33-35 (2020) (finding that customer location information is CPNI under the Act); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, et al.*, CC Docket No. 96-115, Declaratory Ruling, 28 FCC Rcd 9609 (2013) (*2013 CPNI Declaratory Ruling*) (concluding that information collected by a customer’s device at the carrier’s direction may be CPNI); *1999 CPNI Reconsideration Order*, 14 FCC Rcd at 14487, paras. 146-47 (adopting the conclusions of the Common Carrier Bureau that names, addresses, and telephone numbers are not CPNI).

<sup>10</sup> *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, et al.*, CC Docket Nos. 96-115, et al., Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) (*1998 CPNI Order*).

<sup>11</sup> *See id.* at 8195, para. 193.

<sup>12</sup> In this Notice of Proposed Rulemaking, we refer to telecommunications carriers and interconnected VoIP providers collectively as “telecommunications carriers” or “carriers,” consistent with our existing Part 64, Subpart U rules. In doing so, we do not address the regulatory classification of interconnected VoIP service or interconnected VoIP service providers. *See* 47 CFR § 64.2003(o) (defining *telecommunications carrier* or *carrier* for purposes of Subpart U to include an entity that provides interconnected VoIP service as that term is defined in 47 CFR § 9.3).

<sup>13</sup> *2007 CPNI Order*, 22 FCC Rcd at 6943-45, paras. 26-32.

<sup>14</sup> 47 CFR § 64.2011(e).

<sup>15</sup> 47 CFR § 64.2011(b). Additionally, the Commission’s rules require carriers to maintain a record of any discovered breaches, notifications to the Secret Service and the FBI regarding those breaches, as well as the Secret Service and the FBI response to the notifications for a period of at least two years. This record must include, if available, the date that the carrier discovered the breach, the date that the carrier notified the Secret Service and the

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carrier to notify the customer and/or disclose the breach publicly after seven business days following notification to the Secret Service and the FBI, if the Secret Service and the FBI have not requested that the telecommunications carrier continue to postpone disclosure.<sup>16</sup> Under the rules, a telecommunications carrier may immediately notify a customer or disclose the breach publicly only after consultation with the relevant investigative agency and only if the carrier believes that there is an extraordinarily urgent need to notify a customer or class of customers in order to avoid immediate and irreparable harm.<sup>17</sup> The Commission declined to specify the precise content of the notice that must be provided to customers in the event of a breach of CPNI, saying that it was leaving telecommunications carriers discretion to tailor the language and method of notification to the circumstances.<sup>18</sup>

4. In 2016, the Commission acted to revise its breach notification rule as part of a larger proceeding addressing privacy requirements for broadband internet access service providers (ISPs).<sup>19</sup> In 2017, however, Congress nullified those 2016 revisions to the Commission's CPNI rules under the Congressional Review Act.<sup>20</sup>

5. In 2013, as part of a larger proceeding addressing the video relay service (VRS) and telecommunications relay (TRS) programs, the Commission adopted rules to protect the privacy of

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FBI, a detailed description of the CPNI that was breached, and the circumstances of the breach. See 47 CFR § 64.2011(d).

<sup>16</sup> If the relevant investigating agency determines that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security, the law enforcement agency may direct the carrier not to disclose the breach for an initial 30-day period. This 30-day period may be extended by the law enforcement agency as reasonably necessary in the judgment of the agency. The law enforcement agency shall provide in writing to the carrier its initial direction to the carrier and any subsequent direction. 47 CFR § 64.2011(b)(3).

<sup>17</sup> See 47 CFR § 64.2011(b)(2) (requiring a telecommunications carrier to indicate its desire to notify its customer or class of customers immediately in the notice that it provides to the Secret Service and FBI).

<sup>18</sup> 2007 CPNI Order, 22 FCC Rcd at 6945, para. 32.

<sup>19</sup> *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106, Report and Order, 31 FCC Rcd 13911, 14019-33, paras. 261-291 (2016) (*2016 Privacy Order*). In 2015, the Commission classified broadband Internet access service as a telecommunications service subject to Title II of the Act, a decision that the D.C. Circuit upheld in *United States Telecom Ass'n v. FCC*. See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5733, paras. 306 (2015), *aff'd*, *United States Telecom Ass'n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016). As a result of classifying broadband Internet access service as a telecommunications service, such services were subject to section 222 of the Act. The rules the Commission adopted in the *2016 Privacy Order* applied to carriers and interconnected VoIP providers in addition to ISPs. See *2016 Privacy Order*, 31 FCC Rcd at 13925, para. 39, 14033-34, para. 293. In 2017, the Commission reversed the 2015 classification decision so that Title II obligations, including section 222, no longer apply to ISPs. *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 (2017) (subsequent history omitted).

<sup>20</sup> See Joint Resolution, Pub. L. No. 115-22 (2017) (“Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Federal Communications Commission relating to ‘Protecting the Privacy of Customers of Broadband and Other Telecommunications Services’ (81 Fed. Reg. 87274 (December 2, 2016)), and such rule shall have no force or effect.”); 5 U.S.C. § 801(f) (“Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.”); *id.* § 801(b)(1) (“A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval . . . of the rule.”); see also *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services; Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, WC Docket No. 16-106, CC Docket No. 96-115, Order, 32 FCC Rcd 5442 (2017).

customer information relating to all relay services authorized under section 225 of the Act.<sup>21</sup> In that proceeding, the Commission adopted a data breach reporting rule applicable to TRS modeled off of the CPNI data breach reporting rule applicable to telecommunications services.<sup>22</sup>

6. *Data Breach Notification Laws and Regulations.* As the Commission has previously explained, its data breach rule is “not intend[ed] to supersede any statute, regulation, order, or interpretation in any state, except to the extent that such statute regulation, order, or interpretation is inconsistent with the provisions” of the rule, and then only to the extent of the inconsistency.<sup>23</sup> In 2007, the Commission explicitly rejected requests to preempt all state CPNI obligations, finding instead that states should also be allowed to create rules for protecting CPNI.<sup>24</sup>

7. All 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands have laws requiring covered entities to notify individuals of data breaches.<sup>25</sup> Our breach notification requirement is one of several sector-specific breach notification laws in the United States. The Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach-Bliley Act (GLBA), and the Federal Trade Commission (FTC)-enforced Health Breach Notification Rule all have customer notification requirements for breaches of individual data.<sup>26</sup> In addition to sector-specific breach notification rules, the FTC has brought actions under section 5(a) of the FTC Act raising allegations that companies acted unfairly by failing to protect consumer data, resulting in security breaches.<sup>27</sup> The FTC has also published extensive guidance for businesses in the event of a security breach of customer information, setting forth recommendations for appropriate best practices after a data breach has

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<sup>21</sup> *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51, 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8680, para. 155 (2013) (*2013 VRS Reform Order*); 47 CFR § 64.5111.

<sup>22</sup> *2013 VRS Reform Order*, 28 FCC Rcd at 8684, para 165.

<sup>23</sup> *2007 CPNI Order*, 22 FCC Rcd at 6945, para. 31; 47 CFR 64.2011(f).

<sup>24</sup> *2007 CPNI Order*, 22 FCC Rcd at 6957-58, para. 60 (recognizing that many states have laws relating to the safeguarding of personal information such as CPNI, and to the extent those laws do not create a conflict with federal requirements, carriers are able to comply with both federal and state law).

<sup>25</sup> See National Conference of State Legislatures, *Security Breach Notification Laws* (Jan. 17, 2022), <https://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx> (with links to notification laws of each state, district, and territory).

<sup>26</sup> Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996) (HIPAA); Gramm-Leach-Bliley Act (Financial Services Modernization Act of 1999), Pub. L. No. 106-102, 113 Stat. 1338 (1999) (GLBA); 16 CFR § 318.3.

<sup>27</sup> See, e.g., *FTC v. Wyndham Worldwide Corporation*, 799 F.3d 236 (3rd Cir. 2015) (upholding the FTC’s assertion that cybersecurity practices can, as a general matter, form the basis of an unfair practice under section 45(a) of the FTC Act); see also, e.g., *Skymed International Inc.*, FTC Docket No. C-4732, Complaint, at [https://www.ftc.gov/system/files/documents/cases/c-4732\\_skymed\\_final\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/c-4732_skymed_final_complaint.pdf) (2021) (alleging that the company failed to provide reasonable security for the personal information it collected which resulted in exposure of personal information in a cloud database that could be located and accessed by anyone on the internet, and contained approximately 130,000 membership records with consumers’ personal information stored in plain text, including information populated in certain fields for names, dates of birth, gender, home addresses, email addresses, phone numbers, membership information and account numbers, and health information); *InfoTrax Systems L.C.*, FTC Docket No. C-4696, Complaint, at [https://www.ftc.gov/system/files/documents/cases/c-4696\\_162\\_3130\\_infotrax\\_complaint\\_clean.pdf](https://www.ftc.gov/system/files/documents/cases/c-4696_162_3130_infotrax_complaint_clean.pdf) (2020) (alleging that the company failed to put in place reasonable security safeguards, which allowed hackers to access the personal information of more than a million consumers); *LightYear Dealer Technologies, LLC*, FTC Docket No. C-4687, Complaint, [https://www.ftc.gov/system/files/documents/cases/172\\_3051\\_c-4687\\_dealerbuilt\\_final\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/172_3051_c-4687_dealerbuilt_final_complaint.pdf) (2019) (alleging that the auto dealer software provider failed to take reasonable steps to secure consumers’ data, leading to a breach that exposed the personal information of millions of consumers).

occurred.<sup>28</sup>

8. *Recent Developments.* The Commission adopted the data breach rule, like the rest of the privacy safeguards adopted in the *2007 CPNI Order*, to address the problem of “pretexting,” the practice of pretending to be a particular customer or other authorized person in order to obtain access to that customer’s call detail or other private communications records.<sup>29</sup> In the almost 15 years since, it has become clear that breaches of customer information in many contexts extend far beyond pretexting in general or the specific type of pretexting addressed at that time and are increasing in scale and evolving in methodology. For example in 2015, AT&T reached a settlement with the Commission to resolve an investigation into three data breaches at call centers in Mexico, Columbia, and the Philippines perpetrated by insiders who sold customer information to criminals that resulted in the compromise of the personal information of almost 52,000 customers.<sup>30</sup> In 2017, Verizon confirmed the leak of the personal data of six million customers, caused by a misconfigured security configuration on a cloud server.<sup>31</sup> And in 2021, T-Mobile disclosed that the personal information of over 50 million customers was stolen by hackers.<sup>32</sup> Verizon also recently disclosed a breach of its subsidiary Visible.<sup>33</sup> And Syniverse, which provides interconnection services to wireless carriers, disclosed that that an unknown “individual or organization gained unauthorized access to databases within its network on several occasions,” potentially compromising the security of text messages of millions of wireless customers in a series of breaches spanning years.<sup>34</sup> These examples demonstrate the increasing severity and diversifying methods of security breaches involving customer information, which can have lasting detrimental impacts on customers whose information has been breached.<sup>35</sup>

9. To help protect consumers from the ever-growing harms of breaches of personal information across sectors, Congress and the states have taken action. For example, in 2009, Congress enacted laws that created breach notification requirements for businesses that maintain health care information, resulting in HIPAA’s breach notification rules and the FTC’s Health Breach Notification

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<sup>28</sup> FTC, *Data Breach Response: A Guide for Business* at 6 (2021), [https://www.ftc.gov/system/files/documents/plain-language/560a\\_data\\_breach\\_response\\_guide\\_for\\_business.pdf](https://www.ftc.gov/system/files/documents/plain-language/560a_data_breach_response_guide_for_business.pdf); (FTC Data Breach Guidance).

<sup>29</sup> *2007 CPNI Order*, 22 FCC Rcd at 6928, paras. 1-2 & n.1.

<sup>30</sup> *AT&T Services, Inc.*, Order, 30 FCC Rcd 2808 (2015).

<sup>31</sup> See Selena Larson, *Verizon data of 6 million users leaked online*, CNN Business (July 12, 2017), <https://money.cnn.com/2017/07/12/technology/verizon-data-leaked-online/index.html> (last visited Jan. 4, 2023).

<sup>32</sup> T-Mobile, *Notice of Data Breach: Keeping you safe from cybersecurity threats* (Sep. 7, 2021), <https://www.t-mobile.com/brand/data-breach-2021> (providing notice that in August 2021 T-Mobile discovered a breach that occurred in July 2021); CNET, *T-Mobile hack: Here’s what we know about the massive data breach* (Aug. 28, 2021), <https://www.cnet.com/tech/t-mobile-hack-heres-what-we-know-about-the-massive-data-breach/>.

<sup>33</sup> Scott Ikeda, *Attack on Verizon Visible Confirmed To Be a Credential Stuffing Campaign; Hacked Accounts Charged for Thousands of Dollars in Purchases*, CPO Magazine (Oct. 21, 2021), <https://www.cpomagazine.com/cyber-security/attack-on-verizon-visible-confirmed-to-be-a-credential-stuffing-campaign-hacked-accounts-charged-for-thousands-of-dollars-in-purchases/> (reporting that Visible recently experienced an attack that saw customer accounts taken over and orders placed using stored payment information).

<sup>34</sup> See Lorenzo Franceschi-Bicchierai, *Company that Routes Billions of Text Messages Quietly Says It Was Hacked*, Motherboard Tech by Vice (Oct. 4, 2021), <https://www.vice.com/en/article/z3xpm8/company-that-routes-billions-of-text-messages-quietly-says-it-was-hacked> (last visited Jan. 4, 2023).

<sup>35</sup> See, e.g., RAND Corporation, *Consumer Attitudes Toward Data Breach Notifications* at xii (2016), [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR1100/RR1187/RAND\\_RR1187.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR1100/RR1187/RAND_RR1187.pdf) (finding that 68% of data breach victims reported an estimated financial loss, with a median loss of \$500); Identity Theft Resource Center, *2021 Identity Crimes Aftermath Report: How Identity Crimes Impact Victims, Their Families, Friends and Workplaces* at 16-20 (2021), <https://www.idtheftcenter.org/identity-theft-aftermath-study/> (finding that 32% of identity theft victims reported identity-related financial problems, among other consequences).

Rule.<sup>36</sup> In 2010, Congress passed laws imposing breach notification requirements on financial institutions through amendments to GLBA.<sup>37</sup> At the state level, California has been an active leader in consumer privacy laws,<sup>38</sup> most recently in 2019 with the California Consumer Protection Act (CCPA)<sup>39</sup> and the passage of the California Privacy Rights Act (CPRA) in 2020.<sup>40</sup> Elsewhere, in 2021, Virginia and Colorado became the second and third states respectively to enact comprehensive consumer privacy laws,<sup>41</sup> while every state and territory now has some form of breach notification requirements.<sup>42</sup> Both California's and Virginia's recent privacy laws drew inspiration from the 2016 passage of the European Union's General Data Protection Regulation (GDPR) which created one of the world's most comprehensive privacy regimes.<sup>43</sup>

### III. DISCUSSION

10. To better protect telecommunications customers and ensure that our rules keep pace with today's challenges, we propose a number of updates to our rule addressing telecommunications carriers' breach notification duties. We seek to ensure that affected customers, the Commission, and other federal law enforcement agencies receive the information they need in a timely manner so they can mitigate and prevent harm due to the breach and take action to deter future breaches.<sup>44</sup> To identify best practices and to minimize burdens, we look to other federal and state breach laws as potential models for our rules.

11. We propose to expand the Commission's definition of "breach" to include inadvertent disclosures of customer information and seek comment on adopting a harm-based trigger for breach notifications. We also propose to require carriers to notify the Commission, in addition to the Secret Service and FBI, as soon as practicable after discovery of a breach. We also propose to eliminate the

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<sup>36</sup> American Recovery and Reinvestment Act, Pub. L. No. 111-5, 123 Stat. 258 §§ 13400-13402 (2009). *See also*, Department of Health and Human Services, Breach Notification for Unsecured Protected Health Information, 74 Fed. Reg. 42740, 42767 (Aug. 24, 2009) (implementing the HIPAA breach notification rule); Federal Trade Commission, Health Breach Notification Rules, 74 Fed. Reg. 42962 (Aug. 25, 2009) (implementing the Health Breach Notification Rule).

<sup>37</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. Law 111-203, 124 Stat. 1376, §1093 (2010).

<sup>38</sup> *See* Gerald D. Peake, *Data Security and Privacy Law*, §7.11 (2021) (describing California's evolving privacy laws).

<sup>39</sup> Cal. Civ. Code §§ 1798.100.199; *see* State of California Department of Justice, *California Consumer Privacy Act (CCPA)*, <https://oag.ca.gov/privacy/ccpa> (last visited Jan. 4, 2023).

<sup>40</sup> *See*, IAPP, *The California Privacy Rights Act*, <https://iapp.org/resources/article/the-california-privacy-rights-act-of-2020/> (last visited Jan. 4, 2023).

<sup>41</sup> Sarah Rippy, *Virginia Passes the Consumer Data Protection Act* (Mar. 3, 2021), <https://iapp.org/news/a/virginia-passes-the-consumer-data-protection-act/>; GibsonDunn, *The Colorado Privacy Act: Enactment of Comprehensive U.S. State Consumer Privacy Laws Continues* (July 9, 2021), <https://www.gibsondunn.com/the-colorado-privacy-act-enactment-of-comprehensive-u-s-state-consumer-privacy-laws-continues/>.

<sup>42</sup> National Conference of State Legislatures, *Security Breach Notification Laws* (Apr. 15, 2021), <https://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx> (with links to notification laws of each state, district, and territory).

<sup>43</sup> Jennifer Bryant, *3 Years in, GDPR Highlights Privacy in Global Landscape* (May 25, 2021), <https://iapp.org/news/a/three-years-in-gdpr-highlights-privacy-in-global-landscape>. *See* Council Directive 2016/679, art. 34, 2016 O.J. (L 119) 1-88 (EC) (text of GDPR).

<sup>44</sup> *See 2007 CPNI Order*, 22 FCC Red at 6943, para. 27 ("Notifying law enforcement of CPNI breaches is consistent with the goal of protecting CPNI [because] [l]aw enforcement can investigate the breach, which could result in legal action against the perpetrators, thus ensuring that they do not continue to breach CPNI . . . [and] this should enable law enforcement to advise industry, the Commission, and perhaps Congress regarding additional measures that might prevent future breaches.").

mandatory waiting period before notifying customers and instead require carriers to notify customers of CPNI breaches without unreasonable delay after discovery of a breach unless requested by law enforcement. We also seek comment on whether we should adopt minimum requirements for the content of customer breach notices. We also evaluate and seek comment on the impact of the Congressional disapproval of the *2016 Privacy Order* on the Commission's legal authority to issue the rules proposed herein for telecommunications carriers. Finally, we propose to make changes to our TRS data breach reporting rule consistent with those we propose to our CPNI breach reporting rule.

#### A. Defining "Breach"

12. *Inadvertent Disclosures.* We propose to expand the Commission's definition of "breach" to include inadvertent access, use, or disclosures of customer information and seek comment on our proposal. Our current rule, adopted in response to the practice of pretexting,<sup>45</sup> defines a "breach" as "when a person, without authorization or exceeding authorization, has intentionally gained access to, used, or disclosed CPNI."<sup>46</sup> While the practice of pretexting necessarily involves an intent to gain access to customer information, the intervening years since the adoption of our existing rule have demonstrated that the inadvertent exposure of customer information can result in the loss and misuse of sensitive information by scammers and phishers, and trigger a need to inform the affected individuals so that they can take appropriate steps to protect themselves and their information.<sup>47</sup> Further, whether or not a breach was intentional may not always be immediately apparent, which may lead to legal ambiguity and under-reporting. We also believe that it is important that the Commission and law enforcement be made aware of any accidental access, use, or disclosures so that we can (1) investigate and advise carriers on how best to avoid future breaches, and (2) stand ready to investigate if and when any of the affected information falls prey to malicious actors.<sup>48</sup> We anticipate that requiring notification for accidental breaches will encourage telecommunications carriers to adopt stronger data security practices and will help us identify and confront systemic network vulnerabilities. Do commenters agree with the foregoing analysis? Are

<sup>45</sup> See *supra* para. **Error! Reference source not found.**

<sup>46</sup> 47 CFR § 64.2011(e).

<sup>47</sup> Cf., e.g., Shawn Snow, *Major data breach at Marine Forces Reserve impacts thousands*, Marine Corps Times (Feb. 28, 2018), <https://www.marinecorpstimes.com/news/your-marine-corps/2018/02/28/major-data-breach-at-marine-forces-reserve-impacts-thousands/> (describing the accidental disclosure of highly sensitive data of more than 21,000 service members, including truncated Social Security numbers, electronic funds transfer and bank routing numbers, truncated credit card information, mailing and residential addresses, and emergency contact information, caused by the transmission of an unencrypted email with an attachment to the wrong distribution list); Jan Murphy, *Data breach put 360,000 Pa. teachers, education department staffers' personal information at risk*, PennLive (Mar. 23, 2018), [https://www.pennlive.com/politics/2018/03/data\\_breach\\_put\\_360000\\_pa\\_teach.html](https://www.pennlive.com/politics/2018/03/data_breach_put_360000_pa_teach.html) (reporting that human error led to the accidental exposure of highly sensitive information of approximately 360,000 current and retired teachers in Pennsylvania, including users' Social Security numbers); see also, e.g., Australian Associated Press, *Melbourne student health records posted online in 'appalling' privacy breach: Health and medication data posted in error on Strathmore secondary college intranet*, The Guardian (Aug. 21, 2018), <https://www.theguardian.com/australia-news/2018/aug/22/melbourne-student-health-records-posted-online-in-appalling-privacy-breach> (reporting that in August 2018, the personal records of 300 students at Strathmore secondary college in Melbourne, Australia were accidentally published to the school's intranet service, resulting in the inadvertent disclosure of data relating to medical and mental health conditions, medications, and learning and behavioral difficulties for hundreds of high school students); Volodymyr "Bob" Diachenko, Head of Security Research at Comparitech, *Veeam inadvertently exposed marketing database with hundreds of millions of records*, LinkedIn (Sept. 11, 2018), <https://www.linkedin.com/pulse/veeam-inadvertently-exposed-marketing-info-hundreds-its-bob-diachenko/> (reporting on an exposed database that had been accidentally made available on the Internet by Veeam, a company that develops backup, disaster recovery, and intelligent data management software for virtual, physical, and multi-cloud infrastructures, which contained more than 200 gigabytes of customer records, including names, several hundred million email addresses, and IP addresses).

<sup>48</sup> See *2007 CPNI Order*, 22 FCC Rcd at 6944, para. 27.

there other policy factors the Commission should consider in determining whether to require disclosure for unintentional breaches? What are the benefits and burdens associated with this proposal? We note that state data breach laws overwhelmingly do not include an intent limitation,<sup>49</sup> and we seek comment on how state and other federal data breach laws should influence the policy we adopt.

13. We seek comment on the impact of requiring reporting of accidental breaches on the number of reported breaches. Do commenters foresee a significant increase in the number of reported breaches? If so, how would our proposal affect reporting costs for telecommunications carriers and is that burden outweighed by the benefits to customers, who may need to take actions to protect their personal and financial information whether or not the breach was intentional? Would removing the intentionality limit potentially risk over-notification of data breaches to customers? What would the impacts of over-notification be? Would the potential benefits outweigh any potential harm? To help us assess the burden to both carriers and consumers from requiring reporting of accidental breaches, we invite commenters to provide estimates on the total number of breaches they have detected over the past few years, as well as the number of people affected by those breaches, and the severity of the compromised CPNI.

14. We propose to revise our definition to define a breach as any instance in which a person, without authorization or exceeding authorization, has gained access to, used, or disclosed CPNI. We seek comment on this proposal and other possible definitions. Should we retain the intent limitation in certain contexts? If so, what contexts and why? With only a few exceptions, the vast majority of state statutes include a provision exempting from the definition of breach a good-faith acquisition of covered data by an employee or agent of the company where such information is not used improperly or further disclosed.<sup>50</sup>

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<sup>49</sup> See, e.g., Ala. Code § 8-38-2(1); Alaska Stat. § 45.48.090; Ariz. Rev. Stat. § 18-551(1)(a); Ark. Code § 4-110-103(1)(A); Cal. Civ. Code § 1798.29(f); Colo. Rev. Stat. § 6-1-716(1)(a); Conn. Gen. Stat. § 36a-701b(a); Del. Code tit. 6 § 12B-101(1)(a); D.C. Code § 28-3851(1); Fla. Stat. § 501.171(1)(a); Ga. Code § 10-1-911(1); 9 GCA § 48.20(a); Haw. Rev. Stat. § 487N-1; 815 ILCS § 530-5; Ind. Code § 4-1-11-2(a); Iowa Code § 715C.1(1); Kan. Stat. § 50-7a01(h); KRS § 365.732(1)(a); KRS § 61.931(9)(a); La. Rev. Stat. § 51.3073(2); Me. Rev. Stat. tit. 10 § 1347(1); Md. Code Com. Law § 14-3504(a)(1); Md. State Govt. Code § 10-1305(a)(1); Mass. Gen. Laws § 93H-1(a); Mich. Comp. Laws § 445.63(b); Minn. Stat. § 325E.61 Subd. 1(d); Miss. Code § 75-24-29(2)(a); Mo. Rev. Stat. § 407.1500 1. (1); Mont. Code § 2-6-1501(1); Mont. Code § 30-14-1704(4)(a); Neb. Rev. Stat. § 87-802(1); Nev. Rev. Stat. § 603A.020; N.H. Rev. Stat. § 359-C:19(V); N.J. Stat. § 56:8-161; N.M. Stat. § 57-12C-2(D); N.Y. Gen. Bus. Law § 899-AA(c); N.C. Gen. Stat. § 75-61(14); N.D. Cent. Code § 51-30-01(1); Ohio Rev. Code § 1347.12(A)(2)(a); Ohio Rev. Code § 1349.19(A)(1)(a); Ohio Rev. Code § 1354.01(C); Okla. Stat. § 74-3113.1(D)(1); Okla. Stat. § 24-162(1); Oregon Rev. Stat. § 646A.602(1); 73 Pa. Stat. § 2302; 10 L.P.R.A. § 4051(c); R.I. Gen. Laws § 11-49.3-3(a)(1); S.C. Code § 39-1-90(D)(1); S.D. Cod. Laws § 20-40-19(1); Tenn. Code § 47-18-2107(a)(1)(A); Tex. Bus. & Com. Code § 521.053(a); Utah Code § 13-44-102(1)(a); 9 V.S.A. § 2430(13)(A); Va. Code § 18.2-186.6(A); V.I. Code tit. 14, § 2208(d); Wash. Rev. Code § 19.255.005(1); W.V. Code § 46A-2A-101(1); Wis. Stat. § 134.98(2)(a)-(b); Wyo. Stat. § 40-12-501(a)(i).

<sup>50</sup> See, e.g., Ala. Code § 8-38-2(1); Alaska Stat. § 45.48.050; Ariz. Rev. Stat. § 18-551(1)(b); Ark. Code § 4-110-103(1)(B); Cal. Civ. Code § 1798.29(f); Colo. Rev. Stat. § 6-1-716(1)(a); Del. Code tit. 6 § 12B-101(1)(a); D.C. Code § 28-3851(1); Fla. Stat. § 501.171(1)(a); Ga. Code § 10-1-911(1); 9 GCA § 48.20(a); Haw. Rev. Stat. § 487N-1; Idaho Stat. § 28-51-104(2); 815 ILCS § 530-5; Ind. Code § 4-1-11-2(b)(1); Iowa Code § 715C.1(1); Kan. Stat. § 50-7a01(h); KRS § 365.732(1)(a); KRS § 61.931(9)(b); La. Rev. Stat. § 51.3073(2); Me. Rev. Stat. tit. 10 § 1347(1); Md. Code Com. Law § 14-3504(a)(2); Md. State Govt. Code § 10-1305(a)(2); Mass. Gen. Laws § 93H-1(a); Mich. Comp. Laws § 445.63(b); Minn. Stat. § 325E.61 Subd. 1(d); Mo. Rev. Stat. § 407.1500 1. (1); Mont. Code § 30-14-1704(4)(a); Neb. Rev. Stat. § 87-802(1); Nev. Rev. Stat. § 603A.020; N.H. Rev. Stat. § 359-C:19(V); N.J. Stat. § 56:8-161; N.M. Stat. § 57-12C-2(D); N.Y. Gen. Bus. Law § 899-AA(c); N.C. Gen. Stat. § 75-61(14); N.D. Cent. Code § 51-30-01(1); Ohio Rev. Code § 1347.12(A)(2)(b)(i); Ohio Rev. Code § 1349.19(A)(1)(b)(i); Ohio Rev. Code § 1354.01(C)(1); Okla. Stat. § 74-3113.1(D)(1); Okla. Stat. § 24-162(1); Oregon Rev. Stat. § 646A.602(1); 73 Pa. Stat. § 2302; R.I. Gen. Laws § 11-49.3-3(a)(1); S.C. Code § 39-1-90(D)(1); S.D. Cod. Laws § 20-40-19(1); Tenn. Code § 47-18-2107(a)(1)(B); Tex. Bus. & Com. Code § 521.053(a); Utah Code § 13-44-102(1)(b); 9 V.S.A. § 2430(13)(B); Va. Code § 18.2-186.6(A); V.I. Code tit. 14, § 2208(d); Wash. Rev. Code § 19.255.005(1); W.V. Code § 46A-2A-101(1); Wis. Stat. § 134.98(2)(cm)(2); Wyo. Stat. § 40-12-501(a)(i).

Should we include such an exemption in our definition of “breach” or is such a provision unnecessary or otherwise inadvisable? Is our proposed rule sufficient to capture all instances in which persons, either purposefully or inadvertently, gain access to, use, or disclose CPNI? If not, how should we revise our proposed rule to ensure that it does? We also seek comment on whether we should expand the definition of a breach to include situations where a telecommunications carrier or a third party discovers conduct that could have reasonably led to exposure of customer CPNI, even if it has not yet determined if such exposure occurred.<sup>51</sup>

15. *Harm-Based Notification Trigger.* We seek comment on whether to forego requiring notification to customers or law enforcement of a breach in those instances where a telecommunications carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach. Our current rule requires no showing of harm, instead requiring that notification be furnished in every instance where a breach of a carrier’s customers’ CPNI has occurred, where such breach is defined as any instance when “a person, without authorization or exceeding authorization, has intentionally gained access to, used, or disclosed CPNI.”<sup>52</sup>

16. We seek comment on the benefits and drawbacks of adopting a “harm-based” notification trigger. How would it impact consumers? Would it benefit consumers by avoiding confusion and “notice fatigue” with respect to breaches that are unlikely to cause harm? Recognizing that it is not only distressing, but time consuming and expensive, to deal with the fallout of a data breach, we seek comment on whether a harm-based notification trigger could save consumers the time, effort, and financial difficulty of changing their passwords, purchasing fraud alerts or credit monitoring, and freezing their credit in the wake of a breach that is not reasonably likely to result in harm. Alternatively, does a harm-based notification trigger risk that consumers would be unaware of important information regarding their CPNI? We note that a harm-based trigger has a basis in data breach notification frameworks employed by states, which generally do not require covered entities to notify customers of breaches when a determination is made that the breach is unlikely to cause harm.<sup>53</sup> How should state and other data breach laws influence our analysis?

17. We also seek comment on the potential impacts of adopting a harm-based trigger on telecommunications carriers. Would a harm-based trigger allow carriers to better focus their resources on data security and ameliorating the harms caused by data breaches? Or to the contrary, would a harm-

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<sup>51</sup> For example, in 2017 Verizon notified the public that an employee of one of its vendors had put information in cloud storage with settings that could have allowed it to be exposed to the public even though it did not result in “a loss or theft of Verizon or Verizon customer information” because the issue was remedied before any public exposure occurred. Verizon, *Verizon responds to report: Confirms no loss or theft of customer information* (July 12, 2017), <https://www.verizon.com/about/news/verizon-responds-report-confirms-no-loss-or-theft-customer-information>.

<sup>52</sup> 47 CFR § 64.2011(e); *see also* 47 CFR § 64.2011(a), (c).

<sup>53</sup> *See, e.g.*, Alaska Stat. § 45.48.010(c); Arizona Stat. §44-7501(G); Conn. Gen. Stat. § 36a-701b(b)(1) (exempting entities from disclosing breaches when an investigation determines that no harm is likely); Ark. Code § 4-110-105(d) (stating that notice is not required if there is no reasonable likelihood of harm); Fla. Stat. § 501.171(6)(b) (holding that no notice is required if it is reasonably determined that breach has not and will not likely result in identity theft or any other financial harm); Iowa Code § 715C.2(6) (stating that no notice is required if no reasonable likelihood of financial harm has resulted or will result from the breach); Or. Rev. Stat. § 646A.602(1)(a) (stating that no notice is required if no reasonable likelihood of harm has resulted or will result from the breach); N.J. Stat. Ann. § 56:8-163(a) (stating that notice is not required if it is determined that misuse of the information is not reasonably possible); Vt. Stat. Ann. tit. 09 § 2435(d)(1); Md. Com. Law Code Ann. § 14-3504(c); *see also Preparing for and Responding to a Breach of Personally Identifiable Information*, Office of Management and Budget, M-17-12, Memorandum for Heads of Executive Departments and Agencies at 29 (Jan. 3, 2017) (OMB M-17-12) (granting federal agencies discretion on whether to notify individuals potentially affected by a breach when the assessed risk of harm is low, and advising agencies to “balance the need for transparency with concerns about over-notifying individuals”).

based trigger require carriers to unnecessarily expend resources determining whether particular breaches are reasonably likely to cause harm instead of more efficiently providing notice?

18. If we adopt a harm-based trigger, how should telecommunications carriers and the Commission determine the likelihood of misuse or harm? Should we identify a standard or set of factors that telecommunications carriers must consider to evaluate whether no harm to customers is reasonably likely?<sup>54</sup> If so, what factors should carriers consider in making their evaluation? We preliminarily believe that no single factor on its own (*e.g.*, basic encryption) is sufficient to make a determination regarding harm to customers. Do commenters agree? Do carriers have sufficient expertise and experience to determine whether a breach is likely to result in harm? Should we establish a rebuttable presumption of consumer harm unless and until a carrier demonstrates that no harm to consumers is reasonably likely to occur as a result of a breach?<sup>55</sup>

19. We seek comment on whether we should clarify the definition of “misuse” or “harm.”<sup>56</sup> For example, should we construe “harm” broadly to encompass not only financial, but also physical and emotional harm, including reputational damage, personal embarrassment, and loss of control over the exposure of intimate personal details? Should we require telecommunications carriers to consider whether other information about the customers that may be available combined with CPNI could result in harm when determining whether notification is required? Should any harm-based trigger apply even where the data breached is encrypted? What are the potential enforcement and compliance implications associated with this approach? Should breaches without such “harm” be reported to the Commission even if not reported to customers? Should we require the carrier to consult with federal law enforcement and/or the Commission prior to determining that there is no reasonable likelihood of harm or misuse?<sup>57</sup> We seek comment on whether there are other triggers we should consider for which notice would be unnecessary, such as the number of affected consumers or the length of time exposure occurred. Are there other factors that we should consider before requiring breach notifications? Should we adopt a harm-based trigger only if we require notices of unintentional breaches, or should we evaluate the two issues independently? We also seek comment on the current notification practices in the industry. How do carriers currently make decisions regarding whether to notify customers and law enforcement of a breach?

20. We seek comment on whether any harm-based notification trigger should apply to both

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<sup>54</sup> See, *e.g.*, OMB M-17-12 at 20-27 (setting forth a list of factors that agencies should consider when assessing the risk of harm to potentially affected individuals resulting from a breach); 45 CFR § 164.402(2) (setting forth a list of four factors that covered entities must consider when determining whether an acquisition, access, use, or disclosure of protected health information demonstrates a sufficiently high probability of harm so as to constitute a breach and trigger the notification requirements under HIPAA).

<sup>55</sup> See 45 CFR § 164.402(2) (establishing a rebuttable presumption of a “breach” that triggers the notification requirements under HIPAA except where covered entities demonstrate that there is a low probability that the protected health information in question has been compromised based on a risk assessment of four listed factors, including “(i) The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification; (ii) The unauthorized person who used the protected health information or to whom the disclosure was made; (iii) Whether the protected health information was actually acquired or viewed; and (iv) The extent to which the risk to the protected health information has been mitigated”).

<sup>56</sup> See *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, Report and Order, 26 FCC Rcd 9114, 9122, para. 22 (2011) (agreeing that the term “‘harm’ is a broad concept that encompasses financial, physical, and emotional harm”); see also *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leader, Inc.*, File No.: EB-TCD-15-00020488, NAL/Acct. No.: 201732170006, Notice of Apparent Liability For Forfeiture, 32 FCC Rcd 5418, 5423-25, paras. 16-21 (2017); *Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes*, File No.: EB-TCD-16-00023195, NAL/Acct. No.: 201732170007, Forfeiture Order, 33 FCC Rcd 9204, 9218-20, paras. 39-42 (2018).

<sup>57</sup> See, *e.g.*, Conn. Gen. Stat. § 36a-701b(b)(1); Fla. Stat. §501.171(4)(c).

notifications to customers and notifications to law enforcement. While there are legitimate reasons to consider eliminating notifications to customers in those instances where a breach is not reasonably likely to result in harm—including reducing confusion, stress, financial hardship, and notice fatigue—can the same be said of notifications to law enforcement? Are there compelling reasons for carriers to continue notifying law enforcement of data breaches even where such breaches are not reasonably likely to result in consumer harm? Do the benefits of notifying law enforcement of all breaches, regardless of whether the breach is likely to result in harm, outweigh the attendant costs to carriers of providing such notice?

21. We propose that if we adopt a harm-based trigger, where a carrier is unable to make a determination regarding harm or is uncertain whether harm is likely to occur, the obligation to notify would remain. We seek comment on this proposal.

22. We also recognize that telecommunications carriers possess proprietary information other than CPNI that customers have an interest in protecting from public exposure, such as Social Security Numbers and financial records. We seek comment on the Commission’s authority to establish breach-reporting obligations for this type of information under Section 222, to the extent that this information is obtained by a telecommunications carrier in its activity as a common carrier.<sup>58</sup> We also seek comment on the role of the Commission in protecting such information in light of the existing role of other agencies, including the FTC and Cybersecurity and Infrastructure Security Agency (CISA).<sup>59</sup> If we were to require telecommunications carriers to report breaches of proprietary information other than CPNI under Section 222(a), how broadly or narrowly should we define that category of information? If we were to extend our data breach rule to cover such information, how could we minimize duplicative reporting obligations from the FTC and CISA?

#### **B. Notifying the Commission and other Federal Law Enforcement of Data Breaches**

23. *Commission Notification.* We propose to require telecommunications carriers to notify the Commission of breaches, in addition to the Secret Service and FBI, as soon as practicable, and seek comment on our proposal. Our proposal is consistent with other federal sector-specific laws, which require prompt notification to the relevant subject-matter agency. For example, both HIPAA and the Health Breach Notification Rule require notice to the department of Health and Human Services (HHS) and the FTC respectively.<sup>60</sup> We seek comment on the benefits and costs of requiring notification to the Commission in addition to notifying the Secret Service and the FBI, as our existing rules require.<sup>61</sup>

24. As discussed above, the Commission adopted its existing data breach rule to address concerns regarding pretexting practices.<sup>62</sup> The Commission found that notifying law enforcement of CPNI breaches is consistent with the goal of protecting CPNI because it enables law enforcement to investigate the breach, “which could result in legal action against the perpetrators, thus ensuring that they do not continue to breach CPNI.”<sup>63</sup> Moreover, the Commission anticipated that law enforcement investigations into how breaches occurred would enable law enforcement to advise the carrier and the Commission to take steps to prevent future breaches of that kind.<sup>64</sup> However, as we have seen in the

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<sup>58</sup> 15 U.S.C. § 45(a) (prohibiting unfair or deceptive acts or practices in or affecting commerce, but exempting “common carriers subject to the Acts to regulate commerce”), 44 (defining “Acts to regulate commerce” as including “the Communications Act of 1934 and all Acts amendatory thereof and supplementary thereto”).

<sup>59</sup> See *infra* para. 26 (discussing CISA duplication).

<sup>60</sup> 45 CFR § 164.408 (“A covered entity shall, following the discovery of a breach . . . notify the Secretary); 16 CFR § 318.3(a)(2).

<sup>61</sup> 47 CFR § 64.2011(b)(2).

<sup>62</sup> See *supra* para. **Error! Reference source not found.**

<sup>63</sup> 2007 CPNI Order, 22 FCC Rcd at 6943, para. 27.

<sup>64</sup> See *id.*

years since our data breach rule was initially adopted, not all breaches of customer data are the result of criminal pretexting, which was Commission's sole focus in 2007. Large-scale security breaches can also be the result of lax or inadequate data security practices and employee training. Thus, we tentatively conclude that notification of breaches will provide Commission staff important information about data security vulnerabilities that Commission staff can help address and remediate. We anticipate that breach notification to the Commission will also shed light on carriers' ongoing compliance with our rules. We seek comment on these tentative conclusions. How much of an incremental burden is associated with notifying the Commission of data breaches as compared to the existing data breach notification requirement for the Secret Service and FBI? Are there any other government entities to which we should require data breach reporting, such as the FTC? What would be the benefits and burdens of doing so?

25. *Method of Notification.* We propose that the Commission create and maintain a centralized portal for reporting breaches to the Commission and other federal law enforcement agencies, and we seek comment on our proposal. Our current breach notification rule requires that telecommunications carriers notify the FBI and Secret Service "through a central reporting facility" to which the Commission maintains a link on its website.<sup>65</sup> We believe that the creation and operation by the Commission of a centralized reporting facility for reporting of breaches to the Commission, Secret Service, and FBI will streamline the notification process and improve federal coordination. Do commenters agree? Are there alternative mechanisms for breach reporting to the Commission and other federal law enforcement that we should consider instead, such as leveraging the existing central reporting facility? Are there existing notification resources that we can leverage? For example, could we leverage the CISA Incident Reporting System<sup>66</sup> to minimize burdens on carriers?

26. We seek comment on how we can minimize data breach reporting burdens for telecommunications carriers. The recently-passed Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA) requires covered entities to notify CISA of cyber security incidents and establishes an interagency Cyber Incident Reporting Council intended to streamline interagency cyber incident reporting.<sup>67</sup> When implemented, CIRCIA will require covered entities to report cybersecurity incidents to CISA, except where covered entities "by law, regulation, or contract" are already required to report "substantially similar information to another Federal agency within a substantially similar timeframe,"<sup>68</sup> in which case the other agency will report the incident to CISA.<sup>69</sup> To the extent that a breach of CPNI is a result of a cyber incident, we seek comment on whether there are any modifications to our proposed rules that would minimize potential duplicate reporting of such breaches.

27. *Contents.* We seek comment on applying our existing requirements regarding the contents of the data breach notification to federal law enforcement agencies to breaches reported to the Commission. Generally, the central reporting facility requires carriers to report information relevant to the breach, including carrier contact information; a description of the breach incident; the method of

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<sup>65</sup> 47 CFR § 64.2011(b). See Federal Communications Commission, CPNI Breach Reporting Facility, <https://www.fcc.gov/general/cpni-breach-reporting-facility> (last visited Jan. 4, 2023).

<sup>66</sup> Cybersecurity & Infrastructure Security Agency, *CISA Incident Reporting System*, <https://us-cert.cisa.gov/forms/report> (last visited Jan. 4, 2023). The CISA Incident Reporting System allows Federal Government departments and agencies, and other entities, to report breaches of federal government information and information systems. See CISA, *US-CERT Federal Incident Notification Guidelines*, <https://us-cert.cisa.gov/incident-notification-guidelines> (last visited Jan. 4, 2023).

<sup>67</sup> Cyber Incident Reporting for Critical Infrastructure Act of 2022, sec. 2242(a)(1)(A), adopted as part of Consolidated Appropriations Act, 2022, Division Y, sec. 103, Pub. L. No. 117-103. CIRCIA's requirements will not go into effect until after CISA completes a rulemaking implementing the Act.

<sup>68</sup> CIRCIA, sec. 2242(a)(5)(B).

<sup>69</sup> Consolidated Appropriations Act, 2022, Division Y, sec. 104(a)(5), Pub. L. No. 117-103. The federal agency must establish an interagency sharing agreement and mechanism with CISA for this exception.

compromise; the date range of the incident, approximate number of customers affected; an estimate of financial loss to the carriers and customers, if any; types of data breached; and the addresses of affected customers. We believe that the information currently submitted through the FBI/Secret Service reporting facility is largely sufficient, and that generally the same information should be reported under the rule we propose here. Do commenters agree? Are there any additional or alternative categories of information that should be included in these disclosures? For example, should we require telecommunications carriers to report, at a minimum, the information required under CIRCIA with the aim of minimizing potentially duplicate reporting requirements?<sup>70</sup> Should we curtail or streamline any of the existing content requirements? For example, should we eliminate the requirement that carriers report the addresses of affected individuals to law enforcement and the Commission, to minimize the personal information reported to the Commission and law enforcement?

28. *Timeframe.* We seek comment on the appropriate timeframe for notifying the Commission and other federal law enforcement of a breach. Our current rule requires telecommunications carriers to notify the Secret Service and the FBI of all breaches of CPNI no later than seven business days after reasonable determination of the breach.<sup>71</sup> We propose to require carriers to notify the Commission of a reportable breach contemporaneously with notification to other law enforcement agencies as soon as practicable after discovery of a breach. We believe that requiring carriers to notify the Commission, Secret Service, and FBI at the same time will minimize burdens on carriers, eliminate confusion regarding obligations, and streamline the reporting process, allowing carriers to free up resources that can be used to address the breach and prevent further harm. We seek comment on our proposal. Is “as soon as practicable after discovery of a breach” an appropriate timeframe for notifying law enforcement after reasonable determination of a CPNI breach? Or, should we maintain the current “no later than seven business days” standard? Is there an alternative timeframe we should adopt for reporting CPNI breaches to the Commission and other federal law enforcement such as 24 hours or 72 hours as has been proposed in other contexts,<sup>72</sup> or should we consider adopting a graduated timeframe?<sup>73</sup> We also seek comment on whether we should clarify when a carrier should be treated as having “reasonably determined” that a breach has occurred. Should a carrier be held to have “reasonably determined” a breach has occurred when it has information indicating that it is more likely than not that there was a breach? Should we publish guidance on what constitutes a reasonable determination? Should we adopt a more definite standard?

29. *Threshold Trigger.* We seek comment on whether it is appropriate to set a threshold for the number of customers affected to require a breach report to the Commission, Secret Service, and/or FBI. We observe that breaches affecting smaller numbers of customers may not necessitate the same law enforcement attention as larger breaches because they may be less likely to reflect coordinated attacks on CPNI. Under our current rule, telecommunications carriers must notify federal law enforcement of *all*

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<sup>70</sup> See CIRCIA, sec. 2242(b)(4) (requiring, at a minimum, a description of the covered cyber incident; a description of the vulnerabilities exploited and security defense that were in place, as well as the techniques used to perpetrate the covered incident; any identifying information related to those reasonably believed to be responsible for the incident; the categories of information reasonably believed to have been accessed or acquired by unauthorized persons; and contact information of the covered entity impacted).

<sup>71</sup> 47 CFR § 64.2011(a)-(b).

<sup>72</sup> CIRCIA requires covered entities to notify CISA no later than 72 hours after the entity “reasonably believes” that a covered cybersecurity incident has occurred, and to report ransomware payments within 24 hours. See CIRCIA, sec. 2242(a)(1)(A); 2242(a)(2). The GDPR requires notification of a personal data breach to the relevant government authority within 72 hours of discovery of the breach. Council Directive 2016/679, art. 33, 2016 O.J. (L 119) 1 (EC).

<sup>73</sup> See, e.g., Executive Order 14028 (mandating updates to the Federal Acquisition Regulation that will require, among other things, federal contractors to report cyber incidents “based on a graduated scale of severity, with reporting on the most severe cyber incidents not to exceed 3 days after initial detection”).

reportable breaches, regardless of the number of customers affected. Setting a threshold for the number of customers affected for breach reporting to the Secret Service and FBI could reduce the administrative burdens on carriers and law enforcement agencies from excessive reporting, and is consistent with many state statutes requiring notice to state law enforcement authorities, which require law enforcement notification of large breaches.

30. At the same time, establishing a threshold may limit our and our federal partners' abilities to remediate, investigate, and deter smaller breaches. Further, as the Commission has previously found, notification of all breaches could allow the Commission and federal law enforcement to be "better positioned than individual carriers to develop expertise about the methods and motives associated with CPNI breaches."<sup>74</sup> Is this still the case, given the development of data breach law and practices since 2007? Should we adopt a threshold for reporting to federal law enforcement? If so, should the threshold be the same for the Commission as for federal law enforcement? If not, how should the threshold differ? What would be an appropriate threshold for reporting? Most states that adopt a threshold for reporting to law enforcement or government agencies require reporting at 250,<sup>75</sup> 500,<sup>76</sup> or 1000<sup>77</sup> individuals affected. What reporting threshold would meet the needs of law enforcement and provide adequate safeguards? What are the benefits and drawbacks of setting a threshold, particularly for small carriers? If we adopt a threshold trigger, should we require carriers to maintain a record of smaller breaches that fall below the threshold and report such small breaches to the Commission in a report at the end of the year?<sup>78</sup> What are the benefits and drawbacks to such an approach? Rather than a numerical threshold, should we instead consider requiring carriers to report only intentional breaches to law enforcement, but to report all breaches, whether intentional or inadvertent, to the Commission?

### C. Customer Notification

31. *Notifying Customers of Data Breaches without Unreasonable Delay.* We propose to require telecommunications carriers to notify customers of CPNI breaches without unreasonable delay after discovery of a breach and notification to law enforcement, unless law enforcement requests a delay. We seek comment on our proposal. Our existing data breach rule prohibits telecommunications carriers from notifying customers or disclosing the breach to the public until at least seven full business days after

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<sup>74</sup> 2007 CPNI Order, 22 FCC Rcd at 6943, para. 27.

<sup>75</sup> See, e.g., N.D. Cent. Code § 51-30-02 (requiring entities to report data breaches affecting 250 residents or more to the state Attorney General); Or. Rev. Stat. § 646A.604(1)(b) (same); S.D. Codified Laws § 20-40-20 (same).

<sup>76</sup> See, e.g., Cal. Civ. Code § 1798.82(f) (requiring entities to report data breaches affecting 500 residents or more to the state Attorney General); Colo. Rev. Stat. § 6-1-716 (requiring entities to report data breaches affecting 500 residents or more to the state Attorney General); Del. Code tit. 6, § 12B-102(d) (same); Fla. Stat. § 501.171(3)(a) (same); R.I. Gen. Laws § 11-49.3-4(a)(2) (requiring entities to report data breaches affecting 500 residents or more to the state Attorney General and major credit reporting agencies); see also 45 CFR § 164.408 (requiring notification to the Secretary of Health and Human Services for breaches of unsecured protected health information involving 500 or more individuals).

<sup>77</sup> See, e.g., Ala. Admin. Code § 8-38-6(a) (requiring entities to report data breaches affecting 1000 residents or more to the state Attorney General); Ariz. Rev. Stat. Ann. § 18-552 (requiring entities to report data breaches affecting 1000 residents or more to the state Attorney General and three largest nationwide consumer reporting agencies); Haw. Rev. Stat. § 487N-2 (requiring entities to report data breaches affecting 1000 residents or more to the state Office of Consumer Protection); N.M. Code § 57-12C-10 (requiring entities to report data breaches affecting 1000 residents or more to the state Attorney General and major consumer reporting agencies); Colo. Rev. Stat. § 6-1-716 (requiring entities to report data breaches affected 1000 residents or more to the credit reporting agencies).

<sup>78</sup> See, e.g., 45 CFR § 164.408(c) (requiring covered entities to maintain a log of breaches affecting less than 500 individuals and provide the log to Department of Health and Human Services not later than 60 days after the end of each calendar year).

notification to the Secret Service and FBI.<sup>79</sup> In cases where a carrier believes that there is an extraordinarily urgent need to notify affected customers in order to avoid immediate and irreparable harm, our rules permit carriers to notify affected customers after consultation with relevant investigating agencies.<sup>80</sup> In adopting the existing rule, the Commission concluded that once customers have been notified, a breach may become public knowledge, “thereby impeding law enforcement’s ability to investigate the breach, identify the perpetrators, and determine how the breach occurred.”<sup>81</sup> In short, the Commission found, “immediate customer notification may compromise all the benefits of requiring carriers to notify law enforcement of CPNI breaches,” and therefore a short delay was warranted.<sup>82</sup>

32. We tentatively conclude that this existing approach is out-of-step with current approaches regarding the urgency of notifying victims about breaches of their personal information. We tentatively conclude that our proposal better serves the public interest than our current rule because it increases the speed at which customers may receive the important information contained in a notice, except in those specific circumstances when law enforcement officials specifically request otherwise.<sup>83</sup> We seek comment on our tentative conclusion. What are the benefits and drawbacks to such an approach? Is there any reason to maintain our current absolute bar to customer notification for a set period? Does our proposal to eliminate the seven business-day waiting period before notifying customers appropriately balance legitimate law enforcement needs with the customers’ need to take action to timely protect their information after a breach? We seek comment on whether a “without unreasonable delay” notification requirement would allow carriers enough time to determine the scope and impact of a breach. Would prompt customer notification compromise a carrier’s ability to discover the source of the breach, mitigate the loss of data, and ensure further data is not compromised?

33. Our proposed requirement is consistent with many existing data breach notification laws that require expedited notice but refrain from requiring a specific timeframe. For example, the GLBA requires customer notification “as soon as possible” after a determination that customer information has been misused.<sup>84</sup> California law requires notification “be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement.”<sup>85</sup> Similarly, many state data breach statutes impose an “expeditiously as practicable” or “without unreasonable delay” standard instead of a set time limit for reporting.<sup>86</sup> In addition, FTC guidance on addressing data breaches explains that “if you quickly notify people that their personal information has been compromised, they can take steps to reduce the chance that their information will be misused.”<sup>87</sup> How should state and other federal law influence the approach we adopt?

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<sup>79</sup> 47 CFR § 64.2011(b)(1).

<sup>80</sup> 47 CFR § 64.2011(b)(2).

<sup>81</sup> 2007 CPNI Order, 22 FCC Rcd at 6943-44, para. 28.

<sup>82</sup> *Id.* at 6944, para. 28.

<sup>83</sup> *Cf.*, e.g., R.I. Gen. Laws § 11-49.3-4(a)(2) (requiring notification to state Attorney General and major credit reporting agencies if more than 500 residents are affected by a breach, specifying that such notice should be made *without* delaying notice to affected residents, and permitting law enforcement to delay notification if necessary for investigation).

<sup>84</sup> 12 CFR pt. 364, Appx. B, Supp. A § III(A)(1) (interpreting GLBA § 501(b)).

<sup>85</sup> Cal. Civ. Code § 1798.29(a).

<sup>86</sup> *See*, e.g., Va. Code Ann. § 18.2-186.6(B) (“without unreasonable delay”); D.C. Code § 28-3852(a) (“in the most expedient time possible and without unreasonable delay”); Wyo. Stat. Ann. § 40-12-502(a) (“notice shall be made in the most expedient time possible and without unreasonable delay”).

<sup>87</sup> FTC, Data Breach Response: A Guide for Business at 6 (2021), [https://www.ftc.gov/system/files/documents/plain-language/560a\\_data\\_breach\\_response\\_guide\\_for\\_business.pdf](https://www.ftc.gov/system/files/documents/plain-language/560a_data_breach_response_guide_for_business.pdf) (FTC Data Breach Guide).

34. We seek comment on whether requiring notice to customers “without unreasonable delay” after discovery of a breach provides sufficient guidance as to the required timeframe to notify customers. Should we adopt a different approach, such as a fixed number of days for notification, and if so what should we adopt? If we were to adopt a “without unreasonable delay” standard, we seek comment on whether we should provide guidance on a specific time period that would be considered “reasonable” for notification. For example, HIPAA requires notification to individuals “without unreasonable delay and in no case later than 60 calendar days after discovery of a breach.”<sup>88</sup> The Health Breach Notification Rule also requires notification to individuals “without unreasonable delay and in no case later than 60 days after the discovery of a breach of security.”<sup>89</sup> Most states that impose an outside limit on when consumers must be notified of a breach require notification to affected consumers no later than 30,<sup>90</sup> 45,<sup>91</sup> or 60<sup>92</sup> days after discovery of a breach. What are the benefits and drawbacks to setting a definite time limit on notification while requiring notification without unreasonable delay?

35. We also seek comment on whether the same notification deadline should be applied to all carriers. Are there unique concerns or compliance barriers for small carriers that make prompt response unfeasible, such as resource availability or reliance on third-party cybersecurity services for breach detection? Should we adopt different notification requirements for small carriers? If so, what threshold should we establish for small carriers? Should we consider establishing any other exceptions to this proposed requirement? We also seek comment on whether we should take into consideration the scope of the breach, e.g., how many customers are affected, the type of information breach, in determining the appropriate timeframe for customer breach reporting.

36. We seek comment on how best to coordinate the timing of customer notification and federal law enforcement notification. Our current rule, providing for consecutive rather than simultaneous notification of federal law enforcement and customers, was adopted at the request of federal law enforcement.<sup>93</sup> Is such an approach still necessary? Are there circumstances where it would be acceptable for carriers to notify customers and law enforcement simultaneously in certain instances? Given that nearly all, if not all, state data breach statutes subject the timing of customer notification to legitimate law enforcement needs,<sup>94</sup> we seek comment on whether it is necessary to provide any further guidance to help coordinate the timing of notice to customers with notice to the Commission and other federal law enforcement.

37. In addition, consistent with our current rules implementing section 222, our proposed rules would allow a federal agency to direct a carrier to delay customer notification for an initial period of up to 30 days if such notification would interfere with a criminal investigation or national security.<sup>95</sup> In

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<sup>88</sup> 45 CFR § 164.404(b). For breaches involving more than 500 individuals, HIPAA also requires notification of “prominent media outlets serving the state or jurisdiction” without unreasonable delay and no later than 60 days. 45 CFR § 164.406. For breaches involving more than 500 individuals HIPAA also requires notification to the Secretary of Health and Human Services (HSS). 45 CFR § 164.408.

<sup>89</sup> 16 CFR § 318.4(a).

<sup>90</sup> See, e.g., Colo. Rev. Stat. § 6-1-716; Fla. Stat. § Fla. Stat. § 501.171(3)(a); Wash. Rev. Code § 19.255.010(8).

<sup>91</sup> See, e.g., Ala. Code § 8-38-5(a); Ariz. Rev. Stat. Ann. § 18-552(B); Md. Code Ann. § 14-3504(b)(3); N.M. Stat. Ann. § 57-12C-6(A); Ohio Rev. Code Ann. § 1349.19(B)(2); Or. Rev. Stat. § 646A.604(3)(a); R.I. Gen. Laws § 11-49.3-4(a)(2); Tenn. Code § 47-18-2107(b); Vt. Stat. Ann. Tit. 9, § 2435(b)(1).

<sup>92</sup> See, e.g., Del. Code Ann. Tit. 6, § 12B-102(c); S.D. Codified Laws § 20-40-20.

<sup>93</sup> See 2007 CPNI Order, 22 FCC Red at 6943-44, paras. 26-29.

<sup>94</sup> See, e.g., Ala. Code § 8-38-5(c); Ariz. Rev. Stat. Ann. § 18-552(D); Cal. Civ. Code § 1798.29(c); Colo. Rev. Stat. § 6-1-716(2)(c); D.C. Code § 28-3852(d); Fla. Stat. § 501.171(4)(b); Haw. Rev. Stat. § 487N-2; Md. Code Ann. § 14-3504(d); Ohio Rev. Code Ann § 1349.19(d); Miss. Code § 75-24-29(5); Mont. Code § 2-6-1503(3); Utah Code § 13-44-102(4); Wash. Rev. Code § 19.255.010(3).

circumstances when a carrier reasonably decides to consult with law enforcement, a short delay pending such consultation would likely be reasonable for purposes of a “without unreasonable delay” standard for customer notification. We seek comment on this proposal. We observe that HIPAA, the GLBA, and the Health Breach Notification Rules allow for a delay of customer notification if law enforcement determines notification to customers would “impede a criminal investigation or cause damage to national security,” but only if law enforcement officials request such a delay.<sup>96</sup> Both HIPAA and the Health Breach Notification Rule allow notification delays of up to 30 days if requested by law enforcement.<sup>97</sup> Similarly, GLBA allows that “customer notice may be delayed if an appropriate law enforcement agency determines that notification will interfere with a criminal investigation and provides the institution with a written request for a delay.”<sup>98</sup> Likewise, most, if not all, states permit delays in notifying affected consumers for legitimate law enforcement needs.<sup>99</sup> We tentatively conclude that our proposal strikes an appropriate balance between the needs of law enforcement to have time to investigate criminal activity and the needs of customers to be notified of data breaches. Do commenters agree? We also observe that these other regimes appear to allow non-federal law enforcement to request a delay, whereas the Commission’s rule currently allows only federal agencies to so request.<sup>100</sup> Should our rule also allow carriers to delay notification upon request of non-federal law enforcement?

38. *Contents of Customer Breach Notification.* We seek comment on whether we should require customer breach notifications to include specific minimum categories of information. Our current rules specify when and to whom breach notifications must be made, but do not address the content of such notifications.<sup>101</sup> In adopting the current breach notification rules, the Commission declined to specify the precise content of the notice that must be provided to customers in the event of a security breach of CPNI, “leav[ing] carriers the discretion to tailor the language and method of notification to the circumstances.”<sup>102</sup> Nearly 15 years later, we now seek comment on whether it is appropriate to require a minimum amount of information to ensure that such data breach notifications contain actionable information that is useful to the consumer. We seek comment on the benefits to customers and carriers of requiring carriers to include minimum categories of information in customer data breach notices. Will having minimum consistent fields of information assist consumers in understanding the circumstances and nature of the breach and streamline notice practices for carriers? What are the drawbacks to doing so? Are there any legal barriers to adopting a rule that prescribes the minimum categories of information in these breach notices?

39. To so identify possible categories of information to require, we look to numerous state

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<sup>95</sup> See 47 CFR § 64.2011(b)(3).

<sup>96</sup> See 16 CFR § 318.4(c); 12 CFR part 364, Appx. B, Supp. A; 45 CFR § 164.412.

<sup>97</sup> 45 CFR § 164.412; 16 CFR § 318.4(c).

<sup>98</sup> 12 CFR part 364, Appx. B, Supp. A § III(A)(1).

<sup>99</sup> See, e.g., Cal. Civ. Code § 1798.82(c) (“The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation.”); Alaska Stat. Ann. § 45.48.020 (“An information collector may delay disclosing the breach . . . if an appropriate law enforcement agency determines that disclosing the breach will interfere with a criminal investigation.”); Ariz. Rev. Stat. Ann. § 18-552(D) (“The notifications required by subsection B of this section may be delayed if a law enforcement agency advises the person that the notifications will impede a criminal investigation”); Conn. Gen. Stat. Ann. § 36a-701b(d) (“Any notification required by this section shall be delayed for a reasonable period of time if a law enforcement agency determines that the notification will impede a criminal investigation and such law enforcement agency has made a request that the notification be delayed.”).

<sup>100</sup> See 47 CFR § 64.2011(b)(3); *2007 CPNI Order*, 22 FCC Rcd at 6944, para. 29 & n.96.

<sup>101</sup> See 47 CFR § 64.2011.

<sup>102</sup> *2007 CPNI Order*, 22 FCC Rcd at 6945, para. 32.

data breach statutes as well as existing federal guidance regarding data breach notices. All 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands have laws requiring private or governmental entities to notify individuals of breaches involving their personal information.<sup>103</sup> Of these, many impose minimum content requirements on the notifications that must be transmitted to affected individuals in the wake of a data breach,<sup>104</sup> including: the name and contact information for the entity reporting the breach;<sup>105</sup> the date, estimated date, or estimated date range of the breach;<sup>106</sup> a description of the breach incident;<sup>107</sup> a description of the personally identifiable information that was used, disclosed, or accessed, or reasonably believed to have been used, disclosed, or accessed;<sup>108</sup> any actions the entity is taking to remedy the situation and/or protect affected individuals;<sup>109</sup> a brief list of steps that affected consumers can take to protect themselves and their information, such as contacting credit bureaus to ask that fraud alerts or credit freezes be placed on their credit reports;<sup>110</sup> and contact information for the FTC and any federal agency that assists consumers with matters of identity theft.<sup>111</sup> Similarly, both the HIPAA Breach Notification Rule and guidance issued by the Federal Deposit Insurance Corporation (FDIC) in response to the GLBA impose minimum content requirements on data breach notifications.<sup>112</sup> In its Data

<sup>103</sup> See *Security Breach Notification Laws*, National Conference of State Legislatures (Jan. 17, 2022), <https://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx>.

<sup>104</sup> See, e.g., Ala. Code § 8-38-5(d); Ariz. Rev. Stat. § 18-552(E); Cal. Civ. Code § 1798.82(d)(2); Colo. Rev. Stat. § 6-1-716(2)(a.2); 815 ILCS § 530/10(a)(1); Md. Code Com. Law § 14-3504(g), Md. State Govt. Code § 10-1305(g); Mass. Gen. Laws § 93H-1 Sec. 3(b); Mich. Comp. Laws § 445.72(6)(c)-(g); N.Y. Gen. Bus. Law § 899-AA(7); Oregon Rev. Stat. § 646A.604(5); 9 V.S.A. § 2435(b)(5); Wash. Rev. Code §§ 19.225.010(6)(b), 42.56.590(6)(b).

<sup>105</sup> See Ala. Code § 8-38-5(d); Cal. Civ. Code § 1798.82(d)(2); Colo. Rev. Stat. § 6-1-716(2)(a.2); Md. Code Com. Law § 14-3504(g), Md. State Govt. Code § 10-1305(g); N.Y. Gen. Bus. Law § 899-AA(7); Oregon Rev. Stat. § 646A.604(5); Wash. Rev. Code §§ 19.225.010(6)(b), 42.56.590(6)(b); 45 CFR § 164.404(c)(1).

<sup>106</sup> See Ala. Code § 8-38-5(d); Ariz. Rev. Stat. § 18-552(E); Cal. Civ. Code § 1798.82(d)(2); Colo. Rev. Stat. § 6-1-716(2)(a.2); Oregon Rev. Stat. § 646A.604(5); 9 V.S.A. § 2435(b)(5); Wash. Rev. Code §§ 19.225.010(6)(b), 42.56.590(6)(b); 45 CFR § 164.404(c)(1).

<sup>107</sup> See Cal. Civ. Code § 1798.82(d)(2); Mich. Comp. Laws § 445.72(6)(c)-(g); Oregon Rev. Stat. § 646A.604(5); 9 V.S.A. § 2435(b)(5).

<sup>108</sup> See Ala. Code § 8-38-5(d); Ariz. Rev. Stat. § 18-552(E); Cal. Civ. Code § 1798.82(d)(2); Colo. Rev. Stat. § 6-1-716(2)(a.2); Md. Code Com. Law § 14-3504(g), Md. State Govt. Code § 10-1305(g); Mich. Comp. Laws § 445.72(6)(c)-(g); N.Y. Gen. Bus. Law § 899-AA(7); Oregon Rev. Stat. § 646A.604(5); 9 V.S.A. § 2435(b)(5); Wash. Rev. Code §§ 19.225.010(6)(b), 42.56.590(6)(b).

<sup>109</sup> See Ala. Code § 8-38-5(d); 9 V.S.A. § 2435(b)(5); Mich. Comp. Laws § 445.72(6)(c)-(g); see also Cal. Civ. Code § 1798.82(d)(3)(A) (making the requirement optional).

<sup>110</sup> See Ala. Code § 8-38-5(d); 45 CFR § 164.404(c)(1); see also Cal. Civ. Code § 1798.82(d)(3)(B) (making the requirement optional); Mich. Comp. Laws § 445.72(6)(c)-(g); Ariz. Rev. Stat. § 18-552(E); Cal. Civ. Code § 1798.82(d)(2); Colo. Rev. Stat. § 6-1-716(2)(a.2); 815 ILCS § 530/10(a)(1); Md. Code Com. Law § 14-3504(g), Md. State Govt. Code § 10-1305(g); Oregon Rev. Stat. § 646A.604(5); Wash. Rev. Code §§ 19.225.010(6)(b), 42.56.590(6)(b); Mass. Gen. Laws § 93H-1 Sec. 3(b).

<sup>111</sup> See Ariz. Rev. Stat. § 18-552(E); Colo. Rev. Stat. § 6-1-716(2)(a.2); 815 ILCS § 530/10(a)(1); Md. Code Com. Law § 14-3504(g), Md. State Govt. Code § 10-1305(g); N.Y. Gen. Bus. Law § 899-AA(7); see also 9 V.S.A. § 2435(b)(5).

<sup>112</sup> See 45 CFR § 164.404(c)(1); *Data Security & Customer Notification Requirements for Banks*, American Bankers Association, <https://www.aba.com/banking-topics/technology/data-security/data-security-customer-notification> (last visited Jan. 4, 2023); *Final Guidance on Response Programs: Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice*, Federal Deposit Insurance Corporation, Michael J. Zamorski, Director, Division of Supervision and Consumer Protection, Financial Institution Letters, FIL-27-2005 (Apr. 1, 2005), <https://www.fdic.gov/news/financial-institution-letters/2005/fil2705.html> (*GLBA Customer Notice Guidance*).

Breach Response Guide, the FTC advises companies on specific information that should be included in their breach notices to individuals, including describing what the company knows about the breach (how it happened, what information was taken, how the thieves have used the information (if known), what actions the company has taken to remedy the situation, what actions the company is taking to protect individuals, how to reach the relevant contact in the organization); the steps individuals can take, given the type of information exposed, and provide relevant contact information; current information about how to recover from identity theft; information about the law enforcement agency working on the case, if the law enforcement agency agrees that would help; encouraging people who discover that their information has been misused to report it to the FTC; and describing how the company will contact consumers in the future to help victims avoid phishing scams.<sup>113</sup>

40. We seek comment on adapting these models to telecommunications carriers and requiring carriers to include, at a minimum, the following information in security breach notices to customers: (1) the date of the breach; (2) a description of the customer information that was used, disclosed, or accessed; (3) information on how customers, including customers with disabilities, can contact the carrier to inquire about the breach; (4) information about how to contact the Commission, FTC, and any state regulatory agencies relevant to the customer and the service; (5) if the breach creates a risk of identity theft, information about national credit reporting agencies and the steps customers can take to guard against identity theft, including any credit monitoring, credit reporting, or credit freezes the carrier is offering to affected customers; and (6) what other steps customers should take to mitigate their risk based on the specific categories of information exposed in the breach. Are the identified categories the correct information to be included in data breach notices? Should we consider requiring any additional or alternative categories of information that carriers must include in customer breach notices? For example, would it be helpful to include a statement of whether the notification was delayed due to reporting requirements to law enforcement or a law enforcement investigation, and if so, the length of the delay to help explain to customers the time lapse between discovery of the breach and customer notification?<sup>114</sup> Should we require notifications to include a list of the law enforcement and government entities that have been notified of the breach? Should we require carriers to include a brief description of how the carrier will contact consumers in the future regarding the breach to help consumers avoid phishing scams related to breaches? What are best practices for providing consumers with actionable information in a breach notification? We seek comment on what minimum required information appropriately balances empowering consumers to take the necessary steps to protect themselves and their information in the wake of a data breach and appropriately limiting burdens on telecommunications carriers. We also seek comment on whether adopting or adapting a set of existing notification contents requirements will help to create a measure of consistency across breach notifications and will benefit both consumers and carriers, particularly smaller carriers, by streamlining the manner and content of their response in the event of a data breach.

41. *Method of Customer Breach Notification.* We observe that many state regulations specify the form that notifications to customers may take, whether by physical mail, email, or telephone.<sup>115</sup> We seek comment on whether we should adopt a similar requirement and, if so, on what form notifications to consumers should take. Is there a method or methods of notification that would make the most sense or be most beneficial to consumers? What are the benefits and burdens of imposing such a requirement?

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<sup>113</sup> See *Data Breach Response: A Guide For Business*, Federal Trade Commission (Feb. 2021), <https://www.ftc.gov/tips-advice/business-center/guidance/data-breach-response-guide-business>.

<sup>114</sup> See Cal. Civ. Code § 1798.82(d)(2).

<sup>115</sup> See, e.g., Ala. Code § 8-38-5(d) (specifying that notice to affected individuals shall be “given in writing, sent to the mailing address of the individual . . . or by email notice”); Haw. Rev. Stat. § 487N-2(e) (allowing notice to be provided via physical mailing, email, or telephone); Mass. Gen. Laws § 93H-1(a); Oregon Rev. Stat. § 646A.604(4); Wash. Rev. Code § 19.255.010(4).

#### D. TRS Breach Reporting

42. In 2013, the Commission adopted CPNI rules applicable to all forms of Telecommunications Relay Services (TRS), as well as to point-to-point video calls handled over the video relay services (VRS) network.<sup>116</sup> The Commission found that “for TRS to be functionally equivalent to voice telephone services, consumers with disabilities who use TRS are entitled to have the same assurances of privacy as do consumers without disabilities for voice telephone services.”<sup>117</sup> The CPNI rules for TRS include a breach notification rule that is equivalent to section 64.2011 in terms of the substantive protection provided to TRS users.<sup>118</sup> To maintain functional equivalency for TRS users, we propose to amend section 64.5111 so that it continues to provide equivalent privacy protection for TRS users. The amendments we propose for section 64.5111 are thus essentially the same as those proposed for users of telecommunications and interconnected VoIP services. That is, we propose: (1) to expand the Commission’s definition of “breach” to include inadvertent disclosures of customer information; (2) to require TRS providers to notify the Commission, in addition to the Secret Service and FBI, as soon as practicable after discovery of a breach; and (3) to eliminate the mandatory waiting period to notify customers, instead requiring TRS providers to notify customers of CPNI breaches without unreasonable delay after discovery of a breach unless law enforcement requests a delay. Further, we seek comment on the following additional issues, raised above regarding section 64.2011, as they relate to TRS providers: (1) whether to adopt a harm-based trigger for breach notifications; (2) whether we should adopt minimum requirements for the content of customer breach notices; and (3) whether our rules should address breaches of sensitive personal information.

43. We seek comment on each of these proposals and their costs and benefits. Should updated data breach requirements for TRS providers be identical to those we adopt for providers of telecommunications and interconnected VoIP services, or are there circumstances unique to TRS providers that warrant differences in their obligations regarding data breaches? Are any additional notification requirements necessary to ensure TRS users receive functionally equivalent privacy protection? If we adopt the proposed requirement that service providers notify the Commission of breaches via a centralized portal, is there any need to retain the current requirement that TRS providers submit a copy of any breach notification to the Disability Rights Office of the Consumer and Governmental Affairs Bureau?<sup>119</sup> Finally, would TRS providers incur costs or other compliance burdens under the proposed amendments that are disproportionately greater than those incurred by providers of telecommunications and interconnected VoIP services, and if so, would the extent of such costs or burdens justify the application of different breach notification requirements to TRS?

44. *Legal Authority.* Section 225 of the Act directs the Commission to ensure that TRS are available to enable communication in a manner that is functionally equivalent to voice telephone services.<sup>120</sup> In 2013, the Commission found that applying the privacy protections of the Commission’s

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<sup>116</sup> *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8680-87, para. 155-172 (2013) (*2013 VRS Reform Order*); 47 CFR §§ 64.5101-64.5111 (TRS CPNI rules). This includes the breach notification rule. See 47 CFR § 64.5111.

<sup>117</sup> *2013 VRS Reform Order*, 28 FCC Rcd at 8683, para. 164

<sup>118</sup> The texts of the two provisions are virtually identical, except for the substitution of the term “TRS provider” for “telecommunications carrier” in section 64.5111. Compare 47 CFR § 64.2011 with 47 CFR § 64.5111. The only substantive difference is that under the TRS rule, after a TRS provider notifies law enforcement of a breach, it “shall file a copy of the notification with the Disability Rights Office of the Consumer and Governmental Affairs Bureau at the same time as when the TRS provider notifies the customers.” 47 CFR § 64.5111(a).

<sup>119</sup> See 47 CFR § 64.5111(a).

<sup>120</sup> 47 U.S.C. § 225(a)(3), (b)(1).

CPNI regulations to TRS users advances the functional equivalency of TRS.<sup>121</sup> The Commission concluded further that the specific mandate of section 225 to establish “functional requirements, guidelines, and operations procedures for TRS” authorizes the Commission to make the privacy protections of the Commission’s CPNI regulations applicable to TRS users.<sup>122</sup> In addition, the Commission found that extending the CPNI regulations to TRS users is ancillary to its responsibilities under section 222 of the Act to telecommunications service subscribers that place calls to or receive calls from TRS users, because TRS call records include call detail information concerning all calling and called parties.<sup>123</sup> Finally, the Commission determined that applying CPNI requirements to point-to-point video services provided by VRS providers<sup>124</sup> is ancillary to its responsibilities under sections 222 and 225.<sup>125</sup>

45. We tentatively conclude that, for the same reasons cited in the *2013 VRS Reform Order*, these sources of authority for establishing the current CPNI rules for TRS authorize the Commission to amend those rules to ensure that TRS users receive privacy protections equivalent to those proposed for users of telecommunications and VoIP services. We seek comment on this tentative conclusion.

#### E. Legal Authority

46. *Section 222.* We believe that section 222 provides authority to adopt the breach notification rules for which we seek comment in this *Notice*.<sup>126</sup> We also tentatively conclude that we have authority to apply the rules proposed in this *Notice* to interconnected VoIP providers. We seek comment on these tentative conclusions.

47. Section 222 of the Act governs telecommunications carriers in their use, disclosure, and protection of proprietary information that they obtain in the course of providing telecommunications services. Section 222(a) imposes a duty on carriers to “protect the confidentiality of proprietary information of, and relating to” customers, fellow carriers, and equipment manufacturers.<sup>127</sup> Section 222(c) imposes more specific requirements on carriers as to the protection and confidentiality of CPNI.<sup>128</sup> We tentatively conclude that both subsections provide us authority to adopt rules requiring telecommunications carriers and interconnected VoIP providers to address breaches of CPNI.

48. The Commission has long required carriers to report data breaches as part of their duty to protect the confidentiality of customers’ information.<sup>129</sup> We believe that the proposed revisions to the Commission’s data breach reporting rule reinforce carriers’ duty to protect the confidentiality of their customers’ information. Data breach reporting requirements also reinforce our other rules addressing the protection of CPNI.<sup>130</sup> For example, data breach notifications can meaningfully inform customer decisions regarding whether to give, withhold, or retract their approval to use or disclose their information. Similarly, we believe that requiring carriers to notify the Commission in the event of a data breach will better enable the Commission to identify and confront systemic network vulnerabilities and

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<sup>121</sup> *2013 VRS Reform Order*, 26 FCC Rcd at 8685-86, para. 170.

<sup>122</sup> *Id.* at para. 170 & n.430, citing 47 U.S.C. § 225(d)(1)(A).

<sup>123</sup> *2013 VRS Reform Order*, 26 FCC Rcd at 8685-86, para. 170.

<sup>124</sup> Such point-to-point services, while provided in association with VRS, are not themselves a form of TRS.

<sup>125</sup> *2013 VRS Reform Order*, 26 FCC Rcd at 8686-87, para. 171.

<sup>126</sup> We discuss legal authority for non-CPNI sensitive personal information above at *supra* para. 22 and for TRS breach reporting above at *supra* para. 43.

<sup>127</sup> 47 U.S.C. § 222(a).

<sup>128</sup> *See* 47 U.S.C. § 222(c).

<sup>129</sup> *See 2007 CPNI Order*, 22 FCC Rcd at 6943-45, paras. 26-32.

<sup>130</sup> *See* 47 CFR §§ 64.2001-2010.

help investigate and advise carriers on how best to avoid future breaches, also helping carriers to fulfill their duty under section 222(a) to protect the confidentiality of their customers' information. We seek comment on this analysis.

49. *Interconnected VoIP.* We believe that we have authority under section 222 and our ancillary jurisdiction to apply the rules we propose today to interconnected VoIP providers. In 2007, the Commission exercised ancillary jurisdiction to extend its Part 64 CPNI rules to interconnected VoIP services.<sup>131</sup> Since then, interconnected VoIP providers have operated under these rules. Interconnected VoIP services remain within the Commission's subject matter jurisdiction and we believe that the application of customer privacy requirements to these services is "reasonably ancillary to the effective performance" of our statutory responsibility under section 222.<sup>132</sup> As the Commission explained in 2007, "American consumers [can reasonably] expect that their telephone calls are private irrespective of whether the call is made using the service of a wireline carrier, a wireless carrier, or an interconnected VoIP provider."<sup>133</sup> Now, as then, extending section 222's protections to interconnected VoIP service customers is also "necessary to protect the privacy of wireline or wireless customers that place calls to or receive calls from interconnected VoIP providers."<sup>134</sup> In addition, in 2008, Congress ratified the Commission's decision to apply section 222's requirements to interconnected VoIP services by adding language to section 222 that expressly covers "IP-enabled voice service,"<sup>135</sup> defined expressly to incorporate the Commission's definition of "interconnected VoIP service."<sup>136</sup> The 2008 revisions to section 222 would not make sense if the privacy-related duties of subsections (a) and (c) did not apply to interconnected VoIP providers. We seek comment on this analysis.

50. We seek comment on whether there are other bases of authority on which we can rely to adopt the rules we propose and seek comment on today.

#### **F. Impact of the Congressional Disapproval of the 2016 Privacy Order**

51. As noted above, in 2016, the Commission acted to revise its breach notification rule as part of a larger proceeding addressing privacy requirements for broadband internet access service providers (ISPs).<sup>137</sup> The rules the Commission adopted in the *2016 Privacy Order* applied to telecommunications carriers and interconnected VoIP providers in addition to ISPs, which had been

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<sup>131</sup> See *2007 CPNI Order*, 22 FCC Rcd at 6954-57, paras. 54-59; see also 47 CFR § 64.2003(o) (defining "telecommunications carrier or carrier" for purposes of the CPNI rules to include interconnected VoIP providers).

<sup>132</sup> See *2007 CPNI Order*, 22 FCC Rcd at 6955, para. 55; see also *United States v. Southwestern Cable*, 392 U.S. 157, 177-78 (1968) (setting forth the two-part "ancillary jurisdiction" test); *Comcast Corp. v. FCC*, 600 F.3d 642, 654 (D.C. Cir. 2010) (holding that ancillary jurisdiction must be "necessary to further its regulation of activities over which [the Commission] does have express statutory authority").

<sup>133</sup> *2007 CPNI Order*, 22 FCC Rcd at 6956, para. 56.

<sup>134</sup> *Id.* at 6956, para. 57.

<sup>135</sup> See New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283 (2008) (NET 911 Act); see also 47 U.S.C. § 222(d)(4), (f)(1), (g).

<sup>136</sup> 47 U.S.C. § 222(d)(4), (f)(1), (g) (applying provisions of section 222 to "IP-enabled voice service"); § 615b(8) (defining "IP-enabled voice service" as having "the meaning given the term 'interconnected VoIP service' by section 9.3 of the Federal Communications Commission's regulations (47 CFR 9.3)").

<sup>137</sup> *2016 Privacy Order*, 31 FCC Rcd at 14019-33, paras. 261-291. In 2015, the Commission classified broadband Internet access service as a telecommunications service subject to Title II of the Act, a decision that the D.C. Circuit upheld in *United States Telecom Ass'n v. FCC*. See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5733, paras. 306 (2015), *aff'd*, *United States Telecom Ass'n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016). As a result of classifying broadband Internet access service as a telecommunications service, such services were subject to section 222 of the Act.

classified as providers of telecommunications services in 2015.<sup>138</sup> In 2017, however, Congress nullified those 2016 revisions to the Commission’s CPNI rules under the Congressional Review Act.<sup>139</sup>

52. As a threshold matter, we seek comment on the effect of the Congressional disapproval of the *2016 Privacy Order* under the Congressional Review Act.<sup>140</sup> While we seek comment on a range of proposals in this item, we clarify that, in light of the Congressional resolution of disapproval, we are not seeking comment on “reissu[ing] . . . in substantially the same form,” or on issuing “a new rule that is substantially the same as,” the rule disapproved by Congress.<sup>141</sup> More generally, though, we seek comment here on the effect and scope of the Congressional disapproval of the *2016 Privacy Order* for purposes of adopting rules that apply to telecommunications carriers.

### G. Digital Equity Considerations

53. The Commission, as part of its continuing effort to advance digital equity for all,<sup>142</sup> including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, invites comment on any equity-related considerations<sup>143</sup> and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

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<sup>138</sup> See *2016 Privacy Order*, 31 FCC Rcd at 13925, para. 39, 14033-34, para. 293. In 2017, the Commission reversed the 2015 classification decision so that Title II obligations, including section 222, no longer apply to ISPs. *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 (2017), *aff’d in part and remanded in part*, *Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019), *on remand*, Order on Remand, 35 FCC Rcd 12328 (2020), *ptns. for recon. pending*.

<sup>139</sup> See Joint Resolution, Pub. L. No. 115-22 (2017) (“*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That Congress disapproves the rule submitted by the Federal Communications Commission relating to ‘Protecting the Privacy of Customers of Broadband and Other Telecommunications Services’ (81 Fed. Reg. 87274 (December 2, 2016)), and such rule shall have no force or effect.”); 5 U.S.C. § 801(f) (“Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.”); *id.* § 801(b)(1) (“A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval . . . of the rule.”); see also *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services; Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, WC Docket No. 16-106, CC Docket No. 96-115, Order, 32 FCC Rcd 5442 (2017).

<sup>140</sup> See *2016 Privacy Order*, 31 FCC Rcd at 14019-33, paras. 261-293.

<sup>141</sup> See 5 U.S.C. § 801(b)(2) (“A rule that does not take effect (or does not continue) [due to a joint resolution of disapproval] may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.”).

<sup>142</sup> Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

<sup>143</sup> We define the term “equity” consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

#### IV. PROCEDURAL MATTERS

54. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this Notice. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the Notice indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the SBA.<sup>144</sup>

55. *Paperwork Reduction Act.* The Notice contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

56. *Ex Parte Presentations—Permit-But-Disclose.* The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.<sup>145</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.<sup>146</sup>

57. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.

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<sup>144</sup> *See* 5 U.S.C. § 603(a).

<sup>145</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>146</sup> 47 CFR § 1.49(f).

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020).

58. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice).

59. *Additional Information.* For further information about this *Notice*, contact Melissa Kirkel, Deputy Chief, Competition Policy Division, Wireline Competition Bureau, at [melissa.kirkel@fcc.gov](mailto:melissa.kirkel@fcc.gov), (202) 418-7958.

#### V. ORDERING CLAUSES

60. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 222, 225, 303(b), 303(r), 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201, 202, 222, 225, 303(b), 303(r), 332, this Notice of Proposed Rulemaking IS ADOPTED.

61. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis (IRFA), to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****Proposed Rules**

The Federal Communications Commission proposes to amend part 64 of Title 47 of the Code of Federal Regulations as follows:

**PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

Subpart U – Customer Proprietary Network Information

2. Amend § 64.2011 by revising paragraphs (a) through (e) to read as follows:

**§ 64.2011 Notification of customer proprietary network information security breaches.**

(a) A telecommunications carrier shall notify affected customers, the Federal Communications Commission (Commission), and other federal law enforcement of a breach of its customers' CPNI as provided in this section.

(b)(1) As soon as practicable after reasonable determination of a breach, a telecommunications carrier shall electronically notify the Commission, the United States Secret Service (USSS), and the Federal Bureau of Investigation (FBI) through a central reporting facility maintained by the Commission and made available on its website.

(2) If a law enforcement or national security agency notifies the carrier that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security, such agency may direct the carrier not to so disclose or notify for an initial period of up to 30 days. Such period may be extended by the agency as reasonably necessary in the judgment of the agency. If such direction is given, the agency shall notify the carrier when it appears that public disclosure or notice to affected customers will no longer impede or compromise a criminal investigation or national security. The agency shall provide in writing its initial direction to the carrier, any subsequent extension, and any notification that notice will no longer impede or compromise a criminal investigation or national security.

(c) *Customer Notification.* A telecommunications carrier shall notify affected customers of covered breaches of CPNI without unreasonable delay after discovery of the breach after notification to the Commission and law enforcement as described in paragraph (b) of this section.

(d) *Recordkeeping.* All carriers shall maintain a record, electronically or in some other manner, of any breaches discovered, notifications made to the Federal Communications Commission, USSS, and the FBI pursuant to paragraph (b) of this section, and notifications made to customers. The record must include, if available, dates of discovery and notification, a detailed description of the CPNI that was the subject of the breach, and the circumstances of the breach. Carriers shall retain the record for a minimum of 2 years.

(e) *Definitions.* As used in this section, a "breach" has occurred when a person, without authorization or exceeding authorization, has gained access to, used, or disclosed CPNI.

\* \* \* \* \*

3. Amend § 64.5111 by revising paragraphs (a) through (e) to read as follows:

**§ 64.5111 Notification of customer proprietary network information security breaches.**

(a) A TRS provider shall notify affected customers, the Federal Communications Commission (Commission), and other federal law enforcement of a breach of its customers' CPNI as provided in this section.

(b)(1) As soon as practicable after reasonable determination of a breach, a TRS provider shall electronically notify the Commission, the United States Secret Service (USSS), and the Federal Bureau of Investigation (FBI) through a central reporting facility maintained by the Commission and made available on its website.

(2) If a law enforcement or national security agency notifies the TRS provider that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security, such agency may direct the TRS provider not to so disclose or notify for an initial period of up to 30 days. Such period may be extended by the agency as reasonably necessary in the judgment of the agency. If such direction is given, the agency shall notify the TRS provider when it appears that public disclosure or notice to affected customers will no longer impede or compromise a criminal investigation or national security. The agency shall provide in writing its initial direction to the TRS provider, any subsequent extension, and any notification that notice will no longer impede or compromise a criminal investigation or national security and such writings shall be contemporaneously logged on the same reporting facility that contains records of notifications filed by TRS provider .

(c) *Customer Notification.* A TRS provider shall notify affected customers of covered breaches of CPNI without unreasonable delay after discovery of the breach after notification to the Commission and law enforcement as described in paragraph (b) of this section.

(d) *Recordkeeping.* All TRS provider shall maintain a record, electronically or in some other manner, of any breaches discovered, notifications made to the Federal Communications Commission, USSS, and the FBI pursuant to paragraph (b) of this section, and notifications made to customers. The record must include, if available, dates of discovery and notification, a detailed description of the CPNI that was the subject of the breach, and the circumstances of the breach. TRS providers shall retain the record for a minimum of 2 years.

(e) *Definitions.* As used in this section, a "breach" has occurred when a person, without authorization or exceeding authorization, has gained access to, used, or disclosed CPNI.

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## APPENDIX B

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (Notice). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. The Commission first adopted a rule in 2007 requiring telecommunications carriers and interconnected Voice over Internet Protocol (VoIP) providers to notify customers and federal law enforcement of breaches of customer proprietary network information (CPNI) in the carriers' possession.<sup>4</sup> In the almost decade and a half since that time, data breaches nationwide have increased in both frequency and severity in all industries. In the telecommunications industry, the public has suffered an increasing number of security breaches of customer information in recent years. Federal and state data breach laws covering other areas have evolved since 2007. Those developments combined with our specific experience suggest opportunities for improvement in our own breach notification rule. Today, we begin the process to update and strengthen our data breach rule to provide greater protections to the public.

3. The Commission adopted the data breach rule, like the rest of the privacy safeguards adopted in the *2007 CPNI Order*, to address the problem of "pretexting," the practice of pretending to be a particular customer or other authorized person in order to obtain access to that customer's call detail or other private communications records.<sup>5</sup> In the almost 15 years since, it has become clear that breaches of customer information in many contexts extend far beyond pretexting in general or the specific type of pretexting addressed at that time and are increasing in scale and evolving in methodology. The increasing severity and diversifying methods of security breaches involving customer information can have lasting detrimental impacts on customers whose information has been breached.

4. To better protect telecommunications customers and ensure that our rules keep pace with today's challenges, we propose a number of updates to our rule addressing telecommunications carriers' breach notification duties. We seek to ensure that affected customers, the Commission, and other federal law enforcement agencies receive the information they need in a timely manner so they can mitigate and prevent harm due to the breach and take action to deter future breaches. To identify best practices and to minimize burdens, we look to other federal and state breach laws as potential models for our rules.

5. In this *Notice*, we propose to expand the Commission's definition of "breach" to include inadvertent disclosures of customer information and seek comment on adopting a harm-based trigger for

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See 5 U.S.C. § 603(a).

<sup>4</sup> See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) (*2007 CPNI Order*); 47 CFR § 64.2011.

<sup>5</sup> *2007 CPNI Order*, 22 FCC Rcd at 6928, paras. 1-2 & n.1.

breach notifications. We also propose to require carriers to notify the Commission, in addition to the Secret Service and FBI, as soon as practicable after discovery of a breach. We also propose to eliminate the mandatory waiting period before notifying customers and instead require carriers to notify customers of CPNI breaches without unreasonable delay after discovery of a breach unless law enforcement requests a delay. We also seek comment on whether we should adopt minimum requirements for the content of customer breach notices, and we seek comment on whether our rules should address breaches of other types of sensitive personal information beyond CPNI. Finally, we propose to make changes to our TRS data breach reporting rule consistent with those we propose to our CPNI breach reporting rule.

### **B. Legal Basis**

6. The legal basis for any action that may be taken pursuant to this Notice is contained in sections 1, 4(i), 4(j), 201, 202, 222, 225, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201, 202, 222, 225, 303(r), 332.

### **C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

7. 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 proposed rules and by the rule revisions on which the Notice seeks comment, if adopted.<sup>6</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>8</sup> 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.<sup>9</sup>

8. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>10</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>11</sup> These types of small businesses represent 99.9 percent of all businesses in the United States, which translates to 32.5 million businesses.<sup>12</sup>

9. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>13</sup> The

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<sup>6</sup> See 5 U.S.C. § 603(b)(3).

<sup>7</sup> See 5 U.S.C. § 601(6).

<sup>8</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>9</sup> See 15 U.S.C. § 632.

<sup>10</sup> See 5 U.S.C. § 601(3)-(6).

<sup>11</sup> See SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf> (Nov 2021).

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. § 601(4).

Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>14</sup> Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>15</sup>

10. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>16</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>17</sup> indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>18</sup> Of this number there were 36,931 general purpose governments (county,<sup>19</sup> municipal and town or township<sup>20</sup>) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts<sup>21</sup> with enrollment

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<sup>14</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See IRS, *Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), Who May File Form 990-N to Satisfy Their Annual Reporting Requirement*, <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard> (last visited Aug. 2, 2021). We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>15</sup> See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>16</sup> 5 U.S.C. § 601(5).

<sup>17</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7.” See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>18</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes\_Local Governments by Type and State\_2017.

<sup>19</sup> See *id.* at Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>20</sup> See *id.* at Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>21</sup> See *id.* at Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes\_Special Purpose Local Governments by State\_Census Years 1942 to 2017.

populations of less than 50,000.<sup>22</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>23</sup>

### 1. Wireline Carriers

11. *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.<sup>24</sup> 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.<sup>25</sup> By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>26</sup> Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>27</sup>

12. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>28</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>29</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>30</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.<sup>31</sup> Of these providers, the Commission estimates that 4,737

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<sup>22</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>23</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

<sup>24</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

<sup>28</sup> See 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

<sup>29</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>30</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>31</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/ld.lic/attachments/DOC-379181A1.pdf>.

providers have 1,500 or fewer employees.<sup>32</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers<sup>33</sup> is the closest industry with an SBA small business size standard.<sup>34</sup> Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>35</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>36</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>37</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>38</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers.<sup>39</sup> Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.<sup>40</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Incumbent LECs*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. Wired Telecommunications Carriers<sup>41</sup> is the closest industry with an SBA small business size standard.<sup>42</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>43</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.<sup>44</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>45</sup> Additionally, based

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<sup>32</sup> *Id.*

<sup>33</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>34</sup> See 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

<sup>35</sup> Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

<sup>36</sup> *Id.*

<sup>37</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>38</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>39</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/d.lic/attachments/DOC-379181A1.pdf>.

<sup>40</sup> *Id.*

<sup>41</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>42</sup> See 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

<sup>43</sup> *Id.*

<sup>44</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311,

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on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.<sup>46</sup> Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.<sup>47</sup> Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

15. *Competitive Local Exchange Carriers (Competitive LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.<sup>48</sup> Wired Telecommunications Carriers<sup>49</sup> is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>50</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>51</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>52</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.<sup>53</sup> Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees.<sup>54</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers<sup>55</sup> is the closest industry with a SBA small business size standard.<sup>56</sup> The SBA small business size

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<https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

<sup>45</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>46</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>47</sup> *Id.*

<sup>48</sup> Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

<sup>49</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>50</sup> See 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

<sup>51</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

<sup>52</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>53</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>54</sup> *Id.*

<sup>55</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>57</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>58</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>59</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees.<sup>60</sup> Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

17. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended (the Act), also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>61</sup> For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice.<sup>62</sup> Based on industry data, only six cable system operators have more than 677,000 subscribers.<sup>63</sup> Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>64</sup> Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable

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<sup>56</sup> See 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

<sup>57</sup> *Id.*

<sup>58</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>59</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>60</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>61</sup> 47 U.S.C. § 543(m)(2).

<sup>62</sup> *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (CSB 2001) (*2001 Subscriber Count PN*). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to traditional and telco cable operators to be approximately 58.1 million. See *Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3049, para. 156 (2020) (*2020 Communications Marketplace Report*). However, because the Commission has not issued a public notice subsequent to the *2001 Subscriber Count PN*, the Commission still relies on the subscriber count threshold established by the *2001 Subscriber Count PN* for purposes of this rule. See 47 CFR § 76.901(e)(1).

<sup>63</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

<sup>64</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. See 47 CFR § 76.910(b).

operators under the definition in the Communications Act.

18. *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. Wired Telecommunications Carriers<sup>65</sup> is the closest industry with a SBA small business size standard.<sup>66</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>67</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.<sup>68</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>69</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services.<sup>70</sup> Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees.<sup>71</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

## 2. Wireless Carriers

19. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.<sup>72</sup> 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.<sup>73</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>74</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>75</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>76</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report,

<sup>65</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>66</sup> See 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

<sup>67</sup> *Id.*

<sup>68</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

<sup>69</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>70</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/ld.lic/attachments/DOC-379181A1.pdf>.

<sup>71</sup> *Id.*

<sup>72</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>73</sup> *Id.*

<sup>74</sup> See 13 CFR § 121.201, NAICS Code 517312(as of 10/1/22, NAICS Code 517112).

<sup>75</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

<sup>76</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.<sup>77</sup> Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.<sup>78</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *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."<sup>79</sup> Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$38.5 million or less in annual receipts as small.<sup>80</sup> U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.<sup>81</sup> Of this number, 242 firms had revenue of less than \$25 million.<sup>82</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services.<sup>83</sup> Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees.<sup>84</sup> Consequently, using the SBA's small business size standard, a little more than of these providers can be considered small entities.

### 3. Resellers

21. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.<sup>85</sup> 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.<sup>86</sup> Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.<sup>87</sup> Mobile virtual network operators (MVNOs) are

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<sup>77</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId/lic/attachments/DOC-379181A1.pdf>.

<sup>78</sup> *Id.*

<sup>79</sup> US Census Bureau, *2017 NAICS Definitions, "517410 Satellite Telecommunications"*; <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017>.

<sup>80</sup> See 13 CFR § 121.201, NAICS Code 517410.

<sup>81</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>82</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>83</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId/lic/attachments/DOC-379181A1.pdf>.

<sup>84</sup> *Id.*

<sup>85</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

included in this industry.<sup>88</sup> The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.<sup>89</sup> U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.<sup>90</sup> Of that number, 1,375 firms operated with fewer than 250 employees.<sup>91</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services.<sup>92</sup> Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees.<sup>93</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

22. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers<sup>94</sup> is the closest industry with a SBA small business size standard. 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.<sup>95</sup> Mobile virtual network operators (MVNOs) are included in this industry.<sup>96</sup> The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.<sup>97</sup> U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.<sup>98</sup> Of that number, 1,375 firms operated with fewer than 250 employees.<sup>99</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services.<sup>100</sup> Of these providers, the Commission estimates that

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<sup>88</sup> *Id.*

<sup>89</sup> See 13 CFR § 121.201, NAICS Code 517911(as of 10/1/22, NAICS Code 517121).

<sup>90</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>91</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>92</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf>.

<sup>93</sup> *Id.*

<sup>94</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> See 13 CFR § 121.201, NAICS Code 517911(as of 10/1/22, NAICS Code 517121).

<sup>98</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>99</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>100</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf>.

495 providers have 1,500 or fewer employees.<sup>101</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

23. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business definition specifically for prepaid calling card providers. Telecommunications Resellers<sup>102</sup> is the closest industry with a SBA small business size standard. 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.<sup>103</sup> Mobile virtual network operators (MVNOs) are included in this industry.<sup>104</sup> The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.<sup>105</sup> U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.<sup>106</sup> Of that number, 1,375 firms operated with fewer than 250 employees.<sup>107</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 58 providers that reported they were engaged in the provision of payphone services.<sup>108</sup> Of these providers, the Commission estimates that 57 providers have 1,500 or fewer employees.<sup>109</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

#### 4. Other Entities

24. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.<sup>110</sup> 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.<sup>111</sup> Providers of Internet services (e.g. dial-up ISPs) or voice over Internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.<sup>112</sup> The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million

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<sup>101</sup> *Id.*

<sup>102</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> See 13 CFR § 121.201, NAICS Code 517911(as of 10/1/22, NAICS Code 517121).

<sup>106</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>107</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>108</sup> Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26, Table 1.12 (2021)*, <https://docs.fcc.gov/pub/ld.lic/attachments/DOC-379181A1.pdf>.

<sup>109</sup> *Id.*

<sup>110</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

or less as small.<sup>113</sup> U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.<sup>114</sup> Of those firms, 1,039 had revenue of less than \$25 million.<sup>115</sup> Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

25. In this *Notice*, we propose to expand the Commission’s definition of “breach” to include inadvertent disclosures of customer information and seek comment on adopting a harm-based trigger for breach notifications. We also propose to require carriers to notify the Commission, in addition to the Secret Service and FBI, as soon as practicable after discovery of a breach. We also propose to eliminate the mandatory waiting period before notifying customers and instead require carriers to notify customers of CPNI breaches without unreasonable delay after discovery of a breach unless law enforcement requests a delay. We also seek comment on whether we should adopt minimum requirements for the content of customer breach notices, and we seek comment on whether our rules should address breaches of other types of sensitive personal information beyond CPNI. Finally, we propose to make changes to our TRS data breach reporting rule consistent with those we propose to our CPNI breach reporting rule.

26. Should the Commission decide to modify existing rules or adopt new rules to strengthen our data breach reporting rule, such action could potentially result in increased, reduced, or otherwise modified recordkeeping, reporting, or other compliance requirements for affected providers of service. We seek comment on the effect of any proposals on small entities. Entities, especially small businesses, are encouraged to quantify the costs and benefits of any reporting, recordkeeping, or compliance requirement that may be established in this proceeding.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

27. The RFA requires an agency to describe any significant 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 rules for such 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 such small entities.<sup>116</sup>

28. The *Notice* seeks comment on the particular impacts that the proposed rules may have on small entities. Specifically, the *Notice* seeks comment on whether there are unique concerns or compliance barriers for small carriers that make notice to customers without unreasonable delay unfeasible;<sup>117</sup> if there should be different notification requirements for small carriers;<sup>118</sup> if streamlining

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<sup>113</sup> See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

<sup>114</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>115</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>116</sup> 5 U.S.C. § 603(c)(1)-(4).

<sup>117</sup> See *supra* at para. 35.

notice requirements will benefit small providers;<sup>119</sup> if a centralized reporting portal would reduce compliance barriers for small providers;<sup>120</sup> and if a threshold trigger would benefit small providers.<sup>121</sup>

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

29. None.

(Continued from previous page) \_\_\_\_\_

<sup>118</sup> *Id.*

<sup>119</sup> *See supra* at para. 40.

<sup>120</sup> *See supra* at para. 25.

<sup>121</sup> *See supra* at para. 30.

**STATEMENT OF  
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Data Breach Reporting Requirements*, WC Docket No. 22-21, Notice of Proposed Rulemaking (January 5, 2023).

Our mobile phones are in our palms, pockets, and purses. We rarely go anywhere without them. There is good reason for this—the convenience and safety of being able to reach out anytime and virtually anywhere is powerful. But this always-on connectivity means that our carriers have access to a treasure trove of data about who we are, where we have traveled, and who we have talked to.

It is vitally important that this deeply personal data does not fall into the wrong hands. That is why the Federal Communications Commission has long had rules that require carriers to protect the privacy and security of data, under Section 222 of the Communications Act. But the rules this agency has on the books that require carriers to notify consumers and law enforcement of data breaches under Section 222 are more than 15 years old.

That is why we kick off a proceeding to modernize our data breach rules here. We propose to eliminate the outdated seven business day mandatory waiting period before notifying customers, require the reporting of inadvertent but harmful data breaches, and ensure that the agency is notified of major data breaches. We also seek comment on how our breach reporting obligations can work alongside those forthcoming from the Cybersecurity and Infrastructure Security Agency under the Cyber Incident Reporting for Critical Infrastructure Act. I look forward to the record that develops—and updating our policies under the law.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Establishment of the Space Bureau and ) MD Docket No. 23-12  
the Office of International Affairs and )  
Reorganization of the Consumer and )  
Governmental Affairs Bureau and the Office )  
of the Managing Director )  
 )  
 )

ORDER

Adopted: January 4, 2023

Released: January 9, 2023

By the Commission:

I. INTRODUCTION

1. In this Order, the Federal Communications Commission (the Commission or FCC) takes action to modernize and streamline its operations by making changes to its International Bureau as well as certain parts of the Consumer and Governmental Affairs Bureau (CGB) and Office of Managing Director (OMD). In this Order, we amend the Commission’s rules to reflect these new organizational structures and describe the functions being realigned. We find it appropriate to make these organizational changes to strengthen the efficiency and effectiveness of the Commission’s activities and operations. In addition, we make other non-substantive rule revisions to reflect changes in Commission procedures and to modernize certain references to the Chairperson of the FCC.

2. First, to better support United States leadership in the emerging space economy, to promote long-term technical capacity within the FCC to address non-federal satellite programs and policies, and to improve coordination with other agencies on issues related to space, we conclude that the proper dispatch of our business and the public interest will be served by reorganizing the International Bureau into: (1) a Space Bureau to handle policy and licensing matters related to satellite communications and other in-space activities under the Commission’s jurisdiction; and (2) an Office of International Affairs to handle issues involving foreign and international regulatory authorities as well as international telecommunications and submarine cable licensing. We find these organizational changes will provide the FCC with the updated structure it needs to provide essential international leadership in the ever-evolving global telecommunications marketplace.

3. In addition, to improve the efficiency of the agency’s operations, bolster the Commission’s records and document management systems, and enhance public access to critical public records, the Commission has concluded that the proper dispatch of its business and the public interest will be served by taking the following actions:

- a. Transfer the Reference Information Center (RIC) from CGB to the Office of the Secretary in OMD;
- b. Merge the records management program in OMD’s Performance Evaluation and Records Management (PERM) group with OMD’s Information Technology (IT) group;
- c. Rename PERM to be the Performance and Program Management (PPM) group in OMD; and
- d. Transfer the Enterprise Acquisition Center (EAC) in the Front Office of OMD to a new

stand-alone group in OMD.

## II. DISCUSSION

### A. Establishment of Space Bureau and Office of International Affairs and Elimination of International Bureau

4. Under this reorganization, the Space Bureau will promote a competitive and innovative global telecommunications marketplace via space services. The Space Bureau will do so by undertaking policy analysis and rulemakings as well as authorizing satellite systems for the purpose of facilitating the deployment of satellite services, streamlining regulatory processes and maximizing flexibility for operators to meet customer needs, and fostering the efficient use of spectrum and orbital resources. The Space Bureau will also serve as a focal point for coordination with other U.S. government agencies on matters of space policy and governance, and will support the Office of International Affairs for meetings with other countries, international organizations and foreign government officials that involve space policy matters.

5. The Office of International Affairs will develop international telecommunications policy to facilitate competition in the provision of international services and further U.S. strategic objectives in global telecommunications policy. The Office of International Affairs will be responsible for policy development and licensing for international telecommunications facilities and services, submarine cables, and advising and making recommendations to the Commission on foreign ownership issues. The Office of International Affairs will also have responsibility for all intergovernmental leadership, negotiation, and representational functions. The Office of International Affairs will oversee and coordinate the FCC's global participation in international organizations and multilateral conferences, regional organizations, cross-border negotiations, and international standard setting efforts. The Office of International Affairs will also oversee bilateral meetings with other countries and foreign government officials.

6. To further these objectives and functions, the Space Bureau and the Office of International Affairs will utilize professional staff from within the Commission's current International Bureau as well as other parts of the Commission as needed.

7. To accomplish this organizational change, the following actions are taken.

- The Commission will eliminate the International Bureau and generally reallocate the International Bureau's authorities and functions between the Space Bureau and Office of International Affairs.
- The Space Bureau will consist of three divisions: the Satellite Programs and Policy Division, the Satellite Licensing Division, and the Earth Station Licensing Division. These new divisions will have responsibilities and authorities for the analysis and functions currently housed within the Satellite Division of the International Bureau, including its branches, the Policy Branch, the Engineering Branch, and the System Analysis Branch.
- The Office of International Affairs will consist of the Global Strategy and Negotiation Division and the Telecommunications and Analysis Division. The Global Strategy and Negotiation Division will be moved to the Office of International Affairs from the International Bureau as currently organized, including each of its existing Branches and will maintain its current responsibilities and authorities.<sup>1</sup> Similarly, the Telecommunications and Analysis Division will be moved to the Office of International Affairs from the International Bureau as currently organized and will maintain its current responsibilities and authorities.

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<sup>1</sup> The branches of the International Bureau Global Strategy and Negotiation Division include the International Radiocommunication Branch, the Cross Border Negotiations and Treaty Compliance Branch, and the Multilateral and Regional Affairs Branch.

- The International Bureau’s front office staff, including management and administrative staff within the front office, will be reassigned to the Space Bureau or the Office of International Affairs depending upon their roles and responsibilities.

8. Furthermore, to implement these changes, we delegate the authority to the Space Bureau and the Office of International Affairs to make any necessary edits and updates to the Commission’s rules and any forms, policies, web addresses, systems, or other documents associated with the International Bureau to ensure all relevant references and procedures are updated consistent with the provisions of this Order, including any changes needed for renaming the International Bureau Filing System (IBFS) to the International Communications Filing System (ICFS). Any previous delegation to the International Bureau also is transferred to the Satellite Bureau and/or the Office of International Affairs, as appropriate.<sup>2</sup>

**B. Reorganization of the Consumer and Governmental Affairs Bureau and the Office of Managing Director**

9. The key objectives of this reorganization are to strengthen the effectiveness and efficiency of the Commission’s operations and management of prominent public-facing functions as well as vital internal information management operations.

**1. Transfer the Reference Information Center to the Office of the Secretary**

10. The RIC serves as the FCC custodian for designated public records, with functions including intake of records, file maintenance, reference services, retrieval of records, and retirement or archiving of files in accordance with record retention schedules approved by the National Archives and Records Administration (NARA). The RIC is also currently responsible for managing the Commission’s Electronic Comment Filing System (ECFS) and scanning and uploading documents filed on paper into ECFS as needed.

11. Section 0.11 of the Commission’s Rules instructs OMD to “direct agency efforts to improve management effectiveness, operational efficiency, employee productivity, and service to the public.”<sup>3</sup> Pursuant to Section 0.11(b), the Secretary of the Commission is designated the “official custodian of the Commission’s documents.”<sup>4</sup> The Office of the Secretary in OMD oversees prompt and orderly processing of all matters presented to the Commission and supports the Commission decision-making process to ensure efficient operations. To preserve the integrity of the Commission’s records, the Office of the Secretary supervises the receipt and distribution of documents filed by the public through electronic and paper filing systems. In addition, the Office of the Secretary gives effective legal notice of Commission decisions by publishing them in the Federal Register and the FCC Record. The Secretary serves as legal custodian of the Commission’s official records and publishes official documents to the agency’s website.

12. After this reorganization, the Office of the Secretary will be responsible for the management of ECFS in addition to the document custodial functions it performs today. Since the Office of the Secretary currently manages both electronic documents (EDOCS) and the Electronic Commission’s Lifecycle Agenda Tracking System (ECLAS), the addition of ECFS to its list of responsibilities will create further efficiencies in the management and planning of these important internal and public facing systems.

13. In addition to giving it responsibility over ECFS, we transfer administration and management of the RIC from CGB to the Office of the Secretary. By taking this action, we locate the

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<sup>2</sup> See e.g., *Use of Spectrum Bands Above 24 GHz*, Report and Order and FNPRM, 31 FCC Rcd 8014 (2016); *Mandatory Electronic Filing of Section 325(c) Applications, International Broadcast Applications, and Dominant Carrier Section 63.10(c) Quarterly Reports*, Order, 36 FCC Rcd 12038 (2021).

<sup>3</sup> 47 CFR § 0.11.

<sup>4</sup> *Id.*

Commission's public records reference functions with the internal organization that currently carries out other reference functions, including management of the FCC Library.

14. We also update the Commission's rules to reflect the revised procedures for the public to access the RIC. Due to the updated security protocols associated with the FCC's new headquarters, all visitors to the RIC will be required to have a scheduled appointment in advance of accessing the facility.

## **2. Transfer of Records Management from PERM to IT**

15. In OMD, the PERM group has responsibility for the administration and implementation of the FCC's agency-wide records management program, as opposed to the RIC which oversees an important subset of publicly available FCC records. PERM's records management program develops policies, procedures and processes to facilitate retrieval, selection, retention, and disposition of record and non-record materials and coordinates the records management program throughout the FCC and with NARA. The FCC's Agency Records Officer in PERM is responsible for complying with and updating the records schedules set by NARA.

16. As discussed at the outset of this Order, with our actions today, we merge and relocate the records management program and functions into OMD's IT group. The IT group is currently responsible for providing support and services for the information technology component of records management. Thus, merging the implementation and information technology components of these programs within the IT group will facilitate internal coordination and create additional efficiencies by eliminating unnecessary redundant oversight and management. Furthermore, integrating records management considerations into the development and implementation of the FCC's information systems will facilitate the records retention and disposal process, and strengthen compliance with records schedules.

17. As a result of this transfer, PERM will be renamed as the Performance and Program Management (PPM) group in OMD. The PPM group will retain all of PERM's previous functions with the exception of records management as described above.

## **3. Establish a Stand-alone Enterprise Acquisition Center in OMD**

18. To reflect the Commission's focus on strengthening all aspects of its procurement process, we conclude that the proper, efficient and effective dispatch of our business will be served by moving the EAC staff from the OMD Front Office and establishing EAC as a stand-alone group within OMD dedicated to the FCC's procurement activities. By establishing this group as a stand-alone entity, it is the Commission's objective to continue to improve efficiencies, independence, accountability and performance in the management of its acquisition strategy, planning and procurement activities.

### **C. Other Rule Changes**

19. In addition to the changes otherwise identified herein, we update the Commission's rules by replacing the references to the agency's Chairman with references instead to the Chairperson throughout and revise other rules that refer to "chairman" to instead specify "chairperson."<sup>5</sup>

20. We also make minor modifications to reflect slight changes to procedures related to Privacy Act requests,<sup>6</sup> to update rule 0.460 concerning requests for inspection and copies of records which are routinely available for public inspection to reflect current procedures, and to remove from the Code of Federal Regulations a display of approved information collections that is no longer updated and has become obsolete. We also eliminate certain Notes to rules and instead move the language from the Note into a subsection of the relevant rule to conform to the publishing conventions of the National Archives

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<sup>5</sup> This change is consistent with 1 U.S.C. § 1, which provides that, with respect to statutory provisions, "words importing the masculine gender include the feminine as well."

<sup>6</sup> The FCC is updating the points of contact for Privacy Act related inquiries listed in 47 CFR § 0.558.

and Records Administration's Office of the Federal Register.<sup>7</sup>

### III. PROCEDURAL MATTERS

21. Authority for the adoption of the foregoing reorganization is contained in Sections 4(i), 4(j), 5(b), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 154(j), 155(b), 155(c), and 303(r).

22. The notice and comment and effective date provisions of the Administrative Procedure Act contained in 5 U.S.C. §§ 553(b) and (d) do not apply either because the amendments adopted herein pertain to agency organization, procedure, and practice<sup>8</sup> or because there is "good cause" to conclude that notice and comment and delayed effectiveness are unnecessary for non-substantive, editorial revisions.<sup>9</sup> For the same reason, no Final Regulatory Flexibility Analysis is required under the Regulatory Flexibility Act, 5 U.S.C. § 604.

23. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, 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).

24. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Order* to Congress and the Government Accountability office, pursuant to 5 U.S.C. § 801(a)(1)(A).

25. Consistent with the Consolidated Appropriations Act, 2022,<sup>10</sup> this reorganization will not become effective until the appropriate clearance has been obtained, and the Order has thereafter been published in the Federal Register.

#### D. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED THAT, pursuant to sections 4, 5(b), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 155(b), 155(c), 303(r), this Order IS ADOPTED.

27. IT IS FURTHER ORDERED that Parts 0, 1, 25, 27, 43, 63, 73, 90, 97, and 101 of the Commission rules ARE AMENDED as set forth in the Appendix.

28. IT IS FURTHER ORDERED that this Order WILL BECOME EFFECTIVE on the date this Order is published in the Federal Register following the appropriate clearance in accordance with paragraph 25.

29. **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 this Order to Congress and to the Government Accountability Office.

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<sup>7</sup> 47 CFR § 1.767, Note to paragraph (g)(5); 47 CFR § 1.1202, all Notes moved to text; 47 CFR § 63.14, Note to paragraph (a); 47 CFR § 63.22, Note 2; 47 CFR § 73.702, Note to paragraph (d) and Note 4.

<sup>8</sup> 5 U.S.C. § 553(b)(3)(A); 553(d) (required publication 30 days before effective date applies only to substantive rule).

<sup>9</sup> 5 U.S.C. § 553(b)(3)(B); 553(d) (required publication 30 days before effective date does not apply if the agency finds "good cause" to dispense with the requirement). Given the non-substantive, editorial nature of certain revisions, and to expedite revision of the rules for the benefit of the public, we find good cause to make these rule revisions effective upon publication in the Federal Register.

<sup>10</sup> *See* Pub. L. 117-103, at Division E, Title VI, § 608, 136 Stat. 287 (2022).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX****Final Rules**

The Federal Communications Commission amends Title 47 of the Code of Federal Regulations as follows:

**PART 0 – COMMISSION ORGANIZATION**

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 409, unless otherwise noted.

2. Amend § 0.3 by revising the heading and paragraphs (a) and (b) as follows:

**§ 0.3 The Chairperson.**

\* \* \* \* \*

(a) One of the members of the Commission is designated by the President to serve as Chairperson, or chief executive officer, of the Commission. As Chairperson, he/she has the following duties and responsibilities:

\* \* \* \* \*

(b) The Commission will, in the case of a vacancy in the Office of the Chairperson of the Commission, or in the absence or inability of the Chairperson to serve, temporarily designate one of its members to act as Chairperson until the cause or circumstance requiring such designation has been eliminated or corrected.

\* \* \* \* \*

3. Amend section § 0.5 to revise subsection (a) to replace paragraphs (11) through (17) with new paragraphs (11) through (18) to read as follows:

**§ 0.5 General description of Commission organization and operations.**

(a) *Principal staff units.* The Commission is assisted in the performance of its responsibilities by its staff, which is divided into the following principal units:

\* \* \* \* \*

(11) Office of International Affairs.

(12) Wireline Competition Bureau.

(13) Wireless Telecommunications Bureau.

(14) Space Bureau.

(15) Media Bureau.

(16) Enforcement Bureau.

(17) Consumer and Governmental Affairs Bureau.

(18) Public Safety and Homeland Security Bureau.

\* \* \* \* \*

4. Amend § 0.11 by revising paragraphs (a), (a)(2), (a)(3), (a)(4), (a)(11), and (b) as follows:

OFFICE OF THE MANAGING DIRECTOR

**§ 0.11 Functions of the Office.**

\* \* \* \* \*

(a) The Managing Director is appointed by the Chairperson with the approval of the Commission. Under the supervision and direction of the Chairperson, the Managing Director shall serve as the Commission's chief operating and executive official with the following duties and responsibilities:

\* \* \*

(2) Formulate and administer all management and administrative policies, programs, and directives for the Commission consistent with authority delegated by the Commission and the Chairperson and recommend to the Chairperson and the Commission major changes in such policies and programs.

(3) Assist the Chairperson in carrying out the administrative and executive responsibilities delegated to the Chairperson as the administrative head of the agency.

(4) Advise the Chairperson and Commission on management, administrative, and related matters; review and evaluate the programs and procedures of the Commission; initiate action or make recommendations as may be necessary to administer the Communications Act most effectively in the public interest. Assess the management, administrative, and resource implications of any proposed action or decision to be taken by the Commission or by a Bureau or Office under delegated authority; recommend to the Chairperson and Commission program priorities, resource and position allocations, management, and administrative policies.

\* \* \*

(11) Advise the Chairperson, Commission, and Commission Bureaus and Offices on matters concerning the development, administration, and management of the Affordable Connectivity Outreach Grant Program.

\* \* \*

(b) The Secretary is the official custodian of the Commission's documents. The Office of the Secretary also serves as the official FCC records custodian for designated records, including intake processing, organization and file maintenance, reference services, and retirement and retrieval of records; manages

the Electronic Comment Filing System and certifies records for adjudicatory and court proceedings; maintains manual and computerized files that provide for the public inspection of public record materials concerning Broadcast Ownership, AM/FM/TV, TV translators, FM Translators, Cable TV, Wireless, Auction, Common Carrier Tariff matters, International space station files, earth station files, DBS files, and other miscellaneous international files; maintains for public inspection Time Brokerage and Affiliation Agreements, court citation files, and legislative histories concerning telecommunications dockets and provides the public and Commission staff prompt access to manual and computerized records and filing systems.

\* \* \* \* \*

5. Amend § 0.13 by revising the introductory text and paragraphs (d), (d)(1) and (d)(2) as follows:

**§ 0.13 Functions of the Office.**

The Office of Inspector General is directly responsible to the Chairperson as head of the agency. However, the Chairperson may not prevent or prohibit the Office of Inspector General from carrying out its duties and responsibilities as mandated by the Inspector General Act Amendments of 1988 (Pub. L. 100-504) and the Inspector General Act of 1978 (5 U.S.C. Appendix 3), as amended.

\* \* \*

(d) Keep the Chairperson of the Commission - and through him or her the other Commissioners - and the Congress fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of Commission programs and operations; recommend corrective action and report on the progress made in implementing such corrective action. In addition to providing the Chairperson with the results of completed audits and inspections, the Inspector General shall prepare statutorily required reports, identified as such, to include:

- (1) Semiannual reports summarizing activities of the office during the preceding six month period (due to the Chairperson by April 30 and October 31);
- (2) Special reports specifically identifying any serious or flagrant problems, abuses or deficiencies (due to the Chairperson immediately upon discovery of these matters by the Inspector General).

\* \* \* \* \*

6. Amend § 0.17 by revising paragraph(d) as follows:

**§ 0.17 Functions of the Office.**

\* \* \* \* \*

(d) Assist the Chairperson and Commissioners in preparation for, and the coordination of their appearances before the Committees of Congress.

\* \* \* \* \*

7. Add § 0.19 to read as follows:

OFFICE OF INTERNATIONAL AFFAIRS

**§ 0.19 Functions of the Office.**

The Office of International Affairs has the following duties and responsibilities:

- (a) To initiate and direct the development and articulation of international telecommunications policies, consistent with the priorities of the Commission.
- (b) To advise the Chairperson and Commissioners on matters of international telecommunications policy, and on the adequacy of the Commission's actions to promote the vital interests of the American public in international commerce, national defense, and foreign policy.
- (c) To represent the Commission on international communications matters, including matters involving international, regional, and cross border spectrum allocation and frequency coordination at both domestic and international conferences and meetings, and to direct and coordinate the Commission's preparation for such conferences and meetings.
- (d) To direct and coordinate, in consultation with other Bureaus and Offices as appropriate, negotiation of international agreements to provide for arrangements and procedures for coordination of radio frequency assignments to prevent or resolve international radio interference involving U.S. licensees.
- (e) To ensure fulfillment of the Commission's responsibilities under international agreements and treaty obligations, and consistent with Commission policy, in coordination with other Bureaus and Offices as appropriate, to ensure that the Commission's regulations, procedures, and frequency allocations comply with the mandatory requirements of all applicable international and bilateral agreements.
- (f) To serve as the single focal point within the Commission for cooperation and consultation on international telecommunications matters with other Federal agencies, international or foreign organizations, and appropriate regulatory bodies and officials of foreign governments.
- (g) To develop, recommend, and administer policies, rules, standards, and procedures regarding the authorization and regulation of international telecommunications facilities and services, submarine cables, international broadcast services, and foreign ownership issues.
- (h) To develop, recommend, and administer policies, rules, standards, and procedures regarding coordination with Executive Branch agencies on national security, law enforcement, foreign policy, trade policy, or concerns.
- (i) To monitor compliance with the terms and conditions of authorizations and licenses and pursue enforcement actions in conjunction with appropriate bureaus and offices.
- (j) To develop, coordinate with other Federal agencies, and administer the regulatory assistance and training programs for foreign administrations to promote telecommunications development.
- (k) To provide advice and technical assistance to U.S. trade officials in the negotiation and implementation of communications trade agreements, and consult with other bureaus and offices as appropriate with respect thereto.
- (l) To conduct economic, legal, technical, statistical, and other appropriate studies, surveys, and analyses in support of international telecommunications policies and programs.
- (m) To collect and disseminate within the Commission information and data on international communications policies, regulatory and market developments in other countries, and international organizations.

- (n) To work with the Office of Legislative Affairs to coordinate the Commission's activities on significant matters of international policy with appropriate Congressional offices.
- (o) To advise the Chairperson on priorities for international travel and develop, coordinate, and administer the international travel plan.
- (p) Managing efforts across the Bureaus and Offices to participate in international standards activities and serving as the FCC's senior representative at in-person standards meetings around the world in conjunction with staff from other Bureaus and Offices as needed.
- (q) To issue orders revoking a common carrier's operating authority pursuant to section 214 of the Act, and issue orders to cease and desist such operations, in cases where the presiding officer has issued a certification order to the Commission that the carrier has waived its opportunity for hearing under that section.
- (r) To exercise the authority to issue non-hearing related subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements, and any other records deemed relevant to the investigation of matters within the jurisdiction of the Office of International Affairs. Before issuing a subpoena, the Office of International Affairs shall obtain the approval of the Office of General Counsel.
- (s) To assist the Consumer and Governmental Affairs Bureau on issues involving informal consumer complaints and other general inquiries by consumers.
- (t) To coordinate with the Public Safety and Homeland Security Bureau on all matters affecting public safety, homeland security, national security, emergency management, disaster management, and related issues.

8. Amend § 0.31 by revising paragraph (b) to read as follows:

**§ 0.31 Functions of the Office.**

\* \* \* \* \*

(b) Represent the Commission at various national conferences and meetings (and, in consultation with the Office of International Affairs, at various international conferences and meetings) devoted to the progress of communications and the development of technical and other information and standards, and serve as Commission coordinator for the various national conferences when appropriate.

\* \* \* \* \*

9. Amend § 0.41 by revising paragraph (h) to read as follows:

**§ 0.41 Functions of the Office.**

\* \* \* \* \*

(h) To cooperate with the Space Bureau on all matters pertaining to space policy and satellite communications.

\* \* \* \* \*

10. Amend § 0.51 to read as follows:

SPACE BUREAU

**§ 0.51 Functions of the Bureau.**

The Space Bureau has the following duties and responsibilities:

- (a) To develop, recommend, and administer policies, rules, standards, and procedures for the authorization and regulation of domestic and international satellite systems.
- (b) To monitor compliance with the terms and conditions of authorizations and licenses granted by the Bureau, and to pursue enforcement actions in conjunction with appropriate bureaus and offices.
- (c) To facilitate the international coordination of U.S. spectrum allocations for space-based services and frequency and orbital assignments so as to minimize cases of international radio interference involving U.S. licensees.
- (d) To coordinate, in consultation with other Bureaus and Offices as appropriate, negotiation of arrangements and procedures for coordination of radio frequency assignments for space-based services to prevent or resolve international radio interference involving U.S. space station and/or earth station licensees.
- (e) To ensure fulfillment of the Commission's responsibilities under international agreements and treaty obligations in coordination with the Office of International Affairs, and, consistent with Commission policy, to ensure that the Commission's regulations, procedures, and frequency allocations comply with the mandatory requirements of all applicable international and bilateral agreements involving space-based services.
- (f) In coordination with the Office of International Affairs, to oversee and, as appropriate, administer activities pertaining to the international consultation, coordination, and notification of U.S. frequency and orbital assignments, including activities required by bilateral agreements, the international Radio Regulations, and other international agreements.
- (g) To serve as a focal point for coordination with other U.S. government agencies on matters of space policy, licensing and governance and, to support the Office of International Affairs with other Federal agencies, international or foreign organizations, and appropriate regulatory bodies and officials of foreign governments for meetings that involve space policy matters.
- (h) To exercise authority to issue non-hearing related subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements, and any other records deemed relevant to the investigation of matters within the jurisdiction of the Space Bureau. Before issuing a subpoena, the Space Bureau shall obtain the approval of the Office of General Counsel.
- (i) To assist the Consumer and Governmental Affairs Bureau on issues involving informal consumer complaints and other general inquiries by consumers.
- (i) To coordinate with the Public Safety and Homeland Security Bureau on all matters affecting public safety, homeland security, national security, emergency management, disaster management, and related issues.

11. Amend § 0.81 by revising paragraphs (b)(1) and (b)(9) as follows:

**§ 0.81 Functions of the Office.**

\* \* \* \* \*

(b)

(1) Through its Director, serves as the principal advisor to the Chairperson and Commission officials on all aspects of workplace diversity, affirmative recruitment, equal employment opportunity, non-discrimination, and civil rights;

\* \* \* \* \*

(9) Manages the Commission's equal employment opportunity compliance program. Responsibilities in this area include processing complaints alleging discrimination, recommending to the Chairperson final decisions on EEO complaints within the Commission, and providing counseling services to employees and applicants on EEO matters;

\* \* \* \* \*

12. Amend § 0.111 by revising the second sentence of the note to paragraph (a)(1) and paragraph (c) to read as follows:

**§ 0.111 Functions of the Bureau.**

\* \* \* \* \*

Note to paragraph (a)(1):

\* \* \* The Office of International Affairs has primary responsibility for complaints regarding international settlements rules and policies.

\* \* \* \* \*

(c) In coordination with the Office of International Affairs, participate in international conferences dealing with monitoring and measurement; serve as the point of contact for the U.S. Government in matters of international monitoring, fixed and mobile direction-finding and interference resolution; and oversee coordination of non-routine communications and materials between the Commission and international or regional public organizations or foreign administrations.

\* \* \* \* \*

13. Amend § 0.131 by revising paragraphs (e) and (k) to read as follows:

**§ 0.131 Functions of the Bureau.**

\* \* \* \* \*

(e) Develops and recommends policy, rules, standards, procedures and forms for the authorization and regulation of wireless telecommunications facilities and services, including all facility authorization applications involving domestic terrestrial transmission facilities. Coordinates with and assists the Space Bureau regarding frequency assignment, coordination and interference matters.

\* \* \* \* \*

(k) Coordinates with and assists the Office of International Affairs with respect to treaty activities and international conferences concerning wireless telecommunications and standards.

\* \* \* \* \*

14. Amend § 0.141 to read as follows:

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU

**§ 0.141 Functions of the Bureau.**

\* \* \* \* \*

(h) Periodically reviews the status of open docketed proceedings, and following:

(1) Consultation with and concurrence from the relevant bureau or office with responsibility for a particular proceeding,

(2) The issuance of a public notice listing proceedings under consideration for termination, and,

(3) A reasonable period during which interested parties may comment, closes any docket in which no further action is required or contemplated (with termination constituting a final determination in any such proceeding).

\* \* \* \* \*

15. Amend § 0.181 by revising paragraph (g) as follows:

**§ 0.181 The Defense Commissioner.**

\* \* \* \* \*

(g) In the event of enemy attack, or the imminent threat thereof, or other disaster resulting in the inability of the Commission to function at its offices in Washington, D.C., to assume all of the duties and responsibilities of the Commission and the Chairperson, until relieved or augmented by other Commissioners or members of the staff, as set forth in §§ 0.186 and 0.383.

\* \* \* \* \*

16. Amend § 0.186 by revising paragraph (b) as follows:

**§ 0.186 Emergency Relocation Board.**

\* \* \* \* \*

(b) The Board shall comprise such Commissioners as may be present (including Commissioners available through electronic communications or telephone) and able to act. In the absence of the Chairperson, the Commissioner present with the longest seniority in office will serve as acting Chairperson. If no Commissioner is present and able to act, the person designated as next most senior official in the

Commission's Continuity of Operations Plan will head the Board.

\* \* \* \* \*

17. Amend § 0.204 by revising paragraphs (b) and (c)(3) as follows:

**§ 0.204 The exercise of delegated authority.**

\* \* \* \* \*

(b) Authority of subordinate officials. Authority delegated to any official to issue orders or to enter into correspondence under paragraph (a) of this section may be exercised by that official or by appropriate subordinate officials acting for him/her.

(c) \* \* \*

(3) General correspondence by a committee or board is signed by the committee or board chairperson.

\* \* \* \* \*

18. Amend § 0.211 by revising the heading, introductory text, and paragraphs (a), (b), and (c) as follows:

**§ 0.211 Chairperson.**

\* \* \* \* \* The responsibility for the general administration of internal affairs of the Commission is delegated to the Chairperson of the Commission. The Chairperson will keep the Commission advised concerning his actions taken under this delegation of authority. This authority includes:

(a) Actions of routine character as to which the Chairperson may take final action.

(b) Actions of non-routine character which do not involve policy determinations. The Chairperson may take final action on these matters but shall specifically advise the Commission on these actions.

(c) Actions of an important character or those which involve policy determinations. In these matters the Chairperson will develop proposals for presentation to the Commission.

\* \* \* \* \*

19. Amend § 0.212 by revising the first sentence of paragraph (a) as follows:

**§ 0.212 Board of Commissioners.**

\* \* \* \* \*

(a) Whenever the Chairperson or Acting Chairperson of the Commission determines that a quorum of the Commission is not present or able to act, he/she may convene a Board of Commissioners. \* \* \*

\* \* \* \* \*

20. Amend § 0.231 by revising paragraph (g) as follows:

**§ 0.231 Authority Delegated.**

\* \* \* \* \*

(g) The Managing Director, after consultation with the Chairperson shall establish, renew, and terminate all Federal advisory committees. He/She shall also exercise all management responsibilities under the Federal Advisory Committee Act as amended (Pub.L. No. 92-463, 5 U.S.C. App.).

\* \* \* \* \*

21. Amend § 0.251 by revising paragraph (e) to read as follows:

**§ 0.251 Authority delegated.**

\* \* \* \* \*

(e) The official record of all actions taken by the General Counsel pursuant to § 0.251 (c) and (d) is contained in the original docket folder, which is maintained by the Reference Information Center.

\* \* \* \* \*

22. Amend § 0.261 to read as follows:

SPACE BUREAU

**§ 0.261 Authority delegated.**

(a) Subject to the limitations set forth in paragraph (b) of this section, the Chief, Space Bureau, is hereby delegated the authority to perform the functions and activities described in § 0.51, including without limitation the following:

(1) To recommend rulemakings, studies, and analyses (legal, engineering, social, and economic) of various petitions for policy or rule changes submitted by industry or the public, and to assist the Commission in conducting the same.

(2) To act upon applications for satellite systems and earth stations pursuant to part 25 of this chapter.

(3) In conjunction with the Office of International Affairs, to notify the International Telecommunication Union (ITU) of the United States' terrestrial and satellite assignments for inclusion in the Master International Frequency Register.

(4) To interpret and enforce rules and regulations pertaining to matters under its jurisdiction and not within the jurisdiction of the Enforcement Bureau.

(b) Notwithstanding the authority delegated in paragraph (a) of this section, the Chief, Space Bureau, shall not have authority:

(1) To act on any application, petition, pleading, complaint, enforcement matter, or other request that:

(i) Presents new or novel arguments not previously considered by the Commission;

(ii) Presents facts or arguments which appear to justify a change in Commission policy; or

(iii) Cannot be resolved under outstanding precedents and guidelines after consultation with appropriate Bureaus or Offices.

- (2) To issue notices of proposed rulemaking, notices of inquiry, or reports or orders arising from rulemaking or inquiry proceedings;
- (3) To act upon any application for review of actions taken by the Chief, Space Bureau, pursuant to delegated authority, except that the Chief of the Space Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter;
- (4) To act upon any formal or informal radio application which is in hearing status;
- (5) To designate for hearing any applications except:
- (i) Mutually exclusive applications for radio facilities filed pursuant to part 25, of this chapter; and
  - (ii) Applications for facilities where the issues presented relate solely to whether the applicant has complied with outstanding precedents and guidelines; or
- (6) To impose, reduce, or cancel forfeitures pursuant to section 203 or section 503(b) of the Communications Act of 1934, as amended, in amounts of more than \$80,000 for common carrier providers and \$20,000 for non-common carrier providers.

23. Amend § 0.262 by revising the text to read as follows:

**§ 0.262 Record of actions taken.**

The application and authorization files in the appropriate central files of the Space Bureau are designated as the Commission's official records of actions by the Chief, Space Bureau, pursuant to authority delegated to the Chief. The official records of action are maintained in the Reference Information Center.

24. Amend § 0.272 to read as follows:

OFFICE OF ECONOMICS AND ANALYTICS

**§ 0.272 Record of actions taken.**

The application and authorization files and other appropriate files of the Office of Economics and Analytics are designated as the Commission's official records of action of the Chief, Office of Economics and Analytics, pursuant to authority delegated to the Chief. The official records of action are maintained by the Reference Information Center.

25. Amend § 0.285 to read as follows:

**§ 0.285 Record of actions taken.**

The history card, the station file, and other appropriate files are designated to be the official records of action taken by the Chief of the Media Bureau. The official records of action are maintained by the Reference Information Center.

26. Amend § 0.291 by revising paragraph (e) to read as follows:

**§ 0.291 Authority delegated.**

\* \* \* \* \*

(e) Authority concerning rulemaking and investigatory proceedings. The Chief, Wireline Competition Bureau, shall not have authority to issue notices of proposed rulemaking, notices of inquiry, or reports or orders arising from either of the foregoing, except that the Chief, Wireline Competition Bureau, shall have authority, in consultation and coordination with the Chief, Office of International Affairs, to issue and revise a manual on the details of the reporting requirements for international carriers referenced in § 43.61(a)(3) of this chapter.

\* \* \* \* \*

27. Amend § 0.302 to read as follows:

**§ 0.302 Record of actions taken.**

The application and authorization files are designated as the Commission's official records of action of the Chief, Wireline Competition Bureau pursuant to authority delegated to the Chief. The official records of action are maintained by the Reference Information Center.

28. Amend § 0.317 to read as follows:

**ENFORCEMENT BUREAU****§ 0.317 Record of action taken.**

The application, authorization, and other appropriate files of the Enforcement Bureau are designated as the Commission's official records of action taken pursuant to authority delegated under §§0.311 and 0.314, and shall constitute the official Commission minutes entry of such actions. The official records of action are maintained by the Reference Information Center.

\* \* \* \* \*

29. Add § 0.351 to read as follows:

**OFFICE OF INTERNATIONAL AFFAIRS****§ 0.351 Authority delegated.**

(a) The Chief, Office of International Affairs, is hereby delegated the authority to perform the functions and activities described in § 0.19, including without limitation the following:

(1) To assume the principal representational role on behalf of the Commission in international conferences, meetings, and negotiations, and direct Commission preparation for such conferences, meetings, and negotiations with other Bureaus and Offices, as appropriate.

(2) To administer Commission participation in the International Telecommunication Union (ITU) Fellowship telecommunication training program for foreign officials offered through the U.S. Telecommunications Training Institute.

(3) In consultation with the affected Bureaus and Offices, to recommend revision of Commission rules

and procedures as appropriate to conform to the outcomes of international conferences, agreements, or treaties.

- (4) To recommend rulemakings, studies, and analyses (legal, engineering, social, and economic) of various petitions for policy or rule changes submitted by industry or the public, and to assist the Commission in conducting the same.
  - (5) To administer and enforce the policies and rules on international settlements under part 64 of this chapter.
  - (6) To interpret and enforce rules and regulations pertaining to matters under its jurisdiction and not within the jurisdiction of the Enforcement Bureau.
  - (7) To conduct studies and compile such data relating to international telecommunications as may be necessary for the Commission to develop and maintain an adequate regulatory program.
  - (8) To act upon applications for international telecommunications and services pursuant to relevant portions of part 63 of this chapter, and coordinate with the Wireline Competition Bureau as appropriate.
  - (9) To act upon applications for cable landing licenses pursuant to § 1.767 of this chapter.
  - (10) To act upon applications relating to international broadcast station operations, or for permission to deliver programming to foreign stations, under part 73 of this chapter.
  - (11) To administer and make available on a public website, a standardized set of national security and law enforcement questions for the categories of information set forth in part 1, subpart CC, of this chapter.
  - (12) To act upon requests for designation of Recognized Private Operating Agency (RPOA) status under part 63 of this chapter.
  - (13) Overseeing a team of staff from the FCC's Bureaus and Offices for the purposes of developing Commission positions related to international standard setting issues; collaborating on behalf of the FCC with other Federal agencies on international standard setting issues; and serving as the Chairperson's primary point of contact to develop goals and facilitate strategic decisions about FCC engagement in international standard setting efforts.
  - (14) To administer portions of part 2 of this chapter dealing with international treaties and call sign provisions, and to make call sign assignments, individually and in blocks, to U.S. government agencies and FCC operating bureaus.
  - (15) To make technical and ministerial edits to the rules adopted in the 2016 Report and Order in the review of foreign ownership policies for broadcast, common carrier, and aeronautical radio licensees to ensure that the Commission's rules continue to refer to the correct Securities and Exchange Commission rules and forms. 31 FCC Rcd 11272.
- (b) Notwithstanding the authority delegated in paragraph (a) of this section, the Chief, Office of International Affairs, shall not have authority:
- (1) To act on any application, petition, pleading, complaint, enforcement matter, or other request that:
    - (i) Presents new or novel arguments not previously considered by the Commission;

- (ii) Presents facts or arguments which appear to justify a change in Commission policy; or
  - (iii) Cannot be resolved under outstanding precedents and guidelines after consultation with appropriate Bureaus or Offices.
- (2) To issue notices of proposed rulemaking, notices of inquiry, or reports or orders arising from rulemaking or inquiry proceedings;
- (3) To act upon any application for review of actions taken by the Chief, Office of International Affairs, pursuant to delegated authority, except that the Chief of the Office of International Affairs may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter;
- (4) To act upon any formal or informal radio application or section 214 application for common carrier services which is in hearing status;
- (5) To designate for hearing any applications except applications for facilities where the issues presented relate solely to whether the applicant has complied with outstanding precedents and guidelines; or
- (6) To impose, reduce, or cancel forfeitures pursuant to section 203 or section 503(b) of the Communications Act of 1934, as amended, in amounts of more than \$80,000 for common carrier providers and \$20,000 for non-common carrier providers.

30. Add § 0.352 to read as follows:

**§ 0.352 Record of actions taken.**

The application and authorization files and other appropriate files of the Office of International Affairs are designated as the Commission's official records of action of the Chief, Office of International Affairs, pursuant to authority delegated to the Chief. The official records of action are maintained in the Reference Information Center.

31. Amend § 0.391 by revising paragraph (a) as follows:

**§ 0.391 Authority delegated.**

\* \* \* \* \*

(a) Manage the Commission's internal EEO compliance program pursuant to Title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Equal Pay Act, and other applicable laws, rules, regulations, and Executive Orders, with authority that includes appointing EEO counselors, investigators, and mediators; investigating complaints of employment discrimination, and recommending to the Chairperson final agency decisions on EEO complaints;

\* \* \* \* \*

32. Amend § 0.408 to read as follows:

GENERAL

**§ 0.408 OMB Control Numbers and expiration dates assigned pursuant to the Paperwork**

**Reduction Act of 1995.**

OMB control numbers and expiration dates for the Commission information collection requirements assigned by the Office of Management and Budget (“OMB”) pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13 can be found at <https://www.reginfo.gov/public/do/PRAMain>. The Commission intends that this posting comply with the requirement that agencies “display” current OMB control numbers and expiration dates assigned by the Director, OMB, for each approved information collection requirement. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number. Questions concerning the OMB control numbers and expiration dates should be directed to the Secretary, Office of the Secretary, Office of Managing Director, Federal Communications Commission, Washington, DC 20554 by sending an email to [PRA@fcc.gov](mailto:PRA@fcc.gov).

33. Amend § 0.434 to read as follows:

**§ 0.434 Data bases and lists of authorized broadcast stations and pending broadcast applications.**

Periodically the FCC makes available copies of its data bases and lists containing information about authorized broadcast stations, pending applications for such stations, and rulemaking proceedings involving amendments to the TV and FM Table of Allotments. The data bases, and the lists prepared from the data bases, contain frequencies, station locations, and other particulars. The lists are available for public inspection at the FCC's main office, located at the address indicated in § 0.401(a). Many of the databases may be viewed at the Commission's web site at [www.fcc.gov](http://www.fcc.gov) and [ftp.fcc.gov](http://ftp.fcc.gov) under mass media services. Copies of these lists are maintained by the Reference Information Center. These lists are derived from the data bases and can be used as an alternative research source to the Broadcast Application Processing System (BAPS).

34. Amend § 0.441 by revising paragraphs (a)(5) and (d) to read as follows:

**PUBLIC INFORMATION AND INSPECTION OF RECORDS****§ 0.441 General.**

\* \* \* \* \*

(5) Visiting the Reference Information Center located at the address indicated in § 0.401(a).

\* \* \*

(d) The General Counsel shall, subject to the authority of the Chairperson, exercise the responsibilities of the Chief FOIA Officer specified in 5 U.S.C. 552(j).

\* \* \* \* \*

35. Amend § 0.445 by revising the second sentence of paragraph (c) to read as follows:

**§ 0.445 Publication, availability, and use of opinions, orders, policy statements, interpretations, administrative manuals, staff instructions, and frequently requested records.**

\* \* \* \* \*

(c) \* \* \* The complete text of the Commission decision also is released by the Commission and is available for inspection through the Reference Information Center, via the Electronic Document Management System (EDOCS), or as otherwise specified in the rulemaking document published in the Federal Register.

\* \* \* \* \*

36. Amend § 0.453 by revising the second sentence of the introductory text and the first sentence of paragraph (a) to read as follows:

**§ 0.453 Public reference rooms.**

\* \* \* The Commission also maintains the FCC Reference Information Center at its offices in Washington, DC.

(a) The Reference Information Center provides access to files containing the record of all docketed cases, petitions for rule making and related papers.\* \* \*

\* \* \* \* \*

37. Amend § 0.457 by revising the first sentence of paragraph (d)(1)(v) to read as follows:

**§ 0.457 Records not routinely available for public inspection.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(v) The rates, terms and conditions in any agreement between a U.S. carrier and a foreign carrier that govern the settlement of U.S.-international traffic, including the method for allocating return traffic, except as otherwise specified by the Commission by order or by the Office of International Affairs under delegated authority.

\* \* \* \* \*

38. Amend § 0.460 by revising this section to read as follows:

**§ 0.460 Requests for inspection of records which are routinely available for public inspection.**

(a) Section 0.453 specifies those Commission records which are routinely available for public inspection and the places at which those records may be inspected. Subject to the limitations set out in this section, a person who wants to inspect such records must submit a request to the Reference Information Center. Many records also are available on the Commission's Web site, <http://www.fcc.gov> and the Commission's electronic reading room, <http://www.fcc.gov/general/freedom-information-act-electronic-reading-room>. Commission documents are generally published in the FCC Record, and many of these documents or summaries thereof are also published in the Federal Register.

(b) Arrangements to review records must be made in advance, by telephone or by correspondence, by contacting the Reference Information Center.

(c) The records in question must be reasonably described by the person requesting them to permit their location by staff personnel. The information needed to locate the records will vary, depending on the records requested. Advice concerning the kind of information needed to locate particular records will be furnished in advance upon request. Members of the public will not be given access to the area in which records are kept and will not be permitted to search the files.

(d) If it appears that there will be an appreciable delay in locating or producing the records (as where a large number of documents is the subject of a single request or where an extended search for a document appears to be necessary), the requester may be directed to submit or confirm the request in writing.

(e)

(1) Written requests for records routinely available for public inspection under § 0.453 shall be directed to the Commission's Reference Information Center pursuant to the procedures set forth in § 0.465. Requests shall set out all information known to the person making the request which would be helpful in identifying and locating the document, including the date range of the records sought, if applicable. Upon request by Commission staff, the requester shall provide his or her street address, phone number (if any), and email address (if any). Written requests shall, in addition, specify the maximum search fee the person making the request is prepared to pay (see § 0.467).

(2) Written requests shall be delivered or mailed directly to the Commission's Reference Information Center (see § 0.465(a)).

(f) When a written request is received by the Reference Information Center, it will be date-stamped.

(g) All requests limited to records listed in § 0.453 will be granted, subject to paragraph (j) of this section.

(h) The records will be produced for inspection at the earliest possible time.

(i) If the requester is provided access to a physical copy, records shall be inspected within 7 days after notice is given that they have been located and are available for inspection. After that period, they will be returned to storage and additional charges may be imposed for again producing them.

(j) In addition to the other requirements of this section, the following provisions apply to the reports filed with the Commission pursuant to 5 CFR parts 2634 and 3902.

(1) Such reports shall not be obtained or used:

(i) For any unlawful purpose;

(ii) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(iii) For determining or establishing the credit rating of any individual; or

(iv) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) Such reports may not be made available to any person nor may any copy thereof be provided to any person except upon a written application by such person stating:

(i) That person's name, occupation and address;

(ii) The name and address of any other person or organization on whose behalf the inspection or copying is requested; and

(iii) That such person is aware of the prohibitions on the obtaining or use of the report. Further, any such application for inspection shall be made available to the public throughout the period during which the report itself is made available to the public.

39. Amend §§ 0.461(d)(1), (e)(1) and (h)(1) to read as follows:

**§ 0.461 Requests for inspection of materials not routinely available for public inspection.**

\* \* \* \* \*

(d)(1) Requests shall be

(i) Filed electronically through the Internet  
at <https://www.foiaonline.gov/foiaonline/action/public/home>; or

\* \* \* \* \*

40. Amend § 0.504 by revising the first sentence of paragraph (d) as follows:

**§ 0.504 Processing requests for declassification.**

\* \* \* \* \*

(d) The Commission's Classification Review Committee, consisting of the Managing Director (Chairperson), the General Counsel or his/her designee, and the Chief, Internal Review and Security Division, shall have authority to act, within 30 days, upon all appeals regarding denials of requests for mandatory declassification of Commission-originated classifications.

\* \* \* \* \*

41. Amend § 0.557 by revising the third sentence of paragraph (b) as follows:

**§ 0.557 Administrative review of an initial decision not to amend a record.**

\* \* \* \* \*

(b) \*\*\*Final administrative review shall be completed not later than 30 days (excluding Saturdays, Sundays and legal public holidays) from the date on which the individual requests such review unless the Chairperson determines that a fair and equitable review cannot be made within the 30 day period. \* \* \*

\* \* \* \* \*

42. Amend § 0.558 to read as follows:

**§ 0.558 Advice and assistance.**

(a) Individuals who have questions regarding the procedures contained in this subpart for gaining access to a particular system of records or for contesting the contents of a record, either administratively or

judicially, should contact the Privacy Analyst at *Privacy@fcc.gov* or at the address indicated in § 0.401(a), Attn: Office of General Counsel.

(b) Individuals who request clarification of the Notice described in § 0.552 or who have questions concerning the characterization of specific systems of records as set forth therein, should contact the Privacy Analyst at *Privacy@fcc.gov* or at the address indicated in § 0.401(a), Attn: Office of the Managing Director.

43. Amend § 0.701 by revising the third sentence of paragraph (a), the third sentence of paragraph (b), the third sentence of paragraph (c), the third sentence of paragraph (d) and the second sentence of paragraph (e) as follows:

**§ 0.701 Intergovernmental Advisory Committee.**

\* \* \* \* \*

(a) \* \* \* At his/her discretion, the Chairperson of the Federal Communications Commission may extend the IAC's term of operations for an additional two years, for which new members will be appointed as set forth in paragraph (b) of this section. \* \* \*

(b) \* \* \* The Chairperson of the Commission will appoint members through an application process initiated by a Public Notice, and will select a Chairperson and a Vice Chairperson to lead the IAC. The Chairperson of the Commission will also appoint members to fill any vacancies and may replace an IAC member, at his or her discretion, using the appointment process. \* \* \*

(c) \* \* \* Members must attend a minimum of fifty percent of the IAC's yearly meetings and may be removed by the Chairperson of the IAC for failure to comply with this requirement.

(d) \* \* \* Members unable to attend an IAC meeting should notify the IAC Chairperson a reasonable time in advance of the meeting and provide the name of the employee designated on their behalf. \* \* \*

(e) \* \* \* The Chairperson of the Commission, or Commissioner designated by the Chairperson for such purpose, will serve as a liaison between the IAC and the Commission and provide general oversight for its activities. \* \* \*

\* \* \* \* \*

**PART 1 — PRACTICE AND PROCEDURE**

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

AUTHORITY: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

45. Amend § 1.57 by revising paragraph (a) as follows:

**§ 1.57 Circulation and voting of petitions for forbearance.**

\* \* \* \* \*

(a) If a petition for forbearance includes novel questions of fact, law or policy which cannot be resolved under outstanding precedents and decisions, the Chairperson will circulate a draft order no later than 28 days prior to the statutory deadline, unless all Commissioners agree to a shorter period.

\* \* \* \* \*

46. Amend § 1.403 by revising the second sentence of the text of this section to read as follows:

**§ 1.403 Notice and availability.**

\* \* \* Petitions for rulemaking are available through the Commission's Reference Information Center at the FCC's main office, and may also be available electronically at <http://www.fcc.gov/>.

\* \* \* \* \*

47. Amend § 1.767 by removing the Note to paragraph (g)(5), adding (g)(5)(iii), and revising paragraph (n)(1) to read as follows:

**§ 1.767 Cable landing licenses.**

\* \* \* \* \*

(g)(5)(iii)

Licensees may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the requirements of this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power is available from the Office of International Affairs' World Wide Web site at: <https://www.fcc.gov/international-affairs>.

\* \* \* \* \*

(n)

(1) With the exception of submarine cable outage reports, and subject to the availability of electronic forms, all applications and notifications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see part 1, subpart Y, and the ICFS homepage at <https://www.fcc.gov/icfs>. See also sections 63.20 and 63.53 of this chapter.

\* \* \* \* \*

48. Amend § 1.768 by revising paragraph (j) to read as follows:

**§ 1.768 Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier.**

\* \* \* \* \*

(j) Subject to the availability of electronic forms, all notifications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

\* \* \* \* \*

49. Amend § 1.1202 to read as follows:

**§ 1.1202 Definitions.**

For the purposes of this subpart, the following definitions apply:

(a) **Presentation.** A communication directed to the merits or outcome of a proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation directed to the merits or outcome of a proceeding. Excluded from this term are communications which are inadvertently or casually made, inquiries concerning compliance with procedural requirements if the procedural matter is not an area of controversy in the proceeding, statements made by decisionmakers that are limited to providing publicly available information about pending proceedings, and inquiries relating solely to the status of a proceeding, including inquiries as to the approximate time that action in a proceeding may be taken. However, a status inquiry which states or implies a view as to the merits or outcome of the proceeding or a preference for a particular party, which states why timing is important to a particular party or indicates a view as to the date by which a proceeding should be resolved, or which otherwise is intended to address the merits or outcome or to influence the timing of a proceeding is a presentation. A communication expressing concern about administrative delay or expressing concern that a proceeding be resolved expeditiously will be treated as a permissible status inquiry so long as no reason is given as to why the proceeding should be expedited other than the need to resolve administrative delay, no view is expressed as to the merits or outcome of the proceeding, and no view is expressed as to a date by which the proceeding should be resolved. A presentation by a party in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay (and responsive presentations by other parties) may be made on an ex parte basis subject to the provisions of § 1.1204(a)(11).

(b) **Ex parte presentation.** Any presentation which:

(1) If written (including electronic submissions transmitted in the form of texts, such as for Internet electronic mail), is not served on the parties to the proceeding; or

(2) If oral, is made without advance notice to the parties and without opportunity for them to be present.

(c) **Decision-making personnel.** Any member, officer, or employee of the Commission, or, in the case of a Joint Board, its members or their staffs, who is or may reasonably be expected to be involved in formulating a decision, rule, or order in a proceeding. Any person who has been made a party to a proceeding or who otherwise has been excluded from the decisional process shall not be treated as a decision-maker with respect to that proceeding. Thus, any person designated as part of a separate trial staff shall not be considered a decision-making person in the designated proceeding. Unseparated Bureau or Office staff shall be considered decision-making personnel with respect to decisions, rules, and orders in which their Bureau or Office participates in enacting, preparing, or reviewing. Commission staff serving as the case manager in a hearing proceeding in which the Commission is the presiding officer shall be considered decision-making personnel with respect to that hearing proceeding.

(d) **Party.** Unless otherwise ordered by the Commission, the following persons are parties:

(1)(i) In a proceeding not designated for hearing, any person who files an application, waiver request, petition, motion, request for a declaratory ruling, or other filing seeking affirmative relief (including a Freedom of Information Act request), and any person (other than an individual viewer or listener filing comments regarding a pending broadcast application or members of Congress or their staffs or branches of the federal government or their staffs) filing a written submission referencing and regarding such pending filing which is served on the filer, or, in the case of an application, any person filing a mutually exclusive application;

(ii) Persons who file mutually exclusive applications for services that the Commission has announced will be subject to competitive bidding or lotteries shall not be deemed parties with respect to each others' applications merely because their applications are mutually exclusive. Therefore, such applicants may make presentations to the Commission about their own applications provided that no one has become a party with respect to their application by other means, e.g., by filing a petition or other opposition against the applicant or an associated waiver request, if the petition or opposition has been served on the applicant.

(iii) Individual listeners or viewers submitting comments regarding a pending broadcast application pursuant to § 1.1204(a)(8) will not become parties simply by service of the comments. The Media Bureau may, in its discretion, make such a commenter a party, if doing so would be conducive to the Commission's consideration of the application or would otherwise be appropriate.

(2) Any person who files a complaint or request to revoke a license or other authorization or for an order to show cause which shows that the complainant has served it on the subject of the complaint or which is a formal complaint under 47 U.S.C. 208 and § 1.721 of this chapter or 47 U.S.C. 255 and either §§ 6.21 or 7.21 of this chapter, and the person who is the subject of such a complaint or request that shows service or is a formal complaint under 47 U.S.C. 208 and § 1.721 of this chapter or 47 U.S.C. 255 and either §§ 6.21 or 7.21 of this chapter;

(3) The subject of an order to show cause, hearing designation order, notice of apparent liability, or similar notice or order, or petition for such notice or order;

(4) In a proceeding designated for hearing, any person who has been given formal party status; and

(5) In an informal rulemaking proceeding conducted under section 553 of the Administrative Procedure Act (other than a proceeding for the allotment of a broadcast channel) or a proceeding before a Joint Board or before the Commission to consider the recommendation of a Joint Board, members of the general public after the issuance of a notice of proposed rulemaking or other order as provided under § 1.1206(a) (1) or (2).

(6) To be deemed a party, a person must make the relevant filing with the Secretary, the relevant Bureau or Office, or the Commission as a whole. Written submissions made only to the Chairperson or individual Commissioners will not confer party status.

(7) The fact that a person is deemed a party for purposes of this subpart does not constitute a determination that such person has satisfied any other legal or procedural requirements, such as the operative requirements for petitions to deny or requirements as to timeliness. Nor does it constitute a determination that such person has any other procedural rights, such as the right to intervene in hearing proceedings. The Commission or the staff may also determine in particular instances that persons who qualify as "parties" under § 1.1202(d) should nevertheless not be deemed parties for purposes of this subpart.

(8) A member of Congress or his or her staff, or other agencies or branches of the federal government or their staffs will not become a party by service of a written submission regarding a pending proceeding that has not been designated for hearing unless the submission affirmatively seeks and warrants grant of party status.

(e) Matter designated for hearing. Any matter that has been designated for hearing before a presiding officer.

50. Amend § 1.1901 by revising paragraph (c) as follows:

**§ 1.1901 Definitions and construction.**

\* \* \* \* \*

(c) The term agency head means the Chairperson of the Federal Communications Commission.

\* \* \* \* \*

51. Amend § 1.4000(h) as follows:

**§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.**

\* \* \* \* \*

(h) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary at the FCC's main office, located at the address indicated in 47 CFR 0.401(a). Copies of the petitions and related pleadings will be available for public inspection through the Reference Information Center.

\* \* \* \* \*

52. Amend § 1.5000 by revising the first two sentences of paragraph (b) to read as follows:

**§ 1.5000 Citizenship and filing requirements under section 310(b) of the Communications Act of 1934, as amended.**

\* \* \* \* \*

(b) Except for petitions involving broadcast stations only, the petition for declaratory ruling required by paragraph (a) of this section shall be filed electronically through the International Communications Filing System (ICFS) or any successor system thereto. For information on filing a petition through ICFS, see part 1, subpart Y and the ICFS homepage at <https://www.fcc.gov/icfs>. \* \* \*

\* \* \* \* \*

53. Amend § 1.5004 by revising the first and third sentences of paragraph (c)(2), and the first and third sentences of paragraph (d)(2) to read as follows:

**§ 1.5004 Routine terms and conditions.**

\* \* \* \* \*

(c) \* \* \*

(2) Where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval pursuant to paragraph (c)(1) of this section, the licensee shall file a letter to the attention of the Chief, Office of International Affairs, within 30 days after the insertion of the new, foreign-organized entity. \* \* \* The

letter must also reference the licensee's foreign ownership ruling(s) by ICFS File No. and FCC Record citation, if available. \* \* \*

\* \* \* \* \*

(d) \* \* \*

(2) Where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval pursuant to paragraph (d)(1) of this section, the licensee shall file a letter to the attention of the Chief, Office of International Affairs, within 30 days after the insertion of the new, foreign-organized entity; or in the case of a broadcast licensee, the licensee shall file a letter to the attention of the Chief, Media Bureau, within 30 days after the insertion of the new, foreign-organized entity. \* \* \* The letter must also reference the licensee's foreign ownership ruling(s) by ICFS File No. and FCC Record citation, if available; or, if a broadcast licensee, the letter must reference the licensee's foreign ownership ruling(s) by CDBS File No., Docket No., call sign(s), facility identification number(s), and FCC Record citation, if available. \* \* \*

\* \* \* \* \*

54. Amend § 1.7001 by revising paragraph (d)(4) to read as follows:

**§ 1.7001 Scope and content of filed reports.**

\* \* \* \* \*

(d) \* \* \*

(4) The Commission shall make all decisions regarding non-disclosure of provider-specific information, except that the Chiefs of the Office of International Affairs, Space Bureau, Wireless Telecommunications Bureau, Wireline Competition Bureau, or Office of Economics and Analytics may release provider-specific information to:

\* \* \* \* \*

55. Amend § 1.7003 by revising the text to read as follows:

**§ 1.7003 Authority to update FCC Form 477.**

The Office of International Affairs, Space Bureau, Wireless Telecommunications Bureau, Wireline Competition Bureau, and Office of Economics and Analytics may update the specific content of data to be submitted on FCC Form 477 as necessary to reflect changes over time in transmission technologies, spectrum usage, Geographical Information Systems (GIS) and other data storage and processing functionalities, and other related matters; and may implement any technical improvements or other clarifications to the filing mechanism and forms.

56. Amend § 1.7010 by revising the text to read as follows:

**§ 1.7010 Authority to update the Digital Opportunity Data Collection.**

The Office of International Affairs, Space Bureau, Wireless Telecommunications Bureau, Wireline Competition Bureau, and Office of Economics and Analytics may update the specific format of data to be submitted pursuant to the Digital Opportunity Data Collection to reflect changes over time in

Geographical Information Systems (GIS) and other data storage and processing functionalities and may implement any technical improvements or other clarifications to the filing mechanism and forms.

57. Amend the heading for Subpart Y to read as follows:

Subpart Y - International Communications Filing System

58. Amend § 1.10000 by revising paragraph (b) to read as follows:

**§ 1.10000 What is the purpose of these rules?**

\* \* \* \* \*

(b) This subpart describes procedures for electronic filing of International and Satellite Services applications using the International Communications Filing System.

\* \* \* \* \*

59. Amend § 1.10001 by revising the text to read as follows:

**§ 1.10001 Definitions.**

All other applications. We consider all other applications officially filed once you file the application in the International Communications Filing System (ICFS) and applicable filing fees are received and approved by the FCC, unless the application is determined to be fee-exempt. We determine your official filing date based on one of the following situations:

(1) You file your Satellite Space Station Application or your Application for Earth Stations to Access a Non-U.S. Satellite Not Currently Authorized to provide the Proposed Service in the Proposed Frequencies in the United States in ICFS.

Your official filing date is the date and time (to the millisecond) you file your application and receive a confirmation of filing and submission ID.

(2) You file all other applications in ICFS and then do one of the following:

Your official filing date is:

(i) Pay by online Automatic Clearing House (ACH) payment, online Visa, MasterCard, American Express, or Discover credit card payment, or wire transfer payment denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission (through ICFS)

The date your online payment is approved. (Note: You will receive a remittance ID and an authorization number if your transaction is successful).

(ii) Determine your application type is fee-exempt or your application qualifies for exemption to charges as provided in this part

The date you file in ICFS and receive a confirmation of filing and submission ID.

Application. A request for an earth or space station radio station license, an international cable landing license, or an international service authorization, or a request to amend a pending application or to modify

or renew licenses or authorizations. The term also includes the other requests that may be filed in ICFS such as transfers of control and assignments of license applications, earth station registrations, and foreign carrier affiliation notifications.

**Authorizations.** Generally, a written document or oral statement issued by us giving authority to operate or provide service.

**International Communications Filing System-** The International Communications Filing System (ICFS) is a database, application filing system, and processing system for all International and Satellite services. ICFS supports electronic filing of many applications and related documents in the Space Bureau and Office of International Affairs, and provides public access to this information.

**International Services.** All international services authorized under parts 1, 63 and 64 of this chapter.

**Official Filing Date.**

Satellite Space Station Applications (other than DBS and DARS) and Applications for Earth Stations to Access a Non-U.S. Satellite Not Currently Authorized to Provide the Proposed Service in the Proposed Frequencies in the United States. We consider a Satellite Space Station application (other than DBS and DARS) and an Application for an Earth Station to Access a Non-U.S. Satellite Not Currently Authorized to Provide the Proposed Service in the Proposed Frequencies in the United States officially filed the moment you file them through ICFS. The system tracks the date and time of filing (to the millisecond). For purposes of the queue discussed in § 25.158 of this chapter, we will base the order of the applications in the queue on the date and time the applications are filed, rather than the “Official Filing Date” as defined here.

**Satellite Services.** All satellite services authorized under part 25 of this chapter.

**Submission ID.** The Submission ID is the confirmation number you receive from ICFS once you have successfully filed your application. It is also the number we use to match your filing to your payment.

**Us.** In this subpart, “us” refers to the Commission.

**We.** In this subpart, “we” refers to the Commission.

**You.** In this subpart, “you” refers to applicants, licensees, your representatives, or other entities authorized to provide services.

\* \* \* \* \*

60. Amend § 1.10005 by revising the heading and text to read as follows:

**§ 1.10005 What is ICFS?**

(a) The International Communications Filing System (ICFS) is a database, application filing system, and processing system for all International and Satellite Services. ICFS supports electronic filing of many applications and related documents in the Space Bureau and Office of International Affairs, and provides public access to this information.

(b) We maintain applications, notifications, correspondence, and other materials filed electronically with the Space Bureau and Office of International Affairs in IICFS.

61. Amend § 1.10006 by revising the text to read as follows:

**§ 1.10006 Is electronic filing mandatory?**

Electronic filing is mandatory for all applications for international and satellite services for which an International Communications Filing System (ICFS) form is available. Applications for which an electronic form is not available must be filed through the Electronic Comment Filing System (ECFS) in PDF format until new forms are introduced. See §§ 63.20 and 63.53 of this chapter. As each new ICFS form becomes available for electronic filing, the Commission will issue a public notice announcing the availability of the new form and the effective date of mandatory filing for this particular type of filing. As each new form becomes effective, manual filings will not be accepted by the Commission and the filings will be returned to the applicant without processing. Mandatory electronic filing requirements for applications for international and satellite services are set forth in this part and parts 25, 63, and 64 of this chapter. A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 and the ICFS homepage at <http://licensing.fcc.gov/icfs>.

62. Amend § 1.10007 by revising paragraph (a) to read as follows:

**§ 1.10007 What applications can I file electronically?**

\* \* \* \* \*

(a) For a complete list of applications or notifications that must be filed electronically, log in to the ICFS website at <http://licensing.fcc.gov/icfs>.

\* \* \* \* \*

63. Amend § 1.10008 by revising the heading to read as follows:

**§ 1.10008 What are ICFS file numbers?**

64. Amend § 1.10009 by revising paragraph (a)(2), paragraph (a)(3)(v), paragraph (a)(4), paragraph (b), paragraph (b)(1), paragraph (b)(2), paragraph (b)(4), paragraph (b)(5), paragraph (c), paragraph (c)(2)(i), paragraph (d), paragraph (e)(1)(iii), paragraph (e)(2)(i), paragraph (e)(2)(ii), paragraph (e)(3)(i), paragraph (e)(4), and paragraph (e)(5) to read as follows:

**§ 1.10009 What are the steps for electronic filing?**

(a) \* \* \*

(2) In order to process your electronic application, you must have an FRN. You may obtain an FRN either directly from the Commission Registration System (CORES) at <https://www.fcc.gov/licensing-databases/online-filing>, or through ICFS as part of your filing process. If you need to know more about who needs an FRN, visit CORES at <https://www.fcc.gov/licensing-databases/online-filing>.

(3) \* \* \*

(v) Payer, you are required to have and use an FRN when filing applications and/or paying fees through ICFS.

(4) We use your FRN to give you secured access to ICFS and to pre-fill the application you file.

(b) Step 2: Register with ICFS.

(1) If you are already registered with ICFS, go to Step 3.

(2) In order to complete and file your electronic application, you must register in ICFS, located at <https://www.fcc.gov/icfs>.

\* \* \* \* \*

(4) ICFS will issue you an account number as part of the registration process. You will create your own password.

(5) If you forget your password, send an e-mail to the ICFS helpline at [icfsinfo@fcc.gov](mailto:icfsinfo@fcc.gov) or contact the helpline at (202) 418-2222 for assistance.

(c) Step 3: Log into ICFS, select the application you want to file, provide the required FRN(s) and password(s) and fill out your application. You must completely fill out forms and provide all requested information as provided in parts 1, 25, 63 and 64 of this chapter.

(1) \* \* \*

(2) \* \* \*

(i) The referenced information is filed in ICFS.

\* \* \* \* \*

(d) Step 4: File your application. If you file your application successfully through ICFS, a confirmation screen will appear showing you the date and time of your filing and your submission ID. Print this verification for your records as proof of online filing.

(e) \* \* \*

(1) \* \* \*

(iii) You can run a draft electronic submission of payment online form through ICFS, in association with a filed application, and the system will automatically enter your required fee on the form.

(2)

(i) A complete FCC electronic submission of payment online form must accompany all fee payments. You must provide the FRN for both the applicant and the payer. You also must include your submission ID number on the electronic submission of payment online form in the box labeled "FCC Code 2." In addition, for applications for transfer of control or assignment of license, call signs involved in the transaction must be entered into the "FCC Code 1" box on the FCC electronic submission of payment online form. (This may require the use of multiple rows on the electronic submission of payment online form for a single application where more than one call sign is involved.)

(ii) You can generate a pre-filled FCC electronic submission of payment online form from ICFS using your IB submission ID. For specific instructions on using ICFS to generate your FCC electronic submission of payment online form, go to the ICFS website (<http://licensing.fcc.gov/icfs>) and click on the

“Getting Started” button.

(3) You have 3 payment options:

(i) Pay by credit card (through ICFS);

\* \* \*

(4) You must electronically submit payment o within fourteen (14) calendar days of the date that you file your application in ICFS. If not, we will dismiss your application.

(5) For more information on fee payments, refer to Payment Instructions found on the ICFS internet site at <http://licensing.fcc.gov/icfs>, under the Using ICFS link.

\* \* \* \* \*

65. Amend § 1.10010 by revising the text to read as follows:

**§ 1.10010 Do I need to send paper copies with my electronic applications?**

When you file electronically through ICFS, the electronic record is the official record. You do not need to submit paper copies of your application.

66. Amend § 1.10011 by revising paragraph (a) to read as follows:

**§ 1.10011 Who may sign applications?**

\* \* \* \* \*

(a) The Commission only accepts electronic applications. An electronic application is “signed” when there is an electronic signature. An electronic signature is the typed name of the person “signing” the application, which is then electronically transmitted via ICFS..

\* \* \* \* \*

67. Amend § 1.10012 by revising the heading and text to read as follows:

**§ 1.10012 When can I file on ICFS?**

ICFS is available 24 hours a day, seven (7) days a week for filing.

68. Amend § 1.10013 by revising the text to read as follows:

**§ 1.10013 How do I check the status of my application after I file it?**

You can check the status of your application through the “Search Tools” on the ICFS homepage. The ICFS homepage is located at <https://www.fcc.gov/icfs>.

69. Amend § 1.10014 by revising paragraph (a), the second sentence of paragraph (e), the second sentence of paragraph (g), the first sentence of paragraph (h), and the chart following paragraph (h) to read as follows:

**§ 1.10014 What happens after officially filing my application?**

(a) We give you an ICFS file number.

\* \* \* \* \*

(e) \* \* \* Grants, denials and any other necessary actions are noted in the ICFS database. \* \* \*

\* \* \* \* \*

(g) \* \* \* In all cases, the action dates are available online through the ICFS system.

(h) \* \* \* Not all applications handled through ICFS and granted by the Commission result in the issuance of a paper license or authorization. \* \* \*

\* \* \* \* \*

(Chart, under “International Telecommunications – Section 214,” “Type of license/authorization listed”):

1. Action Taken Public Notice serves as the authorization document. This notice is issued weekly and is available online both at ICFS (<https://www.fcc.gov/icfs>) and the Electronic Document Management System (EDOCS) (<https://www.fcc.gov/edocs>).

(Chart, under “Streamlined (New, Transfer of Control, Assignment),” “Type of license/authorization listed”): 1. Action Taken Public Notice serves as the authorization document. This notice is issued weekly and is available online both at ICFS, which can be found at <https://www.fcc.gov/icfs>, and the Electronic Document Management System (EDOCS), which can be found at <https://www.fcc.gov/edocs>.

\* \* \* \* \*

70. Amend § 1.10016 by revising paragraph (a) to read as follows:

**§ 1.10016 How do I apply for special temporary authority?**

(a) Requests for Special Temporary Authority (STA) may be filed via ICFS for most services. We encourage you to file STA applications through ICFS as it will ensure faster receipt of your request.

\* \* \* \* \*

71. Amend § 1.10017 by revising the text to read as follows:

**§ 1.10017 How can I submit additional information?**

In response to an official request for information from the Space Bureau and Office of International Affairs, you can submit additional information electronically directly to the requestor, or by mail to the Office of the Secretary, Attention: Space Bureau, or Office of International Affairs, as appropriate.

\* \* \* \* \*

72. Amend § 1.10018 by revising paragraph (b) to read as follows:

**§ 1.10018 May I amend my application?**

\* \* \* \* \*

(b) If an electronic version of an amendment application is available in ICFS, you may file your amendment electronically through ICFS.

\* \* \* \* \*

73. Amend 47 C.F.R. Pt. 1, App. A to Part 1 – A Plan of Cooperative Procedure in Matters and Cases Under the Provisions of Section 410 of the Communications Act of 1934 by revising the procedure governing joint hearings, second paragraph of paragraph (d) and paragraph (e) and by revising the tenure of cooperators, paragraph (d) and by revising the text of construction hereof in certain respects expressly provided as follows:

**APPENDIX A TO PART 1—A PLAN OF COOPERATIVE PROCEDURE IN MATTERS AND CASES UNDER THE PROVISIONS OF SECTION 410 OF THE COMMUNICATIONS ACT OF 1934.**

\* \* \* \* \*

(d) \* \* \* The president of the association shall have the authority to accept or to decline said invitation for the association, and to determine the number of commissioners who shall be named on the cooperating committee, provided that his action shall be concurred in by the chairperson of the association's executive committee. In the event of any failure of the president of the association and chairperson of its executive committee to agree, the second vice president of the association (or the chairperson of its committee on cooperation between State and Federal commissions, if there shall be no second vice president) shall be consulted, and the majority opinion of the three shall prevail. Consultations and expressions of opinion may be by mail or telegraph.

(e) If any proceeding, involving more than eight States, is pending before the Federal Commission, in which cooperation has not been invited by that Commission, which the association's president and the first and second vice presidents, or any two of them, consider should be made a cooperating proceeding, they may instruct the general solicitor to suggest to the Federal Commission that the proceeding be made a cooperative proceeding; and any State commission considering that said proceeding should be made cooperative may request the president of the association or the chairperson of its executive committee to make such suggestion after consideration with the executive officers above named. \* \* \*

\* \* \* \* \*

(d) Should a vacancy occur upon any cooperating committee, in a proceeding involving more than eight States, by reason of the death of any cooperating commissioner, or of his ceasing to be a State commissioner, or of other inability to serve, it shall be the duty of the president of the association to fill the vacancy by appointment, if, after communication with the chairperson of the cooperating committee, it be deemed necessary to fill such vacancy.

\* \* \* \* \*

\* \* \* With respect to any such State or States, all negotiations herein specified to be carried on between the Federal Commission and any officer of such association shall be conducted by the Federal Commission directly with the chairperson of the commission of such State or States.

\* \* \* \* \*

**PART 19 - EMPLOYEE RESPONSIBILITIES AND CONDUCT**

74. The authority citation for Part 19 continues to read as follows:

AUTHORITY: 5 U.S.C. 7301; 47 U.S.C. 154 (b), (i), (j), and 303(r), unless otherwise noted.

75. Amend § 19.735–104 by revising paragraphs (a), (b)(2)(i)(B), (b)(2)(ii), (c)(2)(i)(B), (c)(2)(ii) as follows:

**§ 19.735–104 Delegations.**

(a) The Commission has delegated to the Chairperson responsibility for the detection and prevention of acts, short of criminal violations, which could bring discredit upon the Commission and the Federal service.

(b) \* \* \* \* \*

(2)(i) \* \* \*

(B) In the case of Heads of Offices and Bureaus, to the Chairperson; and

(C) \* \* \*

(ii) An official (other than the Chairperson or another Commissioner) to whom a request for approval under 18 U.S.C. 205(e) is submitted shall forward it to the Designated Agency Ethics Official with the official's recommendation as to whether the request should be granted.

\* \* \*

(c) \* \* \* \* \*

\* \* \*

(2)(i) \* \* \* \* \*

(B) In the case of Heads of Offices and Bureaus, to the Chairperson; and

(C) \* \* \*

(ii) An official (other than the Chairperson or another Commissioner) to whom a waiver request is submitted shall forward it to the Designated Agency Ethics Official with the official's recommendation as to whether the waiver should be granted.

\* \* \* \* \*

76. Amend § 19.735–107 by revising paragraph (b), the fifth sentence of paragraph (c), the second sentence of paragraph (d), (d)(3)(i), the first sentence of paragraph (d)(3)(iii), (d)(3)(iv), and (d)(3)(v)A as follows:

**§ 19.735–107 Disciplinary and other remedial action.**

\* \* \* \* \*

(b) The Chairperson will designate an officer or employee of the Commission who will promptly investigate all incidents or situations in which it appears that employees may have engaged in improper conduct. Such investigation will be initiated in all cases where complaints are brought to the attention of the Chairperson, including: Adverse comment appearing in publications; complaints from members of Congress, private citizens, organizations, other government employees or agencies; and formal complaints referred to the Chairperson by the Designated Agency Ethics Official.

(c) \* \* \* Should the Inspector General choose to conduct the investigation, he will promptly notify the Chairperson. \* \* \*

(d) \* \* \* When, after consideration of the employee's explanation, the Chairperson decides that remedial action is required, he or she shall take remedial action. Remedial action may include, but is not limited to:

\* \* \* \* \*

(3) \* \* \*

(i) When investigation reveals that the charges are groundless, the person designated by the Chairperson to assist in administration of the program may give a letter of clearance to the employee concerned, and the case will not be recorded in his or her Official Personnel Folder;

\* \* \*

(iii) If the case administrator considers the problem to be of sufficient importance, he or she may call it to the attention of the Chairperson, who in turn may notify the employee of the seriousness of his or her act and warn him of the consequences of a repetition. \* \* \*

(iv) The Chairperson may, when in his or her opinion circumstances warrant, establish a special review board to investigate the facts in a case and to make a full report thereon, including recommended action; or

(v)(A) If the Chairperson decides that formal disciplinary action should be taken, he or she may prepare for Commission consideration a statement of facts and recommend one of the following:

\* \* \* \* \*

77. Amend § 19.735–203 by revising paragraphs (a) and (b) as follows:

**§ 19.735–203 Nonpublic information.**

(a) Except as authorized in writing by the Chairperson pursuant to paragraph (b) of this section, or otherwise as authorized by the Commission or its rules, nonpublic information shall not be disclosed, directly or indirectly, to any person outside the Commission. Such information includes, but is not limited to, the following:

\* \* \*

(b) An employee engaged in outside teaching, lecturing, or writing shall not use nonpublic information obtained as a result of his or her government employment in connection with such teaching, lecturing, or writing except when the Chairperson gives written authorization for the use of that nonpublic information on the basis that its use is in the public interest.

\* \* \* \* \*

## **PART 20 - COMMERCIAL MOBILE SERVICES**

78. The authority citation for Part 20 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152(a), 154(i), 155, 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, and 615c, unless otherwise noted.

79. Amend § 20.19 by revising paragraph (l) to read as follows:

### **§ 20.19 Hearing aid-compatible mobile handsets.**

\* \* \* \* \*

(l) Incorporation by reference. The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection through the Federal Communications Commission (FCC), 45 L Street NE, Reference Information Center, Room 1.150, Washington, DC 20554, (202) 418-0270, and is available from the source indicated in this paragraph (l). It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov) or go to [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

\* \* \* \* \*

## **PART 25 – SATELLITE COMMUNICATIONS**

80. The authority citation for Part 25 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

81. Amend § 25.108 by revising paragraph (a) to read as follows:

### **§ 25.108 Incorporation by reference.**

\* \* \* \* \*

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection through the Federal Communications Commission's Reference Information Center, and is available from the sources listed in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov) or go to [www.archives.gov/federal-register/ccfr/ibr-locations.html](http://www.archives.gov/federal-register/ccfr/ibr-locations.html).

\* \* \* \* \*

82. Amend § 25.110 by revising paragraphs (a) and (d) to read as follows:

**§ 25.110 Filing of applications, fees, and number of copies.**

\* \* \* \* \*

(a) Applications may be filed by going online at <https://www.fcc.gov/icfs> and submitting the application through the International Communications Filing System (ICFS).

\* \* \* \* \*

(d) Copies. Applications must be filed electronically though ICFS. The Commission will not accept any paper version of any application.

\* \* \* \* \*

83. Amend § 25.111 by revising the second sentence of paragraph (d) to read as follows:

**§ 25.111 Additional information, ITU filings, and ITU cost recovery.**

\* \* \* \* \*

(d) \* \* \* Applicants and licensees must file the declaration electronically in the application file in the International Communications Filing System (ICFS). \* \* \*

\* \* \* \* \*

84. Amend § 25.113 by revising the fifth sentence of paragraph (b) to read as follows:

**§ 25.113 Station construction, deployment approval, and operation of spare satellites.**

\* \* \* \* \*

(b) \* \* \* This notification must be filed electronically in the appropriate file in the International Communications Filing System database. \* \* \*

\* \* \* \* \*

85. Amend § 25.115 by revising the last sentence of paragraph (b) to read as follows:

**§ 25.115 Applications for earth station authorizations.**

\* \* \* \* \*

(b) \* \* \* Such applications must be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

\* \* \* \* \*

86. Amend § 25.116 by revising the first sentence of paragraph (e) to read as follows:

**§ 25.116 Amendments to applications.**

\* \* \* \* \*

(e) Any amendment to an application shall be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter. \* \* \*

\* \* \* \* \*

87. Amend § 25.117 by revising paragraph (b) to read as follows:

**§ 25.117 Modification of station license.**

\* \* \* \* \*

(b) Both earth station and space station modification applications must be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

\* \* \* \* \*

88. Amend § 25.118 by revising the second sentence of paragraph (a), the second sentence of paragraph (e), and the first sentence of paragraph (f) to read as follows:

**§ 25.118 Modifications not requiring prior authorization.**

\* \* \* \* \*

(a) \* \* \* The notification must be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

\* \* \* \* \*

(e) \* \* \* The notification must be filed electronically on FCC Form 312 through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter:

\* \* \* \* \*

(f) A licensee may reposition NGSO space stations within an authorized orbital plane without prior Commission approval, provided the licensee notifies the Commission of the repositioning 10 days in advance by electronic filing on Form 312 in the International Communications Filing System. \* \* \*

\* \* \* \* \*

89. Amend § 25.119 by revising the second sentence of paragraph (c) and the second sentence of paragraph (d) to read as follows:

**§ 25.119 Assignment or transfer of control of station authorization.**

\* \* \* \* \*

(c) \* \* \* You must file these forms electronically through ICFS.

(d) \* \* \* You must file these forms electronically through ICFS. \* \* \*

\* \* \* \* \*

90. Amend § 25.136 by revising the last sentence of paragraph (h) to read as follows:

**§ 25.136 Earth Stations in the 24.75-25.25 GHz, 27.5-28.35 GHz, 37.5-40 GHz, 47.2-48.2, GHz and 50.4-51.4 GHz bands.**

\* \* \* \* \*

(h) \* \* \* A re-coordination notice must be filed in ICFS before commencement of earth station operations.

\* \* \* \* \*

91. Amend § 25.137 by revising the first sentence of paragraph (b) to read as follows:

**§ 25.137 Requests for U.S. market access through non-U.S.-licensed space stations.**

\* \* \* \* \*

(b) Any request pursuant to paragraph (a) of this section must be filed electronically through the International Communications Filing System and must include an exhibit providing legal and technical information for the non-U.S.-licensed space station of the kind that § 25.114 or § 25.122 or § 25.123 would require in a license application for that space station, including but not limited to, information required to complete Schedule S. \* \* \*

\* \* \* \* \*

92. Amend § 25.138 by revising paragraph (b) and paragraph (c)(2) to read as follows:

**§ 25.138 Earth Stations in the 3.7-4.2 GHz band.**

\* \* \* \* \*

(b) Applications for new earth station licenses or registrations within CONUS in the 4.0-4.2 GHz portion of the band will not be accepted until the transition is completed and upon announcement by the Space Bureau via Public Notice that applications may be filed.

(c) \* \* \*

(2) Were licensed or registered (or had a pending application for license or registration) in the ICFS database on November 7, 2018; and

\* \* \* \* \*

93. Amend § 25.154 by revising paragraphs (a)(3), (c), (d), and the second sentence of paragraph (e) to read as follows:

**§ 25.154 Opposition to applications and other pleadings.**

\* \* \* \* \*

(a) \* \* \*

(3) Filed in accordance with the pleading limitations, periods and other applicable provisions of §§ 1.41 through 1.52 of this chapter, except that such petitions must be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter;

\* \* \* \* \*

(c) Except for opposition to petitions to deny an application filed pursuant to § 25.220, oppositions to petitions to deny an application or responses to comments and informal objections regarding an application may be filed within 10 days after the petition, comment, or objection is filed and must be in accordance with other applicable provisions of §§ 1.41 through 1.52 of this chapter, except that such oppositions must be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

(d) Reply comments by a party that filed a petition to deny may be filed in response to pleadings filed pursuant to paragraph (c) or (e) of this section within 5 days after expiration of the time for filing oppositions unless the Commission extends the filing deadline and must be in accordance with other applicable provisions of §§ 1.41 through 1.52 of this chapter, except that such reply comments must be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

(e) \* \* \* This statement and any conjoined opposition must be in accordance with the provisions of §§ 1.41 through 1.52 of this chapter applicable to oppositions to petitions to deny, except that such reply comments must be filed electronically through the International Communications Filing System (ICFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

\* \* \* \* \*

94. Amend § 25.171 by revising paragraph (c) to read as follows:

**§ 25.171 Space station point of contact reporting requirements.**

\* \* \* \* \*

(c) Electronic filing. Filings under paragraphs (a) or (b) of this section must be made electronically in the Commission's International Communications Filing System (ICFS) in the "Other Filings" tab of the station's current authorization file.

\* \* \* \* \*

95. Amend § 25.172 by revising the first sentence of paragraph (b) to read as follows:

**§ 25.172 Requirements for reporting space station control arrangements.**

\* \* \* \* \*

(b) The information required by paragraph (a) of this section must be filed electronically in the Commission's International Communications Filing System (ICFS), in the "Other Filings" tab of the

space station's current authorization file. \* \* \*

\* \* \* \* \*

96. Amend § 25.228 by revising the second sentence of paragraph (h)(5), the second through seventh sentences of paragraph (j)(1), the third and fourth sentences of paragraph (j)(3), and the first four sentences of paragraph (j)(4) to read as follows:

**§ 25.228 Operating and coordination requirements for earth stations in motion (ESIMs).**

\* \* \* \* \*

(h) \* \* \*

(5) \* \* \* The coordination method and the interference criteria objective will be determined by the frequency coordinator. The details of the coordination must be maintained and available at the frequency coordinator, and must be filed with the Commission electronically via the International Communications Filing System (<http://licensing.fcc.gov/icfs/>) to be placed on public notice. \* \* \*

\* \* \* \* \*

(j) \* \* \*

(1) \* \* \* Licensees must notify the Space Bureau once they have completed coordination. Upon receipt of such notification from a licensee, the Space Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party has opposed the operations. When NTIA seeks to provide similar protection to future TDRSS sites that have been coordinated through the IRAC Frequency Assignment Subcommittee process, NTIA will notify the Commission's Space Bureau that the site is nearing operational status. Upon public notice from the Space Bureau, all Ku-band ESIM licensees must cease operations in the 14.0-14.2 GHz band within 125 km (for ESVs and VMESs) or within radio line of sight (for ESAAs) of the new TDRSS site until the licensees complete coordination with NTIA/IRAC for the new TDRSS facility. Licensees must notify the Space Bureau once they have completed coordination for the new TDRSS site. Upon receipt of such notification from a licensee, the Space Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party has opposed the operations. \* \* \*

(3) \* \* \* Licensees must notify the Space Bureau once they have completed coordination. Upon receipt of the coordination agreement from a licensee, the Space Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party has opposed the operations. \* \* \*

(4) When NTIA seeks to provide similar protection to future RAS sites that have been coordinated through the IRAC Frequency Assignment Subcommittee process, NTIA will notify the Commission's Space Bureau that the site is nearing operational status. Upon public notice from the Space Bureau, all Ku-band ESIMs licensees must cease operations in the 14.47-14.5 GHz band within the relevant geographic zone (160 kms for single-dish radio observatories and Very Large Array antenna systems and 50 kms for Very Long Baseline Array antenna systems for ESVs and VMESs, radio line of sight for ESAAs) of the new RAS site until the licensees complete coordination for the new RAS facility. Licensees must notify the Space Bureau once they have completed coordination for the new RAS site and must submit the coordination agreement to the Commission. Upon receipt of such notification from a licensee, the Space Bureau will issue a public notice stating that the licensee may commence operations within the coordination zone in 30 days if no party opposed the operations. \* \* \*

\* \* \* \* \*

97. Amend § 25.254 by revising the third sentence of paragraph (c) to read as follows:

**§ 25.254 Special requirements for ancillary terrestrial components operating in the 1610–1626.5 MHz/2483.5–2500 MHz bands.**

\* \* \* \* \*

(c) \* \* \* Copies of this standard can be inspected through the Federal Communications Commission’s Reference Information Center, Tel: (202) 418–0270, or at the National Archives and Records Administration (NARA). \* \* \*

\* \* \* \* \*

98. Amend § 25.263 by revising the fourth sentence of paragraph (e) to read as follows:

**§ 25.263 Information sharing requirements for SDARS terrestrial repeater operators.**

\* \* \* \* \*

(e) \* \* \* If the licensees are unable to do so, the Space Bureau, in consultation with the Office of Engineering and Technology and the Wireless Telecommunications Bureau, will consider the actions taken by the parties to mitigate the risk of and remedy any alleged interference. \* \* \*

\* \* \* \* \*

99. Amend § 25.271 by revising the second sentence of paragraph (f) to read as follows:

**§ 25.271 Control of transmitting stations.**

\* \* \* \* \*

(f) \* \* \* The updated information must be filed electronically in the “Other Filings” tab of the station’s current authorization file in the International Communications Filing System.

\* \* \* \* \*

100. Amend § 25.301 by revising the third sentence of the text to read as follows:

**§ 25.301 Satellite Emergency Notification Devices (SENDS).**

\* \* \* \* \*

\* \* \* The document is available for inspection through the Federal Communications Commission’s Reference Information Center, Tel: (202) 418-0270. \* \* \*

\* \* \* \* \*

**PART 27 — MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES**

101. The authority citation for part 27 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

102. Amend § 27.6 by revising paragraph (c)(3) to read as follows:

**§ 27.6 Service areas.**

\* \* \* \* \*

(c) \* \* \*

(3) Service areas for Block D in the 716–722 MHz band are based on Economic Area Groupings (EAGs) as defined by the Federal Communications Commission. See 62 FR 15978 (April 3, 1997) extended with the Gulf of Mexico. See also paragraphs (a)(1) and (a)(2) of this section and 62 FR 9636 (March 3, 1997), in which the Commission created an additional four economic area-like areas for a total of 176. Maps of the EAGs and the Federal Register Notice that established the 172 Economic Areas (EAs) are available for public inspection through the Federal Communications Commission’s Reference Information Center. These maps and data are also available on the FCC Web site at <http://www.fcc.gov/oet/info/maps/areas/>.

\* \* \* \* \*

103. Amend § 27.72 by revising the fifth sentence of paragraph (e) to read as follows:

**§ 27.72 Information sharing requirements.**

\* \* \* \* \*

(e) \* \* \* If the licensees are unable to do so, the Wireless Telecommunications Bureau, in consultation with the Office of Engineering and Technology and the Space Bureau, will consider the actions taken by the parties to mitigate the risk of and remedy any alleged interference. \* \* \*

\* \* \* \* \*

104. Amend § 27.73 by revising the sixth sentence of paragraph (a) to read as follows:

**§ 27.73 WCS, AMT, and Goldstone coordination requirements.**

\* \* \* \* \*

(a) \* \* \* Copies are available for public inspection through the Federal Communications Commission’s Reference Information Center, Tel: (202) 418–0270, or at the National Archives and Records Administration (NARA). \* \* \*

\* \* \* \* \*

**PART 43 – REPORTS OF COMMUNICATION COMMON CARRIERS, PROVIDERS OF INTERNATIONAL SERVICES AND CERTAIN AFFILIATES**

105. The authority citation for Part 43 continues to read as follows:

AUTHORITY: 47 U.S.C. 35-39, 154, 211, 219, 220; sec. 402(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 129.

106. Amend § 43.82 by revising the first sentence of paragraph (c) to read as follows:

**§ 43.82 Circuit capacity reports.**

\* \* \* \* \*

(c) \* \* \* Authority is delegated to the Chief of the Office of International Affairs to prepare instructions and reporting requirements for the filing of these reports prepared and published as a Filing Manual. \* \* \*

\* \* \* \* \*

**PART 52 - NUMBERING**

107. The authority citation for Part 52 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 155, 201-205, 207-209, 218, 225-227, 251-252, 271, 303, 332, unless otherwise noted.

108. Amend § 52.26 by revising paragraph (c) to read as follows:

**§ 52.26 NANC Recommendations on Local Number Portability Administration.**

\* \* \* \* \*

(c) The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the Working Group Report and its appendices are available for public inspection through the Federal Communications Commission's Reference Information Center, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>. The Working Group Report and its appendices are also available at <https://docs.fcc.gov/public/attachments/DOC-341177A1.pdf>.

\* \* \* \* \*

**PART 54 – UNIVERSAL SERVICE**

109. The authority citation for Part 54 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601-1609, and 1752, unless otherwise noted.

110. Amend § 54.704 by revising the second sentence of paragraph (b)(1), and paragraphs (b)(2) and (b)(3) as follows:

**§ 54.704 The Administrator's Chief Executive Officer.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* The Board of Directors shall submit the name of its nominee for Chief Executive Officer, along with relevant professional and biographical information about the nominee, to the Chairperson of the Federal Communications Commission.

(2) The Chairperson of the Federal Communications Commission shall review the nomination submitted by the Administrator's Board of Directors. Subject to the Chairperson's approval, the nominee shall be appointed as the Administrator's Chief Executive Officer.

(3) If the Board of Directors does not reach consensus on a nominee or fails to submit a nomination for the Chief Executive Officer, the Chairperson of the Federal Communications Commission shall select a Chief Executive Officer.

\* \* \* \* \*

#### **PART 63 – REPORTS OF COMMUNICATION COMMON CARRIERS, PROVIDERS OF INTERNATIONAL SERVICES AND CERTAIN AFFILIATES**

111. The authority citation for Part 63 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, 571, unless otherwise noted.

112. Amend § 63.10 by revising paragraph (d) and (e) to read as follows:

#### **§ 63.10 Regulatory classification of U.S. international carriers.**

\* \* \* \* \*

(d) A carrier classified as dominant under this section shall file electronically each report required by paragraphs (c)(2), (c)(3), and (c)(4) of this section in the International Communications Filing System (ICFS). Each report filed in ICFS shall clearly identify the report as responsive to the appropriate paragraph of § 63.10(c).

(e) Except as otherwise ordered by the Commission, a carrier that is classified as dominant under this section for the provision of facilities-based services on a particular route and that is affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide switched facilities-based service on that route unless the current rates the affiliate charges U.S. international carriers to terminate traffic are at or below the Commission's relevant benchmark adopted in IB Docket No. 96–261. See FCC 97–280 (rel. Aug. 18, 1997) (available at the FCC's Reference Information Center located at the address indicated in § 0.401(a) and on the FCC's World Wide Web Site at <http://www.fcc.gov>).

\* \* \* \* \*

113. Amend § 63.11 by revising paragraph (j) to read as follows:

#### **§ 63.11 Notification by and prior approval for U.S. international carriers that are or propose to become affiliated with a foreign carrier.**

\* \* \* \* \*

(j) Subject to the availability of electronic forms, notifications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see part 1, §§ 1.10000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

\* \* \* \* \*

114. Amend § 63.14 by removing the Note to paragraph (a) and revising paragraph (a) to read as follows:

**§ 63.14 Prohibition on agreeing to accept special concessions.**

(a) Any carrier authorized to provide international communications service under this part shall be prohibited, except as provided in paragraph (c) of this section, from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and from agreeing to accept special concessions in the future. Carriers may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the prohibitions contained in this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power is available from the Office of International Affairs' World Wide Web site at <https://www.fcc.gov/international-affairs>.

\* \* \* \* \*

115. Amend § 63.17 by revising the note to paragraph (b) to read as follows:

**§ 63.17 Special provisions for U.S. international common carriers.**

\* \* \* \* \*

Note to paragraph (b):

The Commission's list of international routes exempted from the international settlements policy is available on the Office of International Affairs World Wide Web site at <https://www.fcc.gov/international-affairs>.

\* \* \* \* \*

116. Amend § 63.18 by revising paragraph (r) to read as follows:

**§ 63.18 Contents of applications for international common carriers.**

\* \* \* \* \*

(r) Subject to the availability of electronic forms, all applications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

\* \* \* \* \*

117. Amend § 63.19 by revising the second sentence of paragraph (a)(2) and paragraph (d) to read as follows:

**§ 63.19 Special procedures for discontinuances of international services.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \* The filing may be made by letter (sending an original and five copies to the Office of the Secretary, and a copy to the Chief, Office of International Affairs) and shall identify the geographic areas of the planned discontinuance, reduction or impairment and the authorization(s) pursuant to which the carrier provides service.

\* \* \* \* \*

(d) Subject to the availability of electronic forms, all filings described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

\* \* \* \* \*

118. Amend § 63.20 by revising the first three sentences of paragraph (a) to read as follows:

**§ 63.20 Electronic filing, copies required; fees; and filing periods for international service providers.**

(a) Subject to the availability of electronic forms, all filings described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. \* \* \*

\* \* \* \* \*

119. Amend § 63.21 by revising paragraph (j) to read as follows:

**§ 63.21 Conditions applicable to all international Section 214 authorizations.**

\* \* \* \* \*

(j) Subject to the availability of electronic forms, all notifications and other filings described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

\* \* \* \* \*

120. Amend § 63.22 by revising the last sentence of paragraph (b), paragraph (g), the last sentence of paragraph (h), removing Notes 1 and 2 to § 63.22, and adding a new paragraph (j) to read as follows:

**§ 63.22 Facilities-based international common carriers.**

\* \* \* \* \*

(b) \* \* \* The exclusion list is available from the Office of International Affairs' World Wide Web site at <https://www.fcc.gov/international-affairs>.

\* \* \* \* \*

(g) A carrier or other party may request Commission intervention on any U.S. international route for which competitive problems are alleged by filing with the Office of International Affairs a petition, pursuant to this section, demonstrating anticompetitive behavior by foreign carriers that is harmful to U.S. customers. The Commission may also act on its own motion. Carriers and other parties filing complaints must support their petitions with evidence, including an affidavit and relevant commercial agreements. The Office of International Affairs will review complaints on a case-by-case basis and take appropriate action on delegated authority pursuant to § 0.261 of this chapter. Interested parties will have 10 days from the date of issuance of a public notice of the petition to file comments or oppositions to such petitions and subsequently 7 days for replies. In the event significant, immediate harm to the public interest is likely to occur that cannot be addressed through post facto remedies, the Office of International Affairs may impose temporary requirements on carriers authorized pursuant to § 63.18 of this chapter without prejudice to its findings on such petitions.

(h) \* \* \* The list shall be filed electronically in accordance with instructions from the Office of International Affairs.

\* \* \* \* \*

(j) For purposes of this section, *foreign carrier* is defined in § 63.09 of this chapter. For purposes of this section, a *foreign carrier* shall be considered to possess market power if it appears on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points. This list is available on the Office of International Affairs' World Wide Web site at <https://www.fcc.gov/international-affairs>. The Commission will include on the list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points any foreign carrier that has 50 percent or more market share in the international transport or local access markets of a foreign point. A party that seeks to remove such a carrier from the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier lacks 50 percent market share in the international transport and local access markets on the foreign end of the route or that it nevertheless lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. A party that seeks to add a carrier to the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier has 50 percent or more market share in the international transport or local access markets on the foreign end of the route or that it nevertheless has sufficient market power to affect competition adversely in the U.S. market.

121. Amend § 63.23 by revising the note to paragraph (d) to read as follows:

**§ 63.23 Resale-based international common carriers.**

\* \* \* \* \*

Note to paragraph (d):

The Commission's list of international routes exempted from the international settlements policy, and the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points are available on the Office of International Affairs' World Wide Web site at <https://www.fcc.gov/international-affairs>.

\* \* \* \* \*

122. Amend § 63.24 by revising paragraph (h) to read as follows:

**§ 63.24 Assignments and transfers of control.**

\* \* \* \* \*

(h) Subject to the availability of electronic forms, all applications and notifications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see part 1, §§ 1.10000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

\* \* \* \* \*

123. Amend § 63.25 by revising paragraph (e) to read as follows:

**§ 63.25 Special provisions relating to temporary or emergency service by international carriers.**

\* \* \* \* \*

(e) Subject to the availability of electronic forms, all applications and notifications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

\* \* \* \* \*

124. Amend § 63.51 by revising the second sentence of paragraph (c) to read as follows:

**§ 63.51 Additional information.**

\* \* \* \* \*

(c) \* \* \* For information on filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>, and § 63.20.

\* \* \* \* \*

125. Amend § 63.53 by revising the second through fourth sentences of paragraph (a) to read as follows:

**§ 63.53 Form.**

(a) \* \* \* Subject to the availability of electronic forms, all applications and other filings described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.10000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. \* \* \*

\* \* \* \* \*

126. Amend § 63.701 by revising paragraph (j) to read as follows:

**§ 63.701 Contents of application.**

\* \* \* \* \*

(j) Subject to the availability of electronic forms, all filings described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

\* \* \* \* \*

**PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

127. The authority citation for Part 64 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091

128. Amend § 64.604 by revising paragraph (c)(5)(iii)(C)(2)(ii) as follows.

**§ 64.604 Mandatory minimum standards.**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(iii) \* \* \*

(C) \* \* \*

(2) \* \* \*

(i) \* \* \*

(ii) The names and business addresses of the provider's chief executive officer, chairperson, and president, or, in the event that a provider does not have such executives, three similarly senior-level officials of the

provider;

\* \* \* \* \*

129. Amend § 64.621 by revising paragraph (c) to read as follows:

**§ 64.621 Interoperability and portability.**

\* \* \* \* \*

(c) Incorporation by reference. The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection through the Federal Communications Commission's Reference Information Center, Tel: (202) 418-0270, and is available from the sources indicated in this paragraph (c). It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.htm](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm).

\* \* \* \* \*

130. Amend § 64.1195 by revising paragraph (b)(2) as follows:

**§ 64.1195 Registration requirement.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(2) The names and business addresses of the carrier's chief executive officer, chairperson, and president, or, in the event that a company does not have such executives, three similarly senior-level officials of the company;

\* \* \* \* \*

**PART 67 - REAL-TIME TEXT**

131. The authority citation for Part 67 continues to read as follows:

AUTHORITY: 47 U.S.C. 151-154, 225, 251, 255, 301, 303, 307, 309, 316, 615c, 616, 617, unless otherwise noted.

132. Amend § 67.3 by revising paragraph (a) to read as follows:

**§ 67.3 Incorporation by reference.**

\* \* \* \* \*

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection through the Federal Communications Commission's Reference Information Center, Tel: (202)

418-0270, and is available from the sources listed in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

\* \* \* \* \*

## **PART 68 - CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK**

The authority citation for Part 68 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 610, unless otherwise noted.

133. Amend § 68.160 by revising paragraph (d)(1) to read as follows:

### **§ 68.160 Designation of Telecommunication Certification Bodies (TCBs).**

\* \* \* \* \*

(d) Incorporation by reference.

(1) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval and notice of any change in these materials will be published in the Federal Register. All approved material is available for inspection through the Federal Communications Commission's Reference Information Center, Tel: (202) 418-0270, and is available from the sources in this paragraph (d). It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

\* \* \* \* \*

134. Amend § 68.162 by revising paragraph (i) to read as follows:

### **§ 68.162 Requirements for Telecommunication Certification Bodies.**

\* \* \* \* \*

(i) Incorporation by reference. The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the Federal Register. All approved material is available for inspection through the Federal Communications Commission's Reference Information Center, Tel: (202) 418-0270, and is available from the sources in this paragraph (i). It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

\* \* \* \* \*

135. Amend § 68.317 by revising paragraph (i) to read as follows:

**§ 68.317 Hearing aid compatibility volume control: technical standards.**

\* \* \* \* \*

(i) The standards required in this section are incorporated by reference with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection through the Federal Communications Commission's Reference Information Center, Tel: (202) 418-0270, and is available from the source indicated in this paragraph (i). They are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

\* \* \* \* \*

**PART 73 – RADIO BROADCAST SERVICES**

136. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

137. Amend § 73.622 by revising the fifth sentence of paragraph (c)(1) to read as follows:

**§ 73.622 Digital television table of allotments.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \* Copies of the Memorandum Opinion and Order are available for public inspection through the Federal Communications Commission's Reference Information Center. This document is also available on the FCC Home Page at <http://www.fcc.gov>. \* \* \*

\* \* \* \* \*

138. Amend § 73.683 by revising the fifth sentence of paragraph (d) to read as follows:

**§ 73.683 Field strength contours and presumptive determination of field strength at individual locations.**

\* \* \* \* \*

(d) \* \* \* OET Bulletin No. 72 and OET Bulletin No. 73 are available through the Federal Communications Commission's Reference Information Center, or at the FCC's Office of Engineering and Technology (OET) website: <http://www.fcc.gov/oet/info/documents/bulletins/>.

\* \* \* \* \*

139. Amend § 73.702 by revising the second sentence of paragraph (a), the second sentence of paragraph (b), the first and third sentences of paragraph (c), by revising paragraph (d) and removing the Note to paragraph (d), by revising the first sentence of paragraph (e), the third sentence of

paragraph (h)(2), by revising paragraph (i) and removing the Notes 1, 2, 3, and 4 to paragraph (i) and, by revising paragraph (j), and the third sentence of paragraph (m) to read as follows:

**§ 73.702 Assignment and use of frequencies.**

\* \* \* \* \*

(a) \* \* \* Six months prior to the start of each season, licensees and permittees shall by informal written request, submitted to the Commission electronically in the International Communications Filing System (ICFS), indicate for the season the frequency or frequencies desired for transmission to each zone or area of reception specified in the license or permit, the specific hours during which it desires to transmit to such zones or areas on each frequency, and the power, antenna gain, and antenna bearing it desires to use. \* \* \*

(b) \* \* \* After receipt of such notification, the licensee or permittee shall, in writing, not later than two months before the start of the season in question, electronically inform the Commission in ICFS either that it plans to operate in accordance with the authorization which the Commission intends to issue, or that it plans to operate in another manner. \* \* \*

(c) If after submitting the request required under the provisions of paragraph (a) of this section, but before receipt of the Commission's notification referred to in paragraph (b) of this section, the licensee or permittee submits a request for changes of its original request electronically in ICFS such requests will be accepted for consideration only if accompanied by statements showing good cause therefor and will be honored only if conditions permit. \* \* \* If after the licensee or permittee submits the information required under the provisions of paragraph (b) of this section, but before the start of the season in question, the licensee or permittee submits electronically in ICFS a request for changes in its manner of operation for the season in question, the request will be accepted for consideration only if accompanied by statements showing good cause therefor and will be honored only if conditions permit. \* \* \*

\* \* \* \* \*

(d) The provisions of paragraphs (a), (b), and (c) of the section shall apply to licensees, to permittees operating under program test authority, and to permittees who anticipate applying for and receiving program test authority for operation during the specified season. Permittees who during the process of construction wish to engage in equipment tests shall by informal written request, submitted to the Commission electronically in ICFS not less than 30 days before they desire to begin such testing, indicate the frequencies they desire to use for testing and the hours they desire to use those frequencies. No equipment testing shall occur until the Commission has authorized frequencies and hours for such testing. Such authorizations shall be only for one season, and if it is desired to continue equipment testing in a following season, new requests for frequencies and hours must be submitted at least 30 days before it is desired to begin testing in the following season.

(e) Within 14 days after the end of each season, a report shall be filed with the Commission electronically in ICFS by each licensee or permittee operating under program test authority who has been issued a seasonal schedule for that season. \* \* \*

\* \* \* \* \*

(h) \* \* \*

(2) \* \* \* Stations desiring to operate in this band must submit sufficient antenna performance information electronically in ICFS to ensure compliance with these restrictions. \* \* \*

\* \* \* \* \*

(i) \* \* \*

- (1) Requests for frequency-hours shall be accompanied by all pertinent technical data with reference to the frequencies and hours of operation, including calculated field strengths delivered to the zones or areas of reception.
- (2) It is preferable that calculated field strengths delivered to zones or areas of reception be equal to or greater than those required by I.F.R.B. Technical Standards, Series A (and supplements thereto), in order for the I.F.R.B. to afford the notified assignment protection from interference. Nevertheless, calculated field strengths less than those required by the I.F.R.B. standards for protection will be acceptable to the Commission. However, licensees should note that if such lesser field strengths are submitted no protection from interference will be provided by the I.F.R.B. if their technical examination of such notifications show incompatibilities with other notified assignments fully complying with I.F.R.B. technical standards.
- (3) Licensees are permitted to engage in multiple operation as defined in § 73.701(d).
- (4) Seasonal requests for frequency-hours will be only for transmissions to zones or areas of reception specified in the basic instrument of authorization. Changes in such zones or areas will be made only on separate application for modification of such instruments made electronically in ICFS.

(j) Not more than one frequency will be assigned for use at any one time for any one program transmission except in instances where a program is intended for reception in more than one zone or area of reception and the intended zones or areas cannot be served by a single frequency: Provided, however, That on a showing of good cause made electronically in ICFS a licensee may be authorized to operate on more than one frequency at any one time to transmit any one program to a single zone or area of reception.

\* \* \* \* \*

(m) \* \* \* If for a forthcoming season the total of the requests for daily frequency-hours of all licensees exceeds 100, all licensees will be notified and each licensee that makes an adequate showing electronically in ICFS that good cause exists for not having its requested number of frequency-hours reduced and that operation of its station without such reduction would be consistent with the public interest may be authorized the frequency-hours requested.

\* \* \* \* \*

140. Amend § 73.713 by revising the second sentence of paragraph (a) to read as follows:

**§ 73.713 Program tests.**

\* \* \* \* \*

(a) \* \* \* Such request shall be electronically filed with the FCC in the International Communications Filing System (ICFS) at least 10 days prior to the date on which it is desired to begin such operation. \* \* \*

\* \* \* \* \*

141. Amend § 73.732 to read as follows:

**§ 73.732 Authorizations.**

Authorizations issued to international broadcasting stations by the Commission will be authorizations to permit the construction or use of a particular transmitting equipment combination and related antenna systems for international broadcasting, and to permit broadcasting to zones or areas of reception specified on the instrument of authorization. The authorizations will not specify the frequencies to be used or the hours of use. Requests for frequencies and hours of use will be made by electronic filing in the International Communications Filing System (ICFS) as provided in § 73.702. Seasonal schedules, when issued pursuant to the provisions of § 73.702, will become attachments to and part of the instrument of authorization, replacing any such prior attachments.

142. Amend § 73.759 by revising the third sentence of paragraph (c)(2) to read as follows:

**§ 73.759 Auxiliary transmitters.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \* Where such operation is required for periods in excess of 5 days, request therefor shall be made electronically in the International Communications Filing System (ICFS) in accordance with § 73.3542 of this chapter.)

\* \* \* \* \*

143. Amend § 73.761, by revising the introductory text and paragraph (g) to read as follows:

**§ 73.761 Modification of transmission systems.**

Specific authority, upon electronic filing of a formal application (FCC Form 309) therefor in the International Communications Filing System (ICFS), is required for any of the following changes:

\* \* \* \* \*

(g) Other changes, not specified above in this section, may be made at any time without the authority of the Commission: Provided, That the Commission shall be immediately notified electronically in ICFS thereof and such changes shall be shown in the next application for renewal of license.

\* \* \* \* \*

144. Amend § 73.762 by revising the second sentence of paragraph (b) and the first two sentences of paragraph (c) to read as follows:

**§ 73.762 Time of operation.**

\* \* \* \* \*

(b) \* \* \* However, in such cases, the FCC shall be immediately notified by electronic filing in the International Communications Filing System (ICFS) of such limitation or discontinuance of operation and shall subsequently be notified by electronic filing in ICFS when the station resumes regular operation.

(c) In the event that causes beyond a licensee's control make it impossible to adhere to the seasonal schedule or to continue operating for a temporary period of more than 10 days, the station may not limit or discontinue operation until it requests and receives specific authority to do so from the FCC by electronic filing in ICFS. When the station subsequently resumes regular operation after such limited operation or discontinuance of operation, it shall notify the FCC in Washington, DC by electronic filing in ICFS. \* \* \*

\* \* \* \* \*

145. Amend § 73.1212 by revising the second and fifth sentences of paragraph (k) to read as follows:

**§ 73.1212 Sponsorship identification; list retention; related requirements.**

\* \* \* \* \*

(k) \* \* \* A section 325(c) permit holder shall place copies of the disclosures required along with the name of the program to which the disclosures were appended in the International Communications public filing System (ICFS) under the relevant ICFS section 325(c) permit file. \* \* \* Where an aural announcement was made, its contents must be reduced to writing and placed in the ICFS in the same manner.

\* \* \* \* \*

146. Amend § 73.1650 by revising the text following paragraph (b)(6) to read as follows:

**§ 73.1650 International agreements.**

\* \* \* \* \*

The documents listed in this paragraph are available for inspection in the office of the Chief, Office of International Affairs, FCC, Washington, DC.

\* \* \* \* \*

147. Amend § 73.3533 by revising the second sentence of paragraph (a)(2) to read as follows:

**§ 73.3533 Application for construction permit or modification of construction permit.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \* For International Broadcast Stations, applications shall be filed electronically in the International Communications Filing System (ICFS).

\* \* \* \* \*

148. Amend § 73.3539 by revising the last sentence of paragraph (a) to read as follows:

**§ 73.3539 Application for renewal of license.**

\* \* \* \* \*

(a) \* \* \* For International Broadcast Stations, applications shall be filed electronically in the International Communications Filing System (ICFS).

\* \* \* \* \*

149. Amend § 73.3540 by revising the second sentence of paragraph (c) and the second sentence of paragraph (d) to read as follows:

**§ 73.3540 Application for voluntary assignment or transfer of control.**

\* \* \* \* \*

(c) \* \* \* For International Broadcast Stations, the application shall be filed electronically in the International Communications Filing System (ICFS).

(d) \* \* \* For International Broadcast Stations, applications shall be filed electronically in ICFS.

\* \* \* \* \*

150. Amend § 73.3545 by revising the final sentence to read as follows:

**§ 73.3545 Application for permit to deliver programs to foreign stations.**

\* \* \* \* \*

\* \* \* All applications must be filed electronically in the International Communications Filing System (ICFS).

\* \* \* \* \*

151. Amend § 73.3580 by revising paragraph (b)(2)(i) to read as follows:

**§ 73.3580 Local public notice of filing of broadcast applications.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) Content. The online notice shall be in the following form:

On [DATE], [APPLICANT NAME], [PERMITTEE/LICENSEE] of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE OR, FOR INTERNATIONAL BROADCAST STATIONS, COMMUNITY WHERE THE STATION'S TRANSMISSION FACILITIES ARE LOCATED], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LINK IN APPLICANT'S ONLINE PUBLIC INSPECTION FILE (OPIF) OR, IF THE STATION HAS NO OPIF, TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM; IF AN INTERNATIONAL BROADCAST STATION, TO APPLICATION LOCATION IN THE OFFICE OF INTERNATIONAL AFFAIRS' ICFS

DATABASE].

An applicant for a proposed but not authorized station shall post the following online notice:

On [DATE], [APPLICANT NAME], applicant for [A NEW (STATION TYPE) STATION ON] [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE OR, FOR INTERNATIONAL BROADCAST STATIONS, COMMUNITY WHERE THE STATION'S TRANSMISSION FACILITIES ARE TO BE LOCATED], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM; IF AN INTERNATIONAL BROADCAST STATION, TO APPLICATION LOCATION IN THE OFFICE OF INTERNATIONAL AFFAIRS' ICFS DATABASE].

An applicant for an authorization under section 325(c) of the Communications Act (Studio Delivering Programs to a Foreign Station) shall post the following online notice:

On [DATE], [APPLICANT NAME] filed an application with the Federal Communications Commission for a permit to deliver programs to foreign station [FOREIGN STATION CALL SIGN], [FOREIGN STATION FREQUENCY], [FOREIGN STATION COMMUNITY OF LICENSE]. [DESCRIPTION OF THE PROGRAMS TO BE TRANSMITTED OVER THE STATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE OFFICE OF INTERNATIONAL AFFAIRS' ICFS DATABASE].

\* \* \* \* \*

#### **PART 74 - EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

152. The authority citation for Part 74 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336 and 554, unless otherwise noted.

153. Amend § 74.703 by revising the fourth and fifth sentences of paragraph (a) to read as follows:

#### **§ 74.703 Interference.**

(a) \* \* \* Copies of OET Bulletin No. 69 are available for inspection through the Federal Communications Commission's Reference Information Center. This document is also available on the FCC Home Page at <http://www.fcc.gov/oet/info/documents/bulletins/#69>.

\* \* \* \* \*

154. Amend § 74.861 by revising the fourth sentence of paragraph (i) to read as follows:

#### **§ 74.861 Technical requirements.**

\* \* \* \* \*

(i) \* \* \* All approved material is available for inspection through the Federal Communications Commission's Reference Information Center, Tel: (202) 418-0270, and is available from the sources in

this paragraph (i). \* \* \*

\* \* \* \* \*

#### **PART 76 - MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

155. The authority citation for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573, unless otherwise noted.

156. Amend § 76.602 by revising the fourth sentence of paragraph (a) to read as follows:

##### **§ 76.602 Incorporation by reference.**

\* \* \* \* \*

(a) \* \* \* The materials are available for inspection through the Federal Communications Commission's Reference Information Center, and at the National Archives and Records Administration (NARA). \* \* \*

\* \* \* \* \*

#### **PART 79 - ACCESSIBILITY OF VIDEO PROGRAMMING**

157. The authority citation for Part 79 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617, unless otherwise noted.

158. Amend § 79.100 by revising the fourth sentence of paragraph (a) to read as follows:

##### **§ 79.100 Incorporation by reference.**

\* \* \* \* \*

(a) \* \* \* The materials are available for purchase at the corresponding addresses as noted, and are available for inspection through the Federal Communications Commission's Reference Information Center, Tel: (202) 418-0270, and at the National Archives and Records Administration (NARA). \* \* \*

\* \* \* \* \*

#### **PART 80 - STATIONS IN THE MARITIME SERVICES**

The authority citation for Part 80 continues to read as follows:

AUTHORITY: 47 U.S.C. 151-155, 301-609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377, unless otherwise noted.

159. Amend § 80.7 by revising the fifth sentence of paragraph (a) to read as follows:

##### **§ 80.7 Incorporation by reference.**

\* \* \* \* \*

(a) \* \* \* Also it is available for inspection through the Federal Communications Commission's Reference Information Center, and is available from the sources listed in this section.

\* \* \* \* \*

160. Amend § 80.371 by revising the fifth sentence of paragraph (c)(1)(ii) to read as follows:

**§ 80.371 Public correspondence frequencies.**

\* \* \* \* \*

(c)(1)(ii) \* \* \* Maps of the EAs and VPCSA's are available for public inspection through the Federal Communications Commission's Reference Information Center, Tel: 1-888-225-5322. \* \* \*

\* \* \* \* \*

161. Amend § 80.385 by revising the sixth sentence of paragraph (a)(3) to read as follows:

§ 80.385 Frequencies for automated systems.

\* \* \* \* \*

(a)(3) \* \* \* Maps of the EAs and AMTSA's are available for public inspection through the Federal Communications Commission's Reference Information Center. These maps and data are also available on the FCC Web site at [www.fcc.gov/oet/info/maps/areas/](http://www.fcc.gov/oet/info/maps/areas/). \* \* \*

\* \* \* \* \*

**PART 87 - AVIATION SERVICES**

162. The authority citation for Part 87 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

163. Amend § 87.199 by revising the fourth sentence of paragraph (a) to read as follows:

**§ 87.199 Special requirements for 406.0-406.1 MHz ELTs.**

\* \* \* \* \*

(a) \* \* \* Copies of this standard are available for inspection through the Federal Communications Commission's Reference Information Center, Tel: (202) 418-0270, or at the National Archives and Records Administration (NARA). \* \* \*

\* \* \* \* \*

164. Amend § 87.285 by revising the sixth sentence to read as follows:

**§ 87.285 Scope of service.**

\* \* \* \* \*

\* \* \* Copies are available for inspection through the Federal Communications Commission's Reference Information Center, or at the National Archives and Records Administration (NARA). \* \* \*

\* \* \* \* \*

## **PART 90 — PRIVATE LAND MOBILE RADIO SERVICES**

165. The authority citation for part 90 continues to read as follows:

AUTHORITY: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401-1473

166. Amend § 90.7 by revising paragraph (2) of the definition for “900 MHz SMR MTA-based license or MTA license,” the definition for “EA-based or EA license,” and the definition for “MTA-based license or MTA license” to read as follows:

### **§ 90.7 Definitions.**

\* \* \* \* \*

900 MHz SMR MTA-based license or MTA license

(1) \* \* \*

(2) The MTA map is available for public inspection through the Federal Communications Commission's Reference Information Center.

\* \* \* \* \*

EA-based or EA license. A license authorizing the right to use a specified block of SMR or LMS spectrum within one of the 175 Economic Areas (EAs) as defined by the Department of Commerce Bureau of Economic Analysis. The EA Listings and the EA Map are available for public inspection through the Federal Communications Commission's Reference Information Center.

\* \* \* \* \*

MTA-based license or MTA license. A license authorizing the right to use a specified block of SMR spectrum within one of the 51 Major Trading Areas (“MTAs”), as embodied in Rand McNally's Trading Area System MTA Diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide (the “MTA Map”). The MTA Listings, the MTA Map and the Rand McNally/AMTA license agreement are available for public inspection through the Reference Information Center.

\* \* \* \* \*

167. Amend § 90.20 by revising the fifth sentence of paragraph (g)(1) to read as follows:

### **§ 90.20 Public Safety Pool.**

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \* Maps of the EAs and VPCSAAs are available for inspection through the Federal Communications Commission's Reference Information Center. These maps and data are also available on the FCC website at <http://www.fcc.gov/oet/info/maps/areas/>. \* \* \*

\* \* \* \* \*

168. Amend § 90.265 by revising the fourth sentence of paragraph (f) to read as follows:

**§ 90.265 Assignment and use of frequencies in the bands allocated for Federal use.**

\* \* \* \* \*

(f) \* \* \* All approved material is available for inspection through the Federal Communications Commission's Reference Information Center, Tel: (202) 418-0270, and is available from the sources in this paragraph (f). \* \* \*

\* \* \* \* \*

169. Amend § 90.548 by revising the second sentence of paragraph (b) to read as follows:

**§ 90.548 Interoperability Technical Standards.**

\* \* \* \* \*

(b) \* \* \* Material incorporated by reference is available for inspection through the Federal Communications Commission's Reference Information Center, Tel: (202) 418-0270, or at the National Archives and Records Administration (NARA). \* \* \*

\* \* \* \* \*

170. Amend § 90.553 by revising the fifth sentence of paragraph (b) and the second sentence of paragraph (c) to read as follows:

**§ 90.553 Encryption.**

\* \* \* \* \*

(b) \* \* \* Material incorporated by reference is available for inspection through the Federal Communications Commission's Reference Information Center, Tel: (202) 418-0270, or at the National Archives and Records Administration (NARA). \* \* \*

(c) \* \* \* Copies of the standards listed in this section that are incorporated by reference are available for inspection through the Federal Communications Commission's Reference Information Center, Tel: (202) 418-0270, or at the National Archives and Records Administration (NARA). \* \* \*

\* \* \* \* \*

**PART 95 - PERSONAL RADIO SERVICES**

171. The authority citation for Part 95 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 307, unless otherwise noted.

172. Amend § 95.2989 by revising the second sentence of paragraph (b) to read as follows:

**§ 95.2989 PLB and MSLD technical standards.**

\* \* \* \* \*

(b) \* \* \* All approved material is available for inspection through the Federal Communications Commission's Reference Information Center, Tel: (202) 418-0270, and is available from the sources indicated in this paragraph (b). \* \* \*

\* \* \* \* \*

**PART 97 – AMATEUR RADIO SERVICE**

173. The authority citation for Part 97 continues to read as follows:

AUTHORITY: 47 U.S.C. 151-155, 301-609, unless otherwise noted.

174. Amend § 97.207 by revising paragraphs (g) and (g)(1)(viii) to read as follows:

**§ 97.207 Space station.**

\* \* \* \* \*

(g) The license grantee of each space station must make the following written notifications to the Space Bureau, FCC, Washington, DC 20554.

(1) \* \* \*

(viii) If any material item described in this notification changes before launch, a replacement pre-space notification shall be filed with the Space Bureau no later than 90 days before integration of the space station into the launch vehicle.

\* \* \* \* \*

**PART 101 – FIXED MICROWAVE SERVICES**

175. The authority citation for Part 101 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303.

176. Amend § 101.21 by revising the final sentence of paragraph (f) to read as follows:

**§ 101.21 Technical content of applications.**

\* \* \* \* \*

(f) \* \* \* (Technical characteristics of the Earth stations on file and coordination contour maps for those Earth stations will be kept on file for public inspection in the offices of the Commission's Space Bureau in Washington, DC.)

\* \* \* \* \*

177. Amend § 101.523 by revising the third sentence of paragraph (a)(4) to read as follows:

**§ 101.523 Service areas.**

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \* Maps of the EAs and the Federal Register Notice that established the 172 Economic Areas (EAs) are available for public inspection through the Federal Communications Commission's Reference Information Center. These maps and data are also available on the FCC Web site at [www.fcc.gov/oet/info/maps/areas/](http://www.fcc.gov/oet/info/maps/areas/).

\* \* \* \* \*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Q Link Wireless LLC
File No.: EB-IHD-21-00032347
NAL/Acct. No.: 202332080002
FRN: 0021593975

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: January 13, 2023

Released: January 17, 2023

By the Commission:

I. INTRODUCTION

1. Congress established the Emergency Broadband Benefit (EBB) Program to provide assistance to American families by allowing eligible low-income households to receive discounts for broadband service and certain connected devices and reimbursing participating providers for providing such discounts. To ensure the integrity and effectiveness of the EBB Program, Congress and the Federal Communications Commission (Commission) imposed several restrictions and requirements on participating providers. Among other things, reimbursement claims for connected devices are limited to the market value for the provided device less a required co-pay. The Commission takes seriously its obligation to prevent waste, fraud, and abuse in the programs it administers. As we endeavor to close the digital divide for low-income Americans through programs like the EBB Program, we are mindful we must ensure against disbursing funds to participating providers that seek to obtain the benefit of these limited resources without abiding by the Commission's rules.

2. In this Notice of Apparent Liability (NAL), we propose a penalty of \$62,000,000 against Q Link Wireless LLC (Q Link or Company) for apparently violating provisions of the 2021 Consolidated Appropriations Act and Commission rules and orders governing the reimbursements it claimed for providing EBB Program customers with internet-connected devices between December 2021 and March 2022. Because of these apparent violations, which involved overclaiming support for hundreds of thousands of computer tablets, Q Link apparently obtained at least \$20,792,800 in improper disbursements from the EBB Program during the period under review. For these reasons, and in light of the scope, duration, and seriousness of Q Link's apparent violations and the need to promote compliance with the rules, we propose the penalty detailed in this Notice of Apparent Liability for Forfeiture and Order.

II. BACKGROUND

A. Legal Framework

3. Established by Congress on December 27, 2020, pursuant to the Consolidated Appropriations Act of 2021 (Act), the \$3.2 billion Emergency Broadband Connectivity Fund (Fund) provided resources for the Commission to establish the EBB Program to provide discounts on broadband internet service and certain internet-connected devices to eligible low-income households, including those experiencing COVID-19-related economic disruptions.1 The Act and the Commission's rules

1 See Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904, 134 Stat. 1182, 2129-63 (2020) (prior to 2021 amendment by Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021)) (codified at (continued...))

implementing the EBB Program authorized reimbursement from the Fund to participating providers who gave such discounts.

4. In the rules governing the EBB Program, the Commission stated that, to receive reimbursement, an officer of the participating provider must certify that “the connected device claimed meets the Commission’s requirements, that the reimbursement claim amount reflects the market value of the device, and that the connected device has been delivered to the household.”<sup>2</sup> The Commission’s stated purpose was to extend the life of the Fund by making the reimbursement claim amount reflect no more than the market value of the device.<sup>3</sup> The Commission further directed participating providers to retain any materials that

document compliance with these requirements, including the device type (*e.g.*, laptop, tablet, mobile hotspot, modem, gateway, router, antenna, receiver, or satellite dish) and device make and model. We find that requiring certifications under penalty of perjury along with the possibility of an audit will help to encourage compliance with EBB Program requirements and reduce the incidence of improper payments.<sup>4</sup>

### B. Factual Background

5. *Q Link Wireless LLC*. Q Link is a limited liability company organized in Delaware and based in Dania Beach, Florida.<sup>5</sup> Q Link is an eligible telecommunications carrier (ETC) that has provided wireless Lifeline service on a resale basis since 2012,<sup>6</sup> operating in 31 states, Puerto Rico, and the U.S. Virgin Islands.<sup>7</sup> As an ETC, Q Link elected to participate in the EBB Program<sup>8</sup> and offered EBB

(Continued from previous page...)

47 U.S.C. § 1752, Benefit for broadband service.), available at <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act). The Act specified that “[a] violation of [section 904] or a regulation promulgated under this section shall be treated as a violation of the Communications Act of 1934 (47 U.S.C. § 151 *et seq.*) or a regulation promulgated under such Act. The Commission shall enforce this section and the regulations promulgated under this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Communications Act of 1934 were incorporated into and made a part of this section.” *Id.* § 904(g), 134 Stat. at 2135; *see* 47 CFR §§ 54.1600-54.1612 (EBB Program rules); *Emergency Broadband Benefit Program*, Report and Order, WC Docket No. 20-445, FCC 21-29, 36 FCC Rcd 4612 (Feb. 26, 2021) (*EBB Program Order*). The temporary EBB Program transitioned into the longer-term ACP on December 31, 2021, with a 60-day transition period. *See Affordable Connectivity Program; Emergency Broadband Benefit Program*, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2, WC Docket No. 20-445, 2022 WL 218969, para. 2 (rel. Jan. 21, 2022) (*ACP Order*); *Emergency Broadband Benefit Program*, WC Docket Nos. 20-445, 21-250, Order, DA 21-1477 (WCB Nov. 26, 2021); *Emergency Broadband Benefit Program; Affordable Connectivity Program*, WC Docket No. 20-445 and 21-450, Order, DA 21-1524 (WCB Dec. 8, 2021).

<sup>2</sup> 47 CFR § 54.1608(e).

<sup>3</sup> *EBB Program Order*, 36 FCC Rcd at 4660, para. 97.

<sup>4</sup> *Id.*

<sup>5</sup> State of Delaware, Div. of Corps., File No. 5029810 (Q Link Wireless LLC formed on August 25, 2011).

<sup>6</sup> Q Link was the subject of an Enforcement Bureau investigation that culminated in a Notice of Apparent Liability proposing a forfeiture of \$100,000 for failing to respond to a Commission order to provide information and documents concerning an alleged flaw in the Q Link mobile app, which may have permitted unauthorized access to consumer proprietary information. *Quadrant Holdings LLC, Q Link Wireless LLC, and Hello Mobile LLC*, Notice of Apparent Liability for Forfeiture, DA 22-825, 2022 WL 3339390 (EB 2022). *See* Press Release, FCC, FCC Proposes Fine Against Q Link for Failing to Respond Inquiries Into Reported Data Breach (Aug. 5, 2022), <https://www.fcc.gov/document/fcc-proposes-q-link-fine-non-response-data-security-inquiry-0>.

<sup>7</sup> Letter from John T. Nakahata, et al., Harris, Wiltshire & Grannis LLP, Counsel for Q Link, to Jeffrey J. Gee, Chief, Investigations & Hearings Div., FCC Enf. Bur. at Responses to Inquiry 7 (dated June 17, 2021) (in File No. EB-IHD-21-00032347) (June 17, 2021 LOI Response); Public Notice, “Wireline Competition Bureau Approves the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless and Tag Mobile,”

(continued...)

Program-supported monthly wireless service to qualified customers that included unlimited smartphone data, talk and text at no charge to the customers.<sup>9</sup> In exchange, Q Link claimed {{ [REDACTED] }}<sup>10</sup> per EBB-eligible household per month from the Fund. Q Link also elected to participate in the connected device portion of the EBB Program.<sup>11</sup> Q Link requested reimbursement for connected devices through the EBB Program up to and including March 2022.<sup>12</sup>

6. Scepter 8 Tablet. For the Company's EBB-eligible connected device, Q Link offered a tablet model known as the Scepter 8. The Scepter 8 tablet does not appear to have been commercially available to retail customers but instead was manufactured by Hot Pepper, Inc.,<sup>13</sup> which apparently provided this device exclusively to Q Link. The Company made claims from the Fund for providing the Scepter 8 to customers until the conclusion of the EBB Program.<sup>14</sup>

7. According to information from the Universal Service Administrative Company (USAC), the Commission's administrator of the EBB Program, Q Link requested a total of {{ [REDACTED] }} reimbursements for connected devices between June 1, 2021 and March 15, 2022.<sup>15</sup> Q Link attributed a market value of {{ [REDACTED] }} to each device in its reimbursement claims and also attributed a co-pay charge

(Continued from previous page...)

WC Docket Nos. 09-197 and 11-42, DA 12-1286, 27 FCC Rcd 9184 (WCB Aug. 8, 2012) (approving Q Link's compliance plan to become a non-facilities-based Lifeline provider).

<sup>8</sup> *EBB Program Order*, 36 FCC Rcd at 4619, para.15.

<sup>9</sup> June 17, 2021 LOI Response at Response to Inquiry 10. Q Link also provides Lifeline-supported Commercial Mobile Radio Service and Commercial Mobile Data Service. *Id.* at Response to Inquiry 7. A service provider seeking to participate in the EBB Program was required to submit an election notice indicating its intention to participate and providing information about its service and connected device offerings. *See EBB Program Order*, 36 FCC Rcd at 4629, para. 39; 47 CFR § 54.1601(c). Q Link submitted its initial election notice on March 11, 2021, and submitted a revised notice on April 22, 2021.

<sup>10</sup> Material set off by double brackets {{ [REDACTED] }} is confidential and is redacted from the public version of this document.

<sup>11</sup> *See* June 17, 2021 LOI Response at Responses to Inquiry 10; QLINK-98-000112-CONFIDENTIAL (Q Link Election Documentation) (in File No. EB-IHD-21-00032347). *See also Emergency Broadband Benefit Service Provider Election Form: Notice Documentation*, "Section B. Connected Devices," Doc. Identified in footer as "4822-3370-4416v.2" (dated Mar. 11, 2021).

<sup>12</sup> On March 16, 2022, the EBB Program rules at issue in this Notice of Apparent Liability ended and were replaced by the rules adopted in the *ACP Order*. *ACP Order* at 122, para. 269 ("To efficiently administer the Affordable Connectivity Program and to implement the requirements we adopt herein, we adopt the Bureau's *December 30<sup>th</sup> Guidance Order*. Accordingly the EBB Program rules shall continue to control, except where otherwise noted in the Bureau's final guidance order, until the rules we adopt today become effective as set forth in the Ordering Clauses below."); *Wireline Competition Bureau Announces Effective Dates of Affordable Connectivity Program Rules and Comment and Reply Comment Deadlines for Related Further Notice*, WC Docket No. 21-450, Public Notice, DA 22-152 at 1 (WCB Feb. 14, 2022).

<sup>13</sup> Application of Hot Pepper, Inc. for Equipment Authorization, 2APD4-AP10 (filed Apr. 19, 2021), <https://fcc.report/FCC-ID/2APD4-AP10/>. Hot Pepper Inc. is the U.S. subsidiary of Shenzhen XiaoLaJiao Technology Co., Ltd. (XLJ), a mobile phone manufacturer based in the People's Republic of China.

<sup>14</sup> Letter from John T. Nakahata, et al., Harris, Wiltshire & Grannis LLP, Counsel for Q Link, to Jeffrey J. Gee, Chief, Investigations & Hearings Div., FCC Enf. Bur. at Response to Inquiry 128 (dated June 6, 2022) (in File No. EB-IHD-21-00032347) (June 6, 2022 LOI Response). According to Q Link, the Company first offered an 8-inch Android tablet model known as a {{ [REDACTED] }} as its EBB connected device offering. *See id.* at Response to Inquiries 10 and 24. Q Link never clarified to the Commission when it replaced the {{ [REDACTED] }} with the Scepter 8 tablet.

<sup>15</sup> *See* Letter from James Lee, Senior Director, Lifeline and Affordable Connectivity Program, USAC, to Keith Morgan, Deputy Bureau Chief, FCC Enf. Bur. (dated Dec. 2, 2022) (summarizing Q Link's connected device claims during the EBB Program) (in File No. EB-IHD-21-00032347) (USAC Summary of Q Link Claims).

of \$10.01 to each device, resulting in an EBB reimbursement claim of {{ }}.<sup>16</sup> This resulted in total claims for {{ }} connected devices at a rate of {{ }} each for a total of {{ }}, which USAC disbursed to Q Link over the course of the EBB Program.<sup>17</sup> According to Q Link, the Company delivered connected devices to {{ }} EBB customers, and it claimed EBB reimbursement for a total of {{ }} connected devices from the beginning of the EBB Program through March 15, 2022.<sup>18</sup> For purposes of the investigation, the Enforcement Bureau (Bureau) focused on Q Link's {{ }} EBB connected device claims from December 2021 through March 2022, which resulted in {{ }} in EBB reimbursements from the Fund to Q Link.<sup>19</sup>

### III. DISCUSSION

8. The EBB Program sought to reduce the monetary burden of broadband internet access service for low-income households during the COVID-19 health emergency. At the EBB Program's end, over nine million American households benefited from subsidies for broadband services and devices,<sup>20</sup> including students accessing virtual classrooms, adults working remotely, and people providing and receiving critical healthcare services.<sup>21</sup> However, while the Act and the Commission's rules made it possible for approved EBB providers to be reimbursed for providing EBB connected devices to eligible households,<sup>22</sup> providers were restricted to device subsidies that reflected the device's "market value."<sup>23</sup>

9. Congress authorized the EBB Program to help increase broadband connectivity to struggling households during the pandemic, not for companies to attempt to capitalize on a crisis by overcharging taxpayers for devices and services.<sup>24</sup> Consistent with the Act's direction to administer the EBB Program for eligible households during the COVID-19 emergency period while guarding against waste, fraud, and abuse of the Fund's resources, the Commission adopted limitations on the amount EBB providers could claim for supplying connected devices and required providers to charge users a co-pay for each connected device.<sup>25</sup> Providers seeking overpayments in violation of the rules undermine the integrity of the EBB Program. We find that, by claiming reimbursements for EBB connected devices at a rate apparently substantially exceeding their market value, Q Link apparently willfully and repeatedly

<sup>16</sup> See Q Link Election Documentation.

<sup>17</sup> See USAC Summary of Q Link Claims. See also June 6, 2022 LOI Response at Responses to Inquiry 127, QLINK-127-000172-CONFIDENTIAL (listing {{ }} reimbursement claims dated July 14, 2021 through April 16, 2022).

<sup>18</sup> See June 6, 2022 LOI Response at Responses to Inquiries 91(k), (l). See also Q Link-127-000172-CONFIDENTIAL (containing {{ }} reimbursement claims made between July 14, 2021 and April 14, 2022).

<sup>19</sup> {{

}}

<sup>20</sup> See USAC, *Emergency Broadband Benefit Program Enrollments and Claims Tracker*, <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/> (last visited Jan. 10, 2023).

<sup>21</sup> See FCC, *About the Emergency Broadband Benefit*, <https://www.fcc.gov/broadbandbenefit> (last visited Jan. 10, 2023).

<sup>22</sup> See 47 CFR §§ 54.1601 (requirements for service providers to participate in EBB Program), 54.1603(b) (establishing EBB Program support amount for connected devices).

<sup>23</sup> See *Consolidated Appropriations Act*, Pub. L. No. 116-260, div. N, tit. IX § 904(b)(5), 134 Stat. at 2132; 47 CFR § 54.1608(e)(8).

<sup>24</sup> The Act required the Commission to adopt audit requirements to ensure provider compliance with the EBB Program's requirements and to prevent waste, fraud, and abuse. See *Consolidated Appropriations Act*, Pub. L. No. 116-260, div. N, tit. IX at § 904(b)(7); see also *Consolidated Appropriations Act*, Pub. L. No. 116-260, div. N, tit. IX § 904(b)(5), 134 Stat. at 2133-34.

<sup>25</sup> *EBB Program Order*, 36 FCC Rcd at 4659, paras. 93-94 (adopting certification requirements for EBB providers).

violated the sections of the Act and the Commission's rules prescribing these requirements applicable to service providers in the EBB Program.<sup>26</sup>

**A. Q Link Was Reimbursed in Excess of the Market Value of Its EBB Connected Devices**

10. In implementing the EBB Program, the Commission tailored its rules to make support available in accordance with the Act's purposes and to safeguard the Fund from fraud, waste, and abuse.<sup>27</sup> For example, to participate in the EBB Program, broadband internet service providers were authorized to obtain support from the program that was "no more than the standard rate for an internet service offering and associated equipment, but not more than \$50.00 per month."<sup>28</sup> As the Commission found, the inclusion of a "standard rate" limitation was intended to prevent providers from artificially increasing prices above the usual market rate for their services for the purpose of claiming the maximum reimbursement amount.<sup>29</sup> Similarly, Congress specified that providers could be reimbursed *up to* \$100.00 for providing a connected device to a customer's household but had to charge the household a co-pay greater than \$10.00 and less than \$50.00 and could receive reimbursement for only a single device per household.<sup>30</sup> Importantly, to ensure the amount of reimbursement was fair, and to extend the Program funds for as long as possible, the Commission required that the claimed reimbursement for an EBB connected device be based on its "market value."<sup>31</sup>

11. As part of Q Link's notification to the Commission of its intent to participate in the EBB Program, on May 11, 2021, the Company claimed its 8-inch tablet had a "retail rate" of {{ }}, the customer co-payment would be \$10.01, and the EBB support amount would therefore be {{ }}.<sup>32</sup> By submitting and certifying claims for reimbursement for connected devices each month from May 2021 through March 2022 at a rate of {{ }} each,<sup>33</sup> Q Link represented under penalty of perjury that each of its connected devices had a market value of {{ }}, comprised of the \$10.01 customer co-payment it certified it charged the household plus the {{ }} reimbursement from the Fund.<sup>34</sup>

<sup>26</sup> *Consolidated Appropriations Act*, Pub. L. No. 116-260, div. N, tit. IX at § 904(b)(5), 134 Stat. at 2132; 47 CFR §§ 54.1603(b), 54.1608(d), (e)(8).

<sup>27</sup> As the Commission observed throughout the EBB rulemaking process, the Emergency Broadband Connectivity Fund has limited funding and we must make every effort to ensure that we maximize the use of these funds to serve as many eligible households as possible. *EBB Program Order*, 36 FCC Rcd at 4659, para. 95.

<sup>28</sup> 47 CFR § 54.1603(a).

<sup>29</sup> See *EBB Program Order*, 36 FCC Rcd at 4646-47, para. 72.

<sup>30</sup> 47 CFR § 54.1603(b).

<sup>31</sup> *EBB Program Order*, 36 FCC Rcd at 4660, para. 97.

<sup>32</sup> See Q Link Election Documentation; Q Link Wireless LLC, *Emergency Broadband Benefit Service Provider Election Form: Notice Documentation*, "Section B. Connected Devices," Doc. Identified in footer as "4822-3370-4416v.2" (dated Mar. 11, 2021). See also June 6, 2022 LOI Response at Response to Inquiry 98 and QLINK-98-000112-CONFIDENTIAL (email from John Heitmann, Counsel for Q Link, to Melissa Holo, USAC (Mar. 19, 2021 at 4:30 pm)).

<sup>33</sup> See Attachment 1, Table of Q Link EBB Device Reimbursement Claims at cols. O and U. Q Link submitted reimbursement claims for devices provided in May 2021 in June 2021 in accordance with an extension the Commission granted to EBB providers. See *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, DA 21-671, 36 FCC Rcd 9434-35, para. 6 (WCB June 8, 2021) (waiving for one month requirement that participating providers shall submit certified reimbursement claims through Lifeline Claims System by the 15<sup>th</sup> of each month).

<sup>34</sup> See June 6, 2022 LOI Response to Inquiry 98. See also *id.* at Response to Inquiry 128 (stating Q Link receives {{ }} for each device, which was comprised of \$10.01 customer co-payment plus {{ }} reimbursement from USAC).

12. In its EBB election submission, the Company provided USAC with information about the connected device it intended to offer to customers, an eight-inch Android tablet initially identified as a {{ [REDACTED] }}.<sup>35</sup> Q Link subsequently identified its connected device as a different device, the Scepter 8 tablet manufactured by Hot Pepper, Inc. with these specifications:<sup>36</sup>

Platform	A100 Quad core
OS	Android 11 Go
Dimension	208.5*124.5*9.2mm
Display	8" Multi touch capacitive screen; 800*1280 IPS
Rear Camera	2.0 MP
Front Facing Camera	0.3 MP
Connectivity	WIFI, IEEE 802.11 b/g/n Bluetooth 4.2
Memory	1GB + 16GB
Ports	Micro USB, USB-A, Support 3.5mm Headphone/Mic combo, Micro-SD
Battery	Built in Li Polymer 3500 mAh
More Info	FM, G-Sensor
Accessories	5V1A Charger

On November 16, 2021, Q Link submitted to USAC information about the Scepter 8 tablet it was offering and repeated its earlier claim that the tablet “price” was {{ [REDACTED] }}.<sup>37</sup> Q Link included in its submission to USAC a table with technical specifications and screen shots from online retailers comparing seven different tablet models Q Link indicated it considered comparable to the Scepter 8.<sup>38</sup> The purportedly comparable devices ranged in retail price from {{ [REDACTED] }} to {{ [REDACTED] }}, according to information provided by Q Link.<sup>39</sup>

<sup>35</sup> See *Q Link Election Documentation* (specifying the tablet had {{ [REDACTED] }}); June 6, 2022 LOI Response at Response to Inquiry 98 and QLINK-98-000112-CONFIDENTIAL; Letter from John T. Nakahata, et al., Harris, Wiltshire & Grannis LLP, Counsel for Q Link, to Jeffrey J. Gee, Chief, Investigations & Hearings Div., FCC Enf. Bur. at Response to Inquiry 24 (June 17, 2021) (in File No. EB-IHD-21-00032347) (June 17, 2021 LOI Response).

<sup>36</sup> See June 6, 2022 LOI Response at Response to Inquiry 98 and QLINK-98-000116-CONFIDENTIAL.

<sup>37</sup> See Letter from John T. Nakahata, et al., Harris, Wiltshire & Grannis LLP, Counsel for Q Link, to Jeffrey J. Gee, Chief, Investigations & Hearings Div., FCC Enf. Bur. at QLINK-98-000116-CONFIDENTIAL (June 6, 2022), Email from Issa Asad, Q Link, Chief Executive Officer, to Zac St. Martin, USAC (Nov. 16, 2021, at 6:36 p.m.) (responding to USAC request for supplemental documentation and justification of device claim amount) (on file in File No. EB-IHD-21-00032347). Q Link’s description matched the chart that was provided in its initial *Election Documentation*, except that the dimensions were stated as “{{ [REDACTED] }}.” The information was provided as part of a program integrity review of Q Link’s participation in the EBB Program initiated in October 2021.

<sup>38</sup> June 6, 2022 LOI Response at Response to Inquiry 98, QLINK-98-000132-CONFIDENTIAL, and QLINK-98-000132-CONFIDENTIAL.

<sup>39</sup> *Id.* Q Link also stated the information it submitted to USAC on March 21, 2022 similarly demonstrated that the market value of its devices exceeded {{ [REDACTED] }}. However, as of April 1, 2022, Q Link said it had not distributed any ACP devices since {{ [REDACTED] }}. See also Letter from John T. Nakahata, et al., Harris, Wiltshire & Grannis LLP, Counsel for Q Link, to Jeffrey J. Gee, Chief, Investigations & Hearings Div., FCC Enf. Bur. at Response to Inquiry 98 and QLINK-98-000158-CONFIDENTIAL (dated June 6, 2022) (table showing {{ [REDACTED] }} tablet models Q Link provided as comparable ACP devices). We do not address Q Link’s compliance with the ACP rules with regard to its connected devices, but we reserve our right to do so in a separate NAL, if appropriate.

13. In June of 2022, Q Link stated in response to the Bureau’s Letter of Inquiry (LOI) that “[o]n or about November 2021, Q Link {[

]} was not reflected in Q Link’s communications with USAC that it produced in the Bureau’s investigation; in fact, it conflicts with the Company’s statement to USAC on November 16, 2021, about the specifications of its connected device.<sup>41</sup> In any event, even {[ ]} in November 2021, for most of the EBB Program’s duration, Q Link provided customers, and claimed reimbursement from the Fund for, tablets that had {[ ]}.

14. *Market Value Analysis.* The term “market value” is a recognized term, both generally and in the broadband internet service industry and applicable regulatory framework. As both the courts and the Commission have long recognized, the term refers to the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.<sup>42</sup> In competitive markets with many sellers and many buyers, the market price will represent market value. The Commission has previously set the baseline for a good faith determination of fair market value by requiring carriers to use methods that are routinely used by the general business community.<sup>43</sup> Where, as here, a product is not sold through retail channels, one cannot look to its retail price. Instead, we look to the retail prices of products that have identical or similar technical specifications.

15. Q Link failed to cooperate with the Bureau’s investigation when it stated that {[

]}.<sup>44</sup> However, Bureau was able to

<sup>40</sup> Letter from John T. Nakahata, et al., Harris, Wiltshire & Grannis LLP, Counsel for Q Link, to Jeffrey J. Gee, Chief, Investigations & Hearings Div., FCC Enf. Bur. at Response to Inquiry 98 (dated June 6, 2022).

<sup>41</sup> See Letter from John T. Nakahata, et al., Harris, Wiltshire & Grannis LLP, Counsel for Q Link, to Jeffrey J. Gee, Chief, Investigations & Hearings Div., FCC Enf. Bur. at QLINK-98-000116-CONFIDENTIAL (June 6, 2022), Email from Issa Asad, Q Link, Chief Executive Officer, to Zac St. Martin, USAC (Nov. 16, 2021, at 6:36 p m.) (asserting {[ ]}) (on file in File No. EB-IHD-21-00032347).

<sup>42</sup> See *United States v. Cartwright*, 411 US 546, 551 (1973) (citing 26 CFR § 20.2031–1(b)). The willing buyer-willing seller test of fair market value is nearly as old as the federal income, estate and gifts taxes themselves. *Id.* See also *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, 11 FCC Rcd 21233, para. 171 (1996); *Puerto Rico Tel. Co.*, 16 FCC Rcd 8878, 8880 para. 4 n.13 (WCB 2001); 12 CFR § 34.42 (with respect to real estate lending, the U.S. Treasury Department defined market value as “the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus”).

<sup>43</sup> For example, when carriers can estimate the market value of transactions using independent valuation methods, carriers should apply such methods to ascertain fair market value. Depending on the type of transaction, examples of methods for determining fair market values for both assets and services include appraisals, catalogs listing similar items, competitive bids, replacement cost of an asset, and net realizable value of an asset. *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, 11 FCC Rcd 17539, 17610 at para 154 (1996).

<sup>44</sup> Letter from John T. Nakahata, et al., Harris, Wiltshire & Grannis LLP, Counsel for Q Link, to Jeffrey J. Gee, Chief, Investigations & Hearings Div., FCC Enf. Bur. at Response to Inquiry 128 (dated June 6, 2022) (Q Link objected “on the basis of undue burden and relevance,” stating it did not “in the ordinary course of its business, maintain cost records segregated and organized on a per-unit basis, and so it does not believe it has responsive information within its possession, custody, or control.”).

obtain information from Q Link's equipment supplier, Hot Pepper, Inc., in response to a subpoena, during the course of its investigation.

16. To determine whether Q Link accurately represented the market value of the Scepter 8 tablet in its EBB device claims as required by section 54.1608(e)(8) of our rules, we must examine whether { } is the market value of the tablet Q Link provided during 2021 until March 2022. Because the Scepter 8 tablet does not appear to have been available at retail and may, in fact, have only been available through Q Link, there is no retail price for the device to reference as a potential market value. Therefore, the market value must be determined by comparing the Scepter 8 tablet's specifications with other widely available devices with similar specifications and characteristics and established retail prices.<sup>45</sup> Accordingly, we conducted an analysis of the market value of the Scepter 8 tablet pursuant to the following, four-part process: (1) identifying device characteristics that are likely related to market value; (2) assessing whether the devices submitted by Q Link as purportedly comparable to the Scepter 8 are, in fact, comparable for purposes of assessing market value; if not, (3) identifying other widely available devices having characteristics similar to various specifications of the Scepter 8; (4) establishing price ranges based on devices that have characteristics similar to those of the Scepter 8; and (5) determining which devices had the most similar technical characteristics, and using those prices to determine a market value.<sup>46</sup>

17. Device specifications typically considered by consumers in selecting a device include: screen size, processor speed and number of cores, memory (RAM), storage (ROM), battery capacity, and camera resolution.<sup>47</sup> Generally, improvements in each of these specifications are associated with a higher retail price for the device, both because consumers are willing to pay more for higher-quality products and because improved specifications are more costly to manufacture.<sup>48</sup> To assess whether the devices submitted by Q Link as purportedly comparable to the Scepter 8 are actually analogous, we compared those specifications. That comparison revealed: (1) all but one of the devices Q Link claimed were comparable had at least double the RAM and ROM,<sup>49</sup> and five of the seven devices had more than triple the RAM; (2) while some of the devices had similar processor speeds as the Scepter 8, four of the devices had eight cores, which is double that of the Scepter 8; (3) all of the claimed comparable devices had larger batteries; (4) all but one of the devices had significantly better camera resolution;<sup>50</sup> and (5) some of the devices had a larger screen, and the majority of the devices had significantly better screen resolution.<sup>51</sup> Thus, the devices submitted by Q Link had technical specifications that were significantly superior to the Scepter 8, and therefore they were not sufficiently similar for purposes of determining market value.<sup>52</sup>

18. Since we could find no devices sold at retail that were similar to the Scepter 8 in all of the technical specifications discussed above, we performed two sets of comparisons. First, we identified devices that had similar RAM, ROM and camera quality, and then we identified devices with 8-inch

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<sup>45</sup> In its submissions to USAC to substantiate market value and support its certifications, Q Link used this same methodology of relying on the online retail price of purportedly comparable devices to determine market value. See email from Issa Asad to Zac St. Martin (Nov. 16, 2021) (attaching "comparisons" in the form of a series of screenshots of other tablet devices available online and claiming { })).

<sup>46</sup> See Attachment 2, "Analysis of Market Value," at para. 4.

<sup>47</sup> *Id.* at para. 5.

<sup>48</sup> *Id.*

<sup>49</sup> The remaining "comparable," although having the same amount of ROM as the Scepter 8, has twice as much RAM and a much larger screen of 13 inches, compared to the 8-inch screen of the Scepter 8.

<sup>50</sup> While that one device has a comparable camera, it is significantly better than the Scepter 8 in all other respects.

<sup>51</sup> Attachment 2, "Analysis of Market Value," at para. 9 and Table 1.

<sup>52</sup> *Id.* at para. 10.

screens and somewhat similar processor speeds. Those tablets with similar RAM, ROM, and camera quality had only 7-inch screens and lower battery capacities, and some had slightly lower clock speeds.<sup>53</sup> Looking at devices with 8-inch screens and processors with clock speeds reasonably similar to those of the Scepter 8, they also had other specifications that were significantly superior to the Scepter 8. For example, all the devices had twice the ROM and all but one had twice the RAM as the Scepter 8; all had cameras with more than twice the resolution of the cameras included with the Scepter 8; and all but one of the devices had larger batteries than the Scepter 8.<sup>54</sup>

19. We then closely examined the devices we had identified to determine a subset of devices that were “closest” to the Scepter 8 in terms of the selected specifications. Among the 7-inch devices, the two devices that were most similar to the Scepter 8 in terms of the technical specifications we examined were the Hyundai HyTab 7WC1, which had a price of \$50 to \$60 during the relevant period, and the Amazon Fire 7, which had a price of \$65 (\$50 with an ad-supported lock screen). Based on the prices of these devices, we find a reasonable floor for the market value of the Scepter 8 would be \$50.

20. Among the devices with an 8-inch screen, the device most similar to the Scepter 8 in terms of the technical specifications we examined was the Hyundai HyTab 8WC1, which sold for \$70 during the relevant period. It had the same processor and RAM as the Scepter 8, but twice the ROM, a slightly faster processor speed and a better camera. Given that it has several technical specifications that are superior to the Scepter 8, we find that the market value of the Scepter 8 must be less than \$70.<sup>55</sup>

21. Based on our examination of devices with similar technical specifications, in this particular case, our best determination of the market value of the Scepter 8 is \$60.00, which is the mid-point in the range of prices of the devices we found most comparable. Several factors support this conclusion and suggest that the market value of the Scepter 8 should tend towards the low end of the market. First, the Scepter 8, unlike the Amazon Fire, is not a brand name tablet, and name brand products generally command higher prices as they may signal higher quality components to consumers. Second, the Scepter 8 does not appear to have been sold anywhere at retail. Third, while customer reviews of the Scepter 8 are limited, the reviews on YouTube and reseller websites were largely negative as to the quality of the device.<sup>56</sup> Relatedly, the PassMark Android device benchmarking app ranks the Scepter 8 device 4,358<sup>th</sup> out of 4,400 tablet and smartphone devices, which puts it in the bottom 2 percent in terms of benchmark scores.<sup>57</sup>

22. Finally, as we have noted, two somewhat similar devices with 8-inch screens – the Hyundai 8WC1, with a better camera, double the ROM and a higher capacity battery; and the Gateway 8”, with more RAM and more ROM – sold for only \$70.00 and \$65.00, respectively, during the relevant period. If one deducts from the \$70.00 price of the Hyundai 8WC1 the likely incremental value of the increased ROM, the better camera and the larger capacity battery, which together likely well exceed \$10.00, the retail price of such a device would be below \$60.00. Likewise, a similar exercise for the

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<sup>53</sup> *Id.* at paras. 12-13 and Table 2.

<sup>54</sup> *Id.* at para. 15 and Table 3.

<sup>55</sup> Specifically, we observe that tablets with better features generally command higher retail prices than their otherwise identical counterparts. For example, the Hyundai 8WB1 has 1 GB of additional RAM and 3MP of additional camera resolution compared to the Hyundai 8WC1 and costs \$10 more. The Fire 7” with 32 GB of ROM costs \$20 more than an identical Fire 7” tablet with 16GB of ROM.

<sup>56</sup> See, e.g., Mr. Goody, *Q-Link Wireless Scepter 8 Tablet Product Test And Review* (Jan. 22, 2022), <https://www.youtube.com/watch?v=kV4PfJzy9c8>; Neal Adams, *Qlink Scepter 8 tablet review. Spoiler, IT SUCKS* (Jan. 21, 2022), <https://www.youtube.com/watch?v=MWz08EYX8zY>; Reddit, *QLink Scepter 8 Tablet*, [https://www.reddit.com/r/Qlink/comments/qn3gc8/qlink\\_scepter\\_8\\_tablet/](https://www.reddit.com/r/Qlink/comments/qn3gc8/qlink_scepter_8_tablet/) (last visited Jan. 10, 2023).

<sup>57</sup> PassMark Software, *Android Benchmarks*, <https://www.androidbenchmark.net/phone.php?phone=Qlink+Scepter+8+Tablet> (last visited Jan. 10, 2023).

Gateway 8" would reveal a retail price well below \$60.00. For these reasons, we find that the market value of the Scepter 8 is, at most, \$60.00.

23. Thus, Q Link's assertion that the Scepter 8 has a market value of {{ }} is not supported by the information provided by the Company, nor is it supported by analyzing comparable devices available during the same time frame. As a result, apparently Q Link has been reimbursed substantially in excess of the Scepter 8's objective market value. We find that Q Link has apparently received an overpayment of at least {{ }} per device for each of the {{ }} connected devices for which it claimed reimbursement during the EBB Program.

24. Q Link had access to the same information we use in this analysis. Thus, Q Link knew or should have known the market value of its device was far less than it claimed when it sought reimbursement, and that the technical specifications of the Company's device were substantially inferior to those that Q Link asserted were comparable. Despite this, the Company falsely stated in its election notice that the market value of the device was {{ }}.<sup>58</sup> Furthermore, Q Link's Chief Executive Officer certified with each monthly claim for reimbursement during the entire EBB Program that the amount Q Link claimed reflected the market value of the device,<sup>59</sup> and he certified that the information contained in each claim was true, complete, and accurate to the best of his knowledge, information, and belief.<sup>60</sup> From May 2021 through March 2022, Q Link sought reimbursement from the Fund for devices at a rate substantially in excess of their market value, falsely certified as to their market value, and claimed amounts from the Fund again substantially in excess of those to which it was entitled under the rules.

25. In correspondence with USAC in November 2021, Q Link claimed that its EBB connected device and the reimbursement rate had been approved by USAC.<sup>61</sup> To the contrary, the Commission did not authorize USAC to pre-approve any EBB connected device market values. Significantly, in the EBB rulemaking, the Commission rejected requests from commenters who advocated to pre-approve the retail value of connected devices.<sup>62</sup> Instead, the Commission said it would forego a pre-approval process for policy reasons and would use back-end audits to keep participants honest about claiming reimbursement for only the market value of devices:

to ensure the quick reimbursement of valid claims for connected devices, USAC will not be required collect and review documentation before processing a reimbursement claim. Instead, we require providers, under penalty of perjury, to certify that the connected device meets the Commission's requirements, that the reimbursement claim amount reflects the market value of the device, that the household has been charged a compliant co-pay amount, and that the connected device has been delivered to the household.<sup>63</sup>

Consequently, USAC did not "approve" Q Link's reimbursement rate for EBB connected devices.

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<sup>58</sup> QLINK-98-000112-CONFIDENTIAL (stating retail rate of {{ }} on Election Documentation).

<sup>59</sup> See 47 CFR § 54.1608(e)(8); Attachment 1, Table of Q Link EBB Device Reimbursement Claims at col. O.

<sup>60</sup> See 47 CFR § 54.1608(e)(13).

<sup>61</sup> Letter from John T. Nakahata, et al., Harris, Wiltshire & Grannis LLP, Counsel for Q Link, to Jeffrey J. Gee, Chief, Investigations & Hearings Div., FCC Enf. Bur. at QLINK-98-000116-CONFIDENTIAL (June 6, 2022), Email from Issa Asad, Q Link, Chief Executive Officer, to Zac St. Martin, USAC (Nov. 16, 2021, at 6:36 p.m.) (on file in File No. EB-IHD-21-00032347).

<sup>62</sup> *EBB Program Order*, 36 FCC Rcd at 4660, para. 97 ("To help make the Emergency Broadband Connectivity Fund last as long as possible, Public Knowledge urges the Commission to require providers to prove the retail value of the connected device to ensure that the provider is not receiving a reimbursement that exceeds the value of the device.").

<sup>63</sup> *EBB Program Order*, 36 FCC Rcd at 4660, para. 97

26. In light of our rejection of Q Link’s assertions in its LOI responses, its EBB election materials, monthly certifications that its connected device had a market value of {{ }}, and the other information assembled in the Bureau’s investigation, including the economic analysis of Q Link’s device, we find that Q Link apparently violated section 904(b)(5) of the Act as well as sections 54.1603(b), 54.1608(d), and 54.1608(e)(8) of the Commission’s rules by certifying and claiming connected devices at a rate that apparently substantially exceeded their market value and thus exceeded the amount of reimbursement permitted under the EBB Program.<sup>64</sup> Specifically, the {{ }} per device reimbursement amount claimed by Q Link added to the \$10.01 co-pay the Company reportedly charged device recipients resulted in the {{ }} per device market value asserted by the Company. However, as explained above, the market value for the Scepter 8 tablet is at most \$60.00. Thus, the maximum per device reimbursement allowable under the Commission’s rules was \$49.99 (the market value of \$60.00, minus the \$10.01 co-pay). As a result, we find that Q Link apparently received an approximate overpayment of approximately \$50 per device for {{ }} devices between May 12, 2021 and March 15, 2022. Thus, Q Link apparently claimed and received overpayments from the Fund of approximately \$32,900,700.00 over the course of the EBB Program. Focusing on the months at issue in the Bureau’s investigation, we find Q Link apparently claimed excessive reimbursements for {{ }} EBB connected devices between December 16, 2021 and March 15, 2022, for an overcollection from the Fund of at least \$20,792,800.00.

### **B. Proposed Forfeiture**

27. Section 503(b) of the Communications Act of 1934 (Communications Act) authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Communications Act] or of any rule, regulation, or order issued by the Commission[.]”<sup>65</sup> Here, section 503(b)(2)(B) of the Communications Act authorizes us to assess a forfeiture against Q Link of up to \$237,268.00 for each day of a continuing violation, up to a statutory maximum of \$2,372,677.00 for a single act or failure to act.<sup>66</sup> In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>67</sup> In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.<sup>68</sup> Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.<sup>69</sup>

28. In this case, Q Link apparently claimed reimbursement from the EBB Program substantially in excess of the market value of its connected devices each month from December 16, 2021 to March 15, 2022, thereby preventing those funds from assisting other eligible households. Based on our analysis of the connected device’s technical specifications and retail prices of comparable devices that were

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<sup>64</sup> *Consolidated Appropriations Act*, Pub. L. No. 116-260, div. N, tit. IX § 904(b)(5), 134 Stat. at 2132; 47 CFR §§ 54.1603(b), 54.1608(d), (e)(8); *see also EBB Program Order*, 36 FCC Rcd at 4660, para. 97.

<sup>65</sup> 47 U.S.C. § 503(b).

<sup>66</sup> *See* 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect the inflationary adjustments to the forfeitures specified in section 503(b) of the Communications Act. *See Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356, 2022 WL 18023008 (EB Dec. 23, 2022); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 87 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

<sup>67</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>68</sup> 47 CFR § 1.80(b)(10), Note to paragraph (b)(10).

<sup>69</sup> *Id.*

widely available at the time, we have concluded Q Link's claims requested approximately {[ ]} more than market value per device. During the period relevant to our investigation, Q Link claimed excessive reimbursement for {[ ]} EBB connected devices for an apparent total overcollection from the Fund of approximately \$20,792,800.00. We consider each device Q Link claimed and certified for reimbursement above market value as a separate violation; therefore, Q Link had a total of {[ ]} violations of section 904(b)(5) of the Act and sections 54.1603(b), 54.1608(d), and 54.1608(e)(8).<sup>70</sup>

29. Because the EBB Program rules are new, neither the Commission's forfeiture guidelines nor its case law have established a base forfeiture for violations of rules governing claims for EBB connected devices. Based on the totality of the circumstances in this case, including consideration of the factors set forth in section 503(b)(2)(E) of the Communications Act, we determine that a forfeiture amount based on treble the harm to the Fund is appropriate. The Commission has previously proposed forfeitures based, in part, on three times the amount of improper reimbursements for monthly Lifeline service to customers from the Universal Service Fund,<sup>71</sup> as well as in the context of a company's failure to pay regulatory fees.<sup>72</sup> Every dollar misdirected from the EBB Program to providers that violate our rules is a dollar that could instead have been used to make broadband service more affordable for low-income Americans, and we consider the proposed approach to be appropriate to both penalize Q Link's violations of the EBB Program rules and to deter those broadband service providers that fail to devote sufficient resources to prevent company practices resulting in overcollection violations, such as inflating the amount claimed for connected devices above market value. Although we reserve for a separate action a final determination of exact amount of Q Link's apparent overcollection from the Fund, as discussed above, Q Link apparently claimed at least {[ ]} per device above the amount to which it was entitled.

30. Therefore, we propose a forfeiture penalty of \$62,000,000.00 against Q Link for the apparent violations of section 904(b)(5) of the Act and sections 54.1603(b), 54.1608(d), and 54.1608(e)(8).<sup>73</sup> If an EBB service provider violates our rules and submits a request for program support that it knew or should have known exceeds the market value of its connected devices, and thus requests and/or receives more reimbursement from the Fund than the amount to which it is properly entitled, it undermines the support reimbursement mechanism. The Commission believes that the imposition of a significant forfeiture amount upon Q Link is a necessary response to overcollection violations, particularly in programs that benefit households in need of support for telecommunications and broadband service and devices. Service providers participating in these programs must take care to ensure compliance with the Commission's rules, especially the rules and procedures requiring that providers request and/or receive federal support only in the amounts permitted under the rules.

31. In addition, in light of Q Link's apparent misconduct and the resulting harm to the Fund, we order Q Link to respond in writing within 30 days of the release of this NAL explaining why the

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<sup>70</sup> *Consolidated Appropriations Act*, Pub. L. No. 116-260, div. N, tit. IX § 904(b)(5), 134 Stat. at 2132; 47 CFR §§ 54.1603(b), 54.1608(d), (e)(8).

<sup>71</sup> See, e.g., *Total Call Mobile Inc.*, Notice of Apparent Liability, 31 FCC Rcd 4191, 4216, para. 91 (2016) (proposing penalty element of three times the harm to the USF) (*Consent Decree entered into Total Call Mobile, Inc.*, 31 FCC Rcd. 13204 (EB 2016); *Easy Telephone Services, d/b/a Easy Wireless*, Notice of Apparent Liability, 28 FCC Rcd 14433, 14439, para. 17 (2013) (proposing forfeiture penalty element including three times the reimbursements requested and/or received by Easy Wireless for ineligible subscribers) (*Consent Decree entered into Easy Wireless Telephone Services, d/b/a/ Easy Wireless*, 32 FCC Rcd 10932 (2017)) See also 47 U.S.C. § 503(a) (mandating penalty of three times the value of improper intercarrier compensation payments); 31 U.S.C. § 3729 (prescribing civil monetary penalty plus three times the amount of damages which the government sustains because of a violation of the False Claims Act).

<sup>72</sup> See *NECC Telecom, Inc.*, Notice of Apparent Liability, 31 FCC Rcd. 12936, 12944-45, para. 19 (2016) (proposing forfeiture based, in part, on treble the company's regulatory fee delinquency due to the Commission).

<sup>73</sup> *Consolidated Appropriations Act*, Pub. L. No. 116-260, div. N, tit. IX § 904(b)(5), 134 Stat. at 2132; 47 CFR §§ 54.1603(b), 54.1608(d), (e)(8).

Commission should not initiate proceedings, pursuant to 47 CFR § 54.1801(e)(2), to remove Q Link from the ACP program, and/or proceedings against Q Link to revoke its Commission authorizations, including its Section 214 authorizations.<sup>74</sup> We also direct Q Link to respond in writing within 30 days as to why the Enforcement Bureau and the Wireline Competition Bureau should not take measures, in addition to the safeguards already in place, pursuant to 47 CFR § 54.1801(e)(2)(iii)(B) to remove Q Link from the Commission's list of ACP approved providers, USAC's Companies Near Me Tool, and any similar records; and/or to suspend or revoke Q Link's ability to enroll or transfer in new subscribers. We direct Q Link to address the full range of its participation in the EBB and ACP programs, including the accuracy of its certifications and other representations to the Commission and any other potential failures to comply with program requirements. The Commission remains committed to maintaining service to all eligible customers and will work to ensure continued service.

#### IV. CONCLUSION

32. We have determined that Q Link apparently willfully and repeatedly violated section 904(b)(5) of the Consolidated Appropriations Act, Pub. L. No. 116-260, div. N, tit. IX, 134 Stat. at 2132,<sup>75</sup> and sections 54.1603(b), 54.1608(d), and 54.1608(e)(8) of the Commission's rules. As such, Q Link is apparently liable for a forfeiture of \$62,000,000.00.

#### V. ORDERING CLAUSES

33. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934<sup>76</sup> and section 1.80 of the Commission's rules,<sup>77</sup> Q Link Wireless LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Sixty-Two Million Dollars \$62,000,000.00 for willful and repeated violations of section 904(b)(5) of the Consolidated Appropriations Act, Pub. L. No. 116-260, div. N, tit. IX, 134 Stat. at 2132;<sup>78</sup> and sections 54.1603(b), 54.1608(d), and 54.1608(e)(8) of the Commission's rules.<sup>79</sup>

34. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>80</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Q Link Wireless LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 37 below.

35. In order for Q Link Wireless LLC to pay the proposed forfeiture, Q Link Wireless LLC shall notify Kalun Lee, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov) of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, Q Link Wireless LLC shall send electronic notification of payment to Kalun Lee, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov) on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts

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<sup>74</sup> 47 CFR § 54.1801(e)(2). The Commission is authorized to order common carriers such as Q Link to respond to show cause orders. 47 CFR § 1.701(a).

<sup>75</sup> *Consolidated Appropriations Act*, Pub. L. No. 116-260, div. N, tit. IX § 904(b)(5), 134 Stat. at 2132.

<sup>76</sup> 47 U.S.C. § 503(b).

<sup>77</sup> 47 CFR § 1.80.

<sup>78</sup> *Consolidated Appropriations Act*, Pub. L. No. 116-260, div. N, tit. IX at § 904(b)(5), 134 Stat. at 2132.

<sup>79</sup> 47 CFR §§ 54.1603(b), 54.1608(d), (e)(8).

<sup>80</sup> 47 CFR § 1.80.

Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>81</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters “FORF”. In addition, a completed Form 159<sup>82</sup> or printed CORES form<sup>83</sup> must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>84</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

36. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.<sup>85</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

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<sup>81</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

<sup>82</sup> FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

<sup>83</sup> Information completed using the Commission’s Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

<sup>84</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>85</sup> See 47 CFR § 1.1914.

37. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission's rules.<sup>86</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov).

38. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status.<sup>87</sup> Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.<sup>88</sup>

39. **IT IS FURTHER ORDERED** that, pursuant to section 403 of the Communications Act of 1934, as amended, 47 U.S.C. § 403, and section 1.701(b) of the Commission's rules, 47 CFR § 1.701(b),<sup>89</sup> Q Link shall respond to the request in paragraph 31 within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

40. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by first class mail and certified mail, return receipt requested, to Issa Asad, President, Q Link Wireless LLC, 499 E. Sheridan Street, Suite 400, Dania, FL 33004; John T. Nakahata, Esq., Harris, Wiltshire & Grannis LLP, 1919 M Street, NW, Eighth Floor, Washington, DC 20036; and John Heitmann Esq., Nelson Mullins Riley & Scarborough LLP, 101 Constitution Avenue, NW Suite 900, Washington, DC 20001; and a copy of the following document shall be transmitted to Counsel for Q Link Wireless LLC, via secure file transfer: Attachment 1, Table of Q Link EBB Device Reimbursement Claims.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>86</sup> 47 CFR §§ 1.16, 1.80(f)(3).

<sup>87</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>88</sup> See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678–79, paras. 44–45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903–904, paras. 32–33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

<sup>89</sup> 47 U.S.C. § 403; 47 CFR § 1.701(b).

**ATTACHMENT 1**

**TABLE OF Q LINK EBB DEVICE REIMBURSEMENT CLAIMS**

[REDACTED to Protect Customer Personally Identifiable Information  
Document sent to Counsel via Secure File Transfer]

**ATTACHMENT 2****ANALYSIS OF MARKET VALUE****Introduction**

1. Because neither the Scepter 8 nor an identical tablet was sold through any major retailers during the EBB Program, we cannot look to the retail price as an estimate of market value. Instead, we looked to the retail prices of devices with similar specifications.
2. Given the unusual combination of technical specifications in the Scepter 8, we did not find directly comparable devices. Although the Scepter 8 has an 8-inch screen like many higher-end devices, it has memory (RAM), storage (ROM), and camera resolution similar to lower-tier devices with a 7-inch screen.

**Introduction And Overview of Methodology**

3. The phrase “market value” has been defined as the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. In competitive markets with many sellers and many buyers, the interaction of supply and demand generally will determine market price, which will also represent market value. Here, however, as indicated above, the Scepter 8 was not sold through any major retailers, so one cannot look to its market price to estimate market value.
4. Our analysis proceeded as follows:
  - First, we identified technical specifications that are likely related to market value.
  - Then, we analyzed the devices submitted by Q Link as purportedly comparable to the Scepter 8, based on the technical specifications that were identified in the first step.
  - We then identified other widely-available devices that had various specifications similar to the Scepter 8.<sup>1</sup> Because of the unusual mix of technical specifications in the Scepter 8, we separately examined devices with 7-inch screens and those with 8-inch screens.
  - Fourth, we used the retail prices of these devices to establish a market value range.
  - Fifth, we determined which devices had the most similar specifications, and used those prices to determine a market value for the Scepter 8.

**Relevant Device Specifications**

5. In identifying devices to compare with the Scepter 8, we examined the following technical specifications, since these specifications are generally advertised on retail websites and buying

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<sup>1</sup> Note that this approach is similar to that taken by Q Link, when it submitted data on the market prices of devices it claimed were similar to the Scepter 8 to justify the price it charged for the device. However, as discussed below, the technical specifications of the devices identified as comparable by Q Link do not appear closely comparable to those of the Scepter 8.

guides, and they are technical specifications typically considered by consumers in selecting a device:<sup>2</sup>

- Screen size
- Processor speed and number of cores
- Memory (RAM)
- Storage (ROM)
- Battery capacity
- Camera Resolution

In general, for each of these specifications, an improvement in the specification is associated with a higher retail price for the device, both because consumers are willing to pay more for higher-quality products and because devices with improved technical specifications are more costly to manufacture.<sup>3</sup> For example, in comparing otherwise identical devices, those with more RAM or ROM will likely have higher prices.<sup>4</sup> Similarly, where a manufacturer sells otherwise identical devices with different screen sizes, the device with the larger screen generally has a higher price.

6. While the analyses below incorporate specifications that are most likely to be the best predictors for the market value of a device, unmeasured or unmeasurable characteristics of a device may also affect market value. For example brand name, quality of components, overall device

<sup>2</sup> Consumer buying guides typically list these technical specifications as worth considering when deciding which device to purchase. Best Buy, *Buying Guide Tablets*, <https://www.bestbuy.com/site/buying-guides/tablet-buying-guide/pcmcat310900050011.c?id=pcmcat310900050011> (last visited Nov. 17, 2022); Xiomara Blanco, *How to buy a tablet* (Mar. 14, 2017), <https://www.cnet.com/tech/computing/tablets-buying-guide/>; Nick Mediati, *Tablet Buying Guide: 8 Essential Tips* (Feb. 24, 2016), <https://www.laptopmag.com/articles/tablet-buying-guide>; CDW, *Tablet Buying Guide* (Nov. 2, 2021), <https://www.cdw.com/content/cdw/en/articles/hardware/tablet-buying-guide.html>.

<sup>3</sup> Buying guides also highlight the relationship between price and a device's technical specifications. The CDW Tablet Buying Guide states "the larger the capacity of the tablet, the more expensive the device" and "as with screen size and storage, when memory goes up, so does the tablet's price." CDW, *Tablet Buying Guide* (Nov. 2, 2021), <https://www.cdw.com/content/cdw/en/articles/hardware/tablet-buying-guide.html>.

<sup>4</sup> For example, on a major retailer's website, the Amazon Fire HD 10" with 4 GB of RAM and 32 GB of ROM costs \$30 more than the same device with 3 GB of RAM (\$104.99 vs. \$74.99). Best Buy, *Amazon Fire HD 10 10.1" Tablet 32 GB Denim*, website as of Nov. 18, 2022, <https://web.archive.org/web/20221118180212/https://www.bestbuy.com/site/amazon-fire-hd-10-10-1-tablet-32-gb-denim/6461952.p?skuId=6461952> (last visited Nov. 18, 2022); Best Buy, *Amazon Fire HD 10 10.1" Tablet 32 GB Slate*, website as of Nov. 18, 2022, <https://web.archive.org/web/20221118181034/https://www.bestbuy.com/site/amazon-fire-hd-10-plus-10-1-tablet-32-gb-slate/6461929.p?skuId=6461929> (last visited Nov. 18, 2022). Similarly, increasing the ROM from 32 GB to 64 GB on a 3 GB ROM device increases the price by \$20 (\$94.99 vs. \$74.99). Best Buy, *Amazon Fire HD 10 10.1" Tablet 64 GB Denim*, website as of Nov. 18, 2022, <https://web.archive.org/web/20221118181206/https://www.bestbuy.com/site/amazon-fire-hd-10-10-1-tablet-64-gb-denim/6461930.p?skuId=6461930> (last visited Nov. 18, 2022). The case is similar for other devices like the Samsung Galaxy Tab A8 10" which has a price of \$149.99 for a 3 GB RAM, 32 GB ROM version and a price of \$179.99 for a 4 GB RAM, 64 GB ROM version. Best Buy, *Samsung Galaxy Tab A8 10.5" 32GB (Latest Model) Wi-Fi Gray*, website as of Nov. 18, 2022, <https://web.archive.org/web/20221118181624/https://www.bestbuy.com/site/samsung-galaxy-tab-a8-10-5-32gb-latest-model-wi-fi-gray/6492906.p?skuId=6492906> (last visited Nov. 18, 2022); Best Buy, *Samsung Galaxy Tab A8 10.5" 64GB (Latest Model) Wi-Fi Gray*, website as of Nov. 18, 2022, <https://web.archive.org/web/20221118181658/https://www.bestbuy.com/site/samsung-galaxy-tab-a8-10-5-64gb-latest-model-wi-fi-gray/6492905.p?skuId=6492905> (last visited Nov. 18, 2022).

performance, or other unmeasured aspects of quality and reliability could be important factors in determining market value.

7. The available evidence suggests that along many, if not all, of these less easily measured device characteristics, the Scepter 8 tablet would either underperform competitor products or would not be appreciably different.<sup>5</sup> Consequently, the market value of the Scepter 8 should be expected to be on the low end of devices with similar technical specifications.
8. We collected technical specifications and prices of devices with similar specifications that were sold by major retailers. Technical specifications were collected from retailer websites, manufacturer websites, publicly available device manuals, and FCC engineering certifications. For each device, where possible, multiple sources were checked. Device prices were gathered using price aggregators and website archives spanning from a month prior to the adoption of the EBB Program rules on February 25, 2021, to March 15, 2022, the end of EBB program claim submissions to USAC.<sup>6</sup> In particular, CamelCamelCamel is an Amazon.com price aggregator that provides the price history of a product listing.<sup>7</sup> In addition, the Wayback Machine is an archive of websites. While not all websites are archived, there are snapshots of retailer websites that provide price information on tablets that were available.<sup>8</sup>

#### Evaluation of Devices Q-Link Submitted as Comparable

9. As a starting point for the analysis, we examined the technical specifications of the devices that Q Link submitted as comparable to the Scepter 8.<sup>9</sup> See Table 1. All the devices cited by Q Link are

<sup>5</sup> Although reviews for the Scepter 8 are limited, reviews found on YouTube and reseller websites were largely negative as to the quality of the device. Similarly, the PassMark Android device benchmarking app ranks the Scepter 8 4358 out of 4400 tablet and smartphone devices. This puts it in the bottom 2 percent of benchmark scores. PassMark Software, *Android Benchmarks*, <https://www.androidbenchmark.net/phone.php?phone=Qlink+Scepter+8+Tablet> (last visited Nov. 17, 2022).

<sup>6</sup> The Commission adopted the rules and policies creating and governing the EBB Program on February 25, 2021. FCC, *Emergency Broadband Benefit Program*, <https://www.fcc.gov/emergency-broadband-benefit-program> (last visited Nov. 17, 2022).

<sup>7</sup> CamelCamelCamel tracks the price history of any product sold on Amazon. See Ignacia Fulcher, Dan Kim, Jordan Thomas, Nathan Burrow and Krista Lee, *8 Money Saving Tips, According to Wirecutter's Expert Deal Hunters*, N.Y. TIMES (Apr. 19, 2022), <https://www.nytimes.com/wirecutter/money/money-saving-tips-and-tricks/>. The website has also been used by reporters to track prices. See Daisuke Wakabayashi, *Does Anyone Know What Paper Towels Should Cost?*, N.Y. TIMES (Feb. 2, 2022), <https://www.nytimes.com/2022/02/26/technology/amazon-price-swings-shopping.html>.

<sup>8</sup> The Internet Archive is a non-profit entity that catalogs web history. Internet Archive, *About the Internet Archive*, <https://archive.org/about/> (last visited Nov. 17, 2022).

<sup>9</sup> Q Link claimed that one of the devices it submitted as a comparable, the Vankyo MatrixPad S8, had a price of \$111, but both the manufacturer's website and Amazon listed it as \$90 during the EBB program. In June of 2021, the Vankyo website listed the device for \$89.99. Vankyo, *VANKYO MatrixPad S8 Android Tablet, Android 9.0 Pie, Tablet 8 inch, IPS HD Display*, website as of June 20, 2021, <https://web.archive.org/web/20210620053637/https://ivankyo.com/collections/tablet/products/vankyo-matrixpad-s8-android-tablet-android-hd-tablet> (last visited November 17, 2022). While there may be reasons for the price on a manufacturer's website to differ from other retailers, in this case we find that the price was listed elsewhere for \$89.99. CamelCamelCamel, an Amazon.com price aggregator, show the device as having a price of \$89.99 during the last half of 2021. CamelCamelCamel, *VANKYO MatrixPad S8 Tablet 8 inch, Android OS, 2 GB RAM, 32 GB Storage, IPS HD Display, Quad-Core Processor, Dual Camera, GPS, FM, Wi-Fi, Black (B0868RQYTC)*,

(continued...)

significantly better in some or all specifications compared to the Scepter 8. Moreover, these differences were sufficiently great that the retail prices of these tablets cannot be reliably used to establish the market value of the Scepter 8. For example, as shown in the table below, all but one of the devices had at least double the RAM and ROM of the Scepter 8; the remaining “comparable” although having the same amount of ROM as the Scepter 8, has twice as much RAM and a much larger screen size (13 inches compared to 8 inches for the Scepter 8); and five of the seven devices had more than triple the RAM. All of the purported comparable devices had larger batteries, and all but one device had significantly better camera resolution; while one had the same camera resolution, it was significantly better than the Scepter 8 in all other respects. Five of the seven devices cited by Q Link had significantly better screen resolution and four had double the number of cores compared to the Scepter 8.

**Table 1: Devices Submitted by Q-Link as Purported Comparables**

Model Name	RAM (GB)	ROM (GB)	Processor Details	Processor Speed (GHz)	Cores	Battery (mAh)	Camera Front+Back (MP)	Screen (in.)	Screen Resolution	Q-Link Claimed Price
<i>Scepter 8</i>	{[ ]}	16	<i>Allwinner A100</i>	1.5	4	3,500	0.3, 2	8	800x1280	{[ ]}
{[ ]}	3	32	SAS8 Octa Core	1.6	8	4,000	5, 13	8	1920x1200	\$149.99
Blackview Tab 8 SC9863A	4	64	Spreadtrum Octa Core	1.6	8	6,580	5, 13	10.1	1200x1920	\$139.99
AOYODKG	3	32	Quad Core	1.6	4	5,000	2, 5	8	800x1280	\$162.99
Vankyo MatrixPad S8	2	32	Spreadtrum SC7731	1.3	4	4,000	2, 5	8	1280x800	\$110.99 <sup>10</sup>
Supersonic SC-813	2	16 <sup>11</sup>	Cortex A53 Octa Core	1.5	8	10,000	2, 5	13.3	1920x1080	\$209.00
Lenovo Tab M8 FHD	3	32	Octa Core	2.3	8	5,100	5, 13	8	1920x1200	\$139.99
Telecast M8	3	32	All Winner A 63 Quad Core	1.8	4	4,800	0.3, 2	8.4	2560x1600	\$136.99

### Evaluation of Devices with More Comparable Technical Specifications

10. Having determined that the comparable devices submitted by Q-Link had technical specifications that were significantly superior in most or all dimensions to the Scepter 8, and therefore not sufficiently similar for purposes of determining the Scepter 8’s market value, we identified

(Continued from previous page...)

<https://camelcamelcamel.com/product/B0868RQYTC> (last visited Nov. 17, 2021). In addition, it is worth noting that the Vankyo has twice the RAM and ROM; a better battery, and higher resolution camera than the Scepter 8.

<sup>10</sup> As indicated above, the correct price for this device during the EBB period is \$89.99. See *supra* note 9.

<sup>11</sup> Q Link reported that this device had 8 GB of ROM, but both the user manual and box state that it has 16 GB of ROM. Pawn America, *Supersonic SC-813 13.3" Wi-Fi 16GB Octa-Core Android Tablet (In Box)*, [https://www.pawnamerica.com/Product/Supersonic SC 813 13 3 Wi Fi 16GB Octa Core Android Tablet In Box 24223011127](https://www.pawnamerica.com/Product/Supersonic%20SC%20813%2013%203%20Wi%20Fi%2016GB%20Octa%20Core%20Android%20Tablet%20In%20Box%2024223011127) (last visited Nov. 3, 2022).

additional devices that were more similar to the Scepter 8 (although still different in many respects) using the technical specifications set forth above.

11. As previously indicated, we found no devices that were similar to the Scepter 8 in all of the technical specifications we examined. In particular, the memory (RAM), storage (ROM), processor speed, and camera resolution of the Scepter 8 were more comparable to relatively low-end devices with 7-inch screens, compared to the Scepter 8's 8-inch screen, while other 8-inch devices generally had more RAM and ROM, better camera resolution, and in most cases faster processors than the Scepter 8.
12. Because of this, we performed two sets of comparisons. First, we compared devices that had similar RAM, ROM, and camera quality, as these technical specifications are often prominently featured in tablet advertisements.<sup>12</sup> Second, we compared devices with 8-inch screens.

### *Evaluation of Devices with Similar RAM, ROM, and Camera Quality*

13. Table 2 below lists devices that had the same or similar ROM, RAM, and camera quality as the Scepter 8. Devices in Table 2 have prices that range between \$43.43 and \$79.99. However, some of the devices include additional features that consumers may value. In particular, the Veidoo V88, Visual Land Prestige Elite 7QL, Azpen K749B, and Contixo V8 are tablets targeted to children that have a protective bumper case and claim to include additional educational software for children. These additional features can raise the retail price of a tablet considerably. For example, the price for a Fire 7 Kids (2022 release) tablet is currently \$35.00 higher than a Fire 7 (2022 release) tablet with identical technical specifications but without these additional features targeted to children.<sup>13</sup> Additionally, the higher price point for the Core Innovations includes headphones and a sleeve. Of the devices not targeted to children, all have 7-inch screens and lower battery capacity. Two have processors with slightly lower clock speeds, but two had better cameras than the Scepter 8.

**Table 2: Devices with RAM, ROM, and Camera Quality Similar to the Scepter 8<sup>14</sup>**

Model Name	RAM (GB)	ROM (GB)	Processor Details	Processor Speed (GHz)	Cores	Battery (mAh)	Camera Front +Back (MP)	Screen (in)	Screen Resolution	Historical Price
<i>Scepter 8</i>	{ [ ] }	16	<i>Allwinner A100</i>	1.5	4	3,500	0.3, 2	8	800x1280	
Core Innovations 7"	1	16	Rockchip RK3326C	1.5	4	2400	0.3, 2	7	1024 x 600	\$44.00-\$69.00

<sup>12</sup> For example, when viewing tablets on Amazon.com or BestBuy.com (e.g., Amazon Fire, Lenovo, etc.), many give the option to switch between different amounts of storage capacity (e.g., 16 vs. 32 GB) for a different price.

<sup>13</sup> A Fire 7 Kids (2022 release) tablet currently retails for \$109.99 while a regular Fire 7 (2022 release) tablet without ads retails for \$74.99. Amazon, *All-new Fire 7 Kids tablet, 7" display, ages 3-7, with content kids love, ad-free, Kid-Proof Case, 16 GB, (2022 release), Blue*, website as of Sept. 1, 2022, <https://web.archive.org/web/20220901074901/https://www.amazon.com/Fire-7-Kids-Tablet/dp/B099HDR2Y6> (last visited Nov. 18, 2022); Amazon, *Fire 7 tablet, 7" display, 16 GB, 10 hours battery life, light and portable for entertainment at home or on-the-go, (2022 release), Black*, website as of Nov. 11, 2022, <https://web.archive.org/web/20221111062219/https://www.amazon.com/Fire-7-Tablet/dp/B096WKKK2K> (last visited Nov. 18, 2022).

<sup>14</sup> The information sources for all prices are listed in a table in the appendix.

Veidoo V88 *	1	16		1.3	4	2500	0.3, 2	7	1024 x 600	\$58.00-\$69.99
Amazon Fire 7 (2019 16 GB)	1	16	MediaTek 8163	1.3	4	3200	2, 2	7	1024 x 600	\$49.99-64.99 <sup>15</sup>
Visual Land Prestige Elite 7QL*	1	16	Allwinner A33	1.2	4	3000	0.3, 2	7	1024x600	\$69.99-\$79.99
Azpen Remote Learning Kids Tablet K749B*	1	16	A50 Quadcore	1.3	4	2500	0.3, 2	7	1024x600	\$58.99
Ematic 7 8.1 TAB (EGQ378PN)	1	16		1.2	4	2000	0.3, 2	7	1024 x 600	\$54.99
Contixo V8*	1	16	Allwinner A100	1.5	4	3200	0.3, 2	7	1024 x 600	\$59.99-\$79.99
Hyundai HyTab 7WC1	1	32	Allwinner A100	1.5	4	2400	2, 2	7	1024 x 600	\$49.99-\$59.99

\* These devices are targeted toward parents with children and include additional features like protective bumpers, educational software, and parental controls.

### ***Evaluation of Devices with an 8 Inch Screen***

14. As indicated in Table 3, the 8-inch devices we identified generally had higher prices than the 7-inch devices listed in Table 2 (as one would expect), but also had other technical specifications that were significantly superior to the Scepter 8. For example, all the devices in Table 3 had twice the ROM and all but one had twice the RAM as the Scepter 8. In addition, most had cameras with more than twice the resolution of the cameras included with the Scepter 8. Finally, all but one of the devices had larger batteries than the Scepter 8. Despite many superior technical specifications, the prices of all these devices were still below Q-Link’s claimed reimbursement rate for the Scepter 8. Specifically, the prices of the devices in Table 3 range from \$64.99 to \$82.99, which again is significantly below the market value claimed by Q-Link for the Scepter 8. In addition, at least two of the five devices had the same Allwinner A100 processor that was used in the Scepter 8 during this period.<sup>16</sup> These two devices had the same processor as the Scepter 8, but more ROM, better camera resolution, and a larger battery capacity than the Scepter 8, yet both were sold at lower prices, with the lowest cost device sold at {{ }} less than the claimed market value of the Scepter 8.

<sup>15</sup> Currently, Amazon sells versions of its tablets with and without ad-supported lock screens. The tablet costs \$15 more without an ad-supported lock screen. Amazon, *Fire 7 tablet, 7" display, 16 GB, (2019 release), without lockscreen ads, Black*, <https://www.amazon.com/Fire-Tablet-7/dp/B07JQP283M?th=1> (last visited Nov. 17, 2022). Because it is unclear whether the Amazon Fire device found at Best Buy includes ads, an additional \$15 is added to the price to account for the possible removal of the ads. “Amazon makes you pay back any discount you received on your tablet when you agreed to see ads. The cost to remove them later will be around \$15 to \$20.” Smart Home Starter, *How Much To Remove Ads From Fire HD 10* (Jan. 1, 2022), <https://smarthomestarter.com/how-much-to-remove-ads-from-fire-hd-10/>.

<sup>16</sup> This type of processor is a “system-on-a-chip” design that incorporates multiple components into one. These systems-on-a-chip (SoCs) designs integrate the RAM and graphics into a single silicon chip. “This has some implications, as two similar chips’ processor cores may have different amounts of memory and different graphics engines, which can cause variations in performance. Manufacturers might alter the design, but for the most part, performance is similar between products within the same base design.” Mark Kyrnin, *Evaluating Tablet PCs Based on Processors* (Dec. 2, 2020), <https://www.lifewire.com/guide-to-tablet-processors-832330>.

**Table 3: Comparison of the Scepter 8 to Other Devices with 8-inch Screens**

Model Name	RAM (GB)	ROM (GB)	Processor Details	Processor Speed (GHz)	Cores	Battery (mAh)	Camera Front +Back (MP)	Screen (in)	Screen Resolution	Historical Price
<i>Scepter 8</i>	{ [ ] }	16	<i>Allwinner A100</i>	1.5	4	3500	0.3, 2	8	800x1280	
Hyundai HyTab 8WC1	1	32	Allwinner A100	1.8	4	4000	2, 2	8	800 x 1280	\$69.99
Coopers CP80	2	32	Allwinner	1.5	4	4300	2, 5	8	1280x800	\$70 - \$80
Hyundai Hytab Plus 8WB1	2	32	Allwinner	1.6	4	3500	2, 5	8	1280x800	\$79.99
Gateway 8"	2	32	Allwinner	1.5	4	4000	0.3, 2	8	1280X800	\$64.99
Pritom L8	2	32	Unisoc	1.6	4	3900	2, 8	8	1280 x 800	\$82.99

15. Given the fairly broad range of prices and technical specifications for devices identified in Tables 2 and 3, each of the identified devices was closely examined to identify those devices that were “closest” to the Scepter 8 in terms of their technical specifications. In making this determination additional factors were considered, such as whether the device is bundled with additional accessories, whether it was targeted towards children, or was from a well-known tablet manufacturer that may signal higher quality components. Among the 7-inch screen devices listed in Table 2, the following two devices we identified as closest to the Scepter 8. First, was the Hyundai HyTab 7WC1; it had the same processor as the Scepter 8, but twice the ROM and a better camera.<sup>17</sup> It had a price of \$50.00 to \$60.00 during the relevant period.
16. The second device identified was the Amazon Fire 7, which was and is widely sold; it has the same RAM and ROM as the Scepter 8, an only slightly slower clock speed processor, but it has a better camera and is a brand name product. It sold for between \$50.00 and \$65.00.
17. Among the 8-inch devices listed in Table 3, the device we identified as most similar was the Hyundai HyTab 8WC1. It had the same processor and RAM as the Scepter 8, but it had twice the ROM and it had a slightly faster processor and a better camera. It sold for \$70.00.
18. Based on this analysis of the retail prices for the most comparable tablets sold during the same time period, it appears that a conservative estimate of the market value of the Scepter 8 is between \$50.00 and something less than \$70.00. This conclusion is based on the following observations. First, the 8-inch tablet with the technical specifications most similar to the Scepter 8 is the Hyundai 8WC1. The 8WC1 had the same Allwinner A100 processor, but a better camera, double the ROM, and a higher capacity battery, and it sold for only \$70.00 during the relevant period. Given that it has so many technical specifications that are superior to the Scepter 8, a \$70.00 upper bound is conservative. Also, the Gateway 8”, with more RAM and more ROM – sold for only \$65 during the relevant period. Second, while there are some tablets in our

<sup>17</sup> While the Contixo V8 had technical specifications more similar to the Scepter 8 than the HyTab 7WC1, as noted above it is also a tablet targeted at parents with children that comes with a bumper and educational software and parental controls. These extra features tend to increase the price of a tablet and therefore we concluded that the 7WC1 was the closest comparable.

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analysis that sold for \$80.00, these tablets were either tablets targeted at parents with children that are bundled with features that significantly raise retail prices or were tablets, such as the Coopers CP80 and Hyundai 8WB1, that have technical specifications far superior to the Scepter 8. Further, an analysis of the incremental value of adding these types of upgrades to a tablet shows that these superior features would be expected to raise the market value by at least \$10.00, but likely closer to \$20.00.<sup>18</sup>

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<sup>18</sup> For example, the Hyundai 8WB1 has 1 GB of additional RAM and 3MP of additional camera resolution compared to the Hyundai 8WC1 and costs \$10.00 more. Also, the Fire 7" with 32 GB of ROM costs \$20.00 more than an identical Fire 7" tablet with 16GB of ROM.

## Appendix

The table below lists the historical prices found for the devices presented in this analysis.

Model Name	Listing	Price	Date	Store	Link	Comments
QLINK Scepter 8						
Core Innovations 7"	1	\$44.00	11-Aug-21	Walmart	<a href="https://web.archive.org/web/20210811210823/https://www.walmart.com/ip/Core-Innovations-CRTB7001-7-Quad-Core-Tablet-with-Headphones-Tablet-Sleeve-Black/728125242">https://web.archive.org/web/20210811210823/https://www.walmart.com/ip/Core-Innovations-CRTB7001-7-Quad-Core-Tablet-with-Headphones-Tablet-Sleeve-Black/728125242</a>	-
Core Innovations 7"	2	\$69.00	11-Jan-22	Walmart	<a href="https://web.archive.org/web/20220111095641/https://www.walmart.com/ip/Core-Innovations-CRTB7001-7-Quad-Core-Tablet-with-Headphones-Tablet-Sleeve-Black/728125242">https://web.archive.org/web/20220111095641/https://www.walmart.com/ip/Core-Innovations-CRTB7001-7-Quad-Core-Tablet-with-Headphones-Tablet-Sleeve-Black/728125242</a>	Second Link includes headphones
Veidoo V88	1	\$58.00-\$69.99	Over 2021	Amazon	<a href="https://camelcamelcamel.com/product/B07PF26QTL">https://camelcamelcamel.com/product/B07PF26QTL</a>	Includes bumper case and claims to include applications for children.
Fire 7 (2019 16 GB)	1	\$49.99+15	21-Sep-21	Best Buy	<a href="https://web.archive.org/web/20210921053241/https://www.bestbuy.com/site/amazon-fire-7-2019-release-7-tablet-16gb-black/6351374.p?skuId=6351374">https://web.archive.org/web/20210921053241/https://www.bestbuy.com/site/amazon-fire-7-2019-release-7-tablet-16gb-black/6351374.p?skuId=6351374</a>	-
Fire 7 (2019 16 GB)	2				<a href="https://www.lifewire.com/remove-ads-amazon-fire-tablet-5272166#:~:text=How%20much%20does%20it%20cost,be%20around%20%2415%20to%20%2420.">https://www.lifewire.com/remove-ads-amazon-fire-tablet-5272166#:~:text=How%20much%20does%20it%20cost,be%20around%20%2415%20to%20%2420.</a>	Note Amazon Requires \$15 to remove ads
Visual Land Prestige Elite 7QL	1	\$69.99	7-Jun-21	Walmart	<a href="https://web.archive.org/web/20210607125727/https://www.walmart.com/ip/Visual-Land-Prestige-7-Quad-Core-Tablet-16GB-includes-Bumper/41005537">https://web.archive.org/web/20210607125727/https://www.walmart.com/ip/Visual-Land-Prestige-7-Quad-Core-Tablet-16GB-includes-Bumper/41005537</a>	Includes a bumper case.
Visual Land Prestige Elite 7QL	2	\$79.99	5-Sep-21	Kohls	<a href="https://web.archive.org/web/20210905004837/https://www.kohls.com/catalog/visual-land.jsp?CN=Brand:Visual%20Land">https://web.archive.org/web/20210905004837/https://www.kohls.com/catalog/visual-land.jsp?CN=Brand:Visual%20Land</a>	-
Azpen Remote Learning Kids Tablet K749B	1	\$58.99	1-May-21	Tigerdirect	<a href="https://web.archive.org/web/20210501051830/https://www.tigerdirect.com/applications/category/guidedSearch.asp?CatId=6838&amp;sel=Price%3BPrice3">https://web.archive.org/web/20210501051830/https://www.tigerdirect.com/applications/category/guidedSearch.asp?CatId=6838&amp;sel=Price%3BPrice3</a>	Includes bumper case, parental control
Azpen Remote Learning Kids Tablet K749B	2	\$69.99	30-Jul-21	Manufacturer	<a href="https://web.archive.org/web/20210730031447/https://azpenpc.com/products/azpen-wonder-tablet">https://web.archive.org/web/20210730031447/https://azpenpc.com/products/azpen-wonder-tablet</a>	-

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Ematic 7 8.1 TAB (EGQ378 PN)	1	\$54.99	1-May-21	Tigerdirect	<a href="https://web.archive.org/web/20210501051830/https://www.tigerdirect.com/applications/category/guidedSearch.asp?CatId=6838&amp;sel=Price%3BPrice3">https://web.archive.org/web/20210501051830/https://www.tigerdirect.com/applications/category/guidedSearch.asp?CatId=6838&amp;sel=Price%3BPrice3</a>	
Contixo V8	1	\$59.99	19-Oct-21	Walmart	<a href="https://web.archive.org/web/20211019154406/https://www.walmart.com/browse/electronics/android-tablets/3944_1078524_1231200">https://web.archive.org/web/20211019154406/https://www.walmart.com/browse/electronics/android-tablets/3944_1078524_1231200</a>	Includes bumper case, parental control software, and claims to include applications for children
Contixo V8	2	\$79.99	28-July-21	Bed Bath and Beyond	<a href="https://web.archive.org/web/20210728211541/https://www.bedbathandbeyond.com/store/brand/contixo/8351">https://web.archive.org/web/20210728211541/https://www.bedbathandbeyond.com/store/brand/contixo/8351</a>	
Hyundai HyTab 7WC1	1	\$59.99	14-Aug-21	B&H Photo	<a href="https://web.archive.org/web/20210814064707/https://www.bhphotovideo.com/c/buy/Shop-by-Brand-Hyundai/ci/4/phd/7380/N/4294255798">https://web.archive.org/web/20210814064707/https://www.bhphotovideo.com/c/buy/Shop-by-Brand-Hyundai/ci/4/phd/7380/N/4294255798</a>	
Hyundai HyTab 7WC1	2	\$49.99	24-Jul-21	Office Depot	<a href="https://web.archive.org/web/20210724055338/https://www.officedepot.com/a/browse/tablets/N=5+1462097/">https://web.archive.org/web/20210724055338/https://www.officedepot.com/a/browse/tablets/N=5+1462097/</a>	-
Hyundai HyTab 8WC1	1	\$69.99	27-Feb-21	Office Depot	<a href="https://web.archive.org/web/20210227164038/https://www.officedepot.com/a/browse/hyundai-tablets/N=5+1462097&amp;cbxRefine=510649/">https://web.archive.org/web/20210227164038/https://www.officedepot.com/a/browse/hyundai-tablets/N=5+1462097&amp;cbxRefine=510649/</a>	
Coopers CP80	1	\$70 - \$80	2021	Amazon	<a href="https://camelcamelcamel.com/product/B0928N2ZD9">https://camelcamelcamel.com/product/B0928N2ZD9</a>	-
Hyundai Hytab Plus 8WB1	1	\$79.99	14-Mar-2022	Amazon	<a href="https://camelcamelcamel.com/product/B09HDVQ3FB">https://camelcamelcamel.com/product/B09HDVQ3FB</a> and <a href="https://keepa.com/#!/product/1-B09HDVQ3FB">https://keepa.com/#!/product/1-B09HDVQ3FB</a>	-
Gateway 8"	1	\$64.99	9-Mar-21	Walmart	<a href="https://web.archive.org/web/20210309193932/https://www.walmart.com/browse/electronics/gateway-tablets/3944_1078524_3119922_3326300">https://web.archive.org/web/20210309193932/https://www.walmart.com/browse/electronics/gateway-tablets/3944_1078524_3119922_3326300</a>	-
Gateway 8"	2	\$64.99	12-Aug-21	Walmart	<a href="https://web.archive.org/web/20210812064126/https://www.walmart.com/ip/Gateway-8-Tablet-Quad-Core-32GB-Storage-2GB-Memory-0-3MP-Front-Camera-2MP-Rear-Camera-USB-C-Sound-ID-Android-10-Go-">https://web.archive.org/web/20210812064126/https://www.walmart.com/ip/Gateway-8-Tablet-Quad-Core-32GB-Storage-2GB-Memory-0-3MP-Front-Camera-2MP-Rear-Camera-USB-C-Sound-ID-Android-10-Go-</a>	

					<a href="#">Edition-Black/934518766</a>	
Pritom L8	1	\$82.99	31-Mar-21	Amazon	<a href="https://web.archive.org/web/20210331020442/https://www.amazon.com/Android-Tablet-Pritom-Processor-Bluetooth/dp/B08CS9HG6M">https://web.archive.org/web/20210331020442/https://www.amazon.com/Android-Tablet-Pritom-Processor-Bluetooth/dp/B08CS9HG6M</a>	

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Amendment of Part 90 of the Commission's Rules ) WP Docket No. 07-100

SEVENTH REPORT AND ORDER AND NINTH FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: January 18, 2023

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By the Commission:

Comment Date: 30 days after publication in the Federal Register

Reply Comment Date: 60 days after publication in the Federal Register

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## I. INTRODUCTION

1. In this *Seventh Report and Order and Ninth Further Notice of Proposed Rulemaking*, we establish a comprehensive and coordinated nationwide approach to managing the 4.9 GHz (4940-4990 MHz) band while retaining its locally controlled, public safety nature. In doing so, we solidify the band’s status as public safety spectrum, while also allowing secondary, non-public safety use as agreed to by public safety licensees through a new leasing model. Critical to this vision for the 4.9 GHz band is the addition of a nationwide Band Manager, which will be selected based on its expertise and connections to the public safety community and will coordinate all operations in the band to ensure that any non-public safety use remains fully secondary to, and preemptible by, public safety operations. This nationwide framework will optimize public safety use and enable the integration of the latest commercially available technologies, such as 5G.

2. The *Seventh Report and Order* also modifies our rules to allow for the collection of granular data on public safety operations in the 4.9 GHz band. These data combined with a formal coordination structure performed by the Band Manager will improve interference mitigation efforts, bolster public safety confidence in the band, and will play a crucial role in the Band Manager’s ability to find opportunities for secondary, non-public safety access. We also make several changes to the technical rules for the band to promote more robust public safety operations. Finally, in the *Ninth Further Notice*, we seek comment on the details of implementing the new leasing model to achieve our goals of allowing robust locally controlled public safety operations while ensuring consistent, nationwide rules that promote overall spectral efficiency, foster innovation, and drive down equipment costs.

## II. BACKGROUND

### A. Current 4.9 GHz Band Rules

3. The current licensing and regulatory regime for the 4.9 GHz band is significantly different from other public safety bands. As an initial matter, the 4.9 GHz band has looser eligibility requirements; unlike the 700 MHz band which has statutorily defined eligibility criteria,<sup>1</sup> or the Public Safety pool which has Commission-defined eligibility criteria,<sup>2</sup> an entity need only provide public safety

<sup>1</sup> See 47 U.S.C. § 337(f)(1)(B).

<sup>2</sup> See 47 CFR § 90.20.

services to be eligible for a 4.9 GHz license.<sup>3</sup> Licensees include state and local government entities,<sup>4</sup> as well as nongovernmental organizations (NGOs) that support communications essential to services having the sole or principal purpose of protecting the safety of life, health, or property.<sup>5</sup>

4. The 4.9 GHz band is shared amongst eligible licensees—no licensee has a right to exclusive, or interference free, access to the band.<sup>6</sup> Similarly, unlike other public safety bands that only authorize operations on specific frequencies and in clearly delineated geographic areas, 4.9 GHz band licenses authorize operation on any channel over the entire 50 megahertz of the band and are generally issued for the geographic area encompassing the legal jurisdiction of the licensee.<sup>7</sup> Moreover, a 4.9 GHz licensee has blanket authority to operate base stations and mobile units (including portables and handheld units) and/or temporary (one year or less) fixed stations anywhere within its authorized area.<sup>8</sup> Our rules also permit eligible entities to license fixed point-to-point (P-P) and point-to-multipoint (P-MP) operations on specific channels within their jurisdictions, although only those fixed sites that are used to deliver broadband service are accorded “primary” status under the rules.<sup>9</sup>

5. While licensees in this band are geographically limited to the state or local jurisdictions specified on the license,<sup>10</sup> they are also permitted to operate base stations with mobile units and temporary fixed stations outside their authorized area with the permission of the jurisdiction in which they will operate.<sup>11</sup> This licensing scheme means that licenses often overlap with one or more geographic area licenses covering a given location and authorizing operations on the same spectrum, as well as multiple fixed-site licenses in the same area.<sup>12</sup> The Commission established this flexible structure based on public safety agencies’ unique history of coordination with one another in the use of shared frequencies.<sup>13</sup> Our 4.9 GHz rules, however, historically have not specified a formal coordination requirement.<sup>14</sup>

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<sup>3</sup> *Id.* § 90.1203(a) (referring to 47 CFR § 90.523(b) which allows a nongovernmental organization that provides services, the sole or principal purpose of which is to protect the safety of life, health, or property, to hold a license in the band).

<sup>4</sup> *Id.* § 90.523(a).

<sup>5</sup> *Id.* § 90.523(b). In addition, to establish eligibility, a NGO must also secure and maintain the support for the right to operate its system from a state or local governmental entity whose mission is to oversee or provide services that have the sole or principal purpose of protecting the safety of life, health or property, and the NGO must provide a written certification of such support in any submitted application. *Id.*

<sup>6</sup> *Id.* § 90.1209(a).

<sup>7</sup> *Id.* § 90.1207(a). In the case of a NGO, the license is issued for the legal jurisdiction of the state or local government entity supporting the NGO. *Id.* Some licenses are issued for only part of a licensee’s jurisdiction, for example, an area defined by a point and a specified radius of operation.

<sup>8</sup> *Id.* § 90.1207(b).

<sup>9</sup> *Id.* § 90.1207(d).

<sup>10</sup> *Id.* § 90.1207.

<sup>11</sup> *Id.* § 90.1207(c).

<sup>12</sup> For example, a common scenario might involve a statewide license held by the state police, a county-wide license held by the sheriff’s department, and fixed-site licenses operating in the same area by various public safety entities. Licensees informally cooperate with one another to ensure that their operations do not cause interference with one another, and to resolve interference if it occurs.

<sup>13</sup> *The 4.9 GHz Band Transferred from Federal Government Use*, Memorandum Opinion and Order and Third Report and Order, 18 FCC Rcd 9152, 9164, para. 28 (2003) (*4.9 GHz Third Report and Order*) (“We note that many public safety agencies already have procedures or protocols in place with nearby jurisdictions to govern frequency sharing during situations requiring joint operations.” The Commission also explained that “the nature of public safety operations in general will . . . facilitate this sharing requirement.”).

<sup>14</sup> 47 CFR §§ 90.175(j)(22), 90.1209(b).

## B. Current State of the 4.9 GHz Band

6. There are 3,541 licenses currently issued in the band.<sup>15</sup> This includes 137 statewide area licenses, 1,145 countywide area licenses, and 2,259 other licenses, either for geographic area licenses or other types (such as for a group of counties, a city, or parts of one or more cities) or for fixed sites.<sup>16</sup> Most of the United States and U.S. territories are covered by at least one statewide license.<sup>17</sup> In some states, multiple state entities hold statewide licenses.<sup>18</sup> Licensees use P-P and P-MP operations, to facilitate video streaming, communications system backhaul, and data connections for advanced devices.<sup>19</sup> Commenters have suggested that emerging and potential uses of the band may include robotics and airborne operations, as well as the Internet of Things.<sup>20</sup>

## C. Procedural History

7. In 2002, the Commission designated the 4.9 GHz band for public safety use.<sup>21</sup> Operations in the band are limited to those in support of public safety operations<sup>22</sup> and licenses for the band are exclusively available to public safety entities or those operating in support of public safety.<sup>23</sup> Since the designation of the band, the rules have evolved in response to changing conditions, including

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<sup>15</sup> *Universal Licensing System*, FCC, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp> (last visited Jan. 10, 2023).

<sup>16</sup> For example, Southwestern NH District Fire Mutual Aid holds a license, call sign WQNM520, covering three counties in New Hampshire.

<sup>17</sup> The following states/territories are not covered by a statewide license: American Samoa, Georgia, Iowa, Kansas, the Northern Mariana Islands, and South Dakota.

<sup>18</sup> For example, the State of Maryland holds a statewide 4.9 GHz band license (WPYX998), as do four other agencies of the Maryland state government (Maryland State Highway Administration – WQAN291; Maryland Department of Information Technology – WPYZ305; Maryland DNR – WPYT728; Maryland MIEMSS – WQAL856).

<sup>19</sup> *Amendment of Part 90 of the Commission's Rules*, WP Docket No. 07-100, Order on Reconsideration and Eighth Further Notice of Proposed Rulemaking, 36 FCC Rcd 15032, 15036, para. 9 (2021) (*Order on Reconsideration or Eighth Further Notice*).

<sup>20</sup> Letter from Ralph A. Haller, Chairman, National Public Safety Telecommunications Council, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100, at 3 (filed Aug. 13, 2021) (NPSTC Aug. 13, 2021, *Ex Parte*) (“The NPSTC recommendations incorporate provisions for new public safety operations that advances in robotics, the internet of things (IoT) and unmanned aerial systems technologies are generating.”); *see also* IAFC Nov. 23, 2021, Comments at 6-7 (“The IAFC also agrees with NPSTC that 4.9 GHz spectrum can be instrumental in supporting emerging technologies beneficial to public safety, including aeronautical, both manned and unmanned (UAS), robotics and the public safety Internet of Things (PS IoT).”); EWA Nov. 29, 2021, Comments at 8-9 (“Designating specific 4.9 GHz channels for UAS, for robotics, and for IoT technologies will further promote efficient use of this spectrum.”). While Commission rule, section 90.1205(c), 47 CFR § 90.1205(c), currently prohibits aeronautical mobile operations, some operations have been authorized through rule waiver. *See, e.g.*, City of Long Beach, California, call sign WQJE424.

<sup>21</sup> *See The 4.9 GHz Band Transferred from Federal Government Use*, WT Docket No. 00-32, Second Report and Order and Further Notice of Proposed Rulemaking, 17 FCC Rcd 3955 (2002) (*Second Report and Order*).

<sup>22</sup> 47 CFR § 90.1203(b).

<sup>23</sup> *Id.* § 90.1203(a).

band use and technological innovation.<sup>24</sup> In these endeavors, the Commission has sought to increase the use of the band with the goal of maximizing the spectrum's potential.<sup>25</sup>

8. *Sixth Further Notice.* On March 23, 2018, the Commission adopted the *Sixth Further Notice*. The *Notice*, drawing on comments in the record as well as a plan submitted by NPSTC in 2013 and a report provided by APCO in 2015,<sup>26</sup> sought comment on several alternatives to stimulate investment in, as well as expand use of, the 4.9 GHz band.

9. *Freeze Public Notice.* In an effort to stabilize the band while the Commission considers changes to its rules as part of this proceeding,<sup>27</sup> on September 8, 2020, the Public Safety and Homeland Security Bureau (PSHSB) and the Wireless Telecommunications Bureau (WTB) (collectively the Bureaus) announced a freeze on applications in the 4.9 GHz band.<sup>28</sup> Pursuant to the *Freeze Public Notice*, the Bureaus stopped accepting applications for new or modified licenses, including both geographic area licenses and individual fixed-site licenses.<sup>29</sup>

10. *Sixth Report and Order and Seventh Further Notice.* On September 30, 2020, the Commission adopted the *Sixth Report and Order and Seventh Further Notice* in this proceeding.<sup>30</sup> The new leasing framework adopted in the *Sixth Report and Order* granted states the option to lease spectrum access through a single statewide entity designated as the State Lessor to state and local entities—whether public safety or non-public safety—as well as to commercial and other private entities in their

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<sup>24</sup> See, e.g., *Order on Reconsideration and Eighth Further Notice*, 36 FCC Rcd 15032; *Amendment of Part 90 of the Commission's Rules*, WP Docket No. 07-100, *Sixth Report and Order and Seventh Further Notice of Proposed Rulemaking*, 36 FCC Rcd 1958 (2020) (*Sixth Report and Order or Seventh Further Notice*); *Amendment of Part 90 of the Commission's Rules*, WP Docket No. 07-100, *Sixth Further Notice of Proposed Rulemaking*, 33 FCC Rcd 3261 (2018) (*Sixth Further Notice*).

<sup>25</sup> The Commission has also received extensive input from public safety organizations such as the Association of Public-Safety Communications Officials-International, Inc. (APCO) and the National Public Safety Telecommunications Council (NPSTC). See, e.g., APCO International, 4.9 GHz Task Force Report (2015), <https://ecfsapi.fcc.gov/file/60001325364.pdf>, (APCO Sept. 28, 2015 Report); NPSTC, 4.9 GHz National Plan Recommendations Final Report (2013), [https://npstc.org/download.jsp?tableId=37&column=217&id=3222&file=4\\_9\\_GHz\\_National\\_Plan\\_Report\\_131024.pdf](https://npstc.org/download.jsp?tableId=37&column=217&id=3222&file=4_9_GHz_National_Plan_Report_131024.pdf), (NPSTC Oct. 24, 2013 Plan).

<sup>26</sup> *Sixth Further Notice*, 33 FCC Rcd at 3262, para. 3; NPSTC Oct. 24, 2013 Plan; APCO Sept. 28, 2015 Report.

<sup>27</sup> This proceeding began in 2007, and has been the subject of ongoing efforts from the Commission and the public safety community to make the most of this valuable spectrum. *Amendment of Part 90 of the Commission's Rules*, WP Docket No. 07-100, *Notice of Proposed Rulemaking*, 22 FCC Rcd 9595 (2007).

<sup>28</sup> *Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce Temporary Filing Freeze on the Acceptance and Processing of Certain Part 90 Applications for the 4940-4990 MHz Band*, WP Docket No. 07-100, *Public Notice*, 35 FCC Rcd 9522 (PSHSB/WTB 2020) (*Freeze Public Notice*). The *Freeze Public Notice* also noted that any 4.9 GHz licensee could seek relief from the freeze through the Commission's waiver provisions. *Id.* at 9523.

<sup>29</sup> See *Freeze Public Notice*.

<sup>30</sup> *Sixth Report and Order*, 36 FCC Rcd at 1959. In the *Seventh Further Notice*, the Commission, among other things, proposed an expansion of the new state-based framework to include public safety operations and proposed to amend its 4.9 GHz licensing rules to limit future licensing to state entities seeking a statewide license in states without an existing statewide license for purposes of this coordination. *Seventh Further Notice*, 36 FCC Rcd at 1977-82, paras. 48-60.

jurisdictions.<sup>31</sup> State Lessors were also permitted to use the band for non-public safety purposes themselves.<sup>32</sup>

11. *Order on Reconsideration and Eighth Further Notice.* The Commission subsequently adopted the *Order on Reconsideration and Eighth Further Notice* on September 30, 2021.<sup>33</sup> The *Order on Reconsideration*, issued before the framework adopted in the *Sixth Report and Order* could become effective, granted three public safety organization petitions insofar as they sought reconsideration of the rules adopted in the *Sixth Report and Order*.<sup>34</sup> We agreed that, rather than allowing State Lessors to use and lease the band for non-public safety purposes, the public interest would be better served by considering other models, in particular those that advanced a single, nationwide framework for the band. As discussed below, the Commission also directed the Bureaus to lift, in part, the licensing freeze adopted in advance of the *Sixth Report and Order*, thereby allowing incumbents to modify their existing licenses or to license new permanent fixed sites. The freeze was to remain in place as to non-incumbent applicants for 4.9 GHz band licenses.

12. In the *Eighth Further Notice*, the Commission sought comment on important technical and policy questions concerning how to maximize the use of the band to support public safety, leverage technological advancements (such as 5G), foster a robust equipment market, and address non-public safety use of the band on a nationwide basis.<sup>35</sup> In contrast to the State Lessor model, which would have led to different practices for the band in different states, the Commission sought comment on a unified approach across the entire country. We thus sought input on requiring formal frequency coordination in the 4.9 GHz band to support interference protection and increase public safety confidence in using the band.<sup>36</sup> In addition, the Commission asked about the role of the Regional Planning Committees (RPCs), and whether, if we adopted frequency coordination requirements, the RPCs have the technical expertise and resources to serve as coordinators.<sup>37</sup> We also solicited feedback on several alternatives to promote innovation, stimulate investment, and facilitate robust public safety access in the 4.9 GHz band.<sup>38</sup> Further, the Commission sought comment on establishing a database that would contain consistent and reliable information about what spectrum is available and where and how it is being used.<sup>39</sup>

13. Alongside these potential changes, the Commission inquired about allowing non-public safety use of the band to encourage a more robust and innovative equipment market without causing

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<sup>31</sup> *Sixth Report and Order*, 36 FCC Rcd at 1959, para. 2. The Commission only permitted states that are not identified in the Commission's 911 Fee Report from December 2019 as diverting 911 fees for non-911 purposes to lease spectrum rights to non-public safety or public safety entities. *Id.* at 1967-68, paras. 23-24; *see also* FCC, Eleventh Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges at 39, para. 27 (2019), <https://www.fcc.gov/files/11thannual911feereport2019pdf>.

<sup>32</sup> *Sixth Report and Order*, 36 FCC Rcd at 1971-72, paras. 35-36.

<sup>33</sup> *Order on Reconsideration and Eighth Further Notice*, 36 FCC Rcd at 15032. On May 27, 2021, the Commission granted the Public Safety Spectrum Alliance's Petition for Stay of the *Sixth Report and Order*, which stayed the implementation of the new leasing framework adopted in the *Sixth Report and Order* for the 4.9 GHz band, which had not yet become effective, pending a Commission decision on the petitions for reconsideration filed in this proceeding. *Amendment of Part 90 of the Commission's Rules*, WP Docket No. 07-100, Order, 36 FCC Rcd 9761 (2021) (*Stay Order*).

<sup>34</sup> Petitions for reconsideration were filed by PSSA, APCO, and NPSTC. *Order on Reconsideration*, 36 FCC Rcd at 15038-42, paras. 16-26.

<sup>35</sup> *Eighth Further Notice*, 36 FCC Rcd at 15042-62, paras. 27-89.

<sup>36</sup> *Id.* at 15048-50, paras. 45-50.

<sup>37</sup> *Id.* at 15051-52, paras. 54-56.

<sup>38</sup> *Id.* at 15052-53, paras. 57-60.

<sup>39</sup> *Id.* at 15044-46, paras. 32-36.

harmful interference to public safety operations in the band.<sup>40</sup> The Commission emphasized the importance of public safety operations in this band, but sought comment on how allowing non-public safety use could not only lower equipment and deployment costs but also increase efficient use of spectrum, without undermining critical public safety operations.

14. In addition, we sought comment on implementing a nationwide spectrum management framework reflecting public safety input that “will promote more opportunistic use of the 4.9 GHz band without compromising the integrity and security of public safety operations.”<sup>41</sup> More specifically, the Commission asked about designating a single entity to serve as a nationwide band manager or licensee for the 4.9 GHz band and what its responsibilities would be under such an approach.<sup>42</sup>

15. *Freeze Modification Public Notice.* On October 21, 2021, pursuant to the *Order on Reconsideration*, the Bureaus amended the freeze to allow those with existing 4.9 GHz licenses to seek to modify those licenses, whether for permanent fixed sites or geographic areas, as permitted under the rules.<sup>43</sup>

### III. SEVENTH REPORT AND ORDER

#### A. Overview and Key Findings

16. Today we adopt rules that create a comprehensive and coordinated nationwide approach to the 4.9 GHz band, centralizing management in a single Band Manager, while retaining local control over operations conducted by individual public safety licensees. This framework will retain the band’s existing status as a locally controlled public safety band, but with more rationalized and coordinated public safety operations on a nationwide level. Each licensee will retain the authority to decide for itself how best to use the band, given its unique circumstances and needs, but within the context of a predictable and consistent spectral framework nationwide. This will enable greater public safety use, including for 5G, and allow the Band Manager to work with public safety licensees to rationalize their use and consolidate their operations, potentially freeing up new opportunities for expanded use. These expanded operations will encompass both primary public safety use and, subject to coordination by the Band Manager, secondary non-public safety use, the latter of which will be subject to preemption by public safety operations. This balanced approach will spur innovation and drive down costs, enabling more efficient use of this important mid-band spectrum.

17. Implementing a centralized coordination strategy will provide better information and certainty about existing users and public safety deployments, which in turn will help leverage new technologies, lower equipment costs, attract new users, facilitate effective frequency coordination and interference protection, and promote interoperability. We believe this structure will foster greater development and deployment of 4.9 GHz band equipment and systems, increasing spectral efficiency and furthering the public interest, while retaining the operational flexibility and local control that have been

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<sup>40</sup> *Id.* at 15054-60, paras. 61-86.

<sup>41</sup> *Id.* at 15042-62, paras. 27-89; *see also Sixth Further Notice*, 33 FCC Rcd at 3262, para. 3.

<sup>42</sup> *Eighth Further Notice*, 36 FCC Rcd at 15050-51, paras. 51-53.

<sup>43</sup> *Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Modify Temporary Filing Freeze on the Acceptance and Processing of Certain Part 90 Applications for the 4940-4990 MHz Band*, WP Docket No. 07-100, Public Notice, 36 FCC Rcd 15185 (PSHSB/WTB 2021) (*Freeze Modification Public Notice*); *Order on Reconsideration*, 36 FCC Rcd at 15041-42, para. 25. In the *Order on Reconsideration* we gave the example that an incumbent licensee is permitted to add base stations within its jurisdiction. 47 CFR § 90.1207(c). Also, an incumbent licensee may continue to seek an individual station license if required pursuant to Commission rule section 90.1207(b)(1). *Id.* § 90.1207(b)(1). In addition to new deployments within its jurisdiction pursuant to an existing geographic area license, a public safety entity may expand operations through leasing from a State Lessor. *Order on Reconsideration*, 36 FCC Rcd at 15041-42, para. 25.

the hallmarks of the band's structure. This will move the band away from being underutilized and towards being a workhorse not only for public safety operations, but also for non-public safety uses.

### B. Band Manager

18. In the *Eighth Further Notice*, the Commission sought comment on revisions to the 4.9 GHz service rules to expand access to the band, spur innovation, improve coordination, and drive down costs for operators and end users through a new, nationwide framework for the band.<sup>44</sup> We noted the critical importance of incumbent public safety operations and the need to preserve local control over the band, both to accommodate the localized nature of public safety operations and to continue to allow the wide range of public safety uses that the band hosts.<sup>45</sup> At the same time, we emphasized that it was crucial that there be a single set of rules governing the band nationwide.<sup>46</sup> We pointed out that centralizing management of the band would help ensure that public safety operators have consistent rules and a harmonized equipment marketplace, and that any non-public safety use would be standardized and predictable.<sup>47</sup>

19. The Commission also solicited comment on different ways to balance these goals, including via designation of a nationwide Band Manager.<sup>48</sup> We pointed to our experience with band managers in the 700 MHz Guard Bands and the 220 MHz band as precedents for using such an entity to establish a nationwide framework here.<sup>49</sup> Commenters expressed significant support for a nationwide band manager stating that doing so “further ensure[s] public safety interoperability”<sup>50</sup> and that it is “the most effective way to maximize the utilization of the 4.9 GHz band.”<sup>51</sup>

20. In this *Seventh Report and Order*, we adopt a single, nationwide framework for the 4.9 GHz band, that is centered around a new Band Manager, which will be equipped with additional information about the current public safety use of the band and empowered to work with public safety licensees to ensure efficient use of this spectrum and enable new, non-commercial operations on a secondary, preemptible basis. We believe that a nationwide Band Manager will be able to effectively protect the interests of incumbent public safety users by establishing consistent, nationwide rules governing use of the band and providing new opportunities for non-public safety access to the band.<sup>52</sup>

<sup>44</sup> *Eighth Further Notice*, 36 FCC Rcd at 15042-43, para. 27.

<sup>45</sup> *Id.* at 15048, para. 44.

<sup>46</sup> *Id.* at 15050, para. 51.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 15050-51, paras. 51-53.

<sup>49</sup> *Id.* at 15050, para. 52.

<sup>50</sup> SBC Jan. 10, 2022, Reply at 4-6.

<sup>51</sup> PSSA Nov. 29, 2021, Comments at 5-6, 9, 11 (stating “. . . the most-effective way to maximize the utilization of the 4.9 GHz band is to create a nationwide license and authorize a nationwide band manager to implement and enforce priority and preemption rights for public safety, and to permit use of the band for 5G public safety services, while also allowing secondary use of the spectrum on a noninterfering and pre-emptible basis”); see also IAFC Dec. 20, 2021, Reply at 4 (agreeing “with the PSSA that a nationwide band manager would be the most efficient way to ensure consistency throughout the country”, adding that “a nationwide band manager would implement and enforce priority and preemption rights for public safety and allow secondary use of the spectrum on a noninterfering and preemptive basis.”); Neil Horden Jan. 18, 2022, *Ex Parte* at 2 (“Only the establishment of a national strategy and national coordination, licensing, and leasing can maximize the use and utility of the spectrum.”); Letter from American Petroleum Institute, et al, to Marlene H. Dortch, WP Docket No. 07-100, at 2 (filed Aug. 25, 2022) (API et al. Aug. 25, 2022, *Ex Parte*) (supporting the implementation of a band manager-like entity that would be responsible for the “development of a 4.9 GHz spectrum band utilization strategy and policies”).

<sup>52</sup> See IACP Nov. 29, 2021, Comments at 3; IAFC Nov. 23, 2021, Comments at 5-6 (“The band manager must also be empowered to clear 4.9 GHz spectrum of secondary users when public safety users need the band for local,

(continued....)

We also believe this approach will spur innovation and drive down costs while ensuring full protection for authorized public safety operations.<sup>53</sup> Crucially, the Band Manager will ensure that local governments can continue to use the band to suit their unique spectrum needs, while promoting the most efficient use of spectrum and creating a consistent and clear band framework nationwide. We therefore find that designating a nationwide Band Manager to coordinate public safety access and facilitate the introduction of non-public safety services to the band will best serve the public interest.

### 1. Selecting the Band Manager

21. In the *Eighth Further Notice*, we sought comment on the process for accepting applications and selecting the entity that will manage leasing to non-public safety entities.<sup>54</sup> We also sought comment on the criteria to be used to certify coordinators of public safety operations in the band.<sup>55</sup> Based on past Commission experience, we find that it is in the public interest for the Band Manager—who will fill both roles—to be chosen by a selection committee that represents and ensures the involvement of the relevant stakeholders, in particular the public safety community. The Commission has successfully used similar selection committees in other proceedings, such as the 700 MHz and 800 MHz proceedings,<sup>56</sup> and most recently in the 3.7 GHz<sup>57</sup> and 3.45 GHz<sup>58</sup> clearinghouse selections, to enable interested parties to choose who can most effectively manage complex coordination efforts. In the 3.7 GHz proceeding, for example, the Commission used a selection committee to evaluate and choose the 3.7 GHz relocation clearinghouse, the entity responsible for the multi-billion dollar relocation reimbursement process, which is an essential component of transitioning that critical mid-band spectrum to enable new wireless operations.<sup>59</sup> A similar process is underway in the 3.45 GHz band.<sup>60</sup> These selection committees have successfully incorporated feedback from relevant stakeholders to facilitate the choice of well-qualified clearinghouse candidates in the aforementioned bands. We believe using a selection committee in the 4.9 GHz band will similarly enable the efficient use of mid-band spectrum here, while ensuring that the Band Manager is representative of and fully supported by the public safety community.

22. A stakeholder-led process will be particularly useful for the selection of the Band Manager in the instant case, because the Band Manager’s connections with the public safety community will form the backbone of its work. The trust and understanding of the public safety community, as well as its voluntary cooperation with and buy-in to the Band Manager’s mission, will be essential to achieving

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regional, or even nationwide incidents.”); PSSA Jan. 11, 2022, Reply at 2 (“As the PSSA previously stated, a nationwide license is the most effective way to maximize the utilization of the 4.9 GHz Band, and the most efficient way to ensure that public safety users enjoy priority and preemption.”); Seybold Dec. 22, 2021, Reply at 2; SBC Jan. 10, 2022, Reply at 4-6; AT&T Jan. 11, 2022, Reply at 3 (“Although utilized intensively by public safety entities in some state and local jurisdictions under the current regulatory framework, the 4.9 GHz band can and should be more efficiently managed through a nationwide, public safety-led approach.”); ETSB Jan. 21, 2022, *Ex Parte* at 8 (“The ETSB supports the use of a single entity to serve as a nationwide band manager[.]”).

<sup>53</sup> *Eighth Further Notice*, 36 FCC Rcd at 15048, para. 45.

<sup>54</sup> *Id.* at 15050-51, paras. 52-53.

<sup>55</sup> *Id.* at 15049, para. 50.

<sup>56</sup> See 47 CFR § 90.676; see also *id.* § 27.1413(a).

<sup>57</sup> *Id.* § 27.1414(a).

<sup>58</sup> *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, 36 FCC Rcd 5987, 6045, para. 163 (2021) (*3.45 GHz Second Report and Order*); see also *Wireless Telecommunications Bureau Seeks Comment on the Selection Process for and Operation of the Reimbursement Clearinghouse for the 3.45 GHz Band*, WT Docket No. 19-348, Public Notice, 36 FCC Rcd 12698 (2021) (*3.45 GHz Search Committee PN*).

<sup>59</sup> 47 CFR § 27.1414(a).

<sup>60</sup> *3.45 GHz Band Second Report and Order*, 36 FCC Rcd at 6045, para. 163; *3.45 GHz Search Committee PN*, 36 FCC Rcd 12698.

both band rationalization and use maximization of spectrum rights. The selection committee, which will be named by the Commission, will choose from a pool of qualified applicants, and as in prior cases, the final selection will be subject to a finding by the Commission that the selection satisfies the criteria established by the selection committee. While we seek comment on the rights and responsibilities of the Band Manager—which will form the basis for the committee’s selection criteria—the composition of the selection committee, and other process details in the *Ninth Further Notice*, we find that utilizing a selection committee will ensure that the Band Manager, once chosen, will adequately represent the public safety community and foster a cooperative environment that promotes the efficient management and use of this band. We delegate to the Bureaus the authority to manage the process of determining the selection committee’s responsibilities, including by issuing public notices as necessary to obtain additional comment to address questions regarding the selection committee.

## 2. Band Manager Responsibilities

23. Once selected, the Band Manager will have three primary responsibilities: (1) frequency coordination; (2) incentivizing the use of the latest commercially available technologies, including 5G; and (3) facilitating secondary non-public safety use. We describe each responsibility below, and seek comment in the *Ninth Further Notice* on questions related to the implementation of these provisions, as well as the Commission’s role in ensuring the Band Manager can achieve these goals.

24. *Frequency Coordination.* In the *Eighth Further Notice*, we sought comment on whether frequency coordination should be incorporated into management of the band to support efficient and interference-free access for public safety operations.<sup>61</sup> Based on record support, we assign to the Band Manager responsibility for performing the frequency coordination function for public safety applicants seeking to license new or modify existing facilities in the band, thus ensuring the efficient assignment and use of spectrum by public safety licensees.<sup>62</sup> As discussed below,<sup>63</sup> the Band Manager will perform its frequency coordination duties consistent with the Commission’s rules, once adopted,<sup>64</sup> and with input from public safety licensees and applicants to ensure that they are able to access sufficient spectrum for their operations. In doing so, the Band Manager will advise and help public safety licensees and applicants to design their deployments in order to promote efficient and robust use of the band and prevent harmful interference to other licensees. The Band Manager will not, however, have the authority to disallow proposed public safety operations or otherwise limit public safety operations once a public safety entity is licensed to operate in the band. Instead, the Band Manager will provide public safety licensees and applicants with recommendations for the technical characteristics of a proposed system, subject to Commission review in the case of any objections to such recommendations. While the Band

<sup>61</sup> *Eighth Further Notice*, 36 FCC Rcd at 15043, 15048-50, paras. 30, 45-50.

<sup>62</sup> See PSSA Nov. 29, 2021, Comments at 9-10 (stating that a “band manager should develop a spectrum plan for the use of 5G across the contiguous 50 MHz of spectrum” and “be responsible for developing a sustainable business model for usage of the band that would optimize such use”); IAFC Nov. 23, 2021, Comments at 5 (stating that the Commission should “designate a single nationwide band manager that would be responsible for developing a nationwide framework for the 4.9 GHz band”); Caltrans Nov. 23, 2021, Comments at 5 (“Caltrans proposes that primary tasks for a nationwide band manager include . . . Spectrum Protection [to] ensure that protection from harmful interference is strictly observed. Spectrum Band management [to] ensure that equitable spectrum allocation between public safety and non-public safety use is maintained.”); PSSA Jan. 11, 2022, Reply at 2 (stating that a band manager should be appointed to “coordinate usage of the band, ensure interoperability, and protect public safety operations from interference.”); Seybold Dec. 22, 2021, Reply at 2 (offering support for a “nationwide band manager who will issue the order to provide both the public-safety community and secondary users with the type of network management required by public safety”); Joint Filers Reply at 1-2 (“The Joint Filers believe that the majority of those submitting comments are in general agreement that . . . [t]he rules applicable to the use of the 4.9 GHz should be harmonized with those applicable to other frequency bands supporting public safety communications, including the use of Commission certified frequency coordinators in the licensing process[.]”).

<sup>63</sup> See *infra* paras. 36-43.

<sup>64</sup> See *infra* paras. 36-43, 73-86.

Manager will ensure that consistent criteria are used to evaluate the potential for harmful interference, and that all 4.9 GHz operations are designed with the same best practices for efficient spectrum use, it will not impose any limits on public safety use of the band. We recognize that the success of this framework will depend in part on public safety licensees' cooperation and responsible use of spectrum, and given the history of collaboration within this community we anticipate few, if any, issues.

25. *Technological Incentivization.* The *Eighth Further Notice* also sought comment on commercial 5G offerings available to public safety, and on any public safety use cases supported by 5G and other advanced technologies.<sup>65</sup> The Commission further raised the potential for the 4.9 GHz band to support applications enabled by 5G technology, but it expressed a strong preference to adhere to a technology-neutral policy for the band and strive for operational flexibility.<sup>66</sup>

26. In response, several commenters supported the deployment and integration of commercially available technologies such as 5G in the 4.9 GHz band,<sup>67</sup> with some commenters stating that frequency coordination and facilitation by a Band Manager may be necessary if advanced technologies are introduced into the band.<sup>68</sup> For instance, NPSTC asserted that advanced technologies, such as 5G, must be deployed in such a way that supports continued public safety operations.<sup>69</sup>

27. Based on the comments before us, we conclude that the Band Manager should use its background and expertise to determine and recommend, as part of a spectrum plan for the band and for the benefit of any interested licensees and lessees, how best to incorporate the latest commercially available technologies, including 5G, into the 4.9 GHz band in a manner that supports and protects public safety operations. We decline to mandate the use of such technologies in the band, as we agree that this more restrictive approach could limit the use of certain equipment by incumbent licensees.<sup>70</sup> In keeping

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<sup>65</sup> *Eighth Further Notice*, 36 FCC Rcd at 15052, para. 57.

<sup>66</sup> *Id.* at 15052-53, paras. 58-59.

<sup>67</sup> NPSTC Nov. 29, 2021, Comments at 16-17; IACP Nov. 29, 2021, Comments at 4 (“the full 50 MHz of 4.9 GHz is best suited for 5G deployment and, if so, aligns with the ability to pass public presented 5G data to first responders in the field”); PSSA Nov. 29, 2021, Comments at 5; PSSA Jan. 11, 2022, Reply at 3; IAFC Nov. 23, 2021, Comments at 6; IAFC Dec. 20, 2021, Reply at 4-5 (stating that “IAFC agrees with NPSTC that it is enthusiastic about the potential use of 5G technology to serve public safety needs and agrees with PSSA that 4.9 GHz band is well-suited for emerging technologies, including 5G”).

<sup>68</sup> See STARNet Nov. 24, 2021, Comments at 3; Joint Filers Nov. 29, 2021, Comments at 4; PSSA Jan. 11, 2022, Reply at 3 (stating “[t]he most effective way to accelerate the deployment of 5G technologies in the 4.9 GHz Band is through a nationwide licensee (and the appointment of a band manager by such licensee) to develop a spectrum plan for the use of 5G across the band, which would facilitate widespread deployment and interoperability, and lower equipment costs”); PSSA Nov. 29, 2021, Comments at 9; IAFC Dec. 20, 2021, Reply at 5 (concurring with PSSA).

<sup>69</sup> NPSTC Comments at 16 (“5G technology must be deployed in a way needed to serve the public safety community with the requisite capacity, reliability, real coverage, backup power provisions, operational features, rugged devices and specialized applications required. However, to date, NPSTC has seen no evidence that deploying 5G would eliminate the need for the current communications uses at 4.9 GHz, i.e., uses that will continue to be required by the public safety community”); see also Joint Filers Reply at 4 (“The concept of public safety 5G as advocated by the PSSA, IACP, and IAFC fails to address that there are thousands of 4.9 GHz fixed microwave paths in use today that must be protected.”).

<sup>70</sup> API and ENTELEC Nov. 29, 2021, Comments at 6; WISPA Jan. 11, 2022, Reply at 14-15 (stating “[n]o commenter recommended that the Commission should mandate the use of 5G technology in the 4.9 GHz band”); BART Nov. 29, 2021, Comments at 8-9 (stating it “applauds the Commission’s strong preference ‘to adhere to a technology-neutral policy’ and ‘strive for operational flexibility’” but “[a]ny new technology standards should not require new investment or updates by incumbent licensees”); WISPA Nov. 29, 2021, Comments at 23-25 (opposing mandating 5G, or any other technology or standard, because it would undermine the intended objectives of this proceeding by limiting the use of proprietary equipment that is ready-made for the 4.9 GHz band); Maryland et al. Jan. 11, 2022, Reply at 4 (“[t]he concept of public safety 5G as advocated by the PSSA, IACP, and IAFC fails to address that there are thousands of 4.9 GHz fixed microwave paths in use today that must be protected”).

with our goal of protecting public safety operations, we will require the Band Manager to seek input from licensees and work to facilitate the deployment of advanced wireless technologies in a manner that supports and protects public safety users. We also seek comment in the *Ninth Further Notice* below on ways to further encourage the deployment of the latest commercially available technologies below in the *Ninth Further Notice*.<sup>71</sup>

28. *Facilitating Non-Public Safety Access.* While the Commission emphasized the importance of public safety operations in the 4.9 GHz band in the *Eighth Further Notice*, we also recognized that introducing non-public safety operations in the band may help foster innovation and drive down equipment costs, thereby making more intensive public safety use of the spectrum a possibility.<sup>72</sup> To that end, we sought comment on expanding use of the band to non-public safety entities, subject to appropriate safeguards to protect public safety operations.<sup>73</sup> In response, various commenters supported introducing non-public safety users into the band, asserting that this could foster a “‘virtuous cycle’ of reduced costs,”<sup>74</sup> “create opportunities for incumbents and new entrants alike”, and “encourage equipment manufacturers to innovate and develop an expanded device ecosystem.”<sup>75</sup> Commenters cautioned, however, that public safety operations must be protected from harmful interference if the band is opened to non-public safety use.<sup>76</sup>

29. Today, we adopt new rules to allow limited non-public safety access to the 4.9 GHz band, on a secondary basis to, and subject to preemption by, public safety licensees, which will remain the primary users of the band. This expanded access for non-public safety entities will rely on a Band Manager-facilitated spectrum leasing framework premised on the Band Manager’s analysis of where, when, and at what frequencies non-public safety operations can take place without impacting public safety operations. The Band Manager will identify, based on consultation with relevant public safety licensees and its own expertise, situations where there are unused spectrum access opportunities. This cooperative process will enable the Band Manager to take advantage of both its expertise on 4.9 GHz band public safety operations and its extensive links with the public safety community to identify spectrum access opportunities potentially available to non-public safety entities with flexibility to permit regional variation and maximize spectrum use, but also enough consistency to ensure full protection for current and future public safety operations. We believe this approach strikes the proper balance between allowing localized control of public safety operations and reducing interference, while also ensuring that consistent, nationwide rules will promote overall spectral efficiency, foster innovation, and drive down equipment costs.<sup>77</sup> We elaborate further on this approach below in this *Seventh Report and Order*, and seek comment in the *Ninth Further Notice* on the details of implementing the Band Manager facilitated

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<sup>71</sup> NPSTC Nov. 29, 2021, Comments at 14; TDD Nov. 29, 2021, Comments at 3; FPL Nov. 29, 2021, Comments at 2-5; IAFC Nov. 23, 2021, Comments at 6-7 (concurring with NPSTC); PSSA Jan. 11, 2022, Reply at 3, 6; *see also* 3GPP, <https://3gpp.org> (last visited Jan. 10, 2023).

<sup>72</sup> *Eighth Further Notice*, 36 FCC Rcd at 15054-55, paras. 61-65.

<sup>73</sup> *Id.*

<sup>74</sup> T-Mobile Jan. 11, 2022, Reply at 3-4.

<sup>75</sup> APCO Nov. 29, 2021, Comments at 7.

<sup>76</sup> WISPA Nov. 29, 2021, Comments at 17-19; APCO Comments at 7; STARNet Nov. 24, 2021, Comments at 9-10; Seybold Dec. 22, 2021, Reply at 2.

<sup>77</sup> *See* PSSA Nov. 29, 2021, Comments at 8 (stating that a nationwide licensee would “facilitate nationwide network deployment, thereby accelerating the availability of the 4.9 GHz Band for 5G services and reducing equipment costs” and agreeing with the Commission that a nationwide approach to the band will “promote a robust equipment market, drive down prices and costs, spur innovation, and increase the likelihood of interoperable communications and consistent interference protection”); PSSA Jan. 11, 2022, Reply at 2 (stating a nationwide licensee “is also the most effective way to facilitate the Commission’s other goals regarding the 4.9 GHz Band, including nationwide network deployment, interoperability, and reduced equipment costs”).

non-public safety leasing model to achieve these goals.

### C. Licensing Database

30. The Commission sought comment in the *Eighth Further Notice* on collecting more granular data on 4.9 GHz operations in a licensing database and combining that data with a formal coordination structure to improve interference mitigation efforts and bolster public safety confidence in the band.<sup>78</sup> We also sought comment on whether to continue using the Universal Licensing System (ULS) or transition to a third-party licensing database to accommodate additional information.<sup>79</sup>

31. Commenting parties overwhelmingly supported the collection of more granular data on public safety operations.<sup>80</sup> In particular, filers supported the collection of complete microwave path data for fixed links and site-by-site data on base stations (currently licensed under the geographic licensing scheme) as proposed in the *Eighth Further Notice*.<sup>81</sup> Commenters also universally supported keeping ULS over transitioning to a third-party database.<sup>82</sup> For example, EWA stated that “there is no need to look beyond the FCC’s own” ULS and argued there is no “rationale to support the introduction of a third-party managed database that would replicate capabilities already available in ULS.”<sup>83</sup> Commenting parties also explained that transitioning to a third-party database would result in added delays and additional costs for licensees.<sup>84</sup>

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<sup>78</sup> *Eighth Further Notice*, 36 FCC Rcd at 15044, para. 32.

<sup>79</sup> *Id.*

<sup>80</sup> NPSTC Nov. 29, 2021, Comments at 6-7; APCO Nov. 29, 2021, Comments at 4; AASHTO Nov. 29, 2021, Comments at 3; Caltrans Nov. 23, 2021, Comments at 4; IACP Nov. 29, 2021, Comments at 2; IAFC Nov. 23, 2021, Comments at 3-4; Region 20 Nov. 29, 2021, Comments at 3; Maryland et al. Nov. 29, 2021, Comments at 4; BART Nov. 29, 2021, Comments at 3-4; STARNet Nov. 23, 2021, Comments at 2; CalOES Nov. 29, 2021, Comments at 3; RapidSOS Jan. 11, 2022, Reply at 2; Region 20 Jan. 11, 2022, Reply at 1; BART Dec. 28, 2021, Reply at 5; IAFC Dec. 20, 2021, Reply at 2; *see also* API et al. Aug. 25, 2022, *Ex Parte* at 2.

<sup>81</sup> NPSTC Nov. 29, 2021, Comments at 7 (supporting “requiring incumbents and future applicants to supply complete microwave path data for fixed links and to license base stations... on a site-by-site basis.”); APCO Nov. 29, 2021, Comments at 4 (supporting “adding the 4.9 GHz band to the ULS microwave schedule” and “uncoupling base and mobile stations from geographic licenses”); STARNet Nov. 23, 2021, Comments at 4 (stating that “path points should be specifically defined as opposed to the current practice of merely identifying station locations, and specific numbers relative to base stations and mobile devices should be provided by licensees”); Region 20 Nov. 29, 2021, Comments at 3 (mirroring STARNet Nov. 23, 2021, Comments); Maryland et al. Jan. 11, 2022, Reply at 1 (noting that “the majority of commenters are in general agreement that ULS should be enhanced to provide more data, e.g., specific path connection points, frequencies used, etc., which will facilitate spectrum coordination and interference reduction”); *see also Eighth Further Notice*, 36 FCC Rcd at 15044-45, para. 33.

<sup>82</sup> NPSTC Nov. 29, 2021, Comments at 7; APCO Nov. 29, 2021, Comments at 4; AASHTO Nov. 29, 2021, Comments at 3; Caltrans Nov. 23, 2021, Comments at 4 (mirroring AASHTO Nov. 29, 2021, Comments); IACP Nov. 29, 2021, Comments at 2; IAFC Nov. 23, 2021, Comments at 3; STARNet Nov. 23, 2021, Comments at 2; CalOES Nov. 29, 2021, Comments at 3; Maryland et al. Nov. 29, 2021, Comments at 2; Region 20 Jan. 11, 2022, Reply at 1; BART Nov. 29, 2021, Comments at 4; EWA Nov. 29, 2021, Comments at 7-8; BART Dec. 28, 2021, Reply at 5; IAFC Dec. 20, 2021, Reply at 2. *But see* API et al. Aug. 25, 2022, *Ex Parte* at 2 (proposing that FCC-certified Frequency Advisory Committees assist the Commission with the “development of a 4.9 GHz database by securing information about current 4.9 GHz utilization and, thereafter, through the registration/licensing process”).

<sup>83</sup> EWA Nov. 29, 2021, Comments at 7-8.

<sup>84</sup> AASHTO Nov. 29, 2021, Comments at 3 (stating the use of a third-party database “may require a learning process and have significant additional costs to the 4.9 GHz spectrum users with large jurisdictions”); Caltrans Nov. 23, 2021, Comments at 4 (mirroring AASHTO Nov. 29, 2021, Comments); EWA Nov. 29, 2021, Comments at 8 (indicating that a third-party database alternative “would increase costs and complexity without providing any apparent benefit”).

32. Finally, commenters overwhelmingly supported at least a one-year period for incumbent licensees to submit the necessary technical details into ULS.<sup>85</sup> For instance, NPSTC said it would prefer a shorter deadline but believes many licensees with extensive deployments in the band “may not already have full geographic or technical information at its fingertips and may need to determine that information for numerous facilities.”<sup>86</sup> BART estimated it will need at least eight hours per site to collect the necessary information from the hundreds of fixed sites in its 131.4 mile network.<sup>87</sup> Therefore, BART indicated it will need one year to eighteen months to submit the necessary data into ULS.<sup>88</sup>

33. We agree with commenting parties that collecting additional technical data on public safety operations will improve interference protection and give public safety licensees more confidence in the band without adding a significant burden on licensees or applicants.<sup>89</sup> We further believe that having more granular technical data will help the Band Manager perform its duties and enable non-public safety use of excess capacity in the band without causing interference. As such, we adopt our proposal to collect more granular data on public safety deployments and will provide incumbent licensees a one-year period to submit the necessary technical detail. We also agree with commenting parties that ULS can be modified to collect the more granular data described above and that transitioning to a third-party database would introduce added delays and complexity.<sup>90</sup> Therefore, we will continue using ULS as the licensing database for public safety operations in the 4.9 GHz band.

34. Consequently, we direct the Bureaus to make any necessary enhancements to ULS, to obtain any necessary review under the Paperwork Reduction Act, and announce by public notice when ULS is prepared to accept the more granular data on public safety operations in the 4.9 GHz band. Consistent with record support, we will require incumbent licensees and future applicants to supply complete microwave path data for fixed links, and to obtain a license for base stations (currently authorized under the geographic license scheme) on a site-by-site basis.<sup>91</sup> We direct the Bureaus to modify ULS so that it can collect transmission data from incumbent licensees and future applicants.<sup>92</sup> Specifically, for licensees operating permanent fixed P-P, P-M and fixed receiver stations, the Bureaus should enhance ULS to collect transmitter and receiver antenna coordinates, frequencies, polarizations, tolerance, effective isotropic radiated power, emission designator, type of modulation, antenna model, gain, antenna center line height(s) above ground level and ground elevation above mean sea level, path

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<sup>85</sup> NPSTC Nov. 29, 2021, Comments at 7-8; IAFC Nov. 23, 2021, Comments at 4; Maryland et al. Nov. 29, 2021, Comments at 5; BART Nov. 29, 2021, Comments at 4-5; STARNet Nov. 23, 2021, Comments at 4-5.

<sup>86</sup> NPSTC Nov. 29, 2021, Comments at 8.

<sup>87</sup> BART Nov. 29, 2021, Comments at 5.

<sup>88</sup> *Id.*

<sup>89</sup> *See, e.g.*, IAFC Nov. 23, 2021, Comments at 3-4 (stating it believes “additional data would improve the level of interference protection licensees receive” and “would create a more predictable and transparent spectrum environment for the users of the 4.9 GHz band”); AASHTO Nov. 29, 2021, Comments at 3 (stating that “[p]roviding more detailed information does not cause a significant burden on the users and more detailed information may in fact prove beneficial when, and if users experience harmful inference”); Caltrans Nov. 23, 2021, Comments at 4 (mirroring AASHTO Nov. 29, 2021, Comments); EWA Nov. 29, 2021, Comments at 8 (stating the collection of system-specific data in ULS “will promote sound spectrum management”).

<sup>90</sup> AASHTO Nov. 29, 2021, Comments at 3; Caltrans Nov. 23, 2021, Comments at 4; EWA Nov. 29, 2021, Comments at 7-8; APCO Nov. 18, 2022, *Ex Parte* at 1, n.4.

<sup>91</sup> *Eighth Further Notice*, 36 FCC Red at 15044-45, paras. 32-33.

<sup>92</sup> This new information will, by default, be publicly available in order to facilitate the operations of the new Band Manager and to allow prospective 4.9 GHz band users to determine where spectrum access is available.

azimuth and distance.<sup>93</sup> For licensees operating base/mobile, mobile-only or temporary fixed stations, the Bureaus should enhance ULS to collect coordinates (base), antenna height above average terrain (base), center frequency, emission designator, effective radiated power, number of units (mobile and temporary fixed), and area of operation (mobile and temporary fixed). Licensees which fail to comply with this new requirement on the timeline specified by the Bureaus shall be subject to penalties as a violation of our rules.

35. Finally, incumbent licensees will have at least one year from the publication of this item in the Federal Register to provide the required data in ULS.<sup>94</sup> Given the record before us, we believe one year is sufficient time to allow licensees to confirm the necessary information about their existing deployments, and that this requirement will not be unduly burdensome for licensees, which already operate and maintain these deployments.<sup>95</sup> Nonetheless, we encourage licensees to enter their data into ULS as soon as it is available once the Bureaus announce that the ULS modifications are complete and OMB has completed its review of any new collection requirements.

#### D. Frequency Coordination

36. The *Eighth Further Notice* also solicited comment on requiring formal frequency coordination in the 4.9 GHz band to support interference protection and increase public safety confidence in using the band.<sup>96</sup> In particular, we sought input on whether mandatory frequency coordination would provide certainty and incentives for public safety to increase its use of the band,<sup>97</sup> and if so, whether part 90 type frequency coordination, part 101 type frequency coordination, or a combination of the two would be best suited for the 4.9 GHz band.<sup>98</sup> As detailed below, we adopt a part 90 formal frequency coordination requirement for public safety applicants seeking to license facilities in the 4.9 GHz band and assign nationwide authority to the Band Manager to perform the coordination function.

37. Commenting parties overwhelmingly supported formal frequency coordination to bolster interference protection and increase public safety confidence in using the band.<sup>99</sup> For instance, APCO stated that “[f]requency coordination is the most effective way to promote public safety use of the band” while EWA noted that frequency coordination has been used for years in other frequency bands to “promote sound spectrum management.”<sup>100</sup> Based on the record before us, we adopt formal frequency

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<sup>93</sup> API and ENTELEC oppose a polarization requirement since it believes any such requirement would be “limiting or impractical.” See API and ENTELEC Nov. 29, 2021, Comments at 5-6. While we specify technical parameters for P-P, P-MP, and fixed receivers, we will not require licensees to deploy a certain type of polarization.

<sup>94</sup> *Eighth Further Notice*, 36 FCC Red at 15045-46, para. 36. The Bureaus will release a public notice announcing the deadline for submitting required data in ULS only after determining and receiving Office of Management and Budget (OMB) approval of the new collection requirements.

<sup>95</sup> NPSTC Nov. 29, 2021, Comments at 7-8; IAFC Nov. 23, 2021, Comments at 4; Maryland et al. Nov. 29, 2021, Comments at 5; BART Nov. 29, 2021, Comments at 4-5; STARNet Nov. 23, 2021, Comments at 4-5.

<sup>96</sup> *Eighth Further Notice*, 36 FCC Red at 15048, para. 45.

<sup>97</sup> *Id.* at 15048-49, para. 47.

<sup>98</sup> *Id.* at 15049, para. 48. Part 90 frequency coordination is where an applicant must demonstrate that its application was coordinated by a Commission-certified frequency coordinator. See 47 CFR § 90.175. Part 101 frequency coordination is where an applicant must coordinate proposed facilities with existing licensees and other applicants whose facilities could be affected by the new proposal. See *id.* § 101.103(d)(1).

<sup>99</sup> NPSTC Nov. 29, 2021, Comments at 7; APCO Nov. 29, 2021, Comments at 3; AASHTO Nov. 29, 2021, Comments at 3; IAFC Nov. 23, 2021, Comments at 5; EWA Nov. 29, 2021, Comments at 8-9; BART Nov. 29, 2021, Comments at 7; Cal OES Nov. 29, 2021, Comments at 3; Caltrans Nov. 23, 2021, Comments at 6; BART Dec. 28, 2021, Reply at 3; RapidSOS Jan. 11, 2022, Reply at 2; EWA Jan. 11, 2022, Reply at 5; Letter from Jeffrey S. Cohen, Counsel to APCO International, to Marlene Dortch, Secretary, FCC, WP Docket No. 07-100, at 1 (Nov. 18, 2022) (APCO Nov. 18, 2022, *Ex Parte*).

<sup>100</sup> APCO Nov. 29, 2021, Comments at 3; EWA Nov. 29, 2021, Comments at 8.

coordination procedures for the 4.9 GHz band to minimize the potential for interference and increase public safety confidence in the band. In making this decision, we find persuasive arguments by commenting parties who believe the benefits of formal frequency outweigh any nominal costs.<sup>101</sup>

38. Although commenters were split on the type of coordination that should be applied to public safety operations in the band,<sup>102</sup> we find that part 90 coordination with the Band Manager serving as the nationwide frequency coordinator best suits our goal of establishing a nationwide framework for coordinating access to the 4.9 GHz band. We note that part 90 coordination has for years reduced interference while promoting robust public safety operations in other frequency bands.<sup>103</sup> In addition, by performing the frequency coordination function, the Band Manager can ensure the efficient assignment and use of spectrum by public safety licensees. Therefore, we find the part 90 frequency coordination framework with the Band Manager serving as frequency coordinator preferable to a part 101-type coordination approach whereby applicants individually coordinate proposed facilities with existing licensees and other applicants whose facilities could be affected by the new proposal.<sup>104</sup> Furthermore, we assign the frequency coordination function solely to the Band Manager (as opposed to allowing competitive coordination) because we find that a single nationwide coordinator is preferable for 4.9 GHz since we are implementing a nationwide framework for use of the band in contrast to other part 90 bands where coordination is more local or regional.<sup>105</sup>

39. Under the part 90 coordination framework we adopt today, the Band Manager will review applications from public safety entities seeking to license new or modify existing facilities in the 4.9 GHz band before they are filed with the Commission. As frequency coordinator, the Band Manager, utilizing the interference criteria on which we seek comment on below,<sup>106</sup> and the more granular data collected in

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<sup>101</sup> Caltrans Nov. 23, 2021, Comments at 6 (stating “[t]he nominal costs associated with frequency coordination is considerably less than the potential costs of interference mitigation, frustration, and loss of system operation as a result of interference from improperly licensed or un-coordinated systems”).

<sup>102</sup> Some commenting parties prefer part 90 coordination, others part 101 coordination and some did not specify what type of coordination they prefer. *See* Caltrans Nov. 23, 2021, Comments at 6 (suggesting that “Point-to-Point applications follow the Part 101 guidelines” but noting that “coordination through the Part 90 process will also be required” since the 4.9 GHz band supports “the use of mobile units” as well); Cal OES Nov. 29, 2021, Comments at 3 (supporting “Part 90 formal coordination by a certified frequency coordinator”); APCO Nov. 29, 2021, Comments at 3 (stating that for “base station and mobile use, Part 90 contour-based coordination is appropriate” whereas for “fixed point-to-point (P-P) and point-to-multipoint (P-MP) use, a propagation modeling approach . . . would be preferable to . . . Part 101 type coordination”); Joint Filers Nov. 29, 2021, Comments at 4 (stating it looks “to our industry associations, such as APCO International, to work collegially with the broader user community to develop new coordination technologies and tools that can be used by states”); EWA Jan. 11, 2022, Reply at 6 (saying “FCC-certified frequency coordinators, including EWA and several Public Safety organizations, recommend frequencies based on the first-in-time principle” provided “all frequency coordinators and licensees adhere to the FCC criteria, the process promotes intensive use of the spectrum without compromising Public Safety operations”). *But see* WISPA Nov. 29, 2021, Comments at 22 (stating it “believes that mandatory frequency coordination governed by a SAS ‘is necessary to support interference protection and increase public safety confidence in using the band’ and will ‘provide certainty and incentives for public safety to increase its use of the band’”); API et al. Aug. 25, 2022, *Ex Parte* at 2 (recommending “a registration/application process to be used by participating FACs pursuant to the FCC’s MOU”).

<sup>103</sup> EWA Jan. 11, 2022, Reply at 6 (stating that part 90 frequency coordination by FCC-certified frequency coordinators “promotes intensive use of the spectrum without compromising Public Safety operations”).

<sup>104</sup> *See* 47 CFR § 101.103(d)(1)-(2).

<sup>105</sup> EWA Jun. 21, 2022, *Ex Parte* at 1 (proposing that APCO serve as the “nationwide frequency coordinator/band manager with responsibility for developing a 4.9 GHz regulatory framework and overseeing an orderly process for licensing with input and support from the other FCC-certified Public Safety Frequency Advisory Committees”).

<sup>106</sup> *See infra* paras. 75-86.

ULS,<sup>107</sup> will perform an analysis to determine if the proposed operation would cause interference to incumbent licensees or previously filed applicants. The Band Manager may, if it so chooses, allow third parties to perform the interference analysis on its behalf. The Band Manager, however, will have sole responsibility as frequency coordinator, subject to Commission review, for informing applicants if their proposed facilities would cause interference to either an incumbent licensee or an existing applicant under the criteria we eventually adopt for the band. The Band Manager will be permitted to charge reasonable rates for its coordination services, the way other frequency coordinators do today, and we seek comment in the *Ninth Further Notice* below on any requirements we should put in place as to those fees.<sup>108</sup>

40. Given the Band Manager is tasked with assisting public safety applicants with designing their deployments to promote efficient use of the band while preventing harmful interference to other licensees, as described above, we assign it authority to recommend to public safety applicants during the frequency coordination process the most appropriate channel(s), bandwidth, operating power, area of operation (if mobile or temporary fixed operation is requested), or any other technical criteria which promotes robust use of the band while minimizing interference to incumbent licensees.<sup>109</sup> Per our part 90 rules, applicants may request that the Commission overturn a frequency coordination recommendation from the Band Manager; however, any such applicant bears the burden of proof for demonstrating why the Commission should do so.<sup>110</sup>

41. As is typical under part 90 frequency coordination, we afford the Band Manager here flexibility to approve applications which cause or receive more interference than provided for by the criteria we eventually adopt for the band, if the application includes a concurrence letter from each incumbent (or existing applicant) that would receive higher levels of interference or a statement from the applicant accepting higher levels of interference.<sup>111</sup> We believe providing the Band Manager flexibility to approve such applications will promote more robust use of this band, for example by allowing licensees to elect to operate in closer proximity to each other than permitted by our rules, if they believe that their systems are more resistant to interference than our interference protection criteria assume.

42. Once the Band Manager is chosen and interference protection criteria are adopted, all applications filed with the Commission via ULS which seek to license new facilities or modify existing facilities in the 4.9 GHz band must include a showing of frequency coordination by the Band Manager. Below in the *Ninth Further Notice*, we seek comment on interference criteria to ensure public safety licensees have efficient and interference-free access to the band. We also seek comment in the *Ninth Further Notice* on whether the Band Manager, as part of its frequency coordinator duties, should mediate disputes if parties disagree about existing or proposed operations.

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<sup>107</sup> See *supra* paras. 30-35.

<sup>108</sup> See *infra* paras. 124-129.

<sup>109</sup> FCC-certified frequency coordinators for the 1427-1432 MHz band have similar authority to recommend “the most appropriate frequency, operating power and area of operation.” See 47 CFR § 90.175(g).

<sup>110</sup> *Id.* § 90.175(a).

<sup>111</sup> See *id.* § 90.187(d) (permitting an applicant seeking to license a trunked system on frequency bands between 150 and 512 MHz to operate without monitoring its proposed frequencies provided the applicant include written consent from all affected licensees); *id.* § 90.621(b)(5) (permitting an applicant seeking to license facilities in the 800 MHz band to operate at less than the minimum required co-channel distance if the applicant includes with its application a letter of concurrence from each short-spaced incumbent); *id.* § 90.621(d)(4) (permitting an applicant seeking to license facilities in the 800 MHz band to cause contour overlap to or receive contour overlap from an incumbent operating on an adjacent channel provided it includes with its application a letter of concurrence from each incumbent that receives contour overlap or a letter of concurrence from each incumbent that causes contour overlap to the applicant).

43. Finally, we decline to adopt a more active form of frequency coordination for public safety operations in the 4.9 GHz band, such as the automated frequency coordination in the 6 GHz band<sup>112</sup> or the spectrum access system that facilitates dynamic spectrum sharing in the Citizens Broadband Radio Service (CBRS).<sup>113</sup> Given our adoption of a new Band Manager to coordinate access to the band, we find that the public interest is best served by adopting the part 90 frequency coordination framework, described above, which requires no modification of or replacement to equipment currently in use in the band and which grants to the Band Manager flexibility in working with licensees and lessees to maximize the efficient use of this spectrum.

#### **E. Permitting Non-Public Safety Use of the Band**

44. Alongside our decision today to adopt a nationwide Band Manager framework for the 4.9 GHz band, we amend our rules to allow non-public safety use of the band as authorized by the Band Manager. Specifically, we remove the restriction that 4.9 GHz band operations be in support of public safety, provided that any non-public safety operations must: (1) be authorized by the Band Manager; and (2) fully protect<sup>114</sup> and, where necessary, be subject to preemption by, public safety operations in the band. We believe that this will enable the Band Manager to determine where, when, and at what frequencies non-public safety operators can use the 4.9 GHz band without limiting access to the band for public safety purposes.<sup>115</sup> We emphasize that we will not license non-public safety operators, and licensed operations will remain exclusively in support of public safety. Non-public safety operations will be required to fully protect and, when necessary, abide by preemption rules regarding the public safety operations which will retain the primary use of the band.

45. In the *Eighth Further Notice*, the Commission sought comment on a range of potential approaches to expand use of the 4.9 GHz band. In particular, the Commission asked whether it is in the public interest to open the band to non-public safety uses and, if so, under what terms.<sup>116</sup> Many commenters who supported sharing the spectrum argued that introducing new users into the band will allow for reduced costs and “encourage equipment manufacturers to innovate and develop an expanded device ecosystem.”<sup>117</sup> The *Eighth Further Notice* solicited input on leasing regimes that could be used to provide shared non-public safety access to the band while protecting critical public safety operations.<sup>118</sup> Commenters representing a range of interests supported a framework that allowed for the licensing of

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<sup>112</sup> See *Unlicensed Use of the 6 GHz Band; Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, ET Docket No. 18-295 and GN Docket No. 17-183, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852, 3862-77, paras. 23-67 (2020).

<sup>113</sup> See 47 CFR part 96.

<sup>114</sup> We seek comment in the *Ninth Further Notice* on the standard by which the Band Manager will ensure full protection of public safety operations under a new “harmful interference” standard which we will define in our rules. See *infra* paras. 75-83.

<sup>115</sup> SBC Jan. 10, 2022, Reply at 5-6 (stating “any secondary use must be compatible with public safety’s operations in the band, and must be subject to rules that prohibit such secondary use from causing interference to public safety”).

<sup>116</sup> *Eighth Further Notice*, 36 FCC Rcd at 15054, para. 62.

<sup>117</sup> APCO Nov. 29, 2021, Comments at 7; see also T-Mobile Jan. 11, 2022, Reply at 3-4; WISPA Nov. 29, 2021, Comments at 5-9, 17-19; FPL Nov. 29, 2021, Comments at 5-7 (noting that “by allowing CII entities to obtain licenses for or lease spectrum in the 4.9 GHz band, the Commission will expand the band’s user base and, by extension, increase demand for equipment that can operate in the band”); Federated Wireless Nov. 29, 2021, Comments at 8-9; WISPA Jan. 11, 2022, Reply at 2-6, 15-16 (stating that “positions advanced by WISPA, DSA, Federated Wireless and New America’s OTI suggests that if the equipment market will expand with CII, it most certainly will expand”).

<sup>118</sup> *Eighth Further Notice*, 36 FCC Rcd at 15055-56, paras. 66-68.

secondary rights in the band to non-public safety entities,<sup>119</sup> and filers representing public safety agencies also generally supported these goals.<sup>120</sup> APCO, for example, noted that sharing the band with non-public safety operations could create “opportunities for incumbents and new entrants alike” and “encourage equipment manufacturers to innovate and develop an expanded device ecosystem.”<sup>121</sup> Similarly, non-public safety operators expressed interest in the band and noted that allowing them access will benefit not only the public interest, but also public safety users through reduced equipment costs.<sup>122</sup> We believe this band has promise for a variety of innovative use cases, ranging from commercial wireless operations, including 5G, to fixed wireless broadband services, to private network operations, including those of critical infrastructure (CII) entities. Commenters supported the secondary nature of such operations, and asserted their ability to protect public safety from interference.<sup>123</sup>

46. We believe the approach we adopt today will allow local public safety entities to maintain control over their operations in the band while ensuring that non-public safety uses are subject to consistent nationwide rules that minimize the risk of interference, promote robust use, and ensure priority and preemption for public safety operations.<sup>124</sup> We note that some public safety commenters expressed concerns about sharing with non-public safety users. These commenters focused in particular on interference concerns,<sup>125</sup> urging the Commission to make any non-public safety operations secondary if they are permitted. We recognize the importance of protecting public safety operations from interference

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<sup>119</sup> OTI Nov. 29, 2021, Comments at 6-14 (arguing that “[e]nacting a tiered sharing framework in the 4.9 GHz band would both protect the interests of incumbents in the band and promote broader use of the band to further public interest goals, such as improved connectivity and economic activity”); FPL Nov. 29, 2021, Comments at 5-7; Federated Wireless Nov. 29, 2021, Comments at 8-9; Cal OES Nov. 29, 2021, Comments at 2; Maryland et al. Nov. 29, 2021, Comments at 9-10; STARNet Nov. 24, 2021, Comments at 8-9; T-Mobile Jan. 11, 2022, Reply at 3-5 (stating that “public safety entities, at their option, [should be able] to lease the spectrum to commercial providers or otherwise partner with third parties, such as critical infrastructure industry (“CII”) entities, to use the spectrum”); Federated Wireless Jan. 11, 2022, Reply at 4-6; OTI and PK Jan. 11, 2022, Reply at 4-6.

<sup>120</sup> AASHTO Nov. 29, 2021, Comments at 3; NPSTC Nov. 29, 2021, Comments at 10; IAFC Nov. 23, 2021, Comments at 3; IACP Nov. 29, 2021, Comments at 2; Region 20 Nov. 29, 2021, Comments at 2; PSSA Nov. 29, 2021, Comments at 6; BART Nov. 29, 2021, Comments at 2; Cal OES Nov. 29, 2021, Comments at 3; Federated Wireless Nov. 29, 2021, Comments at 8-9; Maryland et al. Nov. 29, 2021, Comments at 9-10; STARNet Nov. 24, 2021, Comments at 8-9.

<sup>121</sup> APCO Nov. 29, 2021, Comments at 2-3, 7.

<sup>122</sup> See, e.g., Federated Wireless Nov. 29, 2021, Comments at 8-9; T-Mobile Jan. 11, 2022, Reply at 3-4 (describing a “virtuous cycle” of reduced equipment costs and greater availability); WISPA Nov. 29, 2021, Comments at 5-8; WISPA Jan. 11, 2022, Reply at 2-7.

<sup>123</sup> WISPA Nov. 29, 2021, Comments at 5-8; WISPA Jan. 11, 2022, Reply at 2-7; Letter from Ari Q Fitzgerald, Counsel to Florida Power & Light Company to Marlene Dortch, Secretary, FCC, WP Docket No. 07-100, at 1 (Nov. 9, 2022) (FPL Nov. 9, 2022, *Ex Parte*).

<sup>124</sup> Some commenters expressed that state management is the best approach; however, we believe the Commission sufficiently addressed this alternative in the *Order on Reconsideration*, which determined that a “state-by-state framework would have resulted in a patchwork of different rules, processes, and terms governing the use of the spectrum” where “decisions driving technical operations would be balkanized across the different states and territories.” *Order on Reconsideration*, 36 FCC Rcd at 15039-40, paras. 20, 22; see also STARNet Nov. 24, 2021, Comments at 3, 9 (explaining that “[b]and management or coordination in all other bands has been successful when states have been delegated management responsibilities, and there is no reason that cannot hold true for 4.9 GHz.”); Maryland et al. Nov. 29, 2021, Comments at 1, 3.

<sup>125</sup> See, e.g., AASHTO Nov. 29, 2021, Comments at 3 (opposing allowing non-public eligible users but urging such operations be secondary if permitted); BART Nov. 29, 2021, Comments at 9; BART Jan. 11, 2022, Reply at 4-5; CALTRANS Nov. 29, 2021, Comments at 5 (opposing allowing non-public eligible users but urging such operations be secondary if permitted).

and agree that non-public safety operations should be secondary to public safety uses, in addition to being coordinated by the Band Manager.

47. We find that we can meet our goal of promoting increased access to the 4.9 GHz band generally, in addition to promoting and protecting public safety use, by allowing non-public safety entities to lease unused spectrum from the public safety licensees through the Band Manager. This model will ensure that leased operations will be on a non-interference basis, thereby, fully protecting public safety operations and providing a mechanism to enable preemption by public safety licensees. While our action today opens the band for leased access by non-public safety operators, we seek comment in the *Ninth Further Notice* on how that access will be implemented and which non-public safety entities should be eligible to operate in the band.<sup>126</sup>

48. Based on our review of existing operations, there is potential for widespread use of the 4.9 GHz band by non-public safety operators without impinging on public safety access. For example, there is no statewide licensee for three states and two U.S. territories, meaning wide swaths of those areas likely host little to no 4.9 GHz band activity.<sup>127</sup> Moreover, even where there is a statewide public safety licensee, it likely is not using the spectrum throughout the state, particularly given the band's limited propagation characteristics. We believe the Band Manager will be well-equipped to find these opportunities, based both on its expertise and experience with the band and on the new, more granular deployment data we will begin collecting in ULS, and be able to match them with the entities capable of making the best use of the band. The Band Manager will evaluate all potential non-public safety operations based on consistent technical parameters and use restrictions deemed necessary to ensure full protection of public safety operations. Allowing the Band Manager to centrally coordinate non-public safety access will promote a standardized set of rules and contractual provisions for such access, which ensure that public safety retains priority and preemption rights.<sup>128</sup>

49. Under our current rules, 4.9 GHz licensees are permitted to enter into spectrum sharing arrangements with entities that do not meet the eligibility requirements for a license, so long as those entities use the spectrum in support of public safety.<sup>129</sup> Here, we clarify that leases to non-public safety entities will only be permitted if they are coordinated and approved by the Band Manager, subject to any requirements we adopt pursuant to the *Ninth Further Notice*. Public safety licensees will also continue to be able to enter directly into 4.9 GHz band sharing arrangements for public safety operations.

#### **F. Priority and Preemption for Public Safety**

50. In the *Eighth Further Notice*, the Commission additionally sought comment on affording public safety licensees priority access to the 4.9 GHz band, including the ability to preempt any non-public safety operations that may be authorized in the future.<sup>130</sup> In particular, we asked whether “public safety priority and preemption should be elements of any sharing model we ultimately adopt” if the Commission opens the 4.9 GHz band to non-public safety users.<sup>131</sup> We also requested input on “the types of mission-critical public safety operations that should have priority over other public safety as well as

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<sup>126</sup> See *infra* paras. 94-123.

<sup>127</sup> The following states/territories are not covered by a statewide license: American Samoa, Georgia, Iowa, Kansas, the Northern Mariana Islands, and South Dakota.

<sup>128</sup> See STARNet Nov. 24, 2021, Comments at 8-9; FPL Nov. 29, 2021, Comments at 1; FPL Jan. 11, 2022, Reply at 5-6; EWA Jan. 11, 2022, Reply at 4; T-Mobile Jan. 11, 2022, Reply at 1.

<sup>129</sup> 47 CFR § 90.1203(b); see also *id.* §§ 1.9020, 1.9030, and 1.9035 (describing obligations for and eligibility of lessees under spectrum manager, long-term *de facto* transfer, and short-term *de facto* transfer spectrum leasing arrangements).

<sup>130</sup> *Eighth Further Notice*, 36 FCC Rcd at 15047, para. 39.

<sup>131</sup> *Id.* at 15047, para. 41.

non-public safety operations” and “the technical feasibility of building priority and preemption algorithms into 4.9 GHz networks and equipment.”<sup>132</sup>

51. Parties commenting on this issue strongly supported affording public safety licensees priority access to the band over non-public safety users and the ability to preempt these operations when needed.<sup>133</sup> For example, TDD indicated that priority and preemption is “an essential element of the public safety network, especially when non-public priority users are on the band.”<sup>134</sup> AASHTO, Caltrans, BART, and IAFC, who opposed sharing the band with non-public safety users, supported priority and preemption under any sharing framework.<sup>135</sup>

52. Accordingly, we will ensure public safety entities have priority access to the 4.9 GHz band through licensing on a primary basis, while non-public safety users will be permitted to operate in the band only on a secondary basis. In other words, non-public safety users, subject to coordination and facilitation by the Band Manager, will only be permitted to operate in the band in a manner which causes no interference to primary public safety licensees, and with no interference protection from public safety operations. Therefore, we conclude that by allowing non-public users to operate in the band only on a secondary basis we retain public safety’s ability to access the band on a priority basis.

53. The Commission also sought comment in the *Eighth Further Notice* on “the types of mission-critical public safety operations that should have priority over other public safety . . . operations,”<sup>136</sup> but no commenting party responded to this request. The Commission does not typically prioritize one public safety entity over another when it processes license applications under part 90.<sup>137</sup> Therefore, we conclude that a local public safety community can adjudicate its own priority levels between public safety users since individual public safety incidents may have differing communication

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<sup>132</sup> *Id.* at 15047-48, paras. 42-43.

<sup>133</sup> NPSTC Nov. 29, 2021, Comments at 18-19 (“NPSTC recommends that public safety remain primary in the band, as it has been since inception. However, we recognize the role CII plays during emergencies and thus would also support CII having next priority and preemption rights over any other non-public safety use that may be permitted now or in the future.”); APCO Nov. 29, 2021, Comments at 7 (stating “APCO is not opposed to a sharing approach provided that public safety is guaranteed priority and preemption over other users”); IAFC Nov. 23, 2021, Comments at 3-5 (stating it “opposes co-primary status with any other entity on the band.”); PSSA Nov. 29, 2021, Comments at 5-6 (“While the PSSA supports secondary use of the band for capacity not being utilized by public safety, first responders need to be able to preempt such secondary use at any time.”); IACP Nov. 29, 2021, Comments at 5 (stating “public safety must retain priority and ruthless preemption”); STARNet Nov. 24, 2021, Comments at 5; Maryland et al. Nov. 29, 2021, Comments at 6 (stating “[p]lanning for communications use and identifying users that should be prioritized can often best be facilitated at the state level”); PSSA Jan. 11, 2022, Reply at 2 (stating “secondary access must be able to be immediately preempted by public safety users”); IAFC Dec. 20, 2021, Reply at 3-4 (stating it “opposes co-primary status with any other entity on the band” and that it “agrees with the PSSA that secondary use of the 4.9 GHz band should only be permitted if it is compatible with public safety and does not cause interference to public safety’s use of the band”); TDD Nov. 29, 2021, Comments at 4 (stating “[t]he 4.9 GHz band should also incorporate priority and preemption.”); WISPA Nov. 29, 2021, Comments at 20-21 (“SAS functions are far superior to any other shared use model in enabling near real-time priority use, providing transparency to non-public safety users and ensuring that public safety users do not interference with each other when communications are essential.”); WISPA Jan. 11, 2022, Reply at 8-9; Andrew Seybold Dec. 22, 2021, Reply at 2; SBC Jan. 10, 2022, Reply at 4; *see also* Rachel Culp et al. Nov. 29, 2021, Comments at 3-4 (“Some use for non-public safety purposes may be allowed, but if this hinders securing public safety, they must be excluded or pushed back.”).

<sup>134</sup> TDD Nov. 29, 2021, Comments at 4.

<sup>135</sup> AASHTO Nov. 29, 2021, Comments at 4; Caltrans Nov. 23, 2021, Comments at 4 (mirroring AASHTO Nov. 29, 2021, Comments); BART Nov. 29, 2021, Comments at 6; IAFC Dec. 20, 2021, Reply at 3-4.

<sup>136</sup> *Eighth Further Notice*, 36 FCC Rcd at 15047, para. 42.

<sup>137</sup> *See, e.g.*, 47 CFR § 90.173 (regarding policies for assignment of frequencies under part 90).

priority. However, the establishment of local priority levels does not preclude a licensee from exercising any rights or seeking any remedy available to it under our rules.

54. Finally, although there was broad support for public safety licensees to have the ability to preempt non-public safety users, there was little detail in the record about how this would work in practice.<sup>138</sup> Therefore, we seek comment below in the *Ninth Further Notice* on questions related to the Band Manager's implementation of an appropriate pre-emption mechanism, including "shut down" procedures and possible limitations on preemption requests.

### G. Annual Reports

55. The *Eighth Further Notice* also sought comment on whether to impose reporting requirements on any Band Manager designated to manage the 4.9 GHz band<sup>139</sup> and, if so, what those reports should address and how often they should be filed with the Commission.<sup>140</sup> We note that band managers in other frequency bands are required to submit annual reports.<sup>141</sup> Consequently, we adopt an annual reporting requirement that will allow the Commission to oversee the Band Manager, ensure its activities advance the Commission's stated goals for this band, and provide greater transparency, certainty, and predictability in the 4.9 GHz band.

56. The current record does not reflect input on the type of information that should be included in such reports. Therefore, below in the *Ninth Further Notice*, we seek comment on the type of information the Band Manager should include in its annual report to facilitate oversight and ensure transparency, certainty, and predictability in the 4.9 GHz band.

### H. Regional Planning Committees

57. Section 90.1211(a) of the current rules provides that each RPC may voluntarily submit a plan with guidelines to be used for sharing 4.9 GHz spectrum within the RPC region. The *Eighth Further Notice* inquired whether RPCs should play a continued or expanded role in the spectrum management framework for the 4.9 GHz band.<sup>142</sup> In particular, we asked whether regional planning is consistent with the Commission's goal of establishing a national framework for management of the band and, if so, what resources RPCs would need to ensure that plans were filed for all regions given that only 10 of 55 RPCs voluntarily filed plans to date.<sup>143</sup>

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<sup>138</sup> APCO Nov. 29, 2021, Comments at 7 (stating "APCO is not opposed to a sharing approach provided that public safety is guaranteed priority and preemption over other users"); PSSA Nov. 29, 2021, Comments at 5-6 (stating "[w]hile the PSSA supports secondary use of the band for capacity not being utilized by public safety, first responders need to be able to preempt such secondary use at any time."); IACP Nov. 29, 2021, Comments at 5 (stating "public safety must retain priority and ruthless preemption"); TDD Nov. 29, 2021, Comments at 4 (stating "[t]he 4.9 GHz band should also incorporate priority and preemption."); PSSA Jan. 11, 2022, Reply at 2 (stating "secondary access must be able to be immediately preempted by public safety users . . .").

<sup>139</sup> *Eighth Further Notice*, 36 FCC Rcd at 15050, para. 52.

<sup>140</sup> *Id.*

<sup>141</sup> The 700 MHz Guard Band licensee and 220 MHz band manager must file annual reports with the Commission. See 47 CFR § 27.607; see also *Annual Guard Band Reports*, FCC (Aug. 2, 2022), <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/700-mhz-guard-bands/annual-guard-band-reports>.

<sup>142</sup> *Eighth Further Notice*, 36 FCC Rcd at 15051, para. 56.

<sup>143</sup> *Id.*

58. Commenting parties generally showed little enthusiasm for continuing or expanding the RPC's current role.<sup>144</sup> Although some commenters supported a continued role for the RPCs,<sup>145</sup> many believed a lack of funding and resources for RPC's, which are voluntary organizations, would hinder their ability to perform frequency coordination or spectrum management functions.<sup>146</sup> For instance, NPSPTC stated that "given the current economic conditions, the necessary resources required for robust regional planning of the 4.9 GHz band throughout the country simply do not exist at this time."<sup>147</sup> Moreover, Region 20 noted the challenge RPCs would face if required to manage newer technologies such as LTE and 5G.<sup>148</sup> We agree and decline to adopt a spectrum management role for RPCs in this band given the lack of necessary funding and resources for RPCs nationwide, lack of expertise in much of the new technology likely to be deployed in the band, and lack of consensus in the record that regional planning is consistent with our goal of establishing a nationwide framework for the band.

### I. Interoperability Standards

59. The Commission also sought comment in the *Eighth Further Notice* on whether to adopt any technical standards that would promote interoperability in the 4.9 GHz band.<sup>149</sup> Commenting parties were split on this question. A few commenters believed the Commission should formulate and adopt technical standards to promote interoperability in the band.<sup>150</sup> For instance, while not expressly advocating for the Commission to promulgate interoperability standards, IACP saw a need for systems operating in the 4.9 GHz band to "interoperate securely and reliably with existing land mobile radio legacy networks whenever possible and practical."<sup>151</sup> On the other hand, some commenting parties such as APCO, NPSTC, and IAFC recommended against the Commission developing interoperability standards for the band.<sup>152</sup> NPSTC stated that "the diversity of uses in the 4.9 GHz band . . . makes

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<sup>144</sup> APCO Nov. 29, 2021, Comments at 7 (stating that "any continued or expanded role [for RPC's] should take into account the funding and authority limitations creating challenges today"); NPSTC Nov. 29, 2021, Comments at 9 (noting that although "voluntary involvement of strong and knowledgeable regional planning committees has been helpful" in larger metropolitan areas the "current economic conditions . . . do not exist at this time" for robust regional planning throughout the country at 4.9 GHz); WISPA Nov. 29, 2021, Comments at 22 (stating "[t]here is no need to designate . . . regional planning committees to coordinate frequencies"); IAFC Dec. 20, 2021, Reply at 3 (citing NPSTC Comments). *But see* Region 20 Nov. 29, 2021, Comments at 4 (stating that "RPCs can play an advisory role in the identification and assignment of available spectrum as we do today with 700 and 800 MHz NPSPEC frequencies"); BART Nov. 29, 2021, Comments at 8 (stating it "strongly supports a continued role for the regional committees").

<sup>145</sup> BART Nov. 29, 2021, Comments at 8 (stating it "strongly supports a continued role for the regional committees"); Maryland et al. Nov. 29, 2021, Comments at 10 (stating "[b]and management or coordination in all other bands has been successful when Regional Planning Committees or states have been delegated management responsibilities and there is no reason that cannot hold true for 4.9 GHz").

<sup>146</sup> APCO Nov. 29, 2021, Comments at 7; NPSTC Nov. 29, 2021, Comments at 9; IAFC Dec. 20, 2021, Reply at 3.

<sup>147</sup> NPSTC Nov. 29, 2021, Comments at 9.

<sup>148</sup> Region 20 Nov. 29, 2021, Comments at 4 (stating that its "concerns relate to newer technologies, such as 5G, which could introduce challenging issues for RPC members with which we may not be fully experienced" and noting that if a new entrant to the band "desires to add private LTE, or in particular, private LTE with multiple eNodeB transmitter locations, technologies with which we are unfamiliar, the challenges of frequency coordination could be more challenging").

<sup>149</sup> *Eighth Further Notice*, 36 FCC Rcd at 15046, para. 37.

<sup>150</sup> TDD Nov. 29, 2021, Comments at 3-4; IACP Nov. 29, 2021, Comments at 5; STARNet Nov. 24, 2021, Comments at 5; Maryland et al. Nov. 29, 2021, Comments at 5.

<sup>151</sup> IACP Nov. 29, 2021, Comments at 5.

<sup>152</sup> APCO Nov. 29, 2021, Comments at 6 (stating that "[t]he use cases for 4.9 GHz do not implicate the interoperability issues more commonly seen in bands used for land mobile radio networks"); NPSTC Nov. 29, 2021, (continued....)

designating an interoperability standard impractical,” and “fixed links . . . [do] not have an interface directly with public safety personnel on the street.”<sup>153</sup>

60. We agree with the latter position. While we recognize that interoperability is an integral part of the public safety communications ecosystem, the lack of technical mandates in this band has led to the development of a variety of innovative uses, some of which have no need to work directly with one another.<sup>154</sup> Consequently, given the wide variety of uses and potential uses of the band, we believe imposing interoperability standards at this juncture could lead to fewer equipment options thereby potentially stifling innovation and contradicting our goal of reducing equipment costs.<sup>155</sup>

#### J. Other Technical Issues

61. In the *Eighth Further Notice*, the Commission sought comment on certain technical rule proposals from the *Sixth Further Notice* to increase utilization of the 4.9 GHz band.<sup>156</sup> Below, we summarize each proposal, review the record, and set forth our decisions.

62. *Channel Aggregation*. The Commission’s rules limit aggregation of channels in the 4.9 GHz band to 20 megahertz bandwidth.<sup>157</sup> In the *Sixth Further Notice*, the Commission proposed expanding the limit to 40 megahertz because it may enable public safety access to 5G technologies.<sup>158</sup> The majority of parties commenting on this issue supported expanding the aggregation limit with some suggesting that channel aggregation up to 50 megahertz be permitted.<sup>159</sup> For instance, the IACP states that “the full 50 MHz of 4.9 GHz is best suited for 5G deployment.”<sup>160</sup> We agree with these commenters that wider bandwidths should be permitted particularly, as commenters note, because 5G technology permits operation with a channel bandwidth up to 50 MHz.<sup>161</sup> Therefore, we will allow channel aggregations up to 50 megahertz to provide maximum flexibility for channel licensing. Unlike with a

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Comments at 15; IAFC Nov. 23, 2021, Comments at 4 (stating “[g]enerally, technologies on the 4.9 GHz band do not normally involve user-to-user or tactical applications”); IAFC Dec. 20, 2021, Reply at 7.

<sup>153</sup> NPSTC Nov. 29, 2021, Comments at 15.

<sup>154</sup> E.g., fixed point-to-point systems and ad hoc mobile networks would not need to directly communicate with one another.

<sup>155</sup> NPSTC Nov. 29, 2021, Comments at 15-16 (stating that “the diversity of uses in the 4.9 GHz band . . . makes designating an interoperability standard impractical” and that although it is “enthusiastic” about the potential for 5G technology to “serve the public safety community” it sees no evidence that 5G technology will “eliminate the need for the current communications uses at 4.9 GHz, i.e., uses that will continue to be required by the public safety community”); APCO Nov. 29, 2021, Comments at 6 (stating that “[t]he use cases for 4.9 GHz do not implicate the interoperability issues more commonly seen in bands used for land mobile radio networks”); BART Nov. 29, 2021, Comments at 8-9 (stating it “applauds the Commission’s strong preference ‘to adhere to a technology-neutral policy’ and ‘strive for operational flexibility’” and that “[a]ny new technology standards should not require new investment or updates by incumbent licensees”); Rachel Culp et al. Nov. 29, 2021, Comments at 3 (arguing that non-public safety use of the band will result in “technological innovation, equipment cost reduction”); IAFC Dec. 20, 2021, Reply at 7 (stating that it supports 5G technology being used in the band “as long as it does not interfere with other public safety uses”).

<sup>156</sup> *Eighth Further Notice*, 36 FCC Rcd at 15053, para. 60.

<sup>157</sup> 47 CFR § 90.1213(a).

<sup>158</sup> *Sixth Further Notice*, 33 FCC Rcd at 3265, para. 10.

<sup>159</sup> Maryland et al. Nov. 29, 2021, Comments at 7; STARNet Nov. 23, 2021, Comments at 6 (supporting channel aggregation up to 40 MHz); APCO Nov. 29, 2021, Comments at 4; IACP Nov. 29, 2021, Comments at 4 (supporting channel aggregation up to 50 MHz). *But see* API and ENTELEC Nov. 29, 2021, Comments at 3 (suggesting a smaller aggregation limit of up to 15 megahertz).

<sup>160</sup> IACP Nov. 29, 2021, Comments at 4.

<sup>161</sup> *Id.*

smaller aggregation limit, this expanded limit will provide licensees with increased bandwidth and throughput and may encourage the use of new innovative technologies in the band. Nonetheless, licensees and applicants should request no more bandwidth than necessary for a particular use. As noted above, the requested bandwidths (among other technical parameters) on all applications seeking to license new or modified facilities will be subject to frequency coordination by the Band Manager, which may recommend bandwidth limits on a case-by-case basis as necessary to protect neighboring or overlapping users and ensure efficient operation in the band. Finally, to promote economies of scale for the equipment market, the expanded limit will apply to all users; however, non-public safety users will be subject to any use restrictions, including potential bandwidth restrictions, that the Band Manager deems necessary to ensure full protection of public safety operations.

63. *Primary Status for Fixed Links.* Currently, the rules accord primary status only to P-P and P-MP fixed links that deliver broadband traffic, while links that do not meet this criterion are secondary to other operations in the 4.9 GHz band.<sup>162</sup> The Commission proposed to accord primary status for all P-P and P-MP links on Channels 14-18 of the band plan, including fixed links that operate with narrowband traffic.<sup>163</sup> Maryland et al. and STARNet advocated for primary status “for the entire band, not merely channels 14-18.”<sup>164</sup> Moreover, several public safety parties also supported removing the broadband requirement,<sup>165</sup> and no filer in the latest comment window opposed extending primary status to fixed links on all channels in the band. We believe that extending primary status to P-P and P-MP fixed links that operate only on Channels 14-18 in the band, as originally proposed, may continue to limit flexibility and make the band less attractive for investment. Furthermore, we agree with those commenters that support removing the requirement that fixed links deliver broadband traffic in order to obtain primary status. Accordingly, going forward we will authorize all P-P and P-MP links throughout the band on a primary basis including those transmitting narrowband traffic. We will also permit licensees operating fixed links which are currently authorized on a secondary basis to seek to upgrade those links to primary status. Applications requesting initial authorization for primary links or upgrades from secondary status to primary status for existing links will be accepted once a Band Manager is selected and the formal frequency coordination process described above is in place.

64. *Temporary P-P Operation.* The Commission proposed to limit temporary P-P operation to thirty days maximum over a given path over a one-year period “in order to limit ‘temporary’ links to truly temporary uses.”<sup>166</sup> Maryland et al. and STARNet opposed such a limit as excessive, noting that it would potentially constrict operations during a disaster or an on-going event.<sup>167</sup> No filer in the latest comment window supported a limit on temporary P-P operations. We agree that a limit on temporary P-P operations will limit flexibility in the band. Accordingly, we decline to adopt this proposal.

65. *Antenna Gain.* The Commission proposed to require a minimum antenna gain of 26 dBi for P-P antennas to “enable users to deploy larger directional antennas, . . . and to produce narrower beam widths and more directional P-P links, which should enable co-channel users in congested areas to place links closer together and achieve greater frequency reuse.”<sup>168</sup> A majority of commenters opposed this

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<sup>162</sup> 47 CFR § 90.1207(d).

<sup>163</sup> *Sixth Further Notice*, 33 FCC Rcd at 3278-79, para. 48.

<sup>164</sup> Maryland et al. Nov. 29, 2021, Comments at 2; STARNet Nov. 23, 2021, Comments at 3.

<sup>165</sup> APCO Nov. 29, 2021, Comments at 5; Region 20 Nov. 29, 2021, Comments at 2 (the term broadband “is not specifically defined in the rules”); Maryland et al. Nov. 29, 2021, Comments at 1, 2, 7 (“Fixed point-to-point and point-to-multi-point 4.9 GHz paths represent the main use of the band, serve an important public safety interest, and should be afforded primary status regardless of whether they are used to deliver broadband service.”); STARNet Nov. 23, 2021, Comments at 1-3, 6; Maryland et al. Jan. 11, 2022, Reply at 1-2.

<sup>166</sup> *Sixth Further Notice*, 33 FCC Rcd at 3279, para. 50 (citing NPSTC Oct. 24, 2013 Plan at 7).

<sup>167</sup> Maryland et al. Nov. 29, 2021, Comments at 7; STARNet Nov. 23, 2021, Comments at 7.

<sup>168</sup> *Sixth Further Notice*, 33 FCC Rcd at 3281, para. 56.

proposal. For example, Maryland et al. and STARNet stated that they are “uncertain why the Commission focuses on a ‘minimum’ gain for antennas” and that “[t]his seems to contradict the goals of the 8th Further Notice by immediately affecting specifications for ‘innovative technologies.’”<sup>169</sup> WISPA stated that “[a] 26 dBi parabolic antenna would be approximately 18 inches or more in diameter, and is larger than commercially available panel antennas.”<sup>170</sup> On the other hand, API and ENTELEC recommended varying minimum antenna gains and power limits depending on link distance and whether a link serves multipoint receivers because API and ENTELEC “feel that the minimum antenna gain requirements should align with the communications distance sought to maximize channel re-use.”<sup>171</sup> While power limits depending on such factors may be appropriate as a method to reduce the likelihood of interference,<sup>172</sup> we agree with the bulk of commenters that a minimum gain requirement would introduce an unnecessary restriction. The proposed restriction would mean that commercially available antennas, which WISPA reports are smaller than a parabolic antenna with 26 dB minimum gain, would be rendered non-compliant. Thus, we believe such a limit may inhibit development of a robust and affordable equipment market for the band that leverages commercially available antennas and technologies. Accordingly, we decline to adopt the minimum antenna gain proposal.

66. *Construction Deadline.* The Commission proposed to require all 4.9 GHz geographic area licensees to place at least one base or temporary fixed station in operation within 12 months of license grant and to reduce the construction period for fixed P-P stations from 18 months to 12 months.<sup>173</sup> The Commission also included P-MP stations in this proposed requirement.<sup>174</sup> Maryland et al., STARNet, and API and ENTELEC supported these proposals.<sup>175</sup> No filer in the latest comment window opposed this proposal. We believe that shortening the construction period to one year for all 4.9 GHz licenses will lead to more timely use of the spectrum and reduce the possibility of spectrum warehousing. Moreover, the change will harmonize the construction deadlines for the 4.9 GHz band with the deadlines of section 90.155, which is the analogous rule for the majority of part 90 radio services.<sup>176</sup> Accordingly, taking into account that base stations will be licensed on a site-by-site basis rather than on geographic licenses as discussed above and including P-MP stations, we adopt the revised construction deadlines.

67. *Robotic Use.* The Commission proposed to allow robotic use in the lowest five megahertz of the band, Channels 1-5.<sup>177</sup> TDD and API and ENTELEC supported allowing robotic

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<sup>169</sup> Maryland et al. Nov. 29, 2021, Comments at 7; STARNet Nov. 23, 2021, Comments at 7.

<sup>170</sup> WISPA Nov. 29, 2021, Comments at 25.

<sup>171</sup> API and ENTELEC Nov. 29, 2021, Comments at 5.

<sup>172</sup> See *supra* para. 68.

<sup>173</sup> *Sixth Further Notice*, 33 FCC Rcd at 3283, para. 63; see also 47 CFR § 90.1209(d) (imposing an 18-month construction deadline only on fixed P-P stations that are licensed on a site-by-site basis, and no construction deadline for base and temporary fixed stations).

<sup>174</sup> *Sixth Further Notice*, 33 FCC Rcd at 3301, Appx. B, proposed rule 90.1209(d) (“Fixed point-to-point and point-to-multipoint stations which are licensed on a site-by-site basis must be placed in operation within twelve (12) months of the grant date or the authorization . . .”).

<sup>175</sup> Maryland et al. Nov. 29, 2021, Comments at 1, 8 (stating “the license rules for constructing stations in 4.9 GHz should be harmonized with other bands, e.g., VHF, UHF, 700, and 800 MHz”); STARNet Nov. 23, 2021, Comments at 4, 8; API and ENTELEC Nov. 29, 2021, Comments at 6 (explaining “a buildout requirement in the Remaining Band of 12 months is sufficient to ensure that licensing is properly utilized”).

<sup>176</sup> 47 CFR § 90.155; see also Maryland et al. Nov. 29, 2021, Comments at 5; STARNet Nov. 23, 2021, Comments at 4 (asking “that the Commission harmonize LMR [land mobile radio] and 4.9 GHz rules whenever practical”).

<sup>177</sup> *Sixth Further Notice*, 33 FCC Rcd at 3267, para. 16.

operations on a coordinated basis,<sup>178</sup> as did several public safety parties and CORF, albeit limited to public safety uses.<sup>179</sup> NPSTC stated that “robotics should be allowed on other channels in the 4.9 GHz band as well and not be limited to channels 1-5.”<sup>180</sup> We agree with NPSTC regarding allowed channels, because NPSTC contends that robotic deployments are conducted in relatively confined areas,<sup>181</sup> which reduces interference concerns. As such, there is little need to separate robotic operations spectrally from other uses of the band. Accordingly, we permit robotic use throughout the band on a frequency coordinated basis as approved by the Band Manager. At this time, we place no specific public safety eligibility limits on robotic use because we do not wish to constrain the Commission’s options to encourage robust non-public-safety use of the band. Any future non-public safety robotic use of the band, as with other operations, would be subject to the leasing framework we seek comment on below in the *Ninth Further Notice*.

68. *Power.* The Commission’s rules currently set maximum conducted output power at 33 dBm for the widest available channel bandwidth, 20 megahertz.<sup>182</sup> The Commission tentatively concluded that maximum equivalent isotropically radiated power (EIRP) limits should be codified in the rules,<sup>183</sup> and proposed maximum EIRP limits of 65.15 dBm for P-P and 55.15 dBm for P-MP links.<sup>184</sup> API and ENTELEC recommended a maximum EIRP of 40 dBm for P-P links less than 8 kilometers; 60 dBm for P-P links exceeding 8 kilometers, and 27 dBm for P-MP links.<sup>185</sup> APCO supported allowing EIRP for fixed P-P and P-MP operations equivalent to part 101 levels,<sup>186</sup> which sets a maximum allowable EIRP of 55 dBW (85 dBm) for frequency bands near 4.9 GHz. WISPA suggested the Commission should “cap the conducted power . . . as is done in the U-NII-3 band.”<sup>187</sup>

69. We agree with APCO that a higher EIRP limit will encourage licensees to achieve higher broadband data rates.<sup>188</sup> Consequently, we set the maximum EIRP limit to match the limit under Part 101

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<sup>178</sup> FPL Nov. 29, 2021, Comments at 2-5; TDD Nov. 29, 2021, Comments at 3; API and ENTELEC Nov. 29, 2021, Comments at 3; Letter from American Petroleum Institute, et al, to Marlene H. Dortch, WP Docket No. 07-100 (filed Oct. 27, 2022) (API et al. Oct. 27, 2022, *Ex Parte*) (“promot[ing] more intensive use of this spectrum for multiple use cases such as . . . robotics”); FPL Nov. 9, 2022, *Ex Parte* at 1.

<sup>179</sup> APCO Nov. 29, 2021, Comments at 5; NPSTC Nov. 29, 2021, Comments at 10, 14 (stating “[r]obotics communications are normally conducted in a relatively confined area compared to that of many point-to-point links or airborne communications, and multiple robotic devices may be deployed simultaneously”); IACP Nov. 29, 2021, Comments at 6; IAFC Dec. 20, 2021, Reply at 5; Maryland et al. Nov. 29, 2021, Comments at 2; CORF Nov. 26, 2021, Comments at 8 (noting “any robotic use of this [should] band be limited to public safety agencies: due to the limited number of exigent circumstances in which such robots are anticipated to be used for public safety purposes . . .”).

<sup>180</sup> NPSTC Nov. 29, 2021, Comments at 14.

<sup>181</sup> *Id.* (“Robotics communications are normally conducted in a relatively confined area compared to that of many point-to-point links or airborne communications, and multiple robotic devices may be deployed simultaneously.”).

<sup>182</sup> 47 CFR § 90.1215.

<sup>183</sup> *Sixth Further Notice*, 33 FCC Rcd at 3276, para. 42.

<sup>184</sup> *Id.* at 3281, para. 57.

<sup>185</sup> API and ENTELEC Nov. 29, 2021, Comments at 5 (recommending minimum antenna gains for P-P links).

<sup>186</sup> APCO Nov. 29, 2021, Comments at 5 (stating “[h]igher EIRP levels encourage agencies to deploy larger antennas to achieve higher broadband data rates”); *see also* 47 CFR § 101.113.

<sup>187</sup> WISPA Nov. 29, 2021, Comments at 25-26; *see also* 47 CFR § 15.407(a)(3)(i) (setting a maximum conducted output power limit for Unlicensed National Information Infrastructure (U-NII) devices operating in the 5.725-5.850 GHz band).

<sup>188</sup> APCO Nov. 29, 2021, Comments at 5.

for nearby frequency bands at 55 dBW (85 dBm).<sup>189</sup> APCO also was “open to limiting EIRP for shorter paths similar to Part 101,”<sup>190</sup> and API and ENTELEC’s suggestion regarding different power limits at different distances is consistent with this approach. We agree that power should be limited for shorter paths to reduce the potential for interference while still permitting sufficient power for the microwave path. Accordingly, because we are adopting the part 101 fixed power limit, we adopt the part 101 “minimum” path length of 17 kilometers at which maximum EIRP is permitted, and we adopt the part 101 power reduction rule for 4.9 GHz band path lengths shorter than 17 kilometers.<sup>191</sup> The existing power limit rules remain in effect for base/mobile, mobile-only, and temporary fixed operations; albeit extrapolated for aggregated bandwidths larger than 20 megahertz and up to 50 megahertz.<sup>192</sup> As with bandwidth and other technical parameters, requested power levels on all new applications and modification applications are subject to frequency coordination by the Band Manager, which may impose limits on a case-by-case basis as necessary to protect neighboring or overlapping users. The Commission also sought comment on whether emission mask M is sufficient, or whether a tighter emission mask should be imposed for high power operations.<sup>193</sup> No party commented on high power emission masks, and we take no further action on the emission mask M at this time.

#### K. 4.9 GHz Band Freeze

70. As the Commission directed in the *Order on Reconsideration*, the Bureaus amended the freeze to allow those with existing 4.9 GHz licenses to modify those licenses as permitted under the rules.<sup>194</sup> Pending resolution of issues raised in the *Ninth Further Notice* below, we retain the freeze for all applicants who are not already 4.9 GHz licensees.<sup>195</sup> The *Ninth Further Notice* seeks comment on a wide range of questions related to the implementation of our new Band Manager model, including the best policies as to new licensing in the band. Issuing licenses to new licensees under the existing rules while these questions remain unresolved would further complicate the spectrum environment and undermine the Band Manager’s flexibility to provide for efficient use of this spectrum by public safety and non-public safety operations. New entrants facing special circumstances may seek a waiver of the freeze pursuant to section 1.925 of the Commission’s rules.<sup>196</sup>

<sup>189</sup> See 47 CFR § 101.113 (allowing a maximum EIRP of 55 dBW for the 3,700-4,200 MHz and 5,925-6,425 MHz frequency bands).

<sup>190</sup> APCO Nov. 29, 2021, Comments at 5, n.16; see also 47 CFR § 101.143 (setting a minimum path length of 17 kilometers in the 1,850-7,125 MHz band (inclusive of the 4.9 GHz band); and a power reduction formula for shorter path lengths).

<sup>191</sup> See 47 CFR § 101.143(b) (setting a power reduction formula of  $EIRP = MAXEIRP - 40 \cdot \log(A/B)$  dBW; where: EIRP = The new maximum EIRP (equivalent isotropically radiated power) in dBW; MAXEIRP = Maximum EIRP as set forth in the Table in Section 101.113(a); A = Minimum path length from the Table above for the frequency band in kilometers; and B = The actual path length in kilometers. In the 4.9 GHz band rule change we adopt today, MAXEIRP = 55 dBW and A = 17 kilometers).

<sup>192</sup> See *Sixth Further Notice*, 33 FCC Rcd at 3304, Appx. B, proposed rule § 90.1215(a)(1) (extrapolating low power and high power maximum conducted output power limits for bandwidths over 20 megahertz and up to 40 megahertz, which was the maximum bandwidth); see also *Sixth Further Notice*, 33 FCC Rcd at 3265, para. 10.

<sup>193</sup> *Sixth Further Notice*, 33 FCC Rcd at 3265, para. 10; see also 47 CFR § 90.210(m).

<sup>194</sup> *Order on Reconsideration*, 36 FCC Rcd at 15041-42, para. 25; *Freeze Modification Public Notice*, 36 FCC Rcd 15185.

<sup>195</sup> *Order on Reconsideration*, 36 FCC Rcd at 15042, para. 26; see also Caltrans Nov. 23, 2021, Comments at 4 (stating “Caltrans welcomes the Commission’s decision of lifting the freeze on licensing, allowing incumbents to modify their existing licenses or licensing new permanent 4.9 GHz fixed sites”). By stating here that we retain the freeze, we do not mean to affect the Bureaus’ discretion to modify, lift, or expand the freeze in the future as it deems necessary.

<sup>196</sup> 47 CFR § 1.925; see also *Freeze Public Notice*, 35 FCC Rcd at 9523.

#### IV. NINTH FURTHER NOTICE OF PROPOSED RULEMAKING

71. In this *Ninth Further Notice*, we seek comment on a range of questions related to the implementation of our new Band Manager model for the 4.9 GHz band adopted above in the *Seventh Report and Order*. This model will preserve the essentially public safety nature of the band while decreasing access costs and expanding use to a variety of primary public safety and secondary non-public safety operations.

72. First, we seek comment on the Band Manager's efforts in coordinating public safety operations, in particular mitigating harmful interference and modernizing operations. Next, we seek comment on the Band Manager's role in facilitating leasing to non-public safety users; how to enable such leasing, how to manage the revenues that arise from it, and how to ensure preemption rights for public safety operations. We also seek comment on the implementation of our committee-based selection process for the Band Manager, which mirrors the approach we have taken for selecting clearinghouses and transition coordinators in a number of other bands. Finally, we seek comment on our oversight of the Band Manager and on other issues related to the implementation of the Band Manager model.

##### A. Rights and Responsibilities of the Nationwide Band Manager Regarding Public Safety Operations

73. We seek comment on the rights and responsibilities of the Band Manager with regards to the coordination and management of public safety operations in the 4.9 GHz band. We believe that the Band Manager, which need not necessarily be a public safety entity itself, at a minimum, must be representative of all eligible licensees in the 4.9 GHz band to ensure that, in coordinating the band and enabling non-public safety access, the Band Manager is knowledgeable and its judgment is impartial.<sup>197</sup> This representativeness, familiarity, and impartiality will help the Band Manager work with public safety licensees and non-public safety users to maximize efficient use of the 4.9 GHz band.

74. We also believe that the Band Manager must have a complete, accurate, and current knowledge of the 4.9 GHz band environment. This would mean that the Band Manager would be able to competently perform frequency coordination, understand and ensure compliance with our interference rules, and control use of the spectrum so as to facilitate protection for public safety. In addition, the Band Manager must be familiar with all applicable Commission rules, policies, and procedures, including the *Seventh Report and Order* and any subsequent orders adopted in this proceeding. We believe this would mean that the Band Manager should also have experience with ULS so that it can fulfill its role as a frequency coordinator for both public safety and non-public safety entities.

##### 1. Criteria for Harmful Interference at 4.9 GHz

75. In the *Eighth Further Notice*, the Commission sought comment on how to ensure public safety licensees have efficient and interference-free access to the band.<sup>198</sup> In particular, it sought comment on the feasibility of the TIA-10 standard<sup>199</sup> to guard against interference between licensees deploying fixed P-P links and P-MP hubs but also asked about an appropriate standard for licensees deploying non-fixed, geographic-area operations or ad-hoc temporary operations.<sup>200</sup>

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<sup>197</sup> Since 1958, the Commission has expected entities that are fulfilling the frequency coordinator role to refrain from discriminating amongst users and to honor all requests for coordination. *Frequency Coordination in the Private Land Mobile Radio Services*, PR Docket No. 83-737, Report and Order, 103 FCC 2d 1093, 1101-02, para. 18 (1986).

<sup>198</sup> *Eighth Further Notice*, 36 FCC Rcd at 15043, para. 30.

<sup>199</sup> Telecommunications Industry Association, TIA Standard Interference Criteria for Microwave Systems TIA-10 (2019), <https://documents.tiaonline.org/1nq99bt/1> (TIA-10). The TIA-10 standard provides a methodology for designing and frequency coordinating fixed point-to-point microwave relay systems.

<sup>200</sup> *Eighth Further Notice*, 36 FCC Rcd at 15043-44, para. 31.

76. In this *Ninth Further Notice*, we build off the record before us and seek comment on specific criteria for protecting public safety licensees operating in the band from what we term “harmful interference at 4.9 GHz.”<sup>201</sup> Caltrans proposed that, “[s]hould the Commission decide to allow non-public safety use,” one of the “primary tasks for a nationwide Band Manager include[] Spectrum Protection [to] ensure that protection from harmful interference is strictly observed.”<sup>202</sup> We agree, and thus, tentatively conclude that the Commission will adopt interference criteria for protecting public safety operations in the band from “harmful interference at 4.9 GHz” and that the Band Manager will be required to apply those interference criteria, once adopted, as it manages access to the band to ensure public safety licensees have efficient and interference-free operations in the band. The interference criteria, once adopted, will be used to protect public safety incumbents from “harmful interference at 4.9 GHz” by other public safety licensees as well as non-public safety users in the band. We seek comment on this tentative conclusion. Below we seek comment on how to define “harmful interference at 4.9 GHz.”

77. Commenting parties uniformly supported the goal of protecting current and future public safety licensees from interference but differ on how to define harmful interference at 4.9 GHz and which interference protection approach is most appropriate.<sup>203</sup> For instance, NPSTC stated that the threshold degradation approach of TIA-10 “has a demonstrated track record of ensuring interference protection for point-to-point fixed links.”<sup>204</sup> TIA-10 defines threshold degradation as interference which degrades a victim receiver’s 10<sup>-6</sup> bit error rate (BER) threshold by more than 1 dB.<sup>205</sup> NPSTC noted, however, that TIA-10 is designed to “minimize interference to fixed operations” but indicates that “[w]hatever approach is ultimately adopted should protect the range of public safety operations [including mobile operations] from interference.”<sup>206</sup> APCO on the other hand preferred a propagation modeling approach it uses for coordinating TDMA systems in the VHF band for protecting fixed P-P and P-MP systems in the 4.9 GHz band from interference.<sup>207</sup> APCO prefers its approach to TIA-10 because it believes it will make frequency coordination “much simpler and more efficient overall.”<sup>208</sup> Furthermore, APCO said “Part 90 contour-based coordination” is appropriate for protecting base/mobile operations in the 4.9 GHz band.<sup>209</sup> WISPA stated that it believes the TIA-10 standard “is overly restrictive” and preferred a contour-based overlap approach similar to one used to protect Priority Access Licenses in the CBRS band from interference.<sup>210</sup>

78. Given the lack of consensus on a protection method, we seek further comment on how best to protect public safety licensees from harmful interference at 4.9 GHz. TIA-10, as noted above,

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<sup>201</sup> Although the term “harmful interference” is already defined under part 90, we seek comment on a specific definition for “harmful interference” which will apply only to the 4.9 GHz band and which will be used as the baseline for interference protection to public safety operations in the band. See 47 CFR § 90.7 (defining harmful interference as “any emission, radiation, or induction which specifically degrades, obstructs, or interrupts the service provided by such stations”).

<sup>202</sup> Caltrans Nov. 23, 2021, Comments at 5.

<sup>203</sup> APCO Nov. 29, 2021, Comments at 2-3; AASHTO Nov. 29, 2021, Comments at 3; NPSTC Nov. 29, 2021, Comments at 10; IAFC Nov. 23, 2021, Comments at 3; IACP Nov. 29, 2021, Comments at 2; Region 20 Nov. 29, 2021, Comments at 2; PSSA Nov. 29, 2021, Comments at 6; BART Nov. 29, 2021, Comments at 2; Cal OES Nov. 29, 2021, Comments at 3.

<sup>204</sup> NPSTC Nov. 29, 2021, Comments at 9-10.

<sup>205</sup> TIA-10 at 38.

<sup>206</sup> NPSTC Nov. 29, 2021, Comments at 9-10.

<sup>207</sup> APCO Nov. 29, 2021, Comment at 3.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> WISPA Nov. 29, 2021, Comments at 18.

defines digital threshold to interference (T/I) as the “difference between the desired signal power (expressed in dBm) when the receiver is at  $10^{-6}$  BER threshold and the interfering power (expressed in dBm) into the victim receiver which degrades the receiver threshold by 1 dB.”<sup>211</sup> The TIA-10 standard notes that only the strength of the interfering signal (I) into the victim receiver must be calculated if a victim receiver’s desired threshold signal power (T) is known.<sup>212</sup> It also notes that there are many ways of setting up the calculation, but “the results should be identical if the same parameters are used.”<sup>213</sup>

79. Therefore, we seek comment on whether the Commission should adopt interference criteria to protect public safety licensees in the 4.9 GHz band in terms of digital T/I or some other standard? Is T/I the proper metric to ensure protection of mission critical communications as NPSTC suggested?<sup>214</sup> If so, would 1 dB of  $10^{-6}$  BER threshold degradation be the proper way to provide sufficient interference protection to public safety? In other words, a public safety licensee would need to tolerate interference that degrades its receiver’s  $10^{-6}$  BER threshold level by 1 dB but would serve to ensure protection from harmful interference at 4.9 GHz. Would these criteria for interference protection strike the right balance between allowing robust use of the band while protecting critical public safety communications or would it be more conservative than is necessary, as WISPA suggested?<sup>215</sup> If it is too conservative, should higher levels of threshold degradation be tolerated or should a different bit error rate be used? Is establishing an approach that ensures protection from harmful interference at 4.9 GHz in terms of digital T/I valid only when considering fixed sites? If so, why not apply it when considering interference to or from mobile operations? What criteria would be appropriate for mobile operations?

80. We also seek comment on the propagation modeling approach proposed by APCO.<sup>216</sup> When performing part 90 frequency coordination involving a TDMA system operating or proposing to operate in the VHF band, APCO and other public safety frequency coordinators comprising the Public Safety Communications Council (PSCC) use the Longley-Rice propagation methodology to calculate the strength of an unwanted signal at the receive antenna of a system being evaluated.<sup>217</sup> The PSCC considers an interfering signal at the receive antenna of less than 9 dBu as passing coordination, an interfering signal greater than 29 dBu as failing coordination, and any value in between as needing further evaluation.<sup>218</sup> Could a similar methodology be used to determine harmful interference at 4.9 GHz and, if so, how would harmful interference at 4.9 GHz be defined? Would harmful interference at 4.9 GHz be defined in terms of the strength of an unwanted signal in dBu or dBm at the receive antenna of a station under consideration? If so, what unwanted signal level would be considered to cause harmful interference at 4.9 GHz? Would this methodology allow for robust use of the band while protecting critical public safety communications? Are there other propagation models besides Longley-Rice which could be used to perform interference calculations for the 4.9 GHz band? If so, what are they and how would these alternate models improve the process? Is the propagation method used by the PSCC only valid when considering the interference potential between fixed sites? If so, why can it not be applied when considering interference to or from mobile operations and what methodology might be more appropriate

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<sup>211</sup> TIA-10 at 38.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> NPSTC Nov. 29, 2021, Comments at 9 (noting that “[p]ublic safety fixed links carry mission critical information and need to be protected from interference”).

<sup>215</sup> WISPA Nov. 29, 2021, Comments at 18.

<sup>216</sup> APCO Nov. 29, 2021, Comments at 3.

<sup>217</sup> See Letter from Farokh Latif, Chairman, Public Safety Communications Council, to Michael Wilhelm, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau (Jan. 22, 2013) (PSCC Jan. 22, 2013 Letter). The PSCC frequency coordinators perform Longley-Rice study at 50%, 50%, 50% (time, location and probability) when calculating the signal level from a proposed system. *Id.* at 1.

<sup>218</sup> PSCC Jan. 22, 2013 Letter at 1-2.

for mobile operations? Commenting parties who support this propagation modeling approach should explain why it would make the frequency coordination process simpler and more efficient, as APCO claims, compared to the digital T/I methodology described above.<sup>219</sup>

81. We also seek comment on contour overlap analysis as the basis for determining harmful interference at 4.9 GHz. As noted above, APCO supported contour overlap analysis for frequency coordination if base/mobile operations are involved but offers no proposal for what contours should be used for determining interference protection.<sup>220</sup> WISPA, on the other hand, suggested the -96 dBm contour of a public safety licensee should be protected against aggregate interference exceeding -80 dBm.<sup>221</sup> Would these contour levels be appropriate for establishing interference protection in the 4.9 GHz band under a contour overlap approach? What method should be used to calculate the contours under this approach? Would using contours simplify the process for determining interference compared to the methods discussed above? Is contour overlap analysis valid only for base/mobile operations or can it also be used for interference analysis of fixed sites? Is contour analysis also a valid method for determining interference when mobile-only or temporary fixed operations are concerned? Further, as discussed previously, would interference protection based on contour overlap allow for robust use of the band while protecting critical public safety communications?

82. We seek comment on whether there are alternative methods not discussed above for establishing interference protection for public safety licensees operating in the 4.9 GHz band. Further, should there be different definitions for harmful interference at 4.9 GHz based upon whether a system deploys fixed or mobile operations? If so, how would interference analysis work when considering systems deploying different operations (for example, an incumbent deploying fixed facilities and an applicant seeking to license mobile operations)? Would a better approach be to have one definition for harmful interference at 4.9 GHz for all deployments in the band but allow the Band Manager maximum flexibility to perform the interference analysis in any manner it sees fit provided the Band Manager uses good engineering principles (with, as noted in the *Seventh Report and Order*, the possibility of challenging this determination to the Commission)? In any case, we request that commenting parties provide us with specific proposals for protecting public safety licensees from interference and to explain the costs and benefits of those proposals.

83. Finally, we seek comment on whether the nationwide Band Manager should be responsible for establishing interference criteria for public safety operations in the band. Is this an appropriate delegation of our authority to the Band Manager? If so, what should the Commission's role be resolving a dispute regarding whether the interference criteria established by the Band Manager are appropriate or whether a particular operation exceeds the interference criteria? We seek comment on this approach.

## 2. Mediation

84. In the *Seventh Report and Order*, we adopt a part 90 formal frequency coordination requirement for public safety applicants seeking to license facilities in the 4.9 GHz band and assign nationwide authority to the Band Manager to perform the coordination function. We now seek comment on what role the Band Manager should play, as part of its frequency coordination duties, in mediating or deciding disputes if parties disagree about existing or proposed operations.

85. For instance, if the Band Manager does play a role in mediating disputes between an applicant and an incumbent licensee, we seek comment on whether we should assign authority to the Band Manager to resolve disputes when mediation is not successful, or simply instruct it to refer matters to the Commission. If the former, should the parties involved in any dispute be able to appeal the Band

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<sup>219</sup> APCO Nov. 29, 2021, Comments at 3.

<sup>220</sup> *Id.*

<sup>221</sup> WISPA Nov. 29, 2021, Comments at 18.

Manager's decision to the Commission? If the latter, should the Band Manager provide a recommended resolution when referring any unresolved dispute to the Commission? In this regard, we seek input on what process would work best if the Band Manager needs to mediate disputes between parties over technical issues such as the potential for one user to cause interference to another user. Has frequency coordination worked in other bands without the need for any formal requirement of mediation?

86. Should the Band Manager also have a role in mediating disputes outside its frequency coordination duties? For instance, should the Band Manager mediate disputes as part of its role, as discussed below, in facilitating the leasing of unused spectrum rights to non-public safety entities? If so, would the mediation procedures described above work if the Band Manager needed to mediate disputes between parties over determining the availability of excess capacity for leasing from public safety to non-public safety users? Are there any other scenarios where the Band Manager might need to mediate disputes between parties, such as over the determination of which links are afforded primary status under our rules?

### 3. Evaluating Potential Integration with Broadband Networks Used by Public Safety

87. PSSA suggested that the nationwide Band Manager should evaluate “potential integration” of the 4.9 GHz band “with the Nationwide Public Safety Broadband Network.”<sup>222</sup> Indeed, ten years ago, the Commission sought comment on how the 4.9 GHz band could complement the 700 MHz public safety broadband network.<sup>223</sup> Since that time, a number of commercial networks have integrated public safety operations into their broadband networks.<sup>224</sup> Thus, we believe the time is ripe to consider this issue anew, but with a broader approach. As it identifies unused spectrum in the band, we tentatively conclude that the Band Manager should explore opportunities to lease spectrum, through the leasing models described below, to operators of broadband networks used by public safety in other frequency bands. We seek comment on our tentative conclusion.

88. We seek further comment on whether the Band Manager should be able to engage with any broadband network providers (public safety and/or commercial) to pursue opportunities for integrating operations in the 4.9 GHz band with broadband networks used by public safety in other spectrum bands through the leasing models described below. Would the introduction of 5G technology into the 4.9 GHz band provide an opportunity for integration with public safety broadband networks in other bands? Are there other technologies that could be deployed in the 4.9 GHz band that also offer an opportunity for integration with public safety broadband networks? What benefits would flow from integrating operations in the 4.9 GHz band with public safety broadband networks? Is there existing statutory authority that would permit the integration of the 4.9 GHz band into public safety broadband networks? If not, would integrating operations in the 4.9 GHz band with broadband networks require legislative or statutory action? Finally, what requirements would ensure that the Band Manager has the appropriate incentives to pursue opportunities to integrate with public safety networks, including broadband networks, in other bands?

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<sup>222</sup> PSSA Nov. 29, 2021, Comments at 9.

<sup>223</sup> *Amendment of Part 90 of the Commission's Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WP Docket No. 07-100, PS Docket No. 06-229, WT Docket No. 06-150, Fourth Report and Order and Fifth Further Notice of Proposed Rulemaking, 27 FCC Rcd 6577, 6594-95, para. 47 (2012).

<sup>224</sup> See, e.g., *Verizon Unveils Public Safety Private Core*, Verizon (March 27, 2018), <https://www.verizon.com/about/news/verizon-unveils-public-safety-private-core>; *We've Made a 10-Year, up to \$7.7 Billion Commitment to First Responder Agencies*, T-Mobile, <https://www.t-mobile.com/business/government/public-safety> (last visited Jan. 10, 2023).

#### 4. Technological Incentivization

89. In the *Seventh Report and Order*, we conclude that the nationwide Band Manager should, as part of a spectrum plan for the band and for the benefit of any interested licensees and lessees, determine how best to incorporate the latest commercially available technologies, including 5G, into the 4.9 GHz band. Should we require that the Band Manager file its spectrum plan for review by the Commission? In addition, should we require that the Band Manager complete the spectrum plan within a certain timeframe, such as within four to six months after the Band Manager is selected?

90. We also seek comment on how to encourage the widespread deployment of such technologies in a way that would promote interoperability while also lowering equipment costs. Should the Band Manager designate one or more preferred standards as part of this process, such as the 3GPP 5G standard, as long as the standards are not mandated and do not restrict the uses of other technologies and protocols, consistent with our preference to adhere to a technology-neutral policy?<sup>225</sup> We seek comment on this approach.

#### 5. Contents of Annual Reports

91. The *Seventh Report and Order*, adopts an annual reporting requirement that will allow the Commission to more effectively oversee the Band Manager, to ensure its activities advance the Commission's stated goals for this band, and to provide greater transparency, certainty, and predictability to the 4.9 GHz band. We now seek comment on what information should be included in those annual reports.

92. We tentatively conclude that the annual reports should include detailed descriptions of the Band Manager's efforts to: (1) develop a nationwide framework that maximizes use of the band; (2) leverage technological advancements, including 5G; (3) foster a robust equipment market and lower equipment costs; and (4) address non-public safety use of the band to foster innovation and investment. We seek comment on our tentative conclusion. For instance, are these the proper topics for the Band Manager to address when reporting on the status of the band to the Commission? Is there any other information that should be included in these reports by the Band Manager?

#### B. Rights and Responsibilities of a Nationwide Band Manager Regarding Non-Public Safety Operations

93. In the *Seventh Report and Order* above, we adopt rules that will permit the Band Manager to facilitate and coordinate spectrum leasing to non-public safety entities on a secondary basis. While public safety licensees will remain the primary users of the band, we find that our Band Manager coordinated leasing framework, which enables secondary access by non-public safety users subject to oversight and approval by the Band Manager, is the most efficient way to promote increased use of the 4.9 GHz band. Below, we seek comment on options for implementing this nationwide leasing program.

#### 1. Leasing to Non-Public Safety Entities

94. The Band Manager will be responsible for coordinating public safety and non-public safety access to the band, ensuring that non-public safety use does not interfere with public safety operations, and for adopting procedures to ensure that non-public safety operations can be pre-empted by authorized public safety users as needed. We seek input on two possible means of enabling Band Manager-coordinated non-public safety leasing, as well as general considerations for creating an effective leased access model for the band, in particular, the need to ensure non-discriminatory treatment of potential lessees. Under either model, we want to ensure that all potentially affected licensees, as

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<sup>225</sup> See, e.g., PSSA Jan. 11, 2022, Reply at 3 (stating “[t]he most effective way to accelerate the deployment of 5G technologies in the 4.9 GHz Band is through a nationwide licensee (and the appointment of a band manager by such licensee) to develop a spectrum plan for the use of 5G across the band, which would facilitate widespread deployment and interoperability, and lower equipment costs”); PSSA Nov. 29, 2021, Comments at 9; IAFC Dec. 20, 2021, Reply at 5 (concurring with PSSA).

discussed below,<sup>226</sup> are given the opportunity to consent to the leasing arrangements and we seek comment on this below. We also seek comment generally on the distribution of leasing revenues, and methods for ensuring that public safety users retain priority and preemption rights within the band.

95. *Model 1: Band Manager as Lessee/Sublessor.* Under Model 1, the Band Manager would lease spectrum access rights directly from public safety licensees and would, in turn, be permitted to sublease those rights to non-public safety entities. The Band Manager would be the only entity eligible to lease from public safety licensees and the only entity eligible to sublease (or lease) 4.9 GHz band spectrum rights to non-public safety entities; the Band Manager would play the role of mandatory intermediary between public safety licensees and any non-public safety 4.9 GHz band user. The Band Manager would be responsible for seeking to obtain leases for access to spectrum rights from all public safety licensees in a given area, as discussed below, meaning the Band Manager would effectively pool all applicable non-exclusive spectrum access rights together to form, if successful, an exclusive spectrum access right (which may be limited in time, frequency, or geographic area) which it would then be permitted to lease to non-public safety entities. The Band Manager would be responsible for ensuring that any non-public safety operations fully comply with our rules on protection of, and preemption for, public safety operations, including by approving the specifics of lessee deployments to ensure no harmful interference is created. The Band Manager's experience with the band—and its relationship with public safety licensees—would be critical factors underlying its ability under this framework to maximize opportunities for spectrum access while avoiding negative impacts on public safety licensees.

96. We seek comment on this model, and any issues related to its implementation. In particular, we seek comment on any requirements we should place on the negotiation of leases between the Band Manager and public safety licensees. Should the Band Manager and public safety licensees have full freedom in negotiating the terms of these leasing arrangements, or should we specify certain terms which must be included, such as with preemption rights? For example, should we require—or prohibit—terms which give a public safety licensee veto rights over the eventual lease entered into by the Band Manager and a non-public safety entity?<sup>227</sup>

97. *Model 2: Band Manager as Lease Approver.* Under Model 2, public safety licensees would be permitted to lease directly to non-public safety entities so long as those leases are coordinated through and approved by the Band Manager. All potentially affected public safety licensees that would have been required to lease their spectrum to the Band Manager under Model 1 would, under Model 2, be required to be parties to the lease to the non-public safety entity.<sup>228</sup>

98. The Band Manager would, in this instance, be responsible for reviewing and consenting to lease agreements and coordinating operations, including by approving the specifics of lessee deployments to ensure no harmful interference is created, but would not be a party to the lease. The Band Manager's mandatory role would be limited to supervising and managing the leasing process, ensuring all required consents had been obtained and that the lease terms and proposed operations fully comply with our rules as to protection for, and preemption by, public safety operations. While public safety licensees would be free to engage the Band Manager as their agent in negotiating the lease, it need not be involved in lease negotiations.

99. We seek comment on this model, and on the nature and requirements of the Band Manager's consent to a lease proposed by a public safety licensee or group of such licensees. Should the Band Manager's consent here be limited to ensuring compliance with our rules, or should the Band

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<sup>226</sup> See *infra* para. 108.

<sup>227</sup> Potential examples include: the licensee does not approve of the specific sublessee selected by the Band Manager; it objects to one or more terms of the lease; or it has concerns about the proposed non-public safety operations.

<sup>228</sup> Under Model 1, public safety agencies would only be a party to the lease to the Band Manager, not the sub-lease to non-public safety users.

Manager have the right to refuse its consent for other reasons? For example, if the Band Manager determines a lease would comply with all our rules, but believes an alternative non-public safety licensee is preferable because it has more experience with the band and its requirements, should the Band Manager be permitted to refuse its consent to the lease? If the Band Manager has the right to decline to consent to a lease, should the parties be able to appeal to the Commission? At a minimum, we propose that the Band Manager would not have the right to disapprove lease agreements for discriminatory reasons, and we seek comment on any appropriate reasons for which the Band Manager could refuse its consent. Once the Band Manager consents to the leasing agreement, what other responsibilities should the Band Manager have to ensure that the parties comply with the lease agreement and the Commission's rules? Is the fact that it will not be a party to the lease agreement a concern with regards to enforcement?

100. *Implementation of the Models.* We believe both models would move the 4.9 GHz band forward and dramatically improve the utilization of this important mid-band spectrum. In both cases, public safety licensees remain the primary users of the band and retain full control over it, with non-public safety operations limited to areas where all relevant public safety licensees voluntarily consent. Both models provide a path towards enabling meaningful non-public safety access to the band, which we believe will drive down costs for all users and help facilitate more efficient use of this public resource.

101. There are, however, potential advantages and disadvantages to each model and we seek comment on them. Our goal is to create a consistent, nationwide framework for the 4.9 GHz band that fosters efficient use of this important mid-band spectrum, but retains public safety priority and local control. To what extent do either of these models further these goals? For example, does Model 1's centralization of leasing with the Band Manager, which emphasizes nationwide consistency, potentially reduce local control by limiting a licensee's right to be a party to leases with non-public safety entities? In contrast, will Model 2 lead to too much regional variation in leasing terms? Are there ways to modify each model to more effectively achieve our goals?

102. Similarly, is one model more or less accommodating of particular types of agreements? For example, shared system agreements, where a public safety entity and a non-public safety entity jointly build and operate a system, may be more feasible under Model 2, which allows the two entities to directly enter into an agreement, subject to the Band Manager's consent. Are there ways we can better enable these kinds of agreements under Model 1? Are there advantages to encouraging a shared system approach?

103. While we have structured each model as a stand-alone proposal, we also seek comment on the possibility of implementing them simultaneously. Can the two models operate together, where some leases involve the Band Manager as a party but others only require its approval? What would be the result if some public safety licensees wish to lease to the Band Manager, but others wish to lease directly to a non-public safety entity? Does allowing both types of agreements present different the incentives for the Band Manager depending on whether or not it is a party to a lease? What other alternative models for leasing should we consider and why?

104. We propose that all lease arrangements with public safety and non-public safety entities in the 4.9 GHz band would be generally required to comply with our secondary markets rules,<sup>229</sup> but seek comment on whether any specific rules should not apply to these leases. We also note that the secondary markets rules provide for a variety of leasing vehicles, each with their own regulatory requirements regarding the nature of the licensee's role in the lessee's operations.<sup>230</sup> Should we limit the types of leasing arrangements that 4.9 GHz band leases may use? For example, should we limit leasing to only spectrum manager leasing arrangements,<sup>231</sup> as opposed to permitting *de facto* transfer leases?<sup>232</sup>

<sup>229</sup> See 47 CFR part 1, subpart X.

<sup>230</sup> See *id.*

<sup>231</sup> See 47 CFR § 1.9020.

<sup>232</sup> See *id.* §§ 1.9030, 1.9035.

Alternatively, should we create a new leasing model specific to this band, given the unique nature of the relationships involved in this framework? We seek comment on these questions with regards to all types of 4.9 GHz band leases under both Model 1 and Model 2.

105. *Required Consents.* Regardless of the type of leasing structure we ultimately adopt, we propose that all potentially affected public safety licensees would be required to consent to non-public safety use. This will provide confidence to public safety licensees in the ongoing primacy of their operations specifically, but also of public safety operations generally. It will ensure that all non-public safety operations occur with the full consent of the relevant public safety licensees, making the decision to allow non-public safety operations fully voluntary. Under Model 1, this consent would take the form of a lease from the public safety licensee to the Band Manager, and under Model 2, it would instead involve being a signatory to the lease of the non-public safety entity.

106. We seek comment on this proposal, and on any alternatives to such a consent requirement. Specifically, are there hold-out concerns that would undermine the utility of leasing to rationalize and increase the efficiency of use in the band? Are there other ways of ensuring the primacy and protection of public safety use that could reduce these concerns? We seek comment on whether we should have exceptions to this general consent requirement such as after a period of non-responsiveness or if the licensee has conditioned its consent in a manner which does not conform with our rules. Similarly, should we have an exception to the general consent requirement if, as discussed below, we require certain licensees whose license area does not overlap with the lease area to consent and they do not consent but the lessee and Band Manager demonstrate full protection for their operations?

107. We also note that, in many cases, public safety licensees are subject to overlapping jurisdiction with one another, as in the case of a state public safety agency that overlaps with city and county level agencies within the state. Should the Commission take a position regarding whether each licensee makes its own, independent, decision as to a given lease? For example, states might mandate that local and county agencies consent to any lease that a state agency has consented to; should we prohibit these kinds of requirements in order to preserve local control of the band in a given jurisdiction? Commenters proposing such requirements should address our authority to impose such a restriction, whether through our preemption authority or otherwise.

108. We seek comment on how the Band Manager will determine which public safety licensees are “potentially affected” and therefore must consent—or be a party—to a given lease. To what extent can the Band Manager use ULS to determine the relevant public safety licensees? Alternatively, or in conjunction with, should the Band Manager rely solely on a licensee’s jurisdictional boundaries in determining the set of potentially affected public safety licensees? Under what circumstances should licensees whose license area does not overlap with the lease area be required to consent? In other words, if a lease area overlaps with the license areas of Licensees A and B, but merely abuts that of Licensee C, we propose that Licensees A and B must consent to the lease, but must Licensee C? How should we define consent rights for licensees of fixed systems, as opposed to geographic area, licenses? Must the Band Manager also obtain consent from a licensee who operates on defined channels but which will not be impacted by the proposed lease?

109. Public safety licensees may wish to modify their systems in ways that conflict with a lease agreement to which they have previously agreed. Should public safety licensees be permitted to withdraw consent while a lease is in effect for this reason? While lease and consent agreements might directly cover this question, we seek comment on whether we should address this issue in our rules. We also seek comment on whether our rules should address the ability of public safety licensees to withdraw consent to a lease, such as where they wish to lease to another non-public safety entity or to deploy a mixed-use system which conflicts with leased access.

110. We also seek comment on how to handle consents in situations where a public safety licensee, which did not previously have to consent to a lease, modifies its system in a way that alters whether its consent is required. For example, Licensees A, B, and C are the only licensees who must consent as of the date of a lease with Company Z, and all consent. During the lease, Licensee D applies

to modify its license in such a way that it now would be a required consenting party to the lease. Should the Band Manager condition its approval of Licensee D's modification on its consent to the lease with Company Z? Or can Licensee D decline such consent? In that case, what is the impact on Company Z's lease? We seek comment below on the related questions involving new licensees in an area with existing leases.<sup>233</sup>

111. *Non-Discriminatory Leasing.* We seek comment on what rules we should adopt to ensure the Band Manager administers leasing in a non-discriminatory manner, and to protect against potential conflicts of interest.<sup>234</sup> Should these rules vary depending on what the Band Manager's role in leasing might be?

112. For purposes of Model 1, we seek comment on whether the Band Manager should be permitted to use the spectrum rights it leases from public safety licensees itself rather than subleasing it. Similarly, should it be permitted to lease to affiliated entities and, if so, should we have any specific obligations in such circumstances? For example, could such agreements be subject to certain conditions, such as a maximum term length or being limited to situations where no non-affiliated entity will agree to comparable terms?

113. For purposes of Model 2, we seek comment on potential limitations on the Band Manager's authority to refuse consent to a given lease. Should the Band Manager's authority to do so be limited to cases of non-compliance with our rules? Or can the Band Manager decline consent in favor of an alternate lessee, subject to certain conditions?

114. In the *Seventh Further Notice*, we sought comment on whether we should limit the types of non-public safety entities that should be eligible for leased access—for example, only CII entities.<sup>235</sup> Because the non-public safety access we are enabling today will be overseen by the Band Manager—an entity vetted and supported by public safety licensees—we do not believe restrictions on the type of non-public safety entities eligible for leasing are necessary. We therefore tentatively conclude we will not adopt rules in this regard, but seek comment on whether the Band Manager should have the flexibility to engage specific non-public safety users and, if so, how that potentially aligns with our rules on non-discriminatory access.

115. Finally, we seek comment on the Commission's role in enforcing these non-discrimination rules. Should we require the Band Manager to actively report to the Commission certain information about leasing, and its relationship to the parties? Or should we rely on the relevant parties to engage the Commission where concerns arise? Should there be a formal right to appeal Band Manager decisions to the Commission? We further seek comment on whether the Commission should oversee the

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<sup>233</sup> See *infra* para. 149.

<sup>234</sup> See API et al. Aug. 25, 2022, *Ex Parte* at 2 (noting the importance of “[p]romoting access to the 4.9 GHz band for all eligible parties, to be defined by the FCC on a . . . non-discriminatory basis.”).

<sup>235</sup> *Eighth Further Notice*, 36 FCC Rcd at 15055, para. 64. Commenters were split on this question, with some supporting such a limitation as a way of ensuring that the needs of public safety operators are respected. See, e.g., TDD Nov. 29, 2021, Comments at 2-3 (stating the Commission should “incorporate parts of NPSTC’s Aug. 13, 2021 *ex parte* recommendations, such as opening the band to CII for “internal operations of the nation’s utilities, petrochemical facilities, and transportation networks that increasingly are subject to cyber-attacks”); FPL Nov. 29, 2021, Comments at 5-7 (supporting “a sharing regime that permits non-public safety CII users to access the 4.9 GHz band and agrees with the Commission that such use should not come at the expense of public safety user”). However, other commenters noted that such restrictions would limit the pool of available non-public safety operators, limiting the utility of opening the band. See, e.g., WISPA Jan. 22, 2022, Reply at 2-6 (stating “positions advanced by WISPA, DSA, Federated Wireless and New America’s OTI suggests that if the equipment market will expand with CII, it most certainly will expand even more if eligibility includes those potential users NPSTC and API/ENTELEC seek to exclude from the band”); FPL Nov. 9, 2022, *Ex Parte* at 1.

fees charged by Band Managers and, if so, to what the nature of that oversight should be.<sup>236</sup> For example, fees charged by spectrum access system administrators in the Citizens Broadband Radio Service must be “reasonable;”<sup>237</sup> should we impose a similar requirement on the Band Manager?

116. *Commission Oversight.* Commission oversight of the Band Manager and any leasing regime must ensure that it complies with all statutory requirements. Under either leasing model, we propose that the Commission’s oversight will be based on our secondary market rules. What, if any, changes to our rules may be needed to implement this oversight model? More specifically, should the Commission review or approve each leasing arrangement? Alternatively, if the Band Manager coordinates leases, should the Commission forebear from requiring submission of leasing notifications in ULS? What, if any, changes to our rules would be required to implement this oversight model?

117. *Geographic-Area License.* Today, most incumbent public safety licensees hold a geographic-area license which generally covers the geographic area encompassing the legal jurisdiction of the licensee.<sup>238</sup> Under the new licensing rules we adopt today in the *Seventh Report and Order*, public safety licensees may be issued site-based licenses for all operations which currently are authorized under their geographic area licenses.<sup>239</sup> Under the newly adopted frequency coordination requirements for the band, all licensees, even those that retain a geographic area license, will be required to coordinate future deployments with the Band Manager.<sup>240</sup>

118. We seek comment on the advantages and disadvantages of allowing all incumbent licensees to retain their geographic-area licenses after they have been issued site-based licenses. Would allowing some or all licensees to retain their geographic licenses aid in the facilitation of leasing excess capacity spectrum to non-public safety users? Are there reasons to only allow certain licensees to retain their geographic-area licenses for purposes of leasing excess capacity spectrum, and if so, how should those licensees be selected? Should we require all other licensees in the band to surrender their geographic-area licenses once the licensees enter their site-based data into ULS? How would site-based-only licensees and commercial operators coordinate in areas near their operations and within their jurisdictions (and thus their former geographic licensed area), but not overlapping with their site-based operations?

119. *Other Leasing Issues.* We seek comment on any other issues related to the implementation of this new leasing regime. What, if any, changes to our rules or to incumbent licenses would be required? Will existing 4.9 GHz licenses need to be modified? What guidelines should we implement to ensure that the Band Manager’s work in enabling leases and reviewing leasing applications is a fair and informed process? Should the Band Manager develop a process to provide non-public safety entities an opportunity to track the progress of their requests?

120. We also seek comment on the extent to which the Band Manager and other parties involved in leased access (public safety licensees and non-public safety operators) may, by agreement, streamline the process by which the Band Manager oversees non-public safety operations. For example, could the parties agree that the lessee may deploy without site-by-site approvals in a given area under certain circumstances?

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<sup>236</sup> *Frequency Coordination in the Private Land Mobile Radio Services*, PR Docket No. 83-737, Notice of Inquiry, FCC 83-329, 35151, para. 9 (1983).

<sup>237</sup> See 47 CFR § 96.65.

<sup>238</sup> *Id.* § 90.1207.

<sup>239</sup> See *supra* Section III.C.

<sup>240</sup> See *supra* Section III.D.

121. We seek comment on how to enable leased access in areas where there is no public safety licensee.<sup>241</sup> In these areas, should we grant the Band Manager the right to lease spectrum in those areas on its own authority? Would such authority require issuance of a license by the Commission? Or should the availability of leasing depend on a public safety entity getting a license in that geographic area?

122. In addition, notwithstanding our decision in the Order to not require interoperability between public safety users in the band, we seek comment on whether the Commission should require interoperability for non-public safety users in the band. We believe that such an approach could have multiple benefits, such as promoting more efficient use of spectrum as well as helping foster a more robust and innovative equipment market. We seek comment on those views and encourage commenters to describe any other effects such a requirement would have on consumers or stakeholders, including public safety. Are there any technical or operational challenges to adopting such a requirement? Are there any alternative approaches that the Commission should consider in lieu of mandating interoperability for non-public safety users?

123. Finally, we seek comment on whether we should distinguish between governmental agencies and nongovernmental entities which hold licenses under our rules.<sup>242</sup> We propose that the operations of non-governmental licensees must be fully protected by secondary non-public safety operations in the band, but seek comment on whether our rules on consent to leases, preemption, and compensation should take into account the difference in status of these entities. Are there different incentives for nongovernmental licensees which justify different treatment under our leasing rules? Should we instead grant authority to consent to leases to the governmental entity which supported the licensee's application?

## 2. Distribution of Leasing Revenues and Other Payments to Licensees

124. *Funding the Band Manager.* We propose that the Band Manager be funded, at least partially, by leasing revenues, which will enable the Band Manager to be fully independent and equipped to engage in the kind of complex spectrum analysis needed to enable this leasing model. This will ensure that those benefiting from the non-public safety access—non-public safety users and their customers—are the ones supporting the access system. We also believe this provides an incentive for the Band Manager to find available spectrum access opportunities wherever it can, subject to the consent of all relevant public safety licensees.

125. We seek comment on this proposal. Will the leasing revenues be sufficient to provide the Band Manager with both sufficient funds to cover its costs and a reasonable rate of return on its investment? We also seek comment on whether this model will provide sufficient start-up funding for the Band Manager, since extensive work will be required prior to any leases going into effect. Should we provide for advanced funding for the Band Manager, and if so, how? Conversely, should we place a cap on the amount of return the Band Manager can make from leases? If so, what should that cap be, and what should be done with revenues above and beyond that amount?

126. Under Model 1 above, the Band Manager's role in leasing provides for a direct means by which it can fund itself using leasing revenues. On the other hand, under Model 2, because licensees make agreements directly with non-public safety lessees, there is no such direct funding source for the Band Manager. We seek comment on whether the Band Manager being funded by leasing revenues is feasible if we permit Model 2 lease arrangements. Should we require that a minimum percentage of lease revenues be allocated to the Band Manager or allow negotiations by the parties to determine the Band Manager's compensation, since the Band Manager will still be required to approve all leases? If we allow

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<sup>241</sup> The following states/territories are not covered by a statewide license: American Samoa, Georgia, Iowa, Kansas, the Northern Mariana Islands, and South Dakota.

<sup>242</sup> See 47 CFR § 90.523.

negotiations to cover the Band Manager's funding, should the Band Manager be able to withhold its consent to a lease where the parties are not providing it with sufficient funding?

127. In the *Seventh Report and Order*, we determined that the Band Manager will be permitted to charge reasonable rates for its coordination services, the way other frequency coordinators do today. We seek comment on implementing this decision, specifically on any requirements we should put in place as to those fees, noting that the Band Manager, unlike most frequency coordinators, will have exclusive control over coordination services in this band. Should we limit fees charged by the Band Manager to public safety licensees and applicants? Are there other funding sources for the Band Manager that our rules should contemplate?

128. *Compensation to Licensees.* We also seek comment on how our rules should treat compensation to licensees, either directly from non-public safety operators or from the Band Manager. While sharing of lease revenues in Model 1, and direct payments of lease revenues in Model 2, will likely form the majority of payments to licensees, they are not the only form of compensation public safety licensees may expect. Such compensation may include, but is not limited to: incentive payments to modify spectrum use by the licensee; payments for consent to a lease; and in-kind provision of services by a non-public safety entity, such as sharing access to a constructed network. Such compensation can incentivize public safety licensees to rationalize their operations to increase spectrum availability and to distribute the benefits of allowing non-public safety access to the band.

129. That said, we emphasize that the primary purpose of this band is to host public safety communications. We seek comment on how to ensure that lease revenue generation for public safety agencies continues to serve the public interest and our policy goals. We tentatively conclude that any public safety licensee which wholly ceases their licensed public safety operations in the band would no longer be eligible for a license and, therefore, any lease-related compensation. We seek comment on that conclusion, and on any other provisions we should consider that serve the same ends. Should we alternatively require some minimum level of continued public safety operations in order to permit leasing?

### 3. Preemption

130. In the *Seventh Report and Order*, we ensure that public safety entities will maintain primary access to the 4.9 GHz band by virtue of being the only entities licensed to operate within it, while non-public safety users will operate in the band on a secondary basis. We now seek comment on how to ensure preemption rights for public safety licensees over non-public safety users in emergency circumstances.

131. As an initial matter, we tentatively conclude that the Band Manager will be responsible for ensuring non-public safety licensees promptly comply with any preemption request, and that cooperation with preemption requests must be a material clause included in any lease agreement with non-public safety users regardless of the leasing model eventually adopted. We seek comment on this tentative conclusion, and on the role of the Band Manager in enabling preemption and ensuring preemption requests are honored. Should licensees have the ability to work directly with non-public safety users, such as when operating a shared system which has been designed to automatically shut down non-public safety operations in a preemptable situation, or should we mandate that all preemption requests flow through the Band Manager in order to ensure full compliance with our rules?

132. Further, we seek comment on what type of "shut down" mechanism would best enable public safety licensees to trigger preemption of a non-public safety user. Should the Band Manager be tasked with establishing a portal through which public safety entities could provide notice of preemption requests? If so, how long should the Band Manager have to initiate operational changes to impacted non-public safety users once the Band Manager receives a preemption request? What specific types of information should the Band Manager be authorized to collect from public safety entities in connection with preemption requests? Would such requests require the submission of any proprietary information or personally identifiable information, other than contact information (e.g., name, address, phone number,

and email address) for a point of contact at the public safety entity? Are there any privacy concerns with allowing the Band Manager to collect and maintain such information? We note that in the Citizens Broadband Radio Service, a Spectrum Access System (SAS) has 300 seconds to confirm suspension of operation of Citizen Broadband radio devices or relocate those devices to unoccupied frequencies once the SAS is informed that the signal of a federal system has been detected in the area.<sup>243</sup> If the Band Manager has dynamic control over a given non-public safety operation in the band, would a similar timeframe be appropriate for a preemption request in the 4.9 GHz band? What would be an appropriate timeframe if the Band Manager does not have dynamic control over non-public safety users? Should there be some other means besides a notification portal for a public safety licensee to initiate a request to preempt non-public safety operations in a particular area? If so, how would preemption work in that case?

133. Are there non-public safety operations in the 4.9 GHz band that need not be subject to preemption requests? For example, would P-P links need to be included in any preemption request involving mobile operations? Similarly, should a preemption request apply to the entire band, or should the requestor identify specific band segments that need clearing? Further, should preemption requests be limited in terms of geography (such as a distance radius around a licensee) and duration? If so, what distance and time duration limits would be appropriate to ensure mission critical public safety licensees have access to the band during an emergency without unduly disrupting non-public safety operation in the band? Should there also be criteria regarding what type of event justifies a preemption request? If so, should the Band Manager have discretion to decide if a particular event justifies preemption of non-public safety operations in the vicinity of that event? Should preemption requests for emergency events of a mobile or nonfixed nature, such as a vehicle pursuit, be subject to geographic and duration limits and, if so, what should those limits be?

134. Finally, we seek comment on whether only certain mission-critical public safety licensees should have the authority to request preemption of non-public safety operations. If so, who should decide which public safety agencies have preemption authority? Should the Band Manager be tasked with working with each state to determine which public safety licensees have the authority to initiate a preemption request? Alternatively, if every public safety licensee in the band has preemption authority, could that lead to excessive preemption requests making the 4.9 GHz band effectively unusable to non-public safety users? In other words, we seek comment on how to balance the need for public safety preemption versus the need to make the band attractive to non-public safety users, which we believe will be to the ultimate benefit of all users of the band.

### C. Selection of the Band Manager

135. In the *Seventh Report and Order*, we establish a nationwide Band Manager and conclude that it will be chosen from a pool of qualified applicants by a selection committee.<sup>244</sup> Here, we seek comment on the nature of the committee and its processes, and on issues related to the creation of the committee and the Commission's role in ensuring its ultimate selection satisfies not only its criteria but also our rules. We believe the Commission has a responsibility to ensure the selection committee process is competitively neutral, and we seek comment on ways to accomplish this.

136. *Selection Committee Composition.* We tentatively conclude that the selection committee should include representatives from the public safety community. Should the Commission direct specific organizations to designate a representative to serve on the selection committee, like it did in the 800 MHz re-banding proceeding?<sup>245</sup> In addition to public safety representatives, should committee members be

<sup>243</sup> See 47 CFR § 96.15(a)(4); see also PSSA Jan. 11, 2022, Reply at 5 (noting that “the lifecycle of a life-threatening emergency, such as an active shooter incident, can be shorter than a 5-minute period”).

<sup>244</sup> See *supra* paras. 18-43.

<sup>245</sup> *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, Report and Order, 19 FCC Rcd 14969, 15070-71, para. 191 (2002) (*800 MHz Report and Order*) (designating Nextel Communications, Inc.;

(continued....)

representative of potential non-public safety users of the band, such as commercial spectrum users or industry associations?<sup>246</sup> If so, which non-public safety entities are most representative of potential users, and thus, should designate a representative to serve on the committee? We note that the Commission has recently used selection committees for clearinghouses in the 3.45 GHz<sup>247</sup> and 3.7 GHz bands.<sup>248</sup> Should the Commission model its selection committee for the 4.9 GHz band on these committees? Alternatively, are the bands—or the nature of the entity being selected (a clearinghouse as opposed to a Band Manager)—too different to justify using substantially the same selection process? If so, how are the situations different and how should such differences be reflected in the selection process?

137. We tentatively conclude that the selection committee will be composed of an odd number of representatives to prevent deadlock. We seek comment on this structure, and also on the appropriate number of representatives that should serve on the selection committee. For example, the Commission chose nine entities in the 700 MHz proceeding and five entities in the 800 MHz proceeding.<sup>249</sup> To aid in determining the appropriate selection committee size, we also seek comment on the specific number of representatives that should be designated from the different categories of entities, such as public safety and commercial users. For example, would it be sufficient to have nine members here—five representing the incumbent and public safety interests and four representing the prospective lessee and non-public safety interests? If not, what other interests or combinations of interests should be included? For example, would a selection committee composed of an even number of representatives from both public safety and non-public safety entities better represent the interests present in the band? What, if any, qualifications or experience should a member have in order to be selected? Are there any factors that would help ensure the selection committee is neutral and balanced from a competitive standpoint?

138. *Selection Committee Procedures.* Consistent with the 3.45 and 3.7 GHz proceedings, we tentatively conclude that the Bureaus will release a joint public notice announcing the entities that will comprise the selection committee and each selected entity would then nominate one individual to serve on the selection committee.<sup>250</sup> We seek comment on this tentative conclusion.

139. In addition, as in the 700 MHz proceeding, we tentatively conclude that the selection committee must notify the Commission of the final process by which it will review applicants for the Band Manager position.<sup>251</sup> The Commission also asked the search committee in the 700 MHz proceeding to “ensure that the Clearinghouse meets relevant best practices and standards in its operation to ensure an effective and efficient transition.”<sup>252</sup> Consistent with this requirement, the 700 MHz band search committee submitted to the Commission a Request for Proposal and detailed instructions for filing

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The Association of Public Safety Communications Officials-International; The Industrial Telecommunications Association; Southern LINC; and United Telecom Council to designate a representative).

<sup>246</sup> In the 700 MHz proceeding, the Commission directed nine entities, which represented a mix of incumbents in the band and prospective flexible-use licensees, to designate a representative to serve on a search committee. *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2450-52, paras. 273-283 (2020) (*700 MHz Report and Order*). In the 3.45 GHz band, the Commission asked WTB and OMD to develop a committee process like that in the 3.7 GHz proceeding. *See 3.45 GHz Second Report and Order*, 36 FCC Rcd at 6045, para. 163.

<sup>247</sup> *3.45 GHz Second Report and Order*, 36 FCC Rcd at 6045, para. 163; *3.45 GHz Search Committee PN*, 36 FCC Rcd at 12700.

<sup>248</sup> 47 CFR § 27.1414(a)(1).

<sup>249</sup> *700 MHz Report and Order*, 35 FCC Rcd at 2450, para. 274; *see also 800 MHz Report and Order*, 19 FCC Rcd at 15070-71, para. 191.

<sup>250</sup> *3.45 GHz Search Committee PN*, 36 FCC Rcd at 12700; *700 MHz Report and Order*, 35 FCC Rcd at 2450-51, para. 274.

<sup>251</sup> *700 MHz Report and Order*, 35 FCC Rcd at 2451, para. 275.

<sup>252</sup> *Id.*; 47 CFR § 27.1414(a)(2).

proposals to demonstrate it was fulfilling its responsibilities.<sup>253</sup> Should we impose similar requirements on the selection committee for the 4.9 GHz band? Are there other requirements that we should impose on the selection committee? For example, should we require the selection committee, once representatives are designated, to certify that they have reviewed and understand the Commission's rules and requirements in this proceeding?

140. We also tentatively conclude that the selection committee should proceed by consensus. In the event that we select an even number of committee members, or if for some other reason there is a deadlock, we tentatively conclude that the selection committee should inform the Bureaus so that the Bureaus may consider additional measures. We seek comment on these tentative conclusions. Further, we seek input on how the Bureaus should resolve the deadlock. For example, should the Bureaus state that the selection committee must proceed by majority vote? Or should the Bureaus appoint an additional selection committee member? If the Bureaus must resolve deadlock, what is the appropriate resolution timeline?

141. *Commission Oversight of the Committee.* We propose that applications for the position of Band Manager will be evaluated by the selection committee on the basis of the applicant's ability to satisfy eligibility criteria established by the search committee, which it will devise based on the functions of the Band Manager, described above in the *Seventh Report and Order* and this *Ninth Further Notice of Proposed Rulemaking*, and any future items issued by the Commission or by the Bureaus.<sup>254</sup> The Commission will then review the selection committee's decision to confirm it satisfies those criteria and that the Band Manager will be able to perform its required functions. We seek comment on this approach.

142. We seek comment generally on what oversight role by the Bureaus is appropriate to ensure the proper performance by the selection committee. We propose the committee must provide the Commission with its selection criteria in advance of its receipt of applications for the Band Manager position so that the Commission may review those criteria and advise the committee on them as appropriate. We propose that prospective Band Managers would be asked to submit to the selection committee, in addition to their qualifications, a general description of the frequency assignment methodology they propose to employ and would also submit their proposed plan for coordinating in the band. Should the selection committee also provide copies of all Band Manager applications to the Commission for its use as part of the review of the committee's processes? While we believe the selection committee will be well-equipped to evaluate applications and choose the appropriate Band Manager, we seek comment on ways the Commission can assist in and oversee that process.

#### **D. Commission Oversight**

143. Beyond our oversight of the selection committee, we also seek comment on the role the Commission and Bureaus should play in overseeing the Band Manager's decisions. While the Band Manager will not be a licensee of the Commission, our general authority over spectrum management forms the basis of our oversight of the Band Manager and its operations, including ensuring it fulfills its functions consistent with our rules. We therefore propose that we delegate to the Bureaus a general oversight responsibility, including the authority to address negligence, discrimination, or other errors or abuses by the Band Manager. We seek comment on this proposal, and on any other ways of ensuring that any discriminatory practices or abuses are properly mitigated and/or remedied, including any penalties which might be appropriate in cases of violations of our rules.

144. We additionally seek comment on oversight of the Band Manager on the basis of performance, such as the quality and timeliness of public safety coordination and non-public safety leasing recommendations. What performance standards would be useful metrics to oversee the Band

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<sup>253</sup> *Wireless Telecommunications Bureau Announces Relation Payment Clearinghouse Request for Proposal Selection Criteria, and Application Deadlines in the 3.7-4.2 GHz Band Transition*, GN Docket No. 18-122, Public Notice, 35 FCC Red 5768 (WTB 2020).

<sup>254</sup> As discussed above in *supra* para. 22, the Bureaus will have authority to manage the selection committee process.

Manager based on performance? Specifically, what performance standards should be used when it comes to timeliness, such as the speed of providing a frequency recommendation, and quality, such as recommending the best available frequency? To the extent performance standards are adopted, are there any incentives or mechanisms, such as shot clocks, that would be appropriate to ensure the Band Manager is meeting or exceeding those standards? Alternatively, should the Commission only oversee the Band Manager's performance when specific complaints are submitted?<sup>255</sup>

145. We could also measure the performance of the Band Manager against any responsibilities we ultimately adopt based on those proposed above in the qualifications section. For example, where it appears that the Band Manager is not performing its duties in a manner consistent with the public interest obligations imposed in this proceeding, we tentatively conclude that the Commission or Bureaus may, on their own motion or at the public's request, conduct an inquiry into the Band Manager's performance.<sup>256</sup> While we do not foresee initiating such an inquiry on the basis of isolated complaints, we anticipate beginning an inquiry if it appears that the Band Manager has established a pattern of failing to perform in accordance with the requirements adopted here or is otherwise acting contrary to the public interest. We seek comment on the Commission's role in overseeing the performance of the Band Manager.

146. We also seek comment on whether we should impose a specific term length for the Band Manager's appointment, or whether the Band Manager should instead serve until removal by the Commission. What are the advantages or disadvantages of either approach? Should a Band Manager whose term has expired be eligible to serve in that position again? If so, what type of renewal showing should the Band Manager be required to make?

147. Finally, we seek comment on the impact of a Band Manager being removed from its position, whether for cause or because of the end of its term. Should we reinstitute the selection committee to appoint a new Band Manager? What are the implications for any agreements entered into by the Band Manager in the event the entity serving in that role changes? Should we require that all such agreements specify a succession plan?

## **E. Other Considerations**

### **1. Future Licensing of the Band**

148. Under the current freeze on applications for new licenses in the 4.9 GHz band, which we retain here pending resolution of this *Ninth Further Notice*, no new licensees may enter the band but incumbents may file to modify their licenses or to license new points in a fixed system.<sup>257</sup> We seek comment on how to address future licensing of the band, given our decision to adopt a Band Manager and taking into consideration the variety of different implementation issues on which we seek comment today.

149. Should the Commission fully lift the freeze and allow any eligible public safety entity to obtain a license in the band? If so, what role should the Band Manager play in the issuance of new licenses, as opposed to simply coordinating new systems? Going forward, how could new licensees impact any existing leases, either in the form of consents or the underlying lease rights? Should new licensees be treated differently from incumbent licensees with regards to lease consent and revenue rights? Given the potential for revenue-generation from 4.9 GHz licenses under our new leasing system, are there additional buildout or other requirements we should place on new licensees to avoid spectrum warehousing?

150. Alternatively, should we instead require that new public safety deployments be under the auspices of an existing license, either an overlapping county or local jurisdiction, or pursuant to a

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<sup>255</sup> *Frequency Coordination in the Private Land Mobile Radio Services*, PR Docket No. 83-737, Notice of Proposed Rulemaking, 49 Fed. Reg. 45454, 45458, para. 23 (1984).

<sup>256</sup> *Frequency Coordination in the Private Land Mobile Radio Services*, PR Docket No. 83-737, Report and Order, 103 FCC 2d 1093, 1155-56, para. 127 (1986).

<sup>257</sup> *See supra* para. 70.

statewide license? This would enable new, locally controlled, public safety systems to be deployed, subject to our frequency coordination rules and Band Manager approval, without the creation of new licensees and new consent rights. Under this proposal, new systems would be treated as new deployments by an incumbent for purposes of protection from non-public safety operations. Is this preferable to a system of new licensure? What are the advantages and disadvantages of such a model?

151. Regardless of whether we permit new licenses to be issued in the 4.9 GHz band generally, we propose that the Commission would allow state entities to obtain statewide licenses where such a license does not currently exist.<sup>258</sup> We seek comment on this tentative conclusion, and on whether there is a preferable alternative to other means of allowing access to the band where it is not currently licensed.

## 2. Aeronautical Mobile Use

152. The Commission's existing rules prohibit aeronautical mobile operations in the 4.9 GHz band,<sup>259</sup> although some aeronautical operations have been approved on a case-by-case basis via waiver.<sup>260</sup> Recognizing that aeronautical mobile transmissions pose a challenge to radio astronomy observatories (RAS),<sup>261</sup> the Commission proposed in the *Sixth Further Notice* in this proceeding to allow crewed aeronautical mobile use for public safety purposes, not including unmanned aircraft systems (UAS), in the lowest five megahertz of the band with altitude and other technical limitations.<sup>262</sup> Public safety parties, API and ENTLEC, FPL, and TDD supported allowing aeronautical mobile on a coordinated basis.<sup>263</sup> CORF opposed aeronautical mobile use, including by UAS, due to potential interference problems for RAS that operate in the 4950-4990 MHz band, but specified provisions to protect observatories if the Commission allows aeronautical mobile use.<sup>264</sup>

153. Because we, through the *Seventh Report and Order* and *Ninth Further Notice*, are working to adopt a comprehensive coordination framework for public safety and non-public safety use,

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<sup>258</sup> The following states/territories are not covered by a statewide license: American Samoa, Georgia, Iowa, Kansas, the Northern Mariana Islands, and South Dakota.

<sup>259</sup> 47 CFR §§ 2.106, 90.1205(c).

<sup>260</sup> See, e.g., call signs WQCQ391 (DeKalb County Police Department), WQCP515 (Commonwealth of Massachusetts Department of State Police), WQCQ392 (Fayette County Sheriff's Office), WQDD311 (Seattle Police Department), WQGX352 (Westchester County Department of Public Safety), WPYU857 (City of Chicago), WQCQ393 (Glendale, City of), WQJE424 (City of Long Beach), WQLF531 (County of Los Angeles), WQNS910 (Pomona Police Department).

<sup>261</sup> "[A]dministrations should bear in mind that the radio astronomy service is extremely susceptible to interference from space and airborne transmitters." ITU Radio Regulations, Art. 29.12 (2020).

<sup>262</sup> *Sixth Further Notice*, 33 FCC Rcd at 3266-70, paras. 12-24.

<sup>263</sup> APCO Nov. 29, 2021, Comments at 5; NPSTC Nov. 29, 2021, Comments at 10, 12 (explaining "[l]aw enforcement agencies operate helicopters and fixed wing aircraft using video cameras to help locate missing persons and to assess accident scenes and natural disasters. Aeronautical operations can also benefit the fire service in viewing or mapping the extent of wildland fires and certain details on structure fires as they progress."); IACP Nov. 29, 2021, Comments at 6; Maryland et al. Nov. 29, 2021, Comments at 8 (stating "[w]e believe that this is a task for the states to manage in a manner similar to the Commission's action to establish 700 MHz air-to-ground rules"); STARNet Nov. 24, 2021, Comments at 7; IAFC Dec. 20, 2021, Reply at 5; API and ENTELEC Dec. 20, 2021, Comments at 5; TDD Nov. 29, 2021, Comments at 3; FPL Nov. 29, 2021, Comments at 2-5; FPL Nov. 9, 2022, *Ex Parte* at 1.

<sup>264</sup> CORF Nov. 26, 2021, Comments at 5-9. Specifically, CORF supported the 5 megahertz guard band between aeronautical mobile and radio astronomy operations and the 1,500 foot altitude limit, conditioned on a 100 km exclusion zone around any observatory listed in footnotes US 385 or US161. It also supported only allowing low power devices aboard aircraft, and suggested that applicants should be required to "provide a description of their operations to demonstrate that such operations will protect radio astronomy (and other terrestrial uses) from interference." *Id.*

we defer this issue and seek comment on whether the Band Manager could coordinate potential aeronautical mobile use of the band. Commenters should focus in particular on CORF's concerns about interference to radio astronomy. We seek comment on whether the Band Manager would be equipped to ensure any aeronautical mobile use fully protects these important operations, based on the criteria CORF provided in its comments.<sup>265</sup> Should we adopt a buffer zone around radio astronomy operations (such as the 100km proposal by CORF)?<sup>266</sup> Should the Band Manager be required to work with radio astronomy operators to ensure non-interference, or is it equipped to do so on its own? What sorts of requirements should be put on the Band Manager to ensure protection for RAS from any aeronautical mobile signals?

154. The *Eighth Further Notice* specifically excluded consideration of UAS operations from the aeronautical mobile proposal.<sup>267</sup> We seek comment on whether the new Band Manager framework presents new opportunities for these operations in the band.<sup>268</sup> Should we permit UAS operations in the band if we allow aeronautical mobile operations generally?<sup>269</sup> Commenters should specifically address concerns raised by CORF and explain why any restrictions on unmanned operations would prevent harmful interference to RAS.<sup>270</sup>

### 3. Digital Equity and Inclusion

155. Finally, the Commission, as part of its continuing effort to advance digital equity for all,<sup>271</sup> including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations<sup>272</sup> and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

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<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Sixth Further Notice*, 33 FCC Rcd at 3268, para. 19 (stating “it would be premature at this time” to permit UAS, but seeking comment on “the potential for the 4.9 GHz band to support possible future UAS payload operations”); *Eighth Further Notice*, 36 FCC Rcd at 15053, para. 60 (seeking comment on “allow[ing] manned aeronautical mobile, not including unmanned aeronautical systems (UAS)”).

<sup>268</sup> *See, e.g.*, Letter from Ari Q Fitzgerald, Counsel to Florida Power & Light Company to Marlene Dortch, Secretary, FCC, WP Docket No. 07-100 (Mar. 29, 2022) (urging the Commission to permit UAS operations in the 4.9 GHz band).

<sup>269</sup> The Federal Aviation Administration (FAA) has authority over matters of aviation safety, and is tasked by statute with the safe integration of UAS into the National Airspace System. *See* 49 U.S.C. § 44802. Accordingly, any potential UAS operation permitted in the 4.9 GHz band would be subject to applicable FAA rules.

<sup>270</sup> For example, it may be desirable to restrict UAS operation to specific use cases to minimize interference potential.

<sup>271</sup> Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

<sup>272</sup> The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

## V. PROCEDURAL MATTERS

156. *Paperwork Reduction Act Analysis.* This *Seventh Report and Order* may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. All such requirements 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 any new or modified 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.

157. In this present document, we have assessed the effects of our creation of a new Band Manager and the collection of new granular licensing information, as well as the new technical rules for the 4.9 GHz band, and find that they will have a small impact on small governmental entities which are currently 4.9 GHz licensees, mainly related to the collection of data about existing 4.9 GHz deployments.

158. This *Ninth Further Notice of Proposed Rulemaking* may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995.<sup>273</sup> All such new or modified information collection requirements will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>274</sup> we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”<sup>275</sup>

159. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA)<sup>276</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>277</sup> Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the potential impact of the rule and policy changes adopted in the *Seventh Report and Order* on small entities. The FRFA is set forth in Appendix D.

160. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy change proposals in the *Ninth Further Notice* on small entities. The IRFA is set forth in Appendix E.

161. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of the *Seventh Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

162. *Ex Parte Presentations.* The proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period

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<sup>273</sup> Pub. L. No. 104-13.

<sup>274</sup> Pub. L. No. 107-198.

<sup>275</sup> 44 U.S.C. § 3506(c)(4).

<sup>276</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 et seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

<sup>277</sup> 5 U.S.C. § 605(b).

applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

163. *Comment Period and Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Commenters should refer to WP Docket No. 07-100 when filing in response to this *Ninth Further Notice of Proposed Rulemaking*.

- Electronic filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper filers: Parties who choose to file by paper must file an original and one copy of each filing.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L St NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.
  - During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.
  - After COVID-19 restrictions are lifted, the Commission has established that hand-carried documents are to be filed at the Commission's office located at 9050 Junction Drive, Annapolis Junction, MD 20701. This will be the only location where hand-carried paper filings for the Commission will be accepted.<sup>278</sup>

<sup>278</sup> See *Amendment of the Commission's Rules of Practice and Procedure*, Order, 35 FCC Rcd 5450 (OMD 2020).

164. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

165. *Additional Information.* For additional information on this proceeding, contact Jon Markman of the Wireless Telecommunications Bureau, Mobility Division, at 202-418-7090 or [Jonathan.Markman@fcc.gov](mailto:Jonathan.Markman@fcc.gov), or Brian Marenco of the Public Safety and Homeland Security Bureau at 202-418-0838 or [Brian.Marenco@fcc.gov](mailto:Brian.Marenco@fcc.gov).

## VI. ORDERING CLAUSES

166. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 4(i), 302, 303(b), 303(f), 303(g), 303(r), 309(j), 316, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 302a, 303(b), 303(f), 303(g), 303(r), 309(j), 316, and 405, this *Seventh Report and Order and Ninth Further Notice of Proposed Rulemaking* **IS HEREBY ADOPTED**.

167. **IT IS FURTHER ORDERED** that this Report and Order SHALL BE EFFECTIVE 30 days after publication in the Federal Register. Compliance with section 90.175(g)(2) and section 90.1207(e)-(f) of the Commission's rules, 47 CFR § 90.175(g)(2) and 47 CFR § 90.1207(e)-(f), which may contain new or modified information collection requirements, will not be required until the date specified in the Public Notice to be issued by the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau announcing that the Office of Management and Budget has completed review of any information collection requirements associated with this Report and Order or that they have determined such review is not required, which date shall be no earlier than one year after the publication of this Report and Order in the Federal Register. The Commission directs the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau to announce the compliance date for section 90.175(g)(2) and section 90.1207(e)-(f) by subsequent Public Notice and to cause section 90.175 and section 90.1207 to be revised accordingly.

168. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Seventh Report and Order and Ninth Further Notice of Proposed Rulemaking*, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

169. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this *Seventh Report and 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).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****List of Commenters****(WP Docket No. 07-100)**

American Association of State Highway and Transportation Officials (AASHTO)  
American Petroleum Institute and the Regulatory and Technology Committee of the Energy  
Telecommunications and Electrical Association (API and ENTELEC)  
APCO International (APCO)  
Enterprise Wireless Alliance (EWA)  
Federated Wireless, Inc. (Federated Wireless)  
Florida Power & Light Company (FPL)  
International Association of Chiefs of Police (IACP)  
International Association of Fire Chiefs (IAFC)  
National Academy of Sciences' Committee on Radio Frequencies (CORF)  
National Public Safety Telecommunications Council (NPSTC)  
Open Technology Institute at New America (OTI)  
Pennsylvania State Police, Statewide Radio Network Division (STARNet)  
Public Safety Spectrum Alliance (PSSA)  
Regional Planning Committee Twenty (Region 20)  
San Francisco Bay Area Rapid Transit District (BART)  
State of California Department of Transportation (Caltrans)  
State of California Governor's Office of Emergency Services (CalOES)  
State of Maryland, District of Columbia Statewide Interoperability Coordinator, Pennsylvania State  
Police, Iowa Statewide Interoperable Communications System Board, State of South Carolina  
Department of Administration, and the State of Washington (Maryland et al.)  
The Digital Decision (TDD)  
Wireless Internet Service Providers Association (WISPA)

**Reply Comments**  
**(WP Docket No. 07-100)**

**Requests for Extension of Time**

Land Mobile Communications Council (LMCC)  
National Sheriffs' Association (NSA)

**Reply Comments**

Andrew Seybold Sr.  
Andrew Woodman  
Anna Courie  
AT&T Services, Inc. (AT&T)  
BART  
Chief Mark W Light, (ret.)  
Craig Scatola  
Daniel Schwarzabach  
Diana Smith Hill  
Donna Covert  
Dynamic Spectrum Alliance (DSA) [styled as comments]  
DSA  
Eddie Carrera  
Edward Murawski  
EWA  
Federated Wireless  
FPL  
Garrett Gauntner  
in the Matter of Amendment of Part 90 of Commission's Rules [sic, filer from Madisonville, TN]  
in the Matter of Amendment of Part 90 of Commission's Rules [sic, filer from Phoenix, AZ]  
IAFC  
James Thomsen  
Jennifer Veber  
Jim Holthaus  
Jonas Ostmeyer  
Joshua Mastenbrook  
Keith Tupper  
Kelley Stransky  
Kelley Stransky [second filing]  
Ken Isom  
Mark Kelly  
Mary Hedges  
Matthew Boggs  
NSA  
Open Technology Institute at New America and Public Knowledge (OTI and PK)  
Oscar Mendoza, El Paso Independent School District Police Services  
Ouachita Parish Fire Department  
PSSA  
RapidSOS Inc. (RapidSOS)  
Region 20  
Richard Tucker  
Ross Shawn Rogers

Safer Buildings Coalition (SBC)  
Samuel Tillery  
Scott C Tallmadge, ENP  
Scott Miller  
State of Maryland, District of Columbia SWIC, Pennsylvania State Police, Regional Planning Committee  
43 (Maryland et al.)  
The Public Safety Network  
Tim Sartin  
T-Mobile USA, Inc. (T-Mobile)  
Tony Maggio  
Tracy Trott  
Utilities Technology Council, Edison Electric Institute, National Rural Electric Cooperative Association  
(UTC et al.)  
Verizon  
Victoria Vadnais  
Western Fire Chiefs Association (WFCA)  
William Carter Region 13 Chair  
WISPA

**Ex Partes**

Alabama Sheriffs Association (ASA)  
American Petroleum Institute (API), EWA, Forestry Conservation Communications Association (FCCA),  
International Municipal Signal Association (IMSA), NSA, and Utilities Technology Council (UTC)  
API and ENTELEC  
Cisco Systems, Inc.  
Daniel B. Schwarzbach on behalf of the Airborne Public Safety Association  
Diana L Runge  
Doug Blevins  
EWA  
FPL [four filings]  
Florida Power & Light Company, Pacific Gas & Electric Company, Edison Electric Institute (FPL,  
PG&E, EEI) [three filings]  
Grundy County Emergency System Telephone Board (Grundy ESTB)  
James May  
Neil Horden for Horden Technology, LLC (HordenTech)  
NPSTC  
R. Shawn Rogers  
Ray Zeisz  
Region 21 700 MHz Planning Committee  
Tennessee Sheriffs' Association (TSA)  
TDD [five filings]  
Tommy Oliveras CPM  
Utilities Technology Council (UTC)  
WISPA

## APPENDIX B

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

**PART 90 – PRIVATE LAND MOBILE RADIO SERVICES**

1. The authority citation for Part 90 continues to read as follows:

**AUTHORITY:** 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401-1473.

2. Amend § 90.155 by revising paragraph (a) to read as follows:

**§ 90.155 Time in which station must be placed in operation.**

(a) All stations authorized under this part, except as provided in §§ 90.528, 90.529, 90.629, 90.631(f), 90.665, and 90.685 must be placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

\* \* \* \* \*

3. Amend § 90.175 by revising paragraph (g) and removing paragraph (j)(22).

The revision reads as follows:

**§ 90.175 Frequency coordinator requirements.**

\* \* \* \* \*

(g) *For frequencies between 1427-1432 MHz and 4940-4990 MHz:* A statement is required as follows.

(1) *For frequencies between 1427-1432 MHz:* A statement is required from the coordinator recommending the most appropriate frequency, operating power and area of operation in accordance with the requirements of § 90.259(b).

(2) *For frequencies between 4940-4990 MHz:* A statement is required from the nationwide band manager recommending the most appropriate channel(s), bandwidth, operating power, and any other technical parameter which promotes robust and efficient use of the band while minimizing interference based on the standard for harmful interference specified in § 90.1211(a).

(3) *Compliance date.* Paragraph (g)(2) of this section may contain information collection and/or recordkeeping requirements. Compliance with paragraph (g)(2) will not be required until this paragraph (g)(3) is removed or contains a compliance date, which will not occur until the date specified in a final rule published by the FCC announcing that the Office of Management and Budget has completed review of any information collection requirements associated with paragraph (g)(2) of this section or that they have determined such review is not required, which date shall be no earlier than [INSERT date 1 YEAR after DATE OF PUBLICATION IN THE FEDERAL REGISTER].

\* \* \* \* \*

4. Amend § 90.1207 by revising paragraph (d) and adding paragraphs (e), (f), and (g) to read as follows:

**§ 90.1207 Licensing.**

\* \* \* \* \*

(d) Permanent fixed point-to-point and point-to-multipoint stations in the 4940-4990 MHz band must be licensed individually on a site-by-site basis. Such fixed stations are accorded primary status. Permanent fixed point-to-point and point-to-multipoint stations must use directional antennas with gains greater than 9 dBi.

(e) Applications for license in the 4940-4990 MHz band must include the following technical information.

(1) The license for base/mobile, mobile-only or temporary fixed (1 year or less) stations will specify, among other parameters, the following technical information:

- (i) Coordinates (base).
- (ii) Antenna height-to-tip (base and temporary fixed).
- (iii) Antenna height above average terrain (base).
- (iv) Center frequency, emission designator, and ERP.
- (v) Number of units (mobile and temporary fixed).

(vi) Area of operation (mobile and temporary fixed), which shall be limited to the geographic area encompassing the legal jurisdiction of the licensee or, in case of a nongovernmental organization, the legal jurisdiction of the state or local governmental entity supporting the nongovernmental organization. However, applicants may define their areas of operation outside of their areas of legal jurisdiction to assist public safety operations with the permission of the jurisdiction(s) in which the mobile and/or temporary fixed stations are to be operated.

(2) The license for permanent fixed point-to-point, point-to-multipoint and fixed receiver stations must include, among other parameters, the following technical information:

- (i) Transmitting station coordinates.
- (ii) Frequencies and polarizations.
- (iii) For the transmitting equipment, the tolerance, effective isotropic radiated power, emission designator, and type of modulation (digital).
- (iv) For the transmitting antenna(s), the model, gain, antenna center line height(s) above ground level and ground elevation above mean sea level.
- (v) Receiving station coordinates.
- (vi) For the receiving antenna(s), the model, gain, antenna center line height(s) above ground level and ground elevation above mean sea level.
- (vii) Path azimuth and distance.

(f) Licensees holding active authorizations for the 4940-4990 MHz band on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] shall file the complete site-by-site information described in paragraph (e) of this section for their existing radio systems in the Commission's Universal Licensing System by the compliance date specified in paragraph (g) of this section.

(g) Paragraphs (e) and (f) of this section may contain information collection and/or recordkeeping requirements. Compliance with paragraphs (e) and (f) will not be required until this paragraph (g) is removed or contains a compliance date, which will not occur until the date specified in a final rule published by the FCC announcing that the Office of Management and Budget has completed review of any information collection requirements associated with paragraphs (e) and (f) of this section or that they have determined such review is not required, which date shall be no earlier than [INSERT DATE 1 YEAR AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

5. Amend § 90.1209 by revising paragraph (d) to read as follows:

**§ 90.1209 Policies governing the use of the 4940-4990 MHz band.**

\* \* \* \* \*

(d) Stations must be placed into operation within twelve (12) months from the date of grant in

accordance with § 90.155. Licensees of temporary fixed stations must place at least one such station in operation within twelve months of license grant.

6. Amend § 90.1213 by revising paragraphs (a) introductory text and (b) to read as follows:

**§ 90.1213 Band plan.**

(a) The following table lists center frequencies for channels in the 4940-4990 MHz band. Channel numbers 1 through 5 and 14 through 18 are 1 MHz bandwidth channels, and channel numbers 6 through 13 are 5 MHz bandwidth channels.

\* \* \* \* \*

(b) The channels listed in the table in paragraph (a) of this section may be aggregated in any manner up to 50 MHz for wider bandwidth operation. Nonetheless, applicants should request no more bandwidth than necessary for a particular use.

7. Amend § 90.1215 by revising the introductory text and paragraph (a)(1) and adding paragraph (f) to read as follows:

**§ 90.1215 Power limits.**

Except as provided in paragraph (f) of this section, the transmitting power of stations operating in the 4940-4990 MHz band must not exceed the maximum limits in this section.

(a)(1) For base, mobile, and temporary fixed operations, the maximum conducted output power must not exceed:

**Table 1 to Paragraph (a)(1)**

<b>Channel bandwidth (MHz)</b>	<b>Low power maximum conducted output power (dBm)</b>	<b>High power maximum conducted output power (dBm)</b>
1	7	20
5	14	27
10	17	30
15	18.8	31.8
20	20	33
30	21.8	34.8
40	23	36
50	24	37

\* \* \* \* \*

(f) The transmitting power of permanent fixed point-to-point and point-to-multipoint stations operating in the 4940-4990 MHz band must not exceed the maximum limits in this paragraph (f). Moreover, applicants should request no more power than necessary for a particular use.

(1) The maximum equivalent isotropically radiated power (EIRP), as referenced to an isotropic radiator, must not exceed 55 dBW (85 dBm).

(2) For path lengths shorter than 17 kilometers, the EIRP shall not exceed the value derived from the following equation:  $\text{New EIRP limit} = 55 \text{ dBW} - 40 \cdot \log(17/B) \text{ dBW}$ , where B = the actual path length in kilometers.

8. Add § 90.1217 to subpart Y to read as follows:

**§ 90.1217 4.9 GHz Band Manager.**

The 4.9 GHz Band Manager will have the following three primary responsibilities:

- (a) Frequency coordination for public safety applications;
- (b) Incentivizing the use of the latest commercially available technologies, including 5G; and
- (c) Facilitating non-public safety use of the 4.9 GHz band.

## APPENDIX C

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Eighth Further Notice of Proposed Rulemaking (Eighth FNPRM)* in October 2021.<sup>2</sup> The Commission sought written public comment on the proposals in the *Eighth FNPRM*, including comments on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objectives of, the Final Rules**

2. In the *Seventh Report and Order*, the Commission takes a number of actions to advance its goals for a comprehensive and integrated approach to the 4.9 GHz band which emphasizes public safety needs while spurring innovation and driving down costs in the band. As an initial matter, the Commission establishes a nationwide Band Manager which will coordinate public safety operations in the band, ensuring protection of public safety operations, and promoting more efficient use of spectrum resources while facilitating non-public safety use of the band through spectrum leasing. The Commission also adopts its proposal to collect more granular data on public safety deployments in the Commission's Universal Licensing System (ULS) and provide incumbent licensees a one-year period to submit the necessary technical detail. Furthermore, the Commission adopts formal frequency coordination procedures for public safety applicants seeking to license new or modify existing facilities in the band and assigns authority to the Band Manager to perform the frequency coordination function. Additionally, the Commission adopts certain technical rules it sought comment on in the *Eighth Further Notice* to increase use of the band while declining to adopt technical standards to promote interoperability or a spectrum management role for Regional Planning Committees (RPCs). Finally, the Commission retains the freeze for all applicants who are not already 4.9 GHz licensees. Consequently, the rules we adopt in the *Seventh Report and Order* further our goal to maximize use of the 4.9 GHz band to support public safety while opening the door for limited non-public safety use and a more robust equipment market.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

3. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

**C. Response to Comments by Chief Counsel for Advocacy of the Small Business Administration**

4. 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.<sup>4</sup>

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

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> *Amendment of Part 90 of the Commission's Rules*, WP Docket No. 07-100, Order on Reconsideration and Eighth Further Notice of Proposed Rulemaking, 36 FCC Rcd 15032, Appendix C, (rel. Oct. 20, 2021) (*Order on Reconsideration or Eighth Further Notice*).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> See 5 U.S.C. § 604 (a)(3).

#### D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. 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.<sup>5</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>6</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>7</sup> 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 Small Business Administration (SBA).<sup>8</sup>

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>9</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>10</sup> These types of small businesses represent 99.9% of all businesses in the United States which translates to 32.5 million businesses.<sup>11</sup>

8. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>12</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>13</sup> Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>14</sup>

<sup>5</sup> See 5 U.S.C. § 604(a)(4).

<sup>6</sup> 5 U.S.C. § 601(6).

<sup>7</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>8</sup> 15 U.S.C. § 632.

<sup>9</sup> See 5 U.S.C. § 601(3)-(6).

<sup>10</sup> See SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

<sup>11</sup> *Id.*

<sup>12</sup> 5 U.S.C. § 601(4).

<sup>13</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>14</sup> See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast

(continued....)

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>15</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>16</sup> indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>17</sup> Of this number there were 36,931 general purpose governments (county<sup>18</sup>, municipal and town or township<sup>19</sup>) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts<sup>20</sup> with enrollment populations of less than 50,000.<sup>21</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>22</sup>

10. *Frequency Coordinators.* Frequency coordinators are entities or organizations certified by the Commission to recommend frequencies for use by licensees in the Private Land Mobile Radio Services (PLMR) that will most effectively meet the applicant's needs while minimizing interference to licensees already operating within a given frequency band. Neither the Commission nor the SBA have developed a small business size standard specifically applicable to spectrum frequency coordinators.

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Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>15</sup> 5 U.S.C. § 601(5).

<sup>16</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>17</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general-purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes\_Local Governments by Type and State\_2017.

<sup>18</sup> See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>19</sup> See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>20</sup> See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes\_Special Purpose Local Governments by State\_Census Years 1942 to 2017.

<sup>21</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>22</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

Business Associations<sup>23</sup> which comprises establishments primarily engaged in promoting the business interests of their member, is the closest applicable industry with a SBA small business size standard.<sup>24</sup>

11. The SBA small business size standard for Business Associations classifies firms with annual receipts of \$8 million or less as small.<sup>25</sup> For this industry, U.S. Census Bureau data for 2017 show that there were 14,540 firms that operated for the entire year.<sup>26</sup> Of these firms, 11,215 had revenue of less than \$5 million.<sup>27</sup> Based on this data, the majority of firms in the Business Associations industry can be considered small. However, the Business Associations industry is very broad and does not include specific figures for firms that are engaged in frequency coordination. Thus, the Commission is unable to ascertain exactly how many of the frequency coordinators are classified as small entities under the SBA size standard. According to Commission data, there are 13 entities certified to perform frequency coordination functions under Part 90 of the Commission's rules.<sup>28</sup> For purposes of this FRFA the Commission estimates that a majority of the 13 FCC-certified frequency coordinators are small

12. *Private Land Mobile Radio Licensees.* Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Wireless Telecommunications Carriers (*except* Satellite)<sup>29</sup> which encompasses business entities engaged in radiotelephone communications, is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>30</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.<sup>31</sup> Of this number, 2,837 firms employed fewer than 250

<sup>23</sup> See U.S. Census Bureau, *2017 NAICS Definition, "813910 Business Associations,"* <https://www.census.gov/naics/?input=813910&year=2017&details=813910>.

<sup>24</sup> See 13 CFR § 121.201, NAICS Code 813910.

<sup>25</sup> *Id.*

<sup>26</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 813910, <https://data.census.gov/cedsci/table?y=2017&n=813910&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>27</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual category for less than \$100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>28</sup> The Commission's records indicate that there are currently 13 frequency coordinators that would be affected by this rulemaking. See <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/industrial-business/industrial-business-licensing#frequency-coordinators>.

<sup>29</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>30</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>31</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

employees.<sup>32</sup> Thus under the SBA size standard, the Commission estimates licensees in this industry can be considered small.

13. Based on Commission data as of December 14, 2021, there are approximately 387,370 active PLMR licenses.<sup>33</sup> Active PLMR licenses include 3,577 licenses in the 4.9 GHz band;<sup>34</sup> 19,011 licenses in the 800 MHz band;<sup>35</sup> and 2,716 licenses in the 900 MHz band.<sup>36</sup> Since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, the Commission believes that a substantial number of PLMR licensees are small entities.

14. *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.<sup>37</sup> 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.<sup>38</sup> The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.<sup>39</sup> U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.<sup>40</sup> Of this number, 624 firms had fewer than 250

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<sup>32</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>33</sup> Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GB, GE, GF, GI, GJ, GO, GP, GU, IG, IQ, PA, PW, QM, QQ, RS, SG, SL, SP, SY, YB, YE, YF, YG, YI, YJ, YO, YP, YU, YW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>34</sup> Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = PA; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>35</sup> Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GB, GE, GF, GI, GM, GO, GP, YB, YE, YF, YJ, YM, YO, YP, YX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>36</sup> Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GI, GR, GU, YD, YS, YU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>37</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing," <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

<sup>38</sup> *Id.*

<sup>39</sup> See 13 CFR § 121.201, NAICS Code 334220.

<sup>40</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

employees.<sup>41</sup> Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

15. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.<sup>42</sup> 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.<sup>43</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>44</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>45</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>46</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.<sup>47</sup> Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.<sup>48</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

#### **E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

16. *Band Manager*. In the *Seventh Report and Order*, the Commission adopted a single, nationwide framework for the 4.9 GHz band, that is centered around a new Band Manager, which will be equipped with additional information about the current public safety use of the band and empowered to work with public safety licensees to ensure efficient use of this spectrum and enable new, non-commercial operations on a secondary, preemptible basis. Once selected, the Band Manager will have three primary responsibilities: (1) frequency coordination; (2) incentivizing the use of the latest commercially available technologies, including 5G; and (3) facilitating secondary non-public safety use.

17. *Licensing Database*. In the *Seventh Report and Order*, the Commission adopts a requirement to collect more granular data on public safety deployments in ULS. We require small and other incumbent licensees and future applicants to supply complete microwave path data for fixed links, and to license base stations (currently authorized under the geographic license scheme) on a site-by-site basis. Specifically, we require applicants for and current licensees of point-to-point (P-P), point-to-multipoint (P-MP), and fixed receivers to provide the following information: transmitter and receiver antenna coordinates, azimuth (direction), polarization, beamwidth, physical dimensions, gain, and height above ground, as well as transmit details such as power, channel, bandwidth, and emissions. These requirements are consistent with existing Commission microwave radio service rules. We require

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<sup>41</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>42</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>43</sup> *Id.*

<sup>44</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>45</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.:* 2017, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

<sup>46</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>47</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/ld/lic/attachments/DOC-379181A1.pdf>.

<sup>48</sup> *Id.*

applicants for and current licensees of base/mobile operations to provide the following information: coordinates (base), height above average terrain (base), number of units (mobile), mobile area of operation, power, channels, and emissions. These requirements are consistent with existing Commission private land mobile radio service rules.

18. The Commission directed the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau to make necessary enhancements to ULS and announce by public notice when ULS is prepared to accept more granular data on public safety operations in the 4.9 GHz band. Incumbent licensees and future applicants seeking to license point-to-point, point-to-multi-point, and fixed receivers as well as base/mobile, mobile-only or temporary fixed operations are required to use FCC Form 601. There will not be any application fees associated with this information collection for public safety entities because they are exempt from application fees pursuant to 47 CFR § 1.1116(b).

19. The *Seventh Report and Order* gives incumbent geographic licensees one year to identify and submit the necessary technical data into the ULS, including P-P links, P-MP hubs, fixed receivers, base stations, and mobiles that are not currently licensed site-by-site. We believe that collecting this data will improve the level of interference protection licensees receive in the band; and will create a more predictable and transparent spectrum environment for any current and future users of the band, including potential non-public safety users. The Commission estimates the average burden for each applicant completing FCC Form 601 and associated schedules to be 1.25 hours, which includes “the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response.”<sup>49</sup>

20. *Frequency Coordination.* In the *Seventh Report and Order*, the Commission adopts a part 90 formal frequency coordination requirement for public safety applicants seeking to license facilities in the 4.9 GHz band and assigns nationwide authority to the Band Manager to perform the coordination function. Specifically, the Band Manager will review applications from public safety entities seeking to license facilities in the 4.9 GHz band before they are filed with the Commission. It will perform an interference analysis and recommend to applicants the most appropriate channel(s), bandwidth, operating power, area of operation (if mobile or temporary fixed operation is requested), or any other technical criteria which promotes robust use of the band while minimizing interference to incumbent licensees. Furthermore, once a Band Manager is in place, all applications filed with the Commission via ULS which seek to license new facilities or modify existing facilities in the 4.9 GHz band must include a showing of frequency coordination by the Band Manager. Finally, we allow the Band Manager to outsource the interference analysis portion of its frequency coordination duties to third parties.

21. *Non-Public Safety Use of the Band.* We amended our rules in the *Seventh Report and Order* to allow non-public safety use of the band by small and other non-public safety operators as authorized by the Band Manager. Non-public safety operations are required to fully protect and, when necessary, abide by preemption rules regarding the public safety operations which will remain the primary use of the band. Non-public safety operators will not be licensed. Licensed operations will remain exclusively in support of public safety. Further, the Band Manager will centrally coordinate non-public safety access and will create a standardized set of rules and contractual provisions for such access by small and other non-public safety operators, which will ensure that public safety retains priority and preemption rights.

**F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

22. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the

<sup>49</sup> See FCC Form 601 at 1, available at <https://www.fcc.gov/sites/default/files/fcc-form-601.pdf>.

other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.<sup>50</sup>

23. The Commission's actions in the *Seventh Report and Order* require small and other public safety incumbents and future applicants for the 4.9 GHz band to submit more granular data on FCC Form 601, however, the economic impact will be minimized since, as noted above, there aren't any application fees associated with filing this information in the ULS. We have also taken steps to minimize the burden of submitting the data by collecting the technical information on forms which licensees in the public safety community are already familiar with because they use these same forms to file license applications in other frequency bands. Furthermore, we provide small and other incumbent licensees a one-year period to submit the necessary technical details into the ULS. As we note in the *Seventh Report and Order*, collecting the additional technical data on public safety operations will benefit public safety licensees operating in the band because it will improve interference protection and give public safety licensees more confidence in the band without adding a significant burden on licensees or applicants to submit the data.

24. While small and other public safety applicants seeking to license facilities in the 4.9 GHz band will be subject to formal frequency coordination procedures, the economic impact will be minimized since we adopt a frequency coordination process which public safety licensees operating PLMR facilities in other frequency bands are familiar. Once in place, the formal frequency coordination process will ensure the efficient assignment and use of spectrum by public safety licensees while minimizing interference to incumbent public safety licensees. Consequently, the frequency coordination process will improve interference protection and give public safety licensees more confidence in the band without adding a significant burden on applicants.

25. The Commission considered but declined to adopt a more active form of frequency coordination for public safety operations in the 4.9 GHz band, such as the automated frequency coordination in the 6 GHz band or the spectrum access system that facilitates dynamic spectrum sharing in the Citizens Broadband Radio Service (CBRS). No comments were filed specifically addressing the costs associated with more active forms of frequency coordination, both in terms of setup and implementation going forward, compared to traditional part 90 frequency coordination. Thus, given the lack of record on costs associated with more active forms of frequency coordination, and the likelihood of considerable disruption to small and other incumbent licensees caused by the need to upgrade or replace all of their equipment currently in use, the Commission determined the public interest is best served by adopting the part 90 frequency coordination framework which does not require any modification of or replacement to equipment currently in use in the band.

26. In the *Seventh Report and Order* we also declined to adopt a spectrum management role at 4.9 GHz for RPCs given the lack of necessary funding and resources for RPCs nationwide, the lack of expertise in the types of technology likely to be deployed in the band, and a lack of consensus in the record that regional planning is consistent with our goal of establishing a national framework for the band. This decision imposes zero burdens and costs and thus imposes no significant economic impact on RPCs and the NRPC, all of which we estimate to be small entities.

27. Further, we believe our decision to allow small and other non-public safety operators use of the 4.9 GHz band as detailed in the *Seventh Report and Order* will provide economic benefits for small entities and strikes the proper balance between allowing localized control of 4.9 GHz band operations by public safety licensees and reducing interference, while also ensuring consistent, nationwide rules that will promote overall spectral efficiency, foster innovation, and drive down equipment costs.

28. Finally, the Commission also considered but declined to: (1) impose an interoperability standard in light of the wide variety of uses and potential uses of the band, imposing such standards at this juncture could lead to fewer equipment options thereby potentially stifling innovation and contradicting

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<sup>50</sup> 5 U.S.C. § 604(a)(6).

our goal of reducing equipment costs; (2) adopt our proposal to limit temporary P-P operations to thirty days maximum over a given path over a one-year period because such a limitation would limit flexibility in the band, and (3) adopt our proposal to require a minimum antenna gain for P-P antennas because commercially available antennas would be rendered non-compliant such a limitation could inhibit development of a robust and affordable equipment market for the band that leverages commercially available antennas and technologies.

**G. Report to Congress**

29. The Commission will send a copy of the *Seventh Report and Order and Ninth Further Notice*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.<sup>51</sup> In addition, the Commission will send a copy of the *Seventh Report and Order and Ninth Further Notice*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Seventh Report and Order and Ninth Further Notice*, and FRFA (or summaries thereof) will also be published in the *Federal Register*.<sup>52</sup>

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<sup>51</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>52</sup> See 5 U.S.C. § 604(b).

## APPENDIX D

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Ninth Further Notice of Proposed Rulemaking (Ninth Further Notice)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments as specified in the *Ninth Further Notice*. The Commission will send a copy of the *Ninth Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *Ninth Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. Having decided in the *Seventh Report and Order* that a nationwide Band Manager for the 4.9 GHz band is the best option for moving forward on a comprehensive nationwide, coordinated approach to the band, in the *Ninth Further Notice* the Commission seeks comment on the tentative conclusions, proposals and inquiries we put forth addressing the rights and responsibilities of the nationwide Band Manager regarding public safety and non-public safety operations, selection of the Band Manager, Commission oversight of the Band Manager and other considerations involving licensing and use of the band. More specifically, we seek comment in the *Ninth Further Notice* on an interference criteria for the Band Manager to apply as part of its frequency coordination duties. We also seek comment on the Band Manager mediating disputes, evaluating potential integration of the 4.9 GHz band with broadband networks used by public safety in other frequency bands, and facilitating the leasing of unused spectrum rights to non-public safety entities which includes two possible leasing models that could be implemented. We further seek comment on our proposals regarding the applicable rules for leasing arrangements, the required consents for non-public safety use of the band, funding of the Band Manager primarily by leasing revenues, allowing the Band Manager to charge licensees and applicants reasonable rates for its coordination services and the eligibility criteria to be used by the selection committee in its evaluation process for Band Manager applicants.

3. Finally, we seek comment on ensuring preemption rights for public safety licensees over non-public safety users, qualifications for any entity seeking the Band Manager position, a selection committee to select the Band Manager, the role of the Commission in overseeing the Band Manager as well as the contents of annual reports from the Band Manager, on future public safety licensing of the band and on aeronautical mobile use of the band.

4. In seeking comment on these issues, we believe the Commission can implement a nationwide framework for the 4.9 GHz band which ensures public safety operations continue to be prioritized while opening the band to additional users which will facilitate increased use of the band, encourage a more robust market for equipment and greater innovation, and at the same time protect public safety users from harmful interference.

**B. Legal Basis**

5. The proposed action is authorized pursuant to Sections 1, 4(i), 4(j), 4(o), 301, 303(b), 303(g), 303(r), 316, 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 154(o), 301, 303(b), 303(g), 303(r), 316, 332, and 403.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. 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 proposed rules and policies, if adopted.<sup>4</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>5</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>6</sup> 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.<sup>7</sup>

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>8</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>9</sup> These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.<sup>10</sup>

8. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>11</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>12</sup> Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>13</sup>

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<sup>4</sup> 5 U.S.C. § 603(b)(3).

<sup>5</sup> *See id.* § 601(6).

<sup>6</sup> *See id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>7</sup> 15 U.S.C. § 632.

<sup>8</sup> *See* 5 U.S.C. § 601(3)-(6).

<sup>9</sup> *See* SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

<sup>10</sup> *Id.*

<sup>11</sup> *See* 5 U.S.C. § 601(4).

<sup>12</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. *See* Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,”

<https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>13</sup> *See* Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-

(continued....)

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>14</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>15</sup> indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>16</sup> Of this number there were 36,931 general purpose governments (county<sup>17</sup>, municipal and town or township<sup>18</sup>) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts<sup>19</sup> with enrollment populations of less than 50,000.<sup>20</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>21</sup>

10. *Private Land Mobile Radio Licensees.* Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Wireless Telecommunications Carriers (*except* Satellite)<sup>22</sup> which encompasses business entities engaged in

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exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000, for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>14</sup> See 5 U.S.C. § 601(5).

<sup>15</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>16</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes\_Local Governments by Type and State\_2017.

<sup>17</sup> See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>18</sup> See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>19</sup> See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes\_Special Purpose Local Governments by State\_Census Years 1942 to 2017.

<sup>20</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>21</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

<sup>22</sup> See U.S. Census Bureau, 2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (*except* Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

*radiotelephone communications*, is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>23</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.<sup>24</sup> Of this number, 2,837 firms employed fewer than 250 employees.<sup>25</sup> Thus under the SBA size standard, the Commission estimates licensees in this industry can be considered small.

11. Based on Commission data as of December 14, 2021, there are approximately 387,370 active PLMR licenses.<sup>26</sup> Active PLMR licenses include 3,577 licenses in the 4.9 GHz band;<sup>27</sup> 19,011 licenses in the 800 MHz band;<sup>28</sup> and 2,716 licenses in the 900 MHz band.<sup>29</sup> Since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, the Commission believes that a substantial number of PLMR licensees are small entities.

12. *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.<sup>30</sup> 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

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<sup>23</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>24</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.:* 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>25</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>26</sup> Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GB, GE, GF, GI, GJ, GO, GP, GU, IG, IQ, PA, PW, QM, QQ, RS, SG, SL, SP, SY, YB, YE, YF, YG, YI, YJ, YO, YP, YU, YW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>27</sup> Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = PA; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>28</sup> Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GB, GE, GF, GJ, GM, GO, GP, YB, YE, YF, YJ, YM, YO, YP, YX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>29</sup> Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GI, GR, GU, YD, YS, YU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>30</sup> See U.S. Census Bureau, *2017 NAICS Definition, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,"* <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

broadcasting equipment.<sup>31</sup> The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.<sup>32</sup> U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.<sup>33</sup> Of this number, 624 firms had fewer than 250 employees.<sup>34</sup> Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

13. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.<sup>35</sup> 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.<sup>36</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>37</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>38</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>39</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.<sup>40</sup> Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.<sup>41</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

14. The *Ninth Further Notice* may impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities, if adopted. Based on Commission proposals in the *Ninth Further Notice*, small and other entities are likely to be subject to the requirement that all lease arrangements between public safety and non-public safety entities in the 4.9 GHz band comply with our secondary markets rules, if our proposal is adopted. Small and other entities are also likely to be subject

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<sup>31</sup> *Id.*

<sup>32</sup> See 13 CFR § 121.201, NAICS Code 334220.

<sup>33</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>34</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>35</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>36</sup> *Id.*

<sup>37</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>38</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>39</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>40</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/ld.lic/attachments/DOC-379181A1.pdf>.

<sup>41</sup> *Id.*

to compliance with our proposed requirement that all relevant public safety licensees must to consent to non-public safety operator use, if adopted.

15. We also seek comment on what role, if any, public safety licensees should have in reviewing and approving lease agreements being negotiated by the Band Manager. In particular, we seek comment on the benefits and costs of different models of licensee involvement in the leasing process. Further, we seek comment whether the Commission should permit the Band Manager to limit the categories of entities eligible for leased access, or whether such limitations would be contrary to the Commission's goals of ensuring fair access and efficient use of spectrum. The resolution of each of these matters may result in additional compliance obligations for small and other entities operating in the 4.9 GHz band.

16. In assessing the cost of compliance for small entities, at this time the Commission is not in a position to determine whether, if adopted, the proposals and matters upon which we seek comment will require small entities to hire professionals to comply and cannot quantify the cost of compliance with any of the potential rule changes that may be adopted. We expect the information we received in comments including where requested, cost and benefit analyses, to help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the *Ninth Further Notice*.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

17. 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 or reporting requirements under the rule for such 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 such small entities.”<sup>42</sup>

18. Parties in the proceeding uniformly supported the goal of protecting current and future public safety licensees from interference but differ on how to define interference and which interference protection approach is most appropriate. Therefore, rather than imposing a standard on its own which could adversely impact small entities, in the *Ninth Further Notice* the Commission seeks further comment on specific criteria for protecting public safety licensees operating in the band from interference. Based on comments, we considered and seek comment on these alternative approaches, the threshold degradation approach of TIA-10, a propagation modeling approach used by part 90 frequency coordination for TDMA systems operating in the VHF band or contour overlap analysis as the basis for determining interference to public safety licensees operating in the 4.9 GHz band. In each case, we seek comment on whether the interference protection criteria would strike the right balance between allowing robust use of the band while protecting critical public safety communications. Further, in the *Ninth Further Notice* we invite the submission of other approaches and proposals with cost and benefit analyses to establish protection for public safety licensees operating in the 4.9 GHz band.

19. In the *Ninth Further Notice*, we also seek comment on ways to enable the Band Manager to facilitate the leasing of unused spectrum rights to non-public safety entities. We propose that all relevant public safety licensees would be required to consent to this arrangement but considered and seek comment on alternatives such as whether we should have exceptions to this general requirement and allow leasing in the absence of a given licensee's consent, for example after a period of non-responsiveness or if the licensee has conditioned its consent in a manner which violates our rules on compensation. Or whether we should have an exception for lack of consent if, we require certain licensees whose license area does not overlap with the lease area to consent.

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<sup>42</sup> 5 U.S.C. § 604(a)(6).

20. To safeguard small and other entities from discriminatory treatment, we seek comment in the *Ninth Further Notice* on what rules should be imposed on the Band Manager to ensure it administers leasing in a non-discriminatory manner. Our inquiry for non-discriminatory leasing rules explores specific lessees as well as the types of lessees and the nature of the operations they will conduct with the 4.9 GHz band. Finally, while we propose that the Band Manager fund itself from leasing revenue, to minimize the impact for small and other entities we considered and seek comment on whether there are any requirements we should put in place as to those fees, whether we should limit the fees charged by the Band Manager to public safety licensees and applicants, whether there are other funding sources for the Band Manager that our rules should contemplate, and how to approach revenues exceeding the Band Manager's costs for its services.

21. The Commission is hopeful that the comments it receives will specifically address matters impacting small entities and include data and analyses relating to these matters. Further, while the Commission believes the rules that are eventually adopted in this proceeding should benefit small entities, whether public safety licensees seeking interference protection in the band or non-public safety entities seeking access to valuable spectrum, the Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *Ninth Further Notice*. The Commission's evaluation of this information will shape the final alternatives it considers, the final conclusions it reaches, and any final actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

22. None.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Fox Corporation d/b/a ) File No.: EB-IHD-21-00033079
Fox Television Stations, LLC ) NAL/Acct. No.: 202332080001
Fox Television Holdings, LLC ) FRNs: 0027991975; 0005795067;
Fox Broadcasting Company, LLC ) 0007322548; 0022705396
NW Communications of Texas, Inc. )
NW Communications of Phoenix, Inc. )
NW Communications of Austin, Inc. )
New World Communications of Atlanta, Inc. )
New World Communications of Tampa, Inc. )
New World Communications of Detroit, Inc. )

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 23, 2023

Released: January 24, 2023

By the Commission:

I. INTRODUCTION

1. We propose a penalty of \$504,000 against Fox Corporation d/b/a Fox Television Stations, LLC; Fox Television Holdings, LLC; Fox Broadcasting Company, LLC; NW Communications of Texas, Inc.; NW Communications of Phoenix, Inc.; NW Communications of Austin, Inc.; New World Communications of Atlanta, Inc.; New World Communications of Tampa, Inc.; and New World Communications of Detroit, Inc. (collectively, FOX) for apparently willfully violating the Federal Communications Commission’s (Commission or FCC) rules that prohibit the transmission of, or causing the transmission of, false or deceptive emergency alert system (EAS) codes or EAS Attention Signals, or simulations thereof (together, EAS Tones). On November 28, 2021, FOX apparently transmitted, or caused the transmission of, EAS Tones during a FOX National Football League (NFL) promotional segment in the absence of any actual emergency, authorized test of the EAS, or qualified public service announcement (PSA).

2. The EAS is a national system that federal, state, and local government authorities use to disseminate public warnings of impending emergencies, such as hurricanes and other dangerous weather conditions, wildfires, and child abductions (AMBER alerts), over broadcast, cable, and satellite networks to consumers’ radios, televisions, and other audio and video devices.<sup>1</sup> Broadcasters, cable television operators, wireless cable operators, wireline video service providers, satellite digital audio radio service providers, and direct broadcast satellite providers also are required to supply the communications capability for delivery of nationwide messages to the American public during a national emergency via the EAS.<sup>2</sup>

<sup>1</sup> See Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System, Report and Order, PS Docket No. 15-94, FCC 22-75, para. 3 (released Sept. 30, 2022).

<sup>2</sup> See CBS Broadcasting Inc. d/b/a CBS Television Network, CBS Television Stations, Inc., CBS Stations Group of Texas LLC, CBS LITV LLC, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 8417, para. 1 (2019) (forfeiture paid) (CBS NAL); FEMA, Emergency Alert System, https://www.fema.gov/emergency-

(continued....)

3. To preserve the unique purpose and effectiveness of the EAS Tones, the Commission enforces laws that prohibit their use or simulation,<sup>3</sup> except for specific Permitted Uses.<sup>4</sup> The Commission has warned that the use of simulated or actual EAS Tones for non-authorized purposes—such as commercial or entertainment purposes—can lead to “alert fatigue,” whereby the public becomes desensitized to the alerts, questioning or simply disregarding whether a particular alert is intended to warn about a real, imminent threat or some other cause.<sup>5</sup> Moreover, because the EAS Tones include operative data elements,<sup>6</sup> the misuse of simulated or actual EAS Tones may result in false activations of the EAS that can spread false information or lock out legitimate activations of the EAS. Unauthorized use of the EAS Tones thus undermines the integrity and effectiveness of the EAS and presents a substantial threat to public safety.

4. In this Notice of Apparent Liability for Forfeiture, we find that FOX apparently willfully violated section 11.45(a) of the Commission’s rules<sup>7</sup> on November 28, 2021, when it transmitted or caused the transmission of EAS Tones during a FOX NFL promotional segment in the absence of any actual emergency, authorized test of the EAS, qualified PSA, or other Permitted Uses.<sup>8</sup> The prohibition on such transmissions has been in place for many years, and the Commission has repeatedly made its requirements clear.<sup>9</sup> Accordingly, based on our review of the facts and circumstances surrounding this

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[managers/practitioners/integrated-public-alert-warning-system/public/emergency-alert-system](#) (last visited Aug. 16, 2022).

<sup>3</sup> A “simulation” of the EAS tones includes not only recordings of actual EAS codes or Attention Signals, *see* 47 CFR § 11.31, but also sounds that mimic or are substantially similar to them, such that an average listener could reasonably mistake the sounds for an actual EAS code or Attention Signal. *Emergency Alert System: False, Fraudulent or Unauthorized Use of the Emergency Alert System Attention Signal and Codes is Strictly Prohibited*, Public Notice, 28 FCC Rcd 15438, 15440 (EB 2013) (*2013 EAS Enforcement Advisory*). By contrast, general alarms or other loud noises, including bells and police or fire sirens, are not considered “simulations” of the EAS tones and are not prohibited under section 11.45 of the Commission’s rules. *Id.*

<sup>4</sup> Permitted uses of the EAS are limited to alerts of actual emergencies, authorized tests of the EAS, or qualified PSAs (collectively, Permitted Uses). *See* 47 CFR § 11.45(a).

<sup>5</sup> *See, e.g., CBS NAL*, 34 FCC Rcd at 8418, para. 2; *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System, Wireless Emergency Alerts*, PS Docket Nos. 15-94, 15-91, Report and Order and Further Notice of Proposed Rulemaking, 33 FCC Rcd 7086, 7091, para. 9 (2018) (*2018 EAS/WEA Report and Order*); *2013 EAS Enforcement Advisory*, 28 FCC Rcd at 15438.

<sup>6</sup> *See* 47 CFR § 11.31(a). The EAS uses a four-part message for an emergency activation, consisting of: Preamble and EAS Header Codes; audio Attention Signal; message; and Preamble and EAS End of Message (EOM) Codes. *Id.* The sounds of an EAS message serve the dual purposes of capturing a listener’s or viewer’s attention and conveying specially coded information for equipment that is activated by the EAS message as part of an actual emergency or authorized test. *See Viacom, Inc., NBC Universal Media, LLC, ESPN Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2548, 2548, para. 1. (*Viacom NAL*), *aff’d, Viacom, Inc., ESPN, Inc.*, Forfeiture Order, 30 FCC Rcd 797 (2015) (forfeiture paid) (*Viacom FO*). The EAS codes consist of audible sounds in which encoded information regarding the specific alert is embedded. *See Viacom NAL*, 29 FCC Rcd at 2548, para 1. The separate EAS Attention Signal that follows the EAS codes includes two tones that are transmitted simultaneously. *Id.*

<sup>7</sup> *See* 47 CFR § 11.45(a).

<sup>8</sup> *See* Response to Letter of Inquiry from Matthew S. DelNero and Brooke Kahn, Covington & Burling LLP, counsel to FOX, to Anya Baez, Enforcement Bureau, Federal Communications Commission at 4 (Feb. 3, 2022) (on file in EB-IHD-21-00033079) (LOI Response). This NAL does not disclose material identified as confidential in the LOI Response, and we defer ruling on the Confidentiality Request unless and until necessary. *See* 47 CFR 0.459(d)(3) (the Commission may defer acting on requests for confidential treatment of materials submitted to the Commission until a request for inspection has been made pursuant to § 0.460 or § 0.461; such material will be accorded confidential treatment until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted).

apparent violation of section 11.45(a) of the Commission's rules, we propose a forfeiture of \$504,000 against FOX.

## II. BACKGROUND

### A. Legal Framework

5. Pursuant to section 503(b)(1) of the Communications Act of 1934, as amended (Act), any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>10</sup> Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of such act, irrespective of any intent to violate” the law.<sup>11</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>12</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>13</sup> In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.<sup>14</sup> The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.<sup>15</sup>

6. Under section 11.45(a) of the Commission's rules, “[n]o person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS; or as specified in [sections] 10.520(d), 11.46, and 11.61 of this chapter.”<sup>16</sup> The Commission adopted section

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<sup>9</sup> See generally *False, Fraudulent, or Unauthorized Use of the Emergency Alert System or Wireless Emergency Alert Codes or Attention Signals is Strictly Prohibited*, Public Notice, 34 FCC Rcd 7041 (EB 2019) (Enforcement Advisory promoting understanding of the regulations governing the appropriate use of EAS Tones); *Viacom FO*, 30 FCC Rcd 797 (affirming findings that Viacom and ESPN committed violations of the Commission's rules by transmitting or causing transmission of EAS Tones in a promotional announcement for the movie, “Olympus Has Fallen,” on cable networks); *2013 EAS Enforcement Advisory*, 28 FCC Rcd 15438 (promoting understanding of the laws governing appropriate use of EAS Tones to address concerns about misuse of EAS Tones aired in order to capture audience attention when there is no actual emergency or test). See also *Enforcement Bureau Reminds Emergency Alert System (EAS) Participants of Compliance Obligations*, Public Notice, 36 FCC Rcd 44, 47 (EB 2021) (reiterating that failure to comply with the EAS rules may subject a violator to sanctions, including monetary forfeitures).

<sup>10</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

<sup>11</sup> 47 U.S.C. § 312(f)(1).

<sup>12</sup> H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., [s]ection 503) . . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in [s]ections 312 and 503, and are consistent with the Commission's application of those terms . . . .”).

<sup>13</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>14</sup> 47 U.S.C. § 503(b)(4); 47 CFR § 1.80(g).

<sup>15</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (forfeiture paid).

<sup>16</sup> 47 CFR § 11.45(a). Section 11.46 of the Commission's rules provides that “EAS Participants may use the EAS Attention Signal and a simulation of the EAS codes as provided by FEMA in EAS Public Service Announcements (PSAs) (including commercially-sponsored announcements, infomercials, or programs) provided by federal, state, and local government entities, or non-governmental organizations, to raise public awareness about emergency

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11.45 in 1994 to protect the integrity and operation of the EAS,<sup>17</sup> acknowledging that while existing laws prohibited false distress signals and broadcast hoaxes, “a specific prohibition against the misuse of the EAS attention signal and codes is necessary . . . because it is more specific and directly addresses the proper use of EAS codes and Tones.”<sup>18</sup>

## B. Factual Background

7. Fox Corporation is the ultimate parent of Fox Television Stations, LLC; Fox Television Holdings, LLC; Fox Broadcasting Company, LLC; NW Communications of Texas, Inc.; NW Communications of Phoenix, Inc.; NW Communications of Austin, Inc.; New World Communications of Atlanta, Inc.; New World Communications of Tampa, Inc.; and New World Communications of Detroit, Inc. FOX, a publicly traded Delaware corporation, is a news, sports, and entertainment company.<sup>19</sup> FOX owns and operates a television broadcast network that produces and distributes programming on its 29 full power broadcast television stations, and to its more than 200 domestic affiliate stations.<sup>20</sup> FOX programming is available in “essentially all U.S. households,” and its owned-and-operated television stations include 14 of the 15 largest television markets in the United States.<sup>21</sup> FOX maintains that it is a “leader in marquee live sports broadcasts,” and that FOX Sports programming, including the NFL is “#1 in live sports viewership among all television networks.”<sup>22</sup>

8. The Commission received information from multiple sources alleging that at approximately 12:20 p.m. Eastern Standard Time on November 28, 2021, FOX apparently transmitted, or caused the transmission of, EAS Tones during a FOX NFL promotional segment (Promotional Segment), in the absence of any actual emergency, authorized test of the EAS, or qualified PSA.<sup>23</sup> The Enforcement Bureau’s Investigations and Hearings Division issued a letter of inquiry (LOI) on January 4, 2022,

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alerting.” *Id.* § 11.46. Section 11.61 of the Commission’s rules provides that “EAS Participants shall conduct tests [of EAS procedures] at regular intervals . . .” *Id.* § 11.61(a).

<sup>17</sup> See *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, FO Docket Nos. 91–301 and 91–171, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 7 FCC Rcd 6903, 6907, para. 39 (1992).

<sup>18</sup> *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, FO Docket Nos. 91–301 and 91–171, Report and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 1786, 1815, para. 84 (1994). In enforcing Section 11.45 of the Commission’s rules, the Commission explained:

The plain language of the rule prohibits *any* transmission of the EAS Tones in the absence of an actual emergency or authorized test . . . Moreover, [s]ection 11.45 contains no provision limiting liability under the rule to cases where intent to deceive exists, nor does the rule make exceptions for, or protect, “dramatic” uses of the EAS Tones. Instead, the rule provides that the transmission of the EAS Tones is prohibited in “any circumstance” except when an actual emergency or authorized test warrants their use. *Viacom FO*, 30 FCC Rcd at 801-02, para. 12.

<sup>19</sup> LOI Response at 1.

<sup>20</sup> FOX Corporation, Sec. & Exch. Comm’n Annual Report (2021 SEC Form 10-K) at I-1 (Aug. 10, 2021, For the fiscal year ended June 30, 2021), <https://investor.foxcorporation.com/static-files/76a77e3f-866f-4f29-8e72-cb650226368b>.

<sup>21</sup> *Id.* at I-3.

<sup>22</sup> *Id.* at I-2.

<sup>23</sup> See, e.g., FEMA notification email, dated November 28, 2021 (on file in EB-IHD-21-00033079).

directing FOX to submit, among other things, recordings of the Promotional Segment and sworn written statements as to whether it had transmitted, or caused the transmission of, the EAS Tones.<sup>24</sup>

9. In its LOI Response, FOX describes the Promotional Segment as a short comedic advertisement for an upcoming game, aired as part of the FOX NFL SUNDAY pre-game show.<sup>25</sup> FOX admits that the Promotional Segment used an approximately three-second excerpt of the EAS Attention Signal commonly used to precede broadcast emergency alerts: two simultaneous tones of 853 Hz and 960 Hz.<sup>26</sup> The three-second excerpt of the EAS Attention Signal was downloaded or recorded from a YouTube video.<sup>27</sup> FOX further admits that its transmission of the Promotional Segment, and the EAS Tones, was not made in connection with any Permitted Use, i.e., an actual emergency, authorized test of the EAS, or qualified PSA.<sup>28</sup> FOX acknowledges that it broadcast the Promotional Segment over 18 of its owned-and-operated stations, and transmitted it to 190 network affiliated stations nationwide.<sup>29</sup> In addition to television distribution, FOX caused the transmission of the Promotional Segment on Fox Sports Radio, the “leading voice in sports talk entertainment,” broadcasting to radio stations nationwide and reaching nearly 15 million listeners on iHeartRadio and FOXSportsRadio.com,<sup>30</sup> and on the “Fox Sports on XM” channel, which is carried nationwide on the Sirius XM satellite digital audio radio service.<sup>31</sup> FOX asserts that the Promotional Segment was provided and distributed by the Fox Broadcasting Company, LLC, an indirect wholly owned subsidiary of Fox Corporation.<sup>32</sup> Certain members of FOX’s production team reviewed the Promotional Segment following its development, and prior to its public transmission, but provided no comments or changes.<sup>33</sup>

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<sup>24</sup> See Letter from Christopher Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Joseph M. Di Scipio and Ann W. Bobeck, FCC Legal and Business Affairs, FOX Corporation (Jan. 4, 2022) (on file in EB-IHD-21-00033079) (LOI).

<sup>25</sup> LOI Response at 2.

<sup>26</sup> *Id.* at 4-5.

<sup>27</sup> *Id.* at 5-6.

<sup>28</sup> *Id.* at 4.

<sup>29</sup> *Id.* at 2, Exhibits D-E. FOX maintains that its additional owned-and-operated and affiliated stations did not transmit the Promotional Segment. See Letter from Matthew S. DelNero and Brooke Kahn, counsel to FOX, to Anya Baez, FCC (Feb. 18, 2022) (on file in EB-IHD-21-00033079) (Supplemental LOI Response).

<sup>30</sup> FOX transmitted the Promotional Segment on its FOX NFL SUNDAY programming, and licensed its distribution on Fox Sports Radio. See LOI Response at 2-3 (“While FOX does not maintain a list of all radio stations affiliated with Fox Sports Radio, it is FOX’s understanding that such stations typically broadcast FOX NFL SUNDAY”). Therefore, FOX knowingly caused the transmission on iHeartRadio and FOXSportsRadio.com. See, e.g., *Viacom NAL*, 29 FCC Rcd at 2558, para. 23 (section 11.45 clearly applies to actions that cause to transmit the restricted tones and is not limited to direct transmissions); *CBS NAL*, 34 FCC Rcd at 8423, para. 13 (“prohibition thus applies to programmers that distribute programming containing a prohibited sound regardless of whether or not they deliver the unlawful signal directly to consumers”). Fox Sports Radio is owned and operated by Premiere Networks, a subsidiary of iHeartMedia, Inc. See LOI Response at 2-3; FOX Sports Radio, <https://foxsportsradio.iheart.com/featured/fox-sports-radio/>; <https://foxsportsradio.iheart.com/howtolisten/> (last visited Oct. 13, 2022).

<sup>31</sup> FOX caused the transmission of the Promotional Segment by programing the Fox Sports on XM channel on the Sirius XM Audio Entertainment Service, which is owned and operated by Sirius XM Radio Inc. See LOI Response at 2-3. The Promotional Segment was also posted to Twitter, Instagram, and Facebook accounts controlled by FOX. See LOI Response at 8.

<sup>32</sup> *Id.* at 2.

<sup>33</sup> *Id.* at 6.

### III. DISCUSSION

10. We find that FOX apparently willfully violated section 11.45(a) of the Commission's rules. FOX confirms that the November 28, 2021 broadcast of the Promotional Segment included the EAS Tones.<sup>34</sup> FOX admits that its wholly owned subsidiary created and distributed the Promotional Segment with the EAS Tones, and that it was broadcast by 18 of FOX's owned-and-operated television broadcast stations and 190 network-affiliated television broadcast stations nationwide.<sup>35</sup> FOX further admits the Promotional Segment that included the EAS Tones was transmitted nationwide over Fox Sports Radio and Fox Sports on XM.<sup>36</sup> FOX also admits that none of the material in question was transmitted in connection with an actual national, state, or local emergency, authorized test, or qualified PSA.<sup>37</sup>

11. Based on FOX's admissions and our review of the video recording of the Promotional Segment, we find that FOX apparently violated section 11.45(a) of the Commission's rules in its capacity as a broadcast programming network and, separately, as a multi-station broadcast licensee.<sup>38</sup> Therefore, we find FOX responsible for broadcasting the Promotional Segment containing the EAS Tones on 18 of its owned-and-operated broadcast stations, transmitting the Promotional Segment to 190 of its network-affiliated television broadcast stations, and causing the transmission of the Promotional Segment on Fox Sports Radio and the Fox Sports on XM channel.

12. Despite being shorter in duration than the full EAS Tones,<sup>39</sup> the three-second EAS Tone used in the Promotional Segment possessed the same dual-tone frequency, pitch, and timbre as the actual EAS Tones, and was recognizable by viewers or listeners as substantially similar to the EAS Tones.<sup>40</sup> The Promotional Segment's "comedic tone"<sup>41</sup> also did not alter or neutralize its overall effect of falsely warning listeners and viewers of a non-existent emergency, as the EAS Tones were clearly audible, cognizable, and appropriated for a non-emergency use.<sup>42</sup> This manner of appropriation of the EAS Tones is exactly the type of simulation that the Commission's rules seek to address and prohibit in order to avoid diluting the EAS Tones' real meaning over time.<sup>43</sup>

### IV. PROPOSED FORFEITURE

13. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with . . . any rule, regulation, or order issued by the Commission . . ."<sup>44</sup> Section 503(b)(2)(A) of the Act and section 1.80(b)(1) of the rules authorize us to assess a forfeiture against FOX as the licensee of broadcast stations of up to \$59,316 per violation or for each day of a continuing violation, except that the amount assessed for any continuing violation shall not

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<sup>34</sup> *Id.* at 4-5.

<sup>35</sup> *Id.* at 2, Exhibits D-E.

<sup>36</sup> *Id.* at 2-3.

<sup>37</sup> *Id.* at 4.

<sup>38</sup> See LOI Response at 2. See *CBS NAL*, 34 FCC Rcd at 8426-27, paras. 23-24.

<sup>39</sup> LOI Response at 4-5.

<sup>40</sup> See *CBS NAL*, 34 FCC Rcd at 8424, para. 17.

<sup>41</sup> LOI Response at 2.

<sup>42</sup> See *CBS NAL*, 34 FCC Rcd at 8425-26, paras. 19-21.

<sup>43</sup> See *CBS NAL*, 34 FCC Rcd at 8425-26, paras. 20-22.

<sup>44</sup> 47 U.S.C. § 503(b)(1)(B).

exceed a total of \$593,170 for a single act or failure to act.<sup>45</sup> In exercising our forfeiture authority, we must consider the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>46</sup> The Commission has established forfeiture guidelines, base penalties for certain violations, and has identified criteria that it considers when determining the appropriate penalty in any given case.<sup>47</sup> Under these guidelines, we may adjust a forfeiture downward for violations that are minor, violations that are voluntarily disclosed, where there is a history of compliance, or where there is an inability to pay.<sup>48</sup> We may adjust a forfeiture upward for violations that are egregious, intentional, repeated, that cause substantial harm or generate substantial economic gain for the violator, where there is an ability to pay, or where there is a history of prior violations of FCC requirements.<sup>49</sup>

14. Section 1.80(b) of the Commission's rules provides for a base forfeiture of \$8,000 for various EAS and false distress rule violations, for each violation or each day of a continuing violation.<sup>50</sup> The Commission has previously applied an \$8,000 base forfeiture for violations of section 11.45(a) of the Commission's rules.<sup>51</sup> We have discretion, however, to depart from the base forfeiture guidelines, taking into account the particular facts of each individual case.<sup>52</sup> In determining the proposed forfeiture amount, we considered the factors outlined in the Commission's *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and section 503 of the Act. We have considered the number of transmissions at issue, FOX's sizeable nationwide audience reach, the gravity of the violation, the violator's degree of culpability, ability to pay, and the serious public safety implications of the apparent violations, as well as the other factors outlined in the Commission's *Forfeiture Policy Statement* and section 1.80 of the Commission's rules.

15. The nature of EAS violations requires particularly serious consideration because, among other issues, such violations undermine the integrity of the EAS by desensitizing the public to the potential importance of warning tones. EAS violations therefore implicate substantial public safety concerns. As explained in the *CBS NAL*, our forfeiture determination in such cases is based on multiple factors associated with the nature of the violation and the violator.<sup>53</sup> When applying the statutory factors concerning the circumstances, extent, and gravity of an EAS violation, we take into account a number of specific factors, including: (1) the number of repetitions (i.e., the number of individual transmissions); (2) the duration of the violation (i.e., the number of days or months over which the violation occurred); (3) the audience reach of the transmissions (e.g., nationwide, regional, or local); and (4) the extent of the

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<sup>45</sup> 47 U.S.C. § 503(b)(2)(A); 47 CFR § 1.80(b)(1). *See Amendment of Section 1.80(b) of the Commission's Rules, Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, DA-22-1356, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for these inflation adjusted forfeiture penalties).

<sup>46</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

<sup>47</sup> 47 CFR § 1.80(b)(10).

<sup>48</sup> *Id.* at Table 3.

<sup>49</sup> *Id.*

<sup>50</sup> 47 CFR § 1.80(b)(10), Table 1.

<sup>51</sup> *See, e.g., CBS NAL*, 34 FCC Rcd at 8431, para. 36.

<sup>52</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098–99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>53</sup> *See CBS NAL*, 34 FCC Rcd at 8431, para. 37.

public safety impact (e.g., whether an EAS activation is triggered).<sup>54</sup> While each of these factors may be significant in a given case, no single factor (e.g., the number of transmissions) is controlling.

16. In this case, we find FOX responsible for broadcasting the EAS Tones during the Promotional Segment over 18 television broadcast stations that it owns and operates. In its capacity as a broadcast licensee, FOX transmitted the EAS Tones one time over each of its 18 television broadcast stations, resulting in a base forfeiture of \$144,000.

17. Reviewing the factors in this case, we find that an upward adjustment is warranted. FOX stated that its programming is available in “essentially all U.S. households,” and its television broadcast stations are located in the five largest, and fifteen of the top twenty, television markets in the United States.<sup>55</sup> As such, the audience reach of each of the FOX owned-and-operated stations is considerable and warrants an upward adjustment of the base forfeiture levied against FOX’s 18 television broadcast stations. Moreover, in this particular case, the creation and transmission of the Promotional Segment involved a self-promotion by FOX for its upcoming pre-game programming and NFL game.<sup>56</sup> As a leader in live sports broadcasts,<sup>57</sup> and a longstanding broadcast licensee, FOX was well aware of the importance and implementation of the EAS rules.<sup>58</sup> We find that, in view of the gravity of the violation and the violator’s degree of culpability, this self-promotion for the purposes of additional economic gain<sup>59</sup> at the expense of the integrity of the EAS constitutes egregious misconduct warranting an additional upward adjustment.

18. We also find FOX responsible for transmitting the Promotional Segment containing the EAS Tones to its television station affiliates nationwide for broadcast, as well as Fox Sports Radio and Fox Sports on XM. These were separate actions that resulted in separate transmissions of the simulated EAS Tones.<sup>60</sup> The Commission is not pursuing a forfeiture in this case for FOX’s transmissions and responsibilities in its capacity as a programming network due to the expiration of the statute of limitations period. However, we emphasize that these actions constitute violations of the Commission’s rules, and we find that they warrant an additional upward adjustment.<sup>61</sup>

19. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, section 1.80 of the Commission’s rules, and the statutory factors, we conclude that a proposed forfeiture of \$504,000 is appropriate in this case for FOX’s apparent egregious violation of section 11.45(a) of the Commission’s rules.

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<sup>54</sup> See *id.*

<sup>55</sup> See 2021 SEC Form 10-K, *supra* note 20, at I-3; LOI Response at Exhibit D – Fox Owned & Operated Stations.

<sup>56</sup> LOI Response at 2.

<sup>57</sup> 2021 Form SEC 10-K, *supra* note 20, at I-2.

<sup>58</sup> LOI Response at 6-9.

<sup>59</sup> FOX reported a quarterly revenue of \$4.44 Billion for October 1 - December 31, 2021, which encompassed the date this Promotional Segment aired. See, e.g., PRNewswire, FOX Corporation Revenues, <https://www.prnewswire.com/news-releases/fox-reports-second-quarter-fiscal-2022-revenues-of-4-44-billion-301478704.html> (last visited Aug. 29, 2022) (FOX Corporation Revenues).

<sup>60</sup> See *CBS NAL*, 34 FCC Rcd at 8431, para. 36.

<sup>61</sup> See, e.g., *Sound Around, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 3478, 3486, note 65 (2020) (“Although some violations are not actionable due to the expiration of the statute of limitations period... the Commission has determined such violations may be relevant in determining adjustments to base forfeiture levels in setting the forfeiture amount”); *Enserch Corp.*, Forfeiture Order, 15 FCC Rcd 13551, 13554, para. 11 (2000) (the Commission can consider facts that occurred outside the statute of limitations period in assessing an appropriate forfeiture amount).

20. Based on our review of the current record, we find no basis for a downward adjustment.<sup>62</sup> First, this was not a minor violation. FOX had clear and unambiguous notice of the requirements and applicability of the EAS rules to its advertising programming,<sup>63</sup> as evidenced in its advertising guidelines, which clearly prohibited the use of EAS Tones, or simulation thereof, in advertisements “under any circumstances.”<sup>64</sup> Yet, despite touting that it is fully knowledgeable and has a policy “barring the improper use of the EAS Attention Signals,” which was purportedly “made known generally to employees of FOX involved in the production of programming,” FOX admits that “all personnel involved in creation and review of the Nov. 28 Segment ... lacked full understanding of FOX’s policy against use of EAS Attention Signals.”<sup>65</sup> Second, this case involved a mandatory, not voluntary, disclosure. Commission rule 11.45(b) requires EAS participants to notify the Commission within 24 hours of discovering it has transmitted a false alert to the public.<sup>66</sup> FOX’s having sent an e-mail to the FCC Ops Center<sup>67</sup> as required by the Commission’s rules, does not constitute the type of good faith disclosure that warrants a reduction to the proposed forfeiture amount.<sup>68</sup> Third, as FOX acknowledges, it has been the subject of previous enforcement actions.<sup>69</sup> We therefore find no countervailing downward adjustment to be appropriate based on compliance history.<sup>70</sup> Finally, we note that FOX reported substantial revenue of \$4.44 billion for the relevant quarter.<sup>71</sup> FOX clearly has an ability to pay, and there is nothing in the record that would indicate that the penalty is otherwise excessive.<sup>72</sup> Therefore, we find FOX apparently liable for a total forfeiture of \$504,000.<sup>73</sup>

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<sup>62</sup> 47 CFR § 1.80(b)(10), Table 3 (downward adjustment factors include minor violations, good faith or voluntary disclosure, history of overall compliance, and inability to pay).

<sup>63</sup> See, e.g., *Viacom NAL*, 29 FCC Rcd at 2558-59, para. 23.

<sup>64</sup> LOI Response at 6-7; Exhibit G.

<sup>65</sup> *Id.* at 7-8.

<sup>66</sup> 47 CFR § 11.45(b).

<sup>67</sup> LOI Response at 6.

<sup>68</sup> FOX acknowledges that it received multiple notifications from representatives of broadcast affiliates concerning this matter. See LOI Response at 9. Corrective action taken in compliance with Commission rules “is expected, and does not nullify or mitigate any prior forfeitures or violations.” See, e.g., *R.J.’s Late Night Ent. Corp.*, Memorandum Opinion and Order, 30 FCC Rcd 1121, 1123, para. 6 (EB 2015) (citing *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994); *Station KGVJ, Inc.*, 42 FCC 2d 258, 259 (1973); *Exec. Broad. Corp.*, Memorandum Opinion and Order, 3 FCC 2d 699, 700, para. 6 (1966) (“The fact that prompt corrective action was taken ... does not excuse the prior violations”)).

<sup>69</sup> LOI Response at 9. See, e.g., *Fox Television Stations, Inc.*, Forfeiture Order, 26 FCC Rcd 9485 (EB 2011) (violated Commission’s sponsorship identification rule) (forfeiture paid); *Fox Television Stations, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074 (EB 2010) (failed to respond to Letter of Inquiry and upward adjustment for egregiousness) (forfeiture paid).

<sup>70</sup> See, 47 CFR § 1.80(b)(10), Table 3. See, e.g., *Cumulus Radio LLC; Radio License Holding Cbc, LLC; Cumulus Licensing LLC; & Radio License Holdings LLC*, Forfeiture Order, 36 FCC Rcd 738, 748, para. 27 (2021) (declining to reduce the forfeiture when licensee’s history of overall compliance includes past violations).

<sup>71</sup> See FOX Corporation Revenues, *supra* note 59.

<sup>72</sup> While ability to pay and a history of prior violations of any FCC requirements could be used as a basis for an upward adjustment, 47 CFR § 1.80(b)(10), Table 3, we find doing so here unnecessary in light of the upward adjustment factors discussed above. See *supra* paras. 17-18.

<sup>73</sup> Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

## V. CONCLUSION

21. In view of the foregoing, we determine that FOX apparently willfully violated section 11.45(a) of the Commission's rules and propose a total forfeiture of \$504,000.

## VI. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act<sup>74</sup> and section 1.80 of the Commission's rules,<sup>75</sup> Fox Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of five hundred and four thousand dollars (\$504,000) for willful violation of section 11.45(a) of the Commission's rules.<sup>76</sup>

23. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>77</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Fox Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 26 below.

24. In order for Fox Corporation to pay the proposed forfeiture, Fox Corporation shall notify Kenneth Scheibel at [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov), and Anya Baez at [Anya.Baez@fcc.gov](mailto:Anya.Baez@fcc.gov), of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, Fox Corporation shall send electronic notification of payment to Kenneth Scheibel at [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov), and Anya Baez at [Anya.Baez@fcc.gov](mailto:Anya.Baez@fcc.gov), Enforcement Bureau, Federal Communications Commission, on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>78</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159<sup>79</sup> or printed CORES form<sup>80</sup> must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>81</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>

<sup>74</sup> 47 U.S.C. § 503(b).

<sup>75</sup> 47 CFR § 1.80.

<sup>76</sup> *Id.* § 11.45(a).

<sup>77</sup> *Id.* § 1.80.

<sup>78</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

<sup>79</sup> FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

<sup>80</sup> Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

<sup>81</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

25. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.<sup>82</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

26. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission’s rules.<sup>83</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Kenneth Scheibel at [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov), and Anya Baez at [Anya.Baez@fcc.gov](mailto:Anya.Baez@fcc.gov).

27. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.<sup>84</sup> Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.<sup>85</sup>

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<sup>82</sup> See 47 CFR § 1.1914.

<sup>83</sup> *Id.* §§ 1.16, 1.80(f)(3).

<sup>84</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>85</sup> See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); (continued....)

28. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Joseph M. Di Scipio, SVP, and Ann W. Bobeck, VP, FCC Legal and Business Affairs, Fox Corporation, 101 Constitution Avenue NW, Suite 200 West, Washington, D.C. 20001, with a copy to Matthew S. DelNero and Brooke Kahn, Covington & Burling LLP, One City Center, 850 Tenth Street, NW, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

(Continued from previous page) \_\_\_\_\_  
*Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Comparative Consideration of 34 Groups of ) NCE FM 2021 Window, MX Group  
Mutually Exclusive Applications ) Numbers 14, 16, 32, 34, 49B, 50, 51, 54, 55,  
for Permits to Construct New Noncommercial ) 63, 79, 83, 92, 106, 124, 137B, 137C, 144,  
Educational FM Stations ) 145, 153, 156, 174, 177, 181, 184, 185, 192,  
 ) 198, 200, 201, 206, 219, 220, and 223

MEMORANDUM OPINION AND ORDER

Adopted: January 23, 2023

Released: January 24, 2023

By the Commission:

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**I. BACKGROUND**

1. The Commission has before it for comparative consideration 34 groups of mutually exclusive (MX) applications for new noncommercial educational (NCE) FM station construction permits.<sup>1</sup> By this Memorandum Opinion and Order (Order), we perform threshold fair distribution of service analyses and use a point system to tentatively select an application for grant in each group. Petitions to deny the application of any of these tentative selectees must be filed within 30 days of the

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<sup>1</sup> On November 29, 2021, the Media Bureau (Bureau) issued a public notice identifying 231 groups of mutually exclusive NCE FM applications. See *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations*, MB Docket No. 20-343, Public Notice, DA 21-1476 (MB rel. Nov. 29, 2021) (*NCE MX Public Notice*). Each of the groups analyzed herein was included in the *NCE MX Public Notice*.

date of release of this Order.<sup>2</sup>

2. We address in this Order applications that were filed in November 2021, during the most recent filing window for new NCE FM applications.<sup>3</sup> These applicants have had an opportunity to enter into settlement agreements among themselves to resolve mutual exclusivity,<sup>4</sup> and, in the absence of any such settlement, are now subject to a simplified, comparative process codified in Part 73, Subpart K, of our rules.<sup>5</sup>

## II. GENERAL NCE COMPARATIVE PROCEDURES

3. Given the finite nature of and high demand for spectrum, the Commission cannot grant a construction permit to every qualified NCE applicant. Due to the noncommercial nature of the NCE service, MX<sup>6</sup> applications for new station construction permits are not subject to auction, but are resolved by applying comparative procedures.<sup>7</sup> Specifically, the Commission's comparative analysis of MX NCE applications generally consists of three main components. First, when NCE FM applicants in an MX group propose service to different communities, the Commission performs a threshold fair distribution analysis under section 307(b) of the Communications Act of 1934, as amended (the Act).<sup>8</sup> Second, application conflicts that are not resolved under this "fair distribution" analysis are compared by the Commission under an NCE point system,<sup>9</sup> which is a simplified, "paper hearing" process.<sup>10</sup> Third, if

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<sup>2</sup> See 47 CFR § 73.7004(b).

<sup>3</sup> See *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB rel. April 21, 2021). The window was available for FM reserved band (channels 201-220) proposals. See 47 CFR § 73.501.

<sup>4</sup> See *NCE MX Public Notice* at 2-5. The NCE FM applicants had an opportunity to enter into and file settlement agreements and to submit technical amendments to resolve conflicts and expedite the grant of applications filed in the NCE FM window.

<sup>5</sup> 47 CFR §§ 73.7000 – 7005. See also *Comparative Consideration of 27 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 22-61 (2022) (*27 Group Comparative Order*) (applying the comparative procedures to identify and tentatively select 27 NCE FM applications from the November 2021, window for grant).

<sup>6</sup> Conflicting NCE applications, which cannot all be granted consistent with the Commission's technical rules, are considered mutually exclusive. An MX group consists of all applications which are MX to at least one other application in the group.

<sup>7</sup> See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000) (*2000 NCE Order*), clarified, Memorandum Opinion and Order, 16 FCC Rcd 5074 (2001) (*2001 NCE MO&O*), recon. denied, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002). See also *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, MB Docket No. 19-3, Report and Order, 34 FCC Rcd 12519 (2019) (*NCE LPFM Order*) (amending the comparative rules and procedures), *aff'd*, Order on Reconsideration, FCC 20-121, 35 FCC Rcd 10180 (2020) (*NCE Order on Reconsideration*).

<sup>8</sup> 47 U.S.C. § 307(b) (Section 307(b)). Although the Media Bureau has delegated authority to perform the Section 307(b) analyses, we are performing the Section 307(b) analyses, where applicable herein, for certain groups in conjunction with our point system analyses in order to expedite consideration of these groups. See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, n.16 (2007) (*NCE Omnibus*); *27 Group Comparative Order*, *supra* note 5. See also 47 CFR §§ 0.61 and 0.283.

<sup>9</sup> See 47 CFR § 73.7003 (point system selection procedures).

<sup>10</sup> See note 7, *supra*.

necessary, the Commission makes a tie-breaker determination, based on applicant-provided data and certifications. Each of these steps is described in greater detail below.<sup>11</sup>

**A. 307(b) --Threshold Fair Distribution Study.**

4. Section 307(b) states that the Commission must “provide a fair, efficient, and equitable distribution” of broadcast service among the states and communities.<sup>12</sup> In accordance with this directive, the Commission considers the fair distribution of service as a first, or threshold, issue in its NCE FM comparative review process<sup>13</sup> in order to ascertain whether grant of any of the applications would best further the Section 307(b) objective.<sup>14</sup> The first step of the Section 307(b), or fair distribution, analysis, is to determine whether any of the applicants in the MX group is a federally recognized Native American Tribe or Alaska Native Village proposing to serve Tribal Lands<sup>15</sup> and claims the Tribal Priority.<sup>16</sup>

5. If there is no Tribal Applicant in the MX group,<sup>17</sup> the second step in the Section 307(b) analysis is to determine whether any applicant would provide a first or second reserved band channel NCE aural service to a substantial population (the First or Second NCE Service Preference) by comparing population coverage totals.<sup>18</sup> Specifically, during this step, an NCE FM applicant is eligible to receive a

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<sup>11</sup> In advance of the November 2021 filing window, the Commission amended its rules and procedures for filing NCE FM applications and selecting and licensing competing NCE FM applications. *See NCE LPFM Order, supra* note 7. The changes were designed to improve the comparative selection procedures, reduce confusion among future applicants, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens. *See also Media Bureau Announces October 30, 2020, Effective Date of New NCE and LPFM Rules*, Public Notice, MB Docket No. 19-3, DA 20-1298 (Nov. 2, 2020).

<sup>12</sup> 47 U.S.C. § 307(b).

<sup>13</sup> *See* 47 CFR § 73.7002; *2000 NCE Order*, 15 FCC Rcd at 7396 (2000) (concluding that “fair distribution of stations to communities should remain a threshold issue”); *2001 NCE MO&O*, 16 FCC Rcd at 5077 (“when competing FM applications propose to serve different communities, a proposal would be considered best, as a threshold matter, if it would provide service to a significant unserved or underserved population”).

<sup>14</sup> *See* 47 U.S.C. § 307(b) (“In considering applications for licenses . . . when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”); 47 CFR § 73.7002(a). Applicants’ Form 2100, Schedule 340, Fair Distribution of Service certifications enable the Commission to consider whether service to one community over the other would best achieve the Commission’s directive to distribute radio service fairly among communities.

<sup>15</sup> *See* 47 CFR §§ 73.7000, 73.7002(b).

<sup>16</sup> An NCE FM applicant is eligible to receive a fair distribution preference, and ultimately be awarded the construction permit, if it identifies itself as a Tribal Applicant, proposes Tribal Coverage, and proposes the first reserved channel NCE service owned by any Tribal Applicant at a community of license located on Tribal Lands (the Tribal Priority). *See* 47 CFR § 73.7000 (defining a “Tribal Applicant” and “Tribal Coverage”); *see also* 47 CFR § 73.7002(b); *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, First Report and Order, 25 FCC Rcd 1583 (2010) (establishing the Section 307(b) Tribal Priority). *Threshold Fair Distribution Analysis of Mutually Exclusive Applications of the Southern California Tribal Chairman’s Association and the Foundation for Economic Justice d/b/a/ Center for Economic Justice for Permits to Construct New Noncommercial Educational FM Stations Filed in November 2021 Window*, FCC 22-28, Memorandum Opinion and Order (rel. April 19, 2022).

<sup>17</sup> None of the MX groups addressed in this Order contain a Tribal Applicant. Accordingly, the first step of the Section 307(b) analysis, the Tribal Priority analysis, is inapplicable herein.

<sup>18</sup> *See* 47 CFR § 73.7002(b).

fair distribution preference (or Section 307(b) preference)<sup>19</sup> if it would provide a first or second reserved band channel NCE aural service to at least 10% of the population (in the aggregate), within the proposed station's service area, provided that the population served is at least 2,000 people. If only one applicant in an MX group qualifies for the First or Second NCE Service Preference, its "fair distribution" (Section 307(b)) preference is dispositive,<sup>20</sup> and that applicant will be awarded the construction permit.

6. If more than one applicant in the MX group claims a First or Second NCE Service Preference, the applicant proposing to provide the greatest number of people with the highest level of service will be awarded a construction permit, if it will provide such service to at least 10% of the people within the station's 60 dBu contour *and* to at least 5,000 more people than the next best applicant.<sup>21</sup> First service will be preferred over second service.<sup>22</sup> Accordingly, the Commission first examines the applicants' first service levels alone to determine whether one of the proposals is superior and should receive a decisive preference. If such applicants are equivalent with respect to first service, or no applicant qualifies for a first service preference, the Commission considers combined first and second NCE aural service population totals. At each stage of the Section 307(b) analysis, any applicant that is comparatively disfavored in terms of Section 307(b) eligibility or service totals is eliminated. The process ends when the Commission determines that one applicant is entitled to a Section 307(b) preference, or that either (1) none of the remaining applicants can be selected or eliminated based on a Section 307(b) preference, or (2) each remaining applicant proposes to serve the same community. Any remaining MX applicants proposing equivalent service overall, or proposing the same community, proceed to a point system analysis.<sup>23</sup>

7. Each applicant claiming a First or Second NCE Service preference must support its fair distribution claim with an exhibit identifying the population residing within the proposed station's 60 dBu service contour and the number of people that would receive a new first or second NCE aural service.<sup>24</sup> Further, any applicant which receives a decisive Section 307(b) preference is required to construct and operate technical facilities substantially as proposed, and cannot downgrade service to the area on which the preference was based for a period of four years of on-air operations.<sup>25</sup>

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<sup>19</sup> The terms "fair distribution preference" and "Section 307(b) preference" are used interchangeably to refer to the preference given to an MX application that is deemed to substantially further the fair distribution of service goals enunciated in Section 307(b).

<sup>20</sup> As noted, in the case of an MX group with a Tribal Applicant, an applicant qualifying for a Tribal Priority, however, will prevail over any MX applicant claiming a First or Second NCE Service Preference.

<sup>21</sup> 47 CFR § 73.7002(b).

<sup>22</sup> *Id.*

<sup>23</sup> See 47 CFR § 73.7003 (point system selection procedures).

<sup>24</sup> See *id.* § 73.7002(b). Applicants were required to use the most recently available, *i.e.*, 2010 Census, population data. See *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window*, DA 21-885, at 5-7 and n.24 (MB rel. July 23, 2021) (*NCE Filing Procedures Public Notice*); FCC Form 2100, Schedule 340, Instructions for Fair Distribution of Service at 12-14. An applicant's fair distribution showing must be computed as of the time of filing (close of the filing window for applications filed prior to the window) and cannot be enhanced thereafter. See 47 CFR § 73.7003(e) and (f)(3); *NCE Filing Procedures Public Notice* at 11; *2001 NCE MO&O*, 16 FCC Rcd at 5082-83. However, an applicant that subsequently makes engineering changes that would diminish its fair distribution position must amend its application to reflect that diminished position. See 47 CFR §§ 1.65 and 73.7003(e).

<sup>25</sup> See 47 CFR § 73.7005(b); see also 47 CFR § 73.7002(c). During this period, such applicant may make minor modifications to its authorized facilities, provided that "(i) the modification does not downgrade service to the area on which the preference was based, or (ii) any potential loss of first and second NCE service is offset by at least equal first and, separately, combined first and second NCE service population gain(s), and the applicant would continue to qualify for a decisive Section 307(b) preference."). *Id.*

**B. Point System Selection Process.**

8. The Commission compares mutually exclusive groups of NCE FM applications, which cannot be decided pursuant to the Section 307(b) analysis, under the point system set forth in section 73.7003 of the rules.<sup>26</sup> The NCE point system awards a maximum of seven merit points, based on four distinct criteria, described below.<sup>27</sup> When MX NCE FM applications proceed to a point system analysis, the Commission reviews the applicants' point submissions<sup>28</sup> to compare the MX applications and tentatively select the application with the highest point total from each MX group for grant.<sup>29</sup>

9. First, we award three points to applicants certifying that they have been local and established for at least two years. To qualify for the three points as an "established local applicant"<sup>30</sup> an applicant must certify that it has been local and established in the community to be served continuously for at least two years immediately prior to the application filing.<sup>31</sup> To be considered local, a non-governmental applicant must have a physical headquarters, campus, or 75% of its governing board members residing within 25 miles of the reference coordinates of the proposed community of license.<sup>32</sup> A governmental unit is considered local within its jurisdictional boundaries.<sup>33</sup>

10. If an applicant certifies that it is an "established local applicant" it must submit substantiating documentation with its application to illustrate how it qualifies as local and established.<sup>34</sup> Examples of acceptable documentation include corporate material from the secretary of state, lists of names, addresses, and length of residence of board members and copies of governing documents requiring a 75% local governing board, or course brochures indicating that classes have been offered at a local campus for the preceding two years.<sup>35</sup> Any applicant awarded localism points in this Order has provided support for its certification. Thus, the specific point system determinations for each MX group

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<sup>26</sup> See 47 CFR § 73.7003. Unlike the 307(b) analysis, the point system selection process cannot be performed by the Bureau on delegated authority. See *2000 NCE Order*, 15 FCC Rcd at 7420.

<sup>27</sup> See 47 CFR § 73.7003(b).

<sup>28</sup> Each NCE FM applicant was required to complete the "Point System Factors/Tie Breakers" Section of FCC Form 2100, Schedule 340, Noncommercial Educational Station for Reserved Channel Construction Permit Application (Schedule 340) in the Bureau's Licensing and Management System (LMS) by the November 9, 2021 filing deadline.

<sup>29</sup> The Commission has reaffirmed its longstanding one-grant policy. See *NCE Order on Reconsideration*, *supra* note 7. The one-grant policy provides that only one application should be granted out of each mutually exclusive group, while providing the remaining competing applicants the opportunity to file again in the next filing window. *Id.* The Commission will not authorize "secondary grants" in MX NCE FM groups after the initial resolution of the MX applications. A secondary grant process would allow non-winning applicants that are not mutually exclusive with the tentative selectee to proceed to a second round of analysis by the Commission. *Id.* See also *NCE LPFM Order*, 34 FCC Rcd at 12528, n.68 (reaffirming the established one-grant policy and declining to pursue a secondary application grant practice).

<sup>30</sup> See 47 CFR § 73.7000.

<sup>31</sup> See *id.* § 73.7003(b)(1).

<sup>32</sup> A local headquarters or residence must be a primary place of business or residence and not, for example, a post office box, lawyer's office, branch office, or vacation home, which are more easily feigned and/or present less of an opportunity for meaningful contact with the community. See *2000 Order*, 15 FCC Rcd at 7410, para. 54.

<sup>33</sup> For example, a state government is considered local throughout the state; a City Board of Education is considered local through the city; a state university is considered local throughout the state.

<sup>34</sup> An applicant claiming points as an established local applicant must also pledge to maintain localism characteristics during the period from grant of the construction permit until the station has achieved at least four years of on-air operations. See 47 CFR § 73.7005(c); see also *NCE LPFM Order*, 34 FCC Rcd at 12523, para. 8.

<sup>35</sup> See *NCE Filing Procedures Public Notice* at 8.

that follows only discuss an applicant's documentation if it is insufficient to justify awarding localism points.

11. Second, we award two points for local diversity of ownership if no party to the application holds an attributable interest in any other station within the principal community contours of the applicant's proposed station.<sup>36</sup> To qualify for the diversity of ownership points, an applicant must submit either a contour map showing no overlap with the proposed NCE FM station, a statement that the applicant holds no attributable interests in any nearby radio stations, or a certification that it holds no attributable interests in any broadcast stations.<sup>37</sup> Any applicant awarded diversity of ownership points in this Order has either satisfied this requirement or submitted a divestiture pledge, as detailed below. Thus, the specific point system determinations for each MX group that follows only discuss an applicant's documentation if it is insufficient to justify awarding diversity points.

12. We note that an NCE FM applicant with an overlapping attributable interest, however, can still qualify for diversity of ownership points if it commits to divest the broadcast interest or resign from the attributable positional interest.<sup>38</sup> The applicant must submit the divestiture pledge with the application by the close of the filing window. We do not require the applicant to divest or resign by the close of the filing window. Rather, if we award that applicant a construction permit based on points, the applicant must complete the actual divestiture or resignation by the time the new NCE FM station commences program test operations.<sup>39</sup>

13. Third, we award two points for certain state-wide networks providing programming to accredited schools. These points are available only to applicants that cannot claim a credit for local diversity of ownership.<sup>40</sup> The state-wide network credit is an alternative for applicants that use multiple stations to serve large numbers of schools and, therefore, do not qualify for the local diversity of ownership credit. Applicants claiming points as a state-wide network must submit supporting documentation as an application exhibit.<sup>41</sup>

14. Fourth, an applicant that proposes the best technical proposal in the group (*i.e.*, proposes service to the largest population and area, excluding substantial areas of water) may receive up to two points. The applicant receives one point if its proposed service area *and* population are 10% greater than those of the next best area and population proposals, or two points if both are 25% greater than those of the next best area and population proposals as measured by each proposed station's predicted 60 dBu signal strength contour.<sup>42</sup> If the best technical proposal does not meet the 10% threshold, no applicant is

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<sup>36</sup> See 47 CFR § 73.7003(b)(2). Parties with attributable interests are defined as the applicant, its parent, subsidiaries, their officers, and members of their governing boards. See 47 CFR § 73.7000. Interests of certain entities providing more than 33% of the applicant's equity and/or debt are also attributable. *Id.*

<sup>37</sup> See Attributable Interests, Other Authorizations, of Schedule 340. An applicant claiming points for diversity of ownership must also pledge to comply with the restrictions on station modifications and acquisitions during the period from grant of the construction permit until the station has achieved at least four years of on-air operations. See 47 CFR § 73.7005(c); see also *NCE LPFM Order*, 34 FCC Rcd at 12524, para. 12.

<sup>38</sup> See *NCE LPFM Order*, 34 FCC Rcd at 12525, para. 13 (expanding the Commission's divestiture policy by recognizing full-service station divestiture pledges for comparative purposes and crediting all contingent divestiture pledges that are made and submitted by the close of the filing window).

<sup>39</sup> *Id.*

<sup>40</sup> See 47 CFR § 73.7003(b)(3).

<sup>41</sup> See Form 2100, Schedule 340 Instructions at page 16 (detailing preferred documentation to support this point claim).

<sup>42</sup> *Id.* § 73.7003(b)(4). See *NCE Omnibus*, 22 FCC Rcd at 6121-22, paras. 50-51. If there is one top applicant in terms of area and population, that applicant will receive one point even if there is no single next best applicant for

(continued....)

awarded points under this criterion. In considering this criterion, we have accepted applicants' coverage and population claims.<sup>43</sup>

15. Finally, the Commission tallies the total number of points awarded to each applicant. The applicant with the highest score in a group is designated the "tentative selectee." All other applicants are eliminated.

### C. Tie-Breakers.

16. In the event MX applicants are tied with the highest number of points, the tied applicants proceed to a tie-breaker round.<sup>44</sup> The first tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant.<sup>45</sup> The applicant with the fewest attributable authorizations prevails and becomes the tentative selectee. If the tie is not broken by this first factor, we apply a second tie-breaker: the number of pending radio station applications attributable to each applicant.<sup>46</sup> The tentative selectee will be the applicant with the fewest pending new and major change applications in the same service.

17. If a tie remains after the second tie-breaker, applicants are considered under a third and final tie-breaker criterion – prior NCE applications.<sup>47</sup> The tentative selectee will be the applicant that can demonstrate that: (1) it applied in a previous filing window, and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant possessing superior points or a tie-breaker showing; (2) it was in continuous existence as a legal entity at all times from the date of the previous NCE window filing until the present; and (3) it does not hold any NCE construction permit or license.<sup>48</sup> If this third factor fails to break the tie, we use time-sharing as the tie-breaker of last resort. Specifically, we designate the remaining tied applicants in the MX group as the tentative selectees and direct the tentative selectees to submit, within 90 days of the release of the Order identifying the tentative selectees, a voluntary time-sharing agreement.<sup>49</sup>

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both factors. The Commission will compare the top applicant's proposed area to the proposed area of the applicant with the next best area proposal and the top applicant's population to the proposed population of the applicant with the next best population proposal.

<sup>43</sup> Our procedures for this filing window required applicants to measure area in square kilometers and exclude significant areas of water, *e.g.*, oceans and lakes, and measure population using the 2010 Census Block Data available from the Census Bureau. *See* Form 2100, Schedule 340 Instructions at page 16.

<sup>44</sup> *See* 47 CFR § 73.7003(c).

<sup>45</sup> *Id.* § 73.7003(c)(1). Applicants are required to count all attributable full service commercial and NCE radio stations (licenses and construction permits) and any FM translator stations providing non-fill-in service. An applicant may exclude fill-in translators, any translator which the applicant seeks to replace with its applied for full-service NCE FM station, and any station, which it pledges to divest. *See 2001 NCE MO&O*, 16 FCC Rcd at 5102-03, para. 85; *see also* Form 2100, Schedule 340 Instructions at page 17.

<sup>46</sup> *See* 47 CFR § 73.7003(c)(2). When reporting pending applications, applicants were required to include new and major change radio applications, including the subject application and all other applications filed in the window by the November 9, 2021 deadline. Applicants should not have included any requests to participate in an auction filed on Schedule 175 and other applications such as voluntary assignment of license, license renewal, and minor change in existing facilities. *See NCE Filing Procedures Public Notice* at 10.

<sup>47</sup> *See NCE LPFM Order*, 34 FCC Rcd at 12527-28, para. 19; 47 CFR § 73.7003(c)(3).

<sup>48</sup> *Id.* Applicants were required to submit an attachment demonstrating their qualifications under this third tie-breaker criterion.

<sup>49</sup> *See* 47 CFR § 73.7003(c)(4). If the tentative selectees do not agree on a voluntary time sharing arrangement within 90 days, we will impose mandatory time sharing, granting all tentative selectees "equal, concurrent, non-renewable" licenses. 47 CFR § 73.7003(c)(5).

**D. Timely Documentation of Comparative Qualifications.**

18. The NCE FM application, Schedule 340, is certification-based, but requires applicants to document certain of their claims by submitting supporting information.<sup>50</sup> Applicants must submit timely-filed exhibits supporting their point claims. We will not give credit to certifications which require the applicant to submit documentation, but which are not supported with any such timely submitted documentation. For example, we reject claims in this Order where the applicant certifies that it qualifies for points as an established local applicant but fails to supply supporting information referred to in the certification. While there is some flexibility in the type of documentation an applicant may provide, an applicant that does not submit timely support cannot have made a valid certification and will not receive the claimed points.<sup>51</sup> Similarly, we will not consider documentation to support a claimed comparative point if it was submitted in an amendment after the November 2021, filing deadline. In such cases, we adjust the points of such applicants downward.

19. Finally, the NCE FM applicant's qualifications for points are initially determined "as of the closing of the filing window" *i.e.*, the November 9, 2021, filing deadline.<sup>52</sup> For example, NCE organizations are considered "established" if they have operated as local entities since November 9, 2019, *i.e.*, for at least two years prior to the November 9, 2021, Application Deadline. These "snap shot" applicant characteristics establish an applicant's maximum points and its maximum position in the event of a tie-breaker. This common reference date ensures a level competitive field for applicants, with their qualifications all compared as of the same time.<sup>53</sup> In order to prevent gamesmanship, any changes made after the filing deadline may potentially diminish, but cannot enhance, an applicant's comparative position and point total. Therefore, we have taken into account any amendments that adversely affect an applicant's point total and comparative position. We have not considered any amendments, filed after the filing deadline, which improve an applicant's comparative position.<sup>54</sup>

**III. GROUP-BY-GROUP ANALYSES**

20. This Section contains narrative descriptions of our analyses, organized sequentially by group number. Unless otherwise noted, each component of the analysis is based on information provided by each of the respective applicants.<sup>55</sup> We have provided readers with an Appendix that condenses the group-by-group narratives that follow into chart form for quick reference.

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<sup>50</sup> See 2000 NCE Report and Order, 15 FCC Rcd at 7423, para. 89.

<sup>51</sup> See, e.g., *Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 5013, 5017, para. 11 (2010) ("applicant submitting no timely documentation at all cannot be found to have made a valid certification").

<sup>52</sup> See 47 CFR § 73.7003(e).

<sup>53</sup> See, e.g., *2001 NCE MO&O*, 16 FCC Rcd at 5082-83, paras. 23-26; see also *id.* at 5083, para. 26 ("Of overall concern to us in this area is that we are comparing applications that use the same data. Reliance on information as of the close of the window will ensure that applicants have essentially a common reference date. With a common reference date and a common method of calculating population, the staff will analyze applicants on a similar basis.").

<sup>54</sup> See 47 CFR § 73.7003(e). For example, an applicant may lose claimed points, such as the diversity of ownership points, as a result of acquiring an overlapping station after the November 2021, filing deadline. In contrast, if an applicant certifies that it does not qualify for one of the point factors, it cannot later amend its application to claim such points. This is the case even if the applicant actually would have qualified for the point it is seeking at the time it filed the application.

<sup>55</sup> See FCC Form 2100, Schedule 340, Fair Distribution of Service certifications and Point System Factors/Tiebreakers certifications.

21. At the outset, we again note that each group of applicants has had an opportunity to resolve mutual exclusivities by settlement and technical amendment. In addition, we emphasize that applicants were required to report their qualifications as of the date of closing of the filing window.<sup>56</sup> Any changes made thereafter may potentially have diminished, but could not enhance, an applicant's comparative position. Finally, we note that the majority of these 34 groups require no discussion of the initial 307(b) analysis because the applicants within the group either all proposed to serve the same community<sup>57</sup> or certified that they are not eligible for a fair distribution preference. In such cases, we proceed directly to the point system analysis.

22. **Group 14.** This group consists of three applications proposing service to different communities in Arkansas, Oklahoma, and Missouri. Gentry Communications Network, Inc. (GCN) proposes to serve Sulphur Springs, Arkansas; Centro Familiar de Restauracion y Vida (CFRV) proposes to serve Noel, Missouri; and Citizenship Tulsa, Inc. (CT) proposes to serve Adair, Oklahoma. Each applicant claims that it is eligible for a fair distribution preference.<sup>58</sup> GCN and CT each claims a fair distribution preference based on first NCE service population totals. CFRV does not, and is therefore, eliminated. GCN and CT claim to provide first NCE service to 7,772 people and 6,198 people, respectively. The proposals are comparable because neither exceeds the other by at least 5,000 people. Accordingly, we consider combined first and second NCE service population totals. GCN would provide a first or second NCE service to 18,334 people (7,772 first service plus 10,562 second service); CT to 18,332 people (6,198 first service plus 12,134 second service). Because these proposals are also comparable, GCN and CT proceed to a point system analysis.

23. GCN claims three points as an established local applicant. CT certifies that it is not entitled to any points under this criterion. Each applicant claims two points for diversity of ownership, with GCN's claim based on a commitment to divest LPFM station KOZR-LP, Gentry, Arkansas. CT did not submit documentation to support its diversity claim, and certifies that it has two other existing authorizations. Thus, we do not award diversity of ownership points to CT.<sup>59</sup> Neither applicant claims points as a state-wide network. With respect to technical parameters, GCN's proposed 60 dBu contour would encompass 1,973 square kilometers with a population of 34,210. CT's proposed 60 dBu contour would encompass 1,674 square kilometers with a population of 29,747. GCN qualifies for one point as the best technical proposal because it proposes to serve at least 10% more area and population than CT. Accordingly, CT is not credited with any points, and GCN is credited with a total of six points. GCN is, therefore, the tentative selectee in Group 14.

24. **Group 16.** This group consists of two applications proposing service to different communities in Arizona. Remanente Broadcasting Network (RBN) proposes to serve Dudleyville, and Arizona Board of Regents for Benefit of University of Arizona (ABOR) proposes to serve Kearny. Neither applicant claims eligibility for a fair distribution preference. Accordingly, the applicants proceed to a point system analysis.

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<sup>56</sup> *NCE Filing Procedures Public Notice* at 10-11.

<sup>57</sup> The fair distribution analysis is only considered when applicants in an MX group propose to serve different communities.

<sup>58</sup> See File Nos. 167736, 167086 and 167841, Fair Distribution of Service Section, and associated exhibits. GCN's 60 dBu contour encompasses 34,210 people, and its claimed aggregated first and second NCE service is 18,334 people. CFRV's 60 dBu contour encompasses 40,137 people, and its claimed aggregated first and second NCE service is 15,524 people. CT's 60 dBu contour encompasses 29,747 people, and its claimed aggregated first and second NCE service is 18,332 people. Thus, each applicant would provide a combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>59</sup> We note that even if we were to award the two diversity points to CT, it would not change the outcome of this group.

25. ABOR claims three points as an established local applicant. RBN certifies that it is not entitled to any points under this criterion. RBN claims two points for diversity of ownership; ABOR does not. Neither applicant claims points as a state-wide network. With respect to technical parameters, RBN's proposed 60 dBu contour would encompass 4,140 square kilometers with a population of 23,872. ABOR's proposed 60 dBu contour would encompass 3,523 square kilometers with a population of 7,351. RBN qualifies for one point as the best technical proposal because it would serve at least 10% more area and population than ABOR. Accordingly, RBN and ABOR are each credited with three points and proceed to the tie-breaker analysis.

26. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. RBN certifies that it has no attributable interest in any radio authorization, and ABOR certifies that it has attributable interests in 26 radio authorizations. RBN is, therefore, the tentative selectee in Group 16.<sup>60</sup>

27. **Group 32.** This group consists of three applications proposing service to different communities in California. Delta 2000 (Delta) proposes to serve Byron; Iglesia del Valle (IDV) proposes to serve Manteca; and Hatch Workshop (HW) proposes to serve Terminous. No applicant claims eligibility for a fair distribution preference. Accordingly, the applicants proceed to a point system analysis.

28. Each applicant claims three points as an established local applicant. However, because IDV did not submit any supporting documentation for its localism claim, we do not award IDV localism points. Each applicant claims two points for diversity of ownership. IDV, however, certifies that it has one other existing authorization and did not submit documentation to support its diversity claim. We, therefore, do not award IDV points under this criterion. IDV also claims two points as a state-wide network. Such points, however, are only available to applicants that do not qualify for two points for diversity of ownership. IDV cannot claim points under both criteria.<sup>61</sup> With respect to technical parameters, Delta's proposed 60 dBu contour would encompass 167 square kilometers with a population of 10,376. HW's proposed 60 dBu contour would encompass 274 square kilometers with a population of 37,566. IDV's application is incomplete because it only lists the proposed population, and we, therefore, cannot consider IDV's technical parameters in our analysis. HW qualifies for two points as the best technical proposal because it proposes to serve at least 25% more area and population than Delta. Accordingly, IDV is not credited with any points, Delta is credited with a total of five points, and HW is credited with a total of seven points. HW is, therefore, the tentative selectee in Group 32.

29. **Group 34.** This group consists of three applications proposing service to different communities in California. Remanente Broadcasting Network (RBN) proposes to serve Boron; Cedar Broadcasting, Inc. (CBI) proposes to serve Randsburg; and Nevada Public Radio (NPR) proposes to serve Ridgecrest. No applicant claims eligibility for a fair distribution preference. Accordingly, the applicants proceed to a point system analysis.

30. No applicant claims points as an established local applicant or as a state-wide network. RBN and NPR claim two points each for diversity of ownership. CBI certifies that it is not entitled to points under this criterion. With respect to technical parameters, RBN's proposed 60 dBu contour would encompass 8,002 square kilometers with a population of 42,073. CBI's proposed 60 dBu contour would encompass 4,838 square kilometers with a population of 49,003. NPR's proposed 60 dBu contour would

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<sup>60</sup> We note that Triangle Access Broadcasting, Inc. (TABI) filed an Informal Objection to the RBN application. See Pleading No. 167141. We generally do not consider objections at this stage, but rather, review the merits of any objection if/when the subject application becomes accepted for filing. We will review the merits of TABI's objection after the tentative selectee's application is accepted for filing.

<sup>61</sup> See 47 CFR § 73.7003(b)(3). Moreover, IDV does not submit any information to support its claim that it qualifies as a state-wide network.

encompass 8,571 square kilometers with a population of 53,539. Because no applicant's proposal would serve at least 10% more area and population than the next best proposal, we do not award points for this criterion. Accordingly, CBI is not credited with any points; RBN and NPR are each credited with a total of two points and proceed to a tie-breaker analysis.

31. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. RBN certifies that it has no attributable interests in any radio authorization, and NPR certifies that it has attributable interests in 15 radio authorizations. RBN is, therefore, the tentative selectee in Group 34.<sup>62</sup>

32. **Group 49B.**<sup>63</sup> This group consists of three applications proposing service to different communities in Virginia. Positive Alternative Radio, Inc. (PAR) proposes to serve Courtland; Redeemer Broadcasting, Inc. (RBI) proposes to serve Fredericksburg; and Calvary Baptist Church of Spotsylvania (CBCS) proposes to serve Spotsylvania. No applicant claims eligibility for a fair distribution preference. Accordingly, the applicants proceed to a point system analysis.

33. CBCS claims three points as an established local applicant. PAR and RBI do not claim points under this criterion. RBI and CBCS claim two points each for diversity of ownership. PAR certifies that it does not qualify for points under this criterion. No applicant claims points as a state-wide network. With respect to technical parameters, PAR's proposed 60 dBu contour would encompass 1,764 square kilometers with a population of 153,432. RBI's proposed 60 dBu contour would encompass 1,164 square kilometers with a population of 133,089. CBCS's proposed 60 dBu contour would encompass 1,407 square kilometers with a population of 146,515. No applicant qualifies for points under the best technical proposal criterion because no applicant proposes to serve at least 10% more area and population than the next best proposal. Accordingly, PAR is not credited with any points; RBI is credited with a total of two points; CBCS is credited with a total of five points. CBCS is, therefore, the tentative selectee in Group 49B.

34. **Group 50.** This group consists of two applications proposing service to different communities in Florida. Putnam Radio Ministries, Inc. (PRMI) proposes to serve Keystone Heights, and Inverse Focus Ministry, Inc. (IFMI) proposes to serve Starke. Neither applicant claims eligibility for a fair distribution preference. Accordingly, the applicants proceed to a point system analysis.

35. Neither applicant claims points as an established local applicant or state-wide network. PRMI and IFMI each certifies that it is entitled to two points for diversity of ownership. PRMI, however, provides no support for its diversity claim, and certifies that it has one existing authorization. Accordingly, we do not award points to PRMI under this criterion.<sup>64</sup> With respect to technical parameters, PRMI's proposed 60 dBu contour would encompass 840 square kilometers with a population of 29,383. IFMI's proposed 60 dBu contour would encompass 925 square kilometers with a population

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<sup>62</sup> We note that Triangle Access Broadcasting, Inc. (TABI) filed an Informal Objection to the RBN application. *See* Pleading No. 167141. We generally do not consider objections at this stage, but rather, review the merits of any objection if/when the subject application becomes accepted for filing. We will review the merits of TABI's objection after the tentative selectee's application is accepted for filing.

<sup>63</sup> Group 49, which originally contained 13 applications, was bifurcated as a result of a technical amendment. The other applications in the group were evaluated as Group 49A in a previous order. *See Threshold Fair Distribution Analysis of 13 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-477, at para. 10 (MB May 2, 2022) (*13 Group Fair Distribution Order*).

<sup>64</sup> We note that even if we were to award PRMI points for diversity of ownership, it would not change the outcome of this group.

of 34,857. IFMI receives one point under the best technical proposal criterion because it would serve at least 10% more area and population than PRMI. Accordingly, PRMI is not credited with any point, and IFMI is credited with a total of three points. IFMI is, therefore, the tentative selectee in Group 50.

36. **Group 51.** This group consists of two applications proposing service to the same community in Florida. Teleamerica Communications West Palm Beach Corp. (TCW) and Newland Broadcasters Incorporated (NBI) each proposes service to Key West. Because the applicants propose service to the same community, TCW and NBI proceed to a point system analysis.

37. Neither applicant claims points as an established local applicant. Each applicant claims two points for diversity of ownership. NBI also claims points as a state-wide network. Such points, however, are only available to applicants that do not qualify for two points for diversity of ownership. NBI cannot receive points under both criteria.<sup>65</sup> With respect to technical parameters, TCW's proposed 60 dBu contour would encompass 16 square kilometers with a population of 24,649. NBI's proposed 60 dBu contour would encompass 11 square kilometers with a population of 23,342. Because neither applicant's proposal would serve at least 10% more area and population than the other, we do not award points for this criterion. Thus, TCW and NBI are each credited with a total of two points and proceed to a tie-breaker analysis.

38. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. TCW certifies that it has no attributable interests in any radio authorization, and NBI certifies that it has an attributable interest in one radio authorization. TCW therefore prevails based on this first tie-breaker and is the tentative selectee in Group 51.<sup>66</sup>

39. **Group 54.** This group consists of four applications proposing service to the same community in Florida. Call Communications Group, Inc. (CCGI), Ethree Group, Inc. (EGI), New Media Humanity Association Inc. (NMHA), and Central Baptist Church of Ocala Inc. (CBCO) each proposes to serve Weeki Wachee. Because the applicants propose to serve the same community, they proceed to a point system analysis.

40. No applicant claims that it qualifies for points as an established local applicant or state-wide network. Each applicant claims two points for diversity of ownership with NMHA's claim based on a pledge to divest its LPFM station, WYPW-LP, Brandon, Florida. With respect to technical parameters, CCGI's proposed 60 dBu contour would encompass 847 square kilometers with a population of 110,411. EGI's proposed 60 dBu contour would encompass 693 square kilometers with a population of 88,689. NMHA's proposed 60 dBu contour would encompass 668 square kilometers with a population of 97,594. CBCO's proposed 60 dBu contour would encompass 945 square kilometers with a population of 105,470. No applicant is eligible for points under the best technical proposal criterion because no applicant proposes to serve at least 10% more area and population than the next best proposal. Accordingly, CCGI, EGI, NMHA, and CBCO are credited with a total of two points each and proceed to a tie-breaker analysis.

41. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. CCGI certifies that it has attributable interests in nine radio authorizations, and CBCO certifies that it has attributable interests in two radio authorizations. EGI and NMHA each certifies that it has no

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<sup>65</sup> See 47 CFR §73.7003(b)(3). Moreover, NBI does not submit any information to support its claim that it qualifies as a state-wide network.

<sup>66</sup> Between December 20, 2021, to May 11, 2022, NBI filed several petitions to deny the TCW application. See Pleading Nos. 177507, 186288, and 190458. Because the TCW application has not yet been accepted for filing, the NBI petitions are premature and will not be considered at this stage. We will review the merits of the NBI petitions after the TCW application is accepted for filing.

attributable interest in any radio authorization. CCGI and CBCO are therefore eliminated, and EGI and NMHA proceed to the second tie-breaker – the number of pending radio applications attributable to each applicant. The applicant with the fewest applications prevails. EGI certifies it has no pending applications, and NMHA certifies it has one pending application. EGI's count, however, is inaccurate because it does not include the instant application and its six other pending applications.<sup>67</sup> After accounting for this error and adjustment, NMHA prevails on the basis of this second tie-breaker and is the tentative selectee in Group 54.

42. **Group 55.** This group consists of four applications to serve different communities in Florida. Ethree Group, Inc. (EGI) proposes to serve Big Pine; Key West Radio (KWR) and Specialized Educational Broadcasting (SEB) each proposes to serve Key West; Frequency Zero, Inc. (FZI) proposes to serve Stock Island. Each applicant certifies that it is not eligible for a fair distribution preference. Accordingly, all four applicants proceed to a point system analysis.

43. No applicant claims that it qualifies for points as an established local applicant or state-wide network. Each applicant claims two points for diversity of ownership. With respect to technical parameters, EGI's proposed 60 dBu contour would encompass 312 square kilometers with a population of 26,234. KWR's proposed 60 dBu contour would encompass 30 square kilometers with a population of 29,890. SEB's proposed 60 dBu contour would encompass 37 square kilometers with a population of 29,550. FZI's proposed 60 dBu contour would encompass 33 square kilometers with a population of 31,066. No applicant is eligible for points under the best technical proposal criterion because no applicant proposes to serve at least 10% more area and population than the next best proposal. Accordingly, EGI, KWR, SEB, and FZI are each credited with a total of two points and proceed to a tie-breaker analysis.

44. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. Each applicant certifies that it has no attributable interest in any radio authorization. All four applicants, therefore, proceed to the second tie-breaker – the number of pending radio applications attributable to each applicant. The applicant with the fewest applications prevails. EGI certifies it has no pending applications; KWR certifies it has one pending application; SEB certifies that it has five pending applications; FZI certifies it has two pending applications. EGI's count, however, is inaccurate because it does not include the instant application and its six other pending applications.<sup>68</sup> After accounting for this error and adjustment, KWR has the fewest pending applications, and is therefore, the tentative selectee in Group 55.

45. **Group 63.** This group consists of three applications proposing service to the same community in Georgia. Inverse Focus Ministry, Inc. (IFM), Frequency Zero, Inc. (FZI), and Sanctuary Church (SC) each proposes to serve Darien. Because each applicant proposes to serve the same community, the three applicants proceed to a point system analysis.

46. SC claims that it qualifies for three points as an established local applicant; IFM and FZI do not claim points under this criterion. Each applicant claims two points for diversity of ownership with SC's claim based on a pledge to divest LPFM station WWZR-LP, Brunswick, Georgia. No applicant claims that it qualifies for points as a state-wide network. With respect to technical parameters, IFM's proposed 60 dBu contour would encompass 3,018 square kilometers with a population of 59,210. FZI's proposed 60 dBu contour would encompass 348 square kilometers with a population of 36,249. SC's proposed 60 dBu contour would encompass 667 square kilometers with a population of 54,575. No applicant is eligible for points under the best technical proposal criterion because no applicant proposes to serve at least 10% more area and population than another. Accordingly, SC is credited with a total of five

<sup>67</sup> See File Nos. 166667, 166680, 166720, 166738, 167098, 167113, and 167131.

<sup>68</sup> See File Nos. 166667, 166680, 166720, 166738, 167098, 167113, and 167131.

points, and IFM and FZI are each credited with two points. SC is, therefore, the tentative selectee in Group 63.

47. **Group 79.** This group consists of seven applications proposing service to four different communities in Iowa. Friendship Baptist Church (FBC), Bible Broadcasting Network, Inc. (BBN), Community Public Radio, Inc. (CPR), and Calvary Chapel Iowa (CCI) each proposes to serve Cedar Rapids. Rising Tide Broadcasting, Inc. (RTB) proposes to serve Center Point. Vida Ministry Inc. (VM) proposes to serve Marion, and Extend the Dream Foundation (EDF) proposes to serve Swisher. Each applicant certifies that it is not eligible for a fair distribution preference, and accordingly, all seven applicants proceed to a point system analysis.

48. FBC, CCI, and EDF each claims that it qualifies for three points as an established local applicant. BBN, CPR, RTB, and FM do not claim points under this criterion. Each applicant claims two points for diversity of ownership with CCI's claim based on a pledge to divest LPFM station KEWR-LP, Cedar Rapids, Iowa, and EDF's claim based on a pledge to divest KICI-LP, Iowa City, Iowa. No applicant claims that it qualifies for points as a state-wide network. With respect to technical parameters, the applicants' proposed 60 dBu contours would encompass areas and populations as follows: FBC, 1,598 square kilometers with a population of 207,189; BBN, 1,551 square kilometers with a population of 205,737; CPR, 4,034 square kilometers with a population of 250,043; CCI, 2,008 square kilometers with a population of 217,630; RTB, 2,011 square kilometers with a population of 211,469; VM, 2,685 square kilometers with a population of 231,036; and EDF, 2,846 square kilometers with a population of 230,891. No applicant is eligible for points under the best technical proposal criterion because no applicant proposes to serve at least 10% more area and population than the next best proposal. Accordingly, FBC, CCI, and EDF are each credited with a total of five points; BBN, CPR, RTB, and VM are each credited with two points. FBC, CCI, and EDF, therefore, proceed to a tie-breaker analysis.

49. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. Each applicant certifies that it has no attributable interest in any radio authorization.<sup>69</sup> Accordingly, FBC, CCI, and EDF proceed to the second tie-breaker – the number of pending radio applications attributable to each applicant. The applicant with the fewest applications prevails. FBC and EDF each certifies it has one pending application, and CCI certifies it has no pending applications. Applicants, however, were required to count the application at issue when reporting their pending applications. Therefore, “one” pending application is the lowest possible number of pending applications that can be specified correctly on the Schedule 340.<sup>70</sup> With this adjustment, FBC, CCI, and EDF remain tied and proceed to a third tie-breaker - prior NCE applications.

50. The tentative selectee will be the applicant that can demonstrate that: (1) it applied in a previous filing window, and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant possessing superior points or a tie-breaker showing; (2) it was in continuous existence as a legal entity at all times from the date of the previous NCE window filing until the present; and (3) it does not hold any NCE construction permit or license. No applicant certifies that it satisfies this final tie-breaker criterion. Accordingly, FBC, CCI, and EDF are all the tentative selectees

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<sup>69</sup> CCI and EDF pledge to divest their current LPFM stations, and accordingly, were not required to count these stations as existing authorizations. See Schedule 340, Point System/Tie-breakers Section, Existing Authorizations (“Radio applicants should count all attributable full service radio stations, AM and FM, commercial and noncommercial, and FM translator stations other than fill-in stations or those identified in the second question (pledge to divest an attributable broadcast interest/resign from an attributable positional interest) under Diversity of Ownership”).

<sup>70</sup> See *NCE Filing Procedures Public Notice*, *supra* note 24 (“When reporting pending applications, applicants must include new and major change radio applications, including the subject application and all other applications filed in this window by the Application Deadline.”).

for Group 79, and, we direct the applicants to submit, within 90 days of the release of the Order, a voluntary time-sharing agreement.

51. **Group 83.**<sup>71</sup> This group consists of two applications proposing service to the same community in Idaho. First Baptist Church of Riverview (FBCR) and Salt & Light Radio, Inc. (SLRI) each proposes to serve Mountain Home. Because the applicants propose service to the same community, FBCR and SLRI proceed to a point system analysis.

52. Neither applicant claims points as an established local applicant or state-wide network. Each applicant certifies that it is entitled to two points for diversity of ownership. With respect to technical parameters, FBCR's proposed 60 dBU contour would encompass 1,815 square kilometers with a population of 25,104. SLRI's proposed 60 dBU contour would encompass 1,809 square kilometers with a population of 23,846. Because neither applicant's proposal would serve at least 10% more area and population than the other, we do not award points for this criterion. Accordingly, FBCR and SLRI are each credited with two points and proceed to a tie-breaker analysis.

53. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. FBCR certifies that it has attributable interests in seven radio authorizations, and SLRI certifies that it has five radio attributable interests. Accordingly, SLRI is the tentative selectees in Group 83.

54. **Group 92.** This group consists of four applications to serve different communities in Illinois and Indiana. Covenant Network (CN) and 2820 Communications Inc. (2820) each proposes to serve Danville, Illinois. Appalachian Educational Communication Corporation (AECC) proposes to serve Paris, Illinois, and Olivet Nazarene University (ONU) proposes to serve Wingate, Indiana. Each applicant certifies that it is not eligible for a fair distribution preference, and accordingly, all four applicants proceed to a point system analysis.

55. No applicant claims that it qualifies for points as an established local applicant or state-wide network. Each applicant claims two points for diversity of ownership. However, because CN and 2820 did not submit documentation to support this claim, we cannot award either applicant points under this criterion.<sup>72</sup> With respect to technical parameters, CN's proposed 60 dBU contour would encompass 402 square kilometers with a population of 16,197. 2820's proposed 60 dBU contour would encompass 2,375 square kilometers with a population of 85,330. AECC's proposed 60 dBU contour would encompass 1,272 square kilometers with a population of 18,443. ONU's proposed 60 dBU contour would encompass 1,620 square kilometers with a population of 35,227. 2820 is eligible for two points under the

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<sup>71</sup> Group 83 was analyzed in a previous point system order, and First Baptist Church of Riverview (FBCR) was declared the tentative selectee. *See Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 22-78 (rel. Oct. 25, 2022). On November 1, 2022, FBCR notified Bureau staff that it had prepared an amendment to update its count of existing authorizations to reflect recent grants and assignments, all of which had occurred prior to the October 25, 2022, release of the point order, but inadvertently neglected to file the amendment. Therefore, on November 1, 2022, FBCR concurrently filed its amendment to update its count of existing authorizations. On November 25, 2022, Salt & Light Radio, Inc. filed a petition to deny the FBCR application (SLRI Petition), asserting that FBCR's recent amendment changes the result of the previous point system analysis and "had the information now available to the agency staff been before the staff when the Order was released 30 days ago, the staff would have tentatively selected Salt & Light's competing application." *See* Pleading No. 204286. FBCR did not file an opposition to the SLRI Petition. The initial tentative selection of the FBCR application was an interlocutory decision, not a final action on the two applications in Group 83, and therefore, can be modified or rescinded when, as the case here, new facts arise which demonstrate the tentative selection was made without accurate data, and therefore, wrong. We, therefore, re-analyze Group 83 herein and dismiss the SLRI Petition as moot.

<sup>72</sup> CN and 2820 each hold attributable interests in Illinois and/or nearby states. Each applicant neglected to submit a statement that there is no overlap with the proposed station.

best technical proposal criterion because it proposes to serve at least 25% more area and population than each other applicant. Accordingly, CN is not credited with any points. 2820, AECC, and ONU are each credited with two points and proceed to a tie-breaker analysis.

56. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. 2820 certifies that it has an attributable interest in nine radio authorizations, AECC in five, and ONU in seven. Accordingly, AECC is the tentative selectee for Group 92.

57. **Group 106.** This group consists of two applications proposing service to the same community in Rhode Island. Radio Sharon Foundation (RSF) and Horizon Christian Fellowship (HCF) each proposes to serve Narragansett Pier. Because the applicants propose to serve the same community, RSF and HCF proceed to a point system analysis.

58. RSF certifies that it is entitled to three points as an established local applicant. HCF does not claim points under this criterion. Each applicant claims two points for diversity of ownership. Neither applicant claims points as a state-wide network. With respect to technical parameters, RSF's proposed 60 dBu contour would encompass 203 square kilometers with a population of 49,310 people. HCF's proposed 60 dBu contour would encompass 976 square kilometers with a population of 59,822 people. HCF is eligible for one point under the best technical proposal criterion because it proposes to serve at least 10% more area and population than RSF. Accordingly, RSF is credited with a total of five points, and HCF is credited with a total of three points. Thus, RSF is the tentative selectee in Group 106.

59. **Group 124.** This group consists of six applications to serve different communities in Minnesota. Southern Minnesota Catholic Radio has two applications in the group, one for Mankato (SMCR-Mankato) and one for Waseca (SMCR-Waseca). The other applicants are: Minnesota State University, Mankato (MSUM), One Day Church Project, Inc. (ODCPI), and Fairmont Area Catholic Radio (FACR), each for Mankato; and Minn-Iowa Christian Broadcasting Inc. (MICBI) for Mapleton. No applicant claims eligibility for a fair distribution preference. Accordingly, the six applicants proceed to a point system analysis.

60. MSUM and MICBI each claim three points as an established local applicant. The other four applicants do not claim points under this criterion. ODCPI, SMCR-Mankato, FACR, and SMCR-Waseca each claim two points for diversity of ownership, with ODCPI's claim based on a pledge to divest LPFM station KCJL-LP, Dodge Center, Minnesota, and with FACR's claim based on a pledge to divest LPFM station KYEJ-LP, Fairmont, Minnesota. MSUM and MICBI do not claim diversity points. No applicant claims points as a state-wide network. With respect to technical parameters, each applicant's proposed 60 dBu contours would encompass areas and populations as follows: MSUM, 4,352 square kilometers with a population of 120,672; ODCPI, 4,951 square kilometers with a population of 133,200; SMCR-Mankato, 755 square kilometers with a population of 70,902; FACR, 1,104 square kilometers with a population of 76,602; MICBI, 756 square kilometers with a population of 6,485; and SMCR-Waseca, 617 square kilometers with a population of 25,524. ODCPI is credited with one point under the best technical proposal criterion because its proposal will serve at least 10% more area and population than MSUM's next best proposal. Accordingly, SMCR-Mankato, FACR, and SMCR-Waseca are each credited with a total of two points; MSUM, MICBI, and ODCPI are each credited with a total of three points and therefore proceed to the tie-breaker analysis.

61. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. MSUM certifies that it has attributable interests in three radio authorizations. MICBI certifies that it has attributable interests in 25 radio authorizations, and ODCPI certifies it has no attributable radio authorizations. ODCPI therefore prevails based on this first tie-breaker and is the tentative selectee in Group 124.

62. **Group 137B.**<sup>73</sup> This group consists of three applications to serve different communities in North Carolina. Hitquake Community Radio Network (HCRN) proposes to serve Glencoe. Church Planters of America (CPA) proposes to serve McLeansville, and Hispanic American Christian Network, Inc. (HACNI) proposes to serve Sedalia. No applicant claims eligibility for a fair distribution preference. Accordingly, the three applicants proceed to a point system analysis.

63. No applicant claims points as an established local applicant or state-wide network. Each applicant claims two points for diversity of ownership. With respect to technical parameters, HCRN's proposed 60 dBu contour would encompass 129 square kilometers with a population of 31,147. CPA's proposed 60 dBu contour would encompass 305 square kilometers with a population of 47,401. HACNI did not provide information regarding its proposed 60 dBu contour or population served, and is therefore not included in our analysis for the best technical proposal. CPA qualifies for two points as the best technical proposal because it proposes to serve at least 25% more area and population than the HCRN proposal. Accordingly, HCRN and HACNI are each credited with two points. CPA is credited with a total of four points, and is, therefore, the tentative selectee in Group 137B.

64. **Group 137C.**<sup>74</sup> This group consists of three applications to serve the same community in Virginia. Positive Alternative Radio, Inc. (PARI), Church Planters of America (CPA), and Hitquake Community Radio Network (HCRN) all propose to serve Danville. Because each applicant proposes to serve the same community, the three applicants proceed to a point system analysis.

65. No applicant claims points as an established local applicant or state-wide network. CPA and HCRN each claim two points for diversity of ownership; PARI does not. With respect to technical parameters, PARI's proposed 60 dBu contour would encompass 351 square kilometers with a population of 59,098. CPA's proposed 60 dBu contour would encompass 665 square kilometers with a population of 60,139. HCRN's proposed 60 dBu contour would encompass 813 square kilometers with a population of 72,547. HCRN qualifies for one point under the best technical proposal criterion because its proposal would serve at least 10% more area and population than CPA's next best proposal. Accordingly, PARI is not credited with any points, CPA is credited with two points, and HCRN is credited with a total of three points. HCRN is, therefore, the tentative selectee in Group 137C.

66. **Group 144.** This group consists of four applications to serve different communities in New Jersey. Radio Vision Cristiana Management Corporation (RVCMC) proposes to serve Brick. Rejuvenation Outreach Center Inc. (ROCI) and Community Public Radio, Inc. (CPRI) each proposes to serve Lakewood. Cantico Nuevo Ministry, Inc. (CNMI) proposes to serve Leisure Village. No applicant claims eligibility for a fair distribution preference. Accordingly, the four applicants proceed to a point system analysis.

67. CNMI claims three points as an established local applicant, but did not submit documentation to support its claim. Accordingly, we will not award CNMI the three localism points. RVCMC, ROCI, and CPRI do not claim points under this criterion. RVCMC, ROCI, and CPRI claim two points for diversity of ownership; CNMI does not. CNMI claims two points as a state-wide network, but did not submit documentation to support its claim. Accordingly, we will not award CNMI the two points as a state-wide network. With respect to technical parameters, RVCMC's proposed 60 dBu contour would encompass 520 square kilometers with a population of 392,195. ROCI's proposed 60 dBu contour would encompass 113 square kilometers with a population of 126,118.<sup>75</sup> CPRI's proposed 60

<sup>73</sup> Group 137, which originally consisted of 16 applications, was divided into three sub-groups as a result of a technical amendment. Groups 137B and 137C are evaluated herein. The applications in Group 137A were evaluated in a previous order. See *13 Group Fair Distribution Order*, *supra* note 63.

<sup>74</sup> See *supra* note 73.

<sup>75</sup> On December 23, 2021, ROCI amended its application to increase its proposed area to 116.5 square kilometers and its proposed population to 130,531. Because the amendment was filed after the close of the filing window, we  
(continued....)

dBu contour would encompass 534 square kilometers with a population of 396,270. CNMI's proposed 60 dBu contour would encompass 173 square kilometers with a population of 128,350. No applicant is eligible for any points under the best technical proposal criterion because no proposal will serve at least 10% more area and population than the next best proposal. Accordingly, CNMI is not credited with any points; RVCMC, ROCI, and CPRI are each credited with two points and proceed to the tie-breaker analysis.

68. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. RVCMC certifies that it has attributable interests in five radio authorizations. ROCI certifies that it has no attributable radio interests. CPRI certifies that it has attributable interests in one radio authorization. ROCI therefore prevails based on this first tie-breaker and is the tentative selectee in Group 144.

69. **Group 145.** This group consists of five applications to serve different communities in New Jersey. Casa de Destino (CDD) and Calvary Chapel Morris Hills (CCMH) each proposes to serve Bernardsville; Redeemer Broadcasting, Inc. (RBI) proposes to serve Mendham; Transmission Communications Network (TCN) proposes to serve Millington; and Cantico Nuevo Ministry, Inc. (CNM) proposes to serve Watchung. CDD, CCMH, and RBI each claim eligibility for a fair distribution preference.<sup>76</sup> TCN and CNM do not claim eligibility for a fair distribution preference. Although CDD certifies that it is eligible for a fair distribution preference, it failed to timely provide sufficient documentation to support its claim in its original application.<sup>77</sup> Accordingly, TCN, CNM, and CDD are each eliminated. CCMH claims to provide new first NCE service to 36,190 people; RBI to 38,643 people. The proposals of CCMH and RBI are comparable because neither proposal exceeds the other by at least 5,000 people. Accordingly, we consider combined first and second NCE service population totals. CCMH would provide a first or second NCE service to 83,722 people (36,190 first service plus 47,532 second service); RBI to 88,378 people (38,643 first service plus 49,735 second service). Because the CCMH and RBI applications are still comparable, CCMH and RBI proceed to a point system analysis.

70. CCMH claims three points as an established local applicant; RBI does not. Both CCMH and RBI claim two points for diversity of ownership, with CCMH's claim based on a pledge to divest LPFM station WCFT-LP, Dover, New Jersey. Neither applicant claims points as a state-wide network. With respect to technical parameters, CCMH's proposed 60 dBu contour would encompass 431 square kilometers with a population of 177,699. RBI's proposed 60 dBu contour would encompass 457 square kilometers with a population of 157,527. Because neither applicant's proposal would serve at least 10% more area and population than the other, we do not award points for this criterion. Accordingly, CCMH

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do not consider it. We have repeatedly disallowed the enhancement of qualifications in NCE comparative cases, consistent with section 73.7003(e) of the rules. *See* 47 CFR §73.7003(e).

<sup>76</sup> *See* File Nos. 167880, 167028, and 166759, Fair Distribution of Service Section, and associated exhibits. CDD's 60 dBu contour encompasses 134,947 people, and its claimed aggregated first and second NCE service is 75,634 people. CCMH's 60 dBu contour encompasses 177,699 people, and its claimed aggregated first and second NCE service is 83,722 people. RBI's 60 dBu contour encompasses 157,527 people, and its claimed aggregated first and second NCE service is 88,378 people. Thus, each applicant would provide a combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>77</sup> *See* File No. 167880, Fair Distribution of Service Section, and associated exhibits. In CDD's original application, submitted on November 9, 2021, it did not certify that it would provide a first or second NCE service, nor did it attach the required documentation. CDD submitted an amendment to the original application on January 24, 2022, that "corrects the [fair distribution of service] certifications and supplies the required supporting documentation." *Id.* We find that CDD's amended application, which claimed fair distribution preference for the first time, was a prohibited attempt to enhance its comparative position, and will therefore not be considered.

is credited with a total of five points, and RBI is credited with a total of two points. CCMH is, therefore, the tentative selectee in Group 145.<sup>78</sup>

71. **Group 153.** This group consists of three applications to serve the same community in New Mexico. Off the Cuff Educational Broadcasting (OTCEB), City of Hobbs, NM (CHN), and The Association for Community Education, Inc. (AFCEI) all propose to serve Hobbs. Because each applicant proposes to serve the same community, the three applicants proceed to a point system analysis.

72. CHN claims three points as an established local applicant; OTCEB and AFCEI do not claim localism points. CHN and AFCEI each claim two points for diversity of ownership, with CHN's claim based on a pledge to divest LPFM station KHBX-LP, Hobbs, New Mexico. OTCEB does not claim points under this criterion. No applicant claims points as a state-wide network. With respect to technical parameters, OTCEB's proposed 60 dBu contour would encompass 484 square kilometers with a population of 34,628. CHN's proposed 60 dBu contour would encompass 1,304 square kilometers with a population of 44,280. AFCEI's proposed 60 dBu contour would encompass 495 square kilometers with a population of 42,589. No applicant is eligible for any points under the best technical proposal criterion because no proposal will serve at least 10% more area and population than the next best proposal. Accordingly, OTCEB is not credited with any points, CHN is credited with five points, and AFCEI is credited with two points. CHN is, therefore, the tentative selectee in Group 153.

73. **Group 156.** This group consists of three applications proposing service to the same community in New Mexico. Northern New Mexico Radio Foundation (NMRF), The Association for Community Education, Inc. (ACE), and The Rock Christian Outreach of Las Vegas (RCLV) each proposes to serve Las Vegas. Because the applicants propose service to the same community, NMRF, ACE, and RCLV proceed to a point system analysis.

74. RCLV claims it qualifies for three points as an established local applicant. NMRF and ACE do not claim points under this criterion. Each applicant claims two points for diversity of ownership, with RCLV's claim based on a pledge to divest LPFM station KLYN-LP, Las Vegas, New Mexico. No applicant claims points as a state-wide network. With respect to technical parameters, NMRF's proposed 60 dBu contour would encompass 339 square kilometers with a population of 18,311. ACE's proposed 60 dBu contour would encompass 548 square kilometers with a population of 18,938. RCLV's proposed 60 dBu contour would encompass 390 square kilometers with a population of 18,476. No applicant qualifies for points under the best technical proposal criterion because no applicant proposes to serve least 10% more area and population than the next best proposal. Accordingly, RCLV is credited with a total of five points. NMRF and ACE are each credited with two points. Thus, RCLV is the tentative selectee in Group 156.

75. **Group 174.** This group consists of two applications proposing service to the same community in Oklahoma. Woodward Catholic Radio, Inc. (WCR) and Great Plains Christian Radio, Inc. (GPCR) each proposes to serve Woodward. Because the applicants propose to serve the same community, WCR and GPCR proceed to a point system analysis.

76. WCR claims that it qualifies for three points as an established local applicant. GPCR does not claim points under this criterion. WCR also claims two points for diversity of ownership based on its pledge to divest LPFM station, KFPP-LP, Woodward, Oklahoma. GPCR does not claim diversity points. Neither applicant claims points as a state-wide network. With respect to technical parameters, WCR's proposed 60 dBu contour would encompass 1,248 square kilometers with a population of 17,400.

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<sup>78</sup> On January 7, 2022, RBI filed an Informal Objection to the CCMH's application. See Pleading No. 179137. We generally do not consider objections at this stage, but rather, review the merits of any objection if/when the subject application becomes accepted for filing. We will review the merits of RBI's objection after the tentative selectee's application is accepted for filing.

GPCR's proposed 60 dBu contour would encompass 1,212 square kilometers with a population of 18,652. Neither applicant is eligible for points under the best technical proposal criterion because neither proposes to serve at least 10% more area and population than the other. Accordingly, WCR is credited with a total of five points, and GPCR is not credited with any points. WCR is, therefore, the tentative selectee in Group 174.

77. **Group 177.** This group consists of three applications to serve three different communities in Oklahoma. Outside the Doors Ministry Foundation (ODMF) proposes to serve Altus, Western Oklahoma Catholic Faith Foundation (WOCF) proposes to serve Elk City, and Top O' Texas Educational Broadcasting Foundation, Inc. (TEBF) proposes to serve Sayre. No applicant claims eligibility for a fair distribution preference.<sup>79</sup> ODMF, WOCF, and TEBF, therefore, proceed to a point system analysis.

78. WOCF claims it qualifies for three points as an established local applicant. ODMF and TEBF do not claim points under this criterion. ODMF and WOCF each claim two points for diversity of ownership, with WOCF's claim based on a pledge to divest LPFM station KPFS-LP, Elk City, Oklahoma. TEBF certifies that it is not entitled to diversity points. ODMF also claims points as a state-wide network. Such points, however, are only available to applicants that do not qualify for two points for diversity of ownership. ODMF cannot claim points under both criteria.<sup>80</sup> With respect to technical parameters, ODMF's proposed 60 dBu contour would encompass 985 square kilometers with a population of 26,084. WOCF's proposed 60 dBu contour would encompass 4,419 square kilometers with a population of 23,870. TEBF's proposed 60 dBu contour would encompass 2,176 square kilometers with a population of 8,115. No applicant qualifies for points under the best technical proposal criterion because no applicant proposes to serve at least 10% more area and population than the next best proposal. Accordingly, ODMF is credited with a total of two points, WOCF is credited with five points, and TEBF is not credited with any points. Thus, WOCF is the tentative selectee in Group 177.

79. **Group 181.** This group consists of two applications to serve the same community in Oregon. Coos Commons Protection Council (CCPC) and Southern Oregon University (SOU) each propose to serve Bandon. Because each applicant proposes to serve the same community, the applicants proceed to a point system analysis.

80. CCPC and SOU each claim three points as an established local applicant. CCPC and SOU also each claim two points for diversity of ownership. SOU certifies that its diversity claim is based on a divestiture pledge, but it neglects to provide such a pledge or submit any information to support its claim. Accordingly, we will not award SOU points under this criterion. Neither applicant claims points as a state-wide network. With respect to technical parameters, CCPC's proposed 60 dBu contour would encompass 1,410 square kilometers with a population of 11,439. SOU's proposed 60 dBu contour would encompass 1,306 square kilometers with a population of 11,040. Because neither applicant's proposal would serve at least 10% more area and population than the other, we do not award points for this

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<sup>79</sup> See File No. 167817, Fair Distribution of Service Section, and associated exhibits. In its initial application, WOCF claimed eligibility for a fair distribution preference based on first and second NCE service population totals and was named the tentative selectee of Group 177. See *Threshold Fair Distribution Analysis of 19 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-314 (MB Mar. 24, 2022). On April 22, 2022, WOCF filed an amendment to its application to disclaim its eligibility for a fair distribution preference. The initial tentative selection of the WOCF application was an interlocutory decision, not a final action on the three applications in Group 177, and therefore, can be modified or rescinded when, as the case here, facts arise which nullify the previous fair distribution analysis. In any event, WOCF remains the tentative selectee based on application of the established criteria as outlined above.

<sup>80</sup> See 47 CFR § 73.7003(b)(3). Moreover, ODMF does not submit any information to support its claim that it qualifies as a state-wide network.

criterion. Accordingly, CCPC is credited with a total of five points, and SOU is credited with a total of three points. CCPC is, therefore, the tentative selectee in Group 181.

81. **Group 184.** This group consists of three applications proposing service to the same community in Oregon. First Baptist Church of Riverview (FBCR), Idaho Conference of Seventh-Day Adventists, Inc. (ICSA), and Baker Art Guild (BAG) each proposes to serve Baker City. Because the applicants propose service to the same community, FBCR, ICSA, and BAG proceed to a point system analysis.

82. ICSA and BAG each claim three points as an established local applicant. FBCR does not claim points under this criterion. FBCR and BAG claim two points each for diversity of ownership; ICSA does not. No applicant claims points as a state-wide network. With respect to technical parameters, FBCR's proposed 60 dBu contour would encompass 507 square kilometers with a population of 10,865. ICSA's proposed 60 dBu contour would encompass 562 square kilometers with a population of 11,985. BAG's proposed 60 dBu contour would encompass 1,307 square kilometers with a population of 13,193. BAG qualifies for one point under the best technical proposal criterion because its proposal would serve at least 10% more area and population than ICSA's next best proposal. Accordingly, BAG is credited with a total of six points, ICSA is credited with three points, and FBCR is credited with two points. BAG is, therefore, the tentative selectee in Group 184.

83. **Group 185.** This group consists of two applications to serve the same community in Oregon. Ondas de Vida, Inc. (ODVI) and Modoc Broadcasting Corporation (MBC) each proposes to serve Altamont. Because the applicants propose to serve the same community, ODVI and MBC proceed to a point system analysis.

84. MBC claims three points as an established local applicant; ODVI does not. ODVI and MBC each claim two points for diversity of ownership. ODVI, however, certifies that it has 10 existing authorizations and does not submit documentation to support its diversity claim.<sup>81</sup> Accordingly, we will not award ODVI points under this criterion. Neither applicant claims points as a state-wide network. With respect to technical parameters, ODVI's proposed 60 dBu contour would encompass 162 square kilometers with a population of 37,281. MBC's proposed 60 dBu contour would encompass 2,833 square kilometers with a population of 26,633. Because neither applicant's proposal would serve at least 10% more area and population than the other, we do not award points for this criterion. Accordingly, ODVI is not credited with any points, and MBC is credited with a total of five points. MBC is, therefore, the tentative selectee in Group 185.

85. **Group 192.** This group consists of two applications to serve the same community in Texas. Hallettsville Right to Life, Inc. (HRLI) and Vida Ministry Inc. (VMI) each proposes to serve Hallettsville. Because HRLI and VMI propose to serve the same community, the applicants proceed to a point system analysis.

86. HRLI claims three points as an established local applicant; VMI does not. HRLI and VMI each claim two points for diversity of ownership. Neither applicant claims points as a state-wide network. With respect to technical parameters, HRLI's proposed 60 dBu contour would encompass 3,541 square kilometers with a population of 27,122. VMI's proposed 60 dBu contour would encompass 3,752 square kilometers with a population of 13,792. Neither applicant qualifies for any points under the best technical proposal criterion because neither proposes to serve at least 10% more area and population than the other. Accordingly, HRLI is credited with a total of five points, and VMI is credited with two points. HRLI is, therefore, the tentative selectee in Group 192.

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<sup>81</sup> We note that even if we were to award ODVI points for diversity of ownership, it would not change the outcome of this group.

87. **Group 198.** This group consists of two applications to serve the same community in Texas. Vida Ministry Inc. (VMI) and Ixoye Productions, Inc. (IPI) each proposes to serve Thorndale. Because VMI and IPI propose to serve the same community, the applicants proceed to a point system analysis.

88. Neither applicant claims points as an established local applicant or state-wide network. VMI and IPI each claim two points for diversity of ownership. With respect to technical parameters, VMI's proposed 60 dBu contour would encompass 440 square kilometers with a population of 3,462. IPI's proposed 60 dBu contour would encompass 150 square kilometers with a population of 2,129. VMI qualifies for two points as the best technical proposal because it proposes to serve at least 25% more area and population than the IPI proposal. Accordingly, VMI is credited with a total of four points, and IPI is credited with two points. VMI is, therefore, the tentative selectee in Group 198.

89. **Group 200.** This group consists of four applications proposing service to three different communities in Texas. Call Communications Group, Inc. (CCGI) proposes to serve Beaumont. Vida Ministry Inc. (VMI) proposes to serve Central Gardens. Christian Ministries of the Valley, Inc. (CMV) and CCS Radio, Inc. (CCSR) each proposes to serve Port Arthur. No applicant claims eligibility for a fair distribution preference. Accordingly, the four applicants proceed to a point system analysis.

90. No applicant claims points as an established local applicant or state-wide network. CCGI and VMI each claim two points for diversity of ownership. CMV and CCSR do not claim points under this criterion. With respect to technical parameters, CCGI's proposed 60 dBu contour would encompass 1,157 square kilometers with a population of 218,225; VMI, 539 square kilometers and 114,876 people; CMV, 1,882 square kilometers and 221,770 people; and CCSR, 1,402 square kilometers and 108,218 people. No applicant qualifies for points under the best technical proposal criterion because no applicant proposes to serve at least 10% more area and population than the next best proposal. Accordingly, CMV and CCSR are not credited with any points. CCGI and VMI are each credited with a total of two points and proceed to a tie-breaker analysis.

91. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. VMI certifies that it has no attributable interests in any radio authorization, and CCGI certifies that it has attributable interests in nine radio authorizations. VMI therefore prevails based on this first tie-breaker and is the tentative selectee in Group 200.

92. **Group 201.** This group consists of five applications to serve five different communities in Texas. Radio Inc. (RI) proposes to serve Ballinger. The other applicants are: La Promesa Foundation (LPF) for Brady; Hispanic American Christian Network, Inc. (HACN) for El Dorado; Sun Radio Foundation (SRF) for Mason; and Centro Cristiano de Vida Eterna San Antonio (CCSA) for Rock Springs. LPF and CCSA each claim eligibility for a first NCE service fair distribution preference.<sup>82</sup> RI, HACN, and SRF do not claim eligibility for a first NCE service fair distribution preference. Accordingly, RI, HACN, and SRF are each eliminated. We note that Albert David (David) filed an Informal Objection (Objection) to the CCSA application,<sup>83</sup> asserting that CCSA's population figures in support of its fair distribution claim are unreliable because it failed to consider NCE FM stations KKER(FM), Kerrville, Texas, and KTXI(FM), Ingram, Texas. CCSA, however, amended its application to account for these

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<sup>82</sup> See File Nos. 167328 and 167127, Fair Distribution of Service Section, and associated exhibits. LPF claims that it would provide first NCE service to 6,907 of the 6,907 people encompassed within its 60 dBu contour, and CCSA to 5,470 of the 5,529 people. Thus, each applicant would provide first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

<sup>83</sup> See Pleading No. 184828 (filed February 15, 2022). We generally do not consider objections at this stage, but rather, review the merits of any objection if/when the subject application becomes accepted for filing. Here, we dismiss David's Objection to the CCSA application as moot because CCSA amended its application to correct and update its population data in response to the Objection.

stations and correct and update its population data.<sup>84</sup> Accordingly, we dismiss the David Objection as moot.<sup>85</sup>

93. LPF claims to provide new first NCE service to 6,907 people, and CCSA to 5,470 people. The applications are comparable because neither exceeds the other by at least 5,000 people. Accordingly, we consider combined first and second NCE service population totals. LPF claims to provide combined first and second service to 6,907 people (all first service); CCSA to 5,483 (5,470 first service plus 13 second service). The applications are still comparable, and therefore, LPF and CCSA proceed to a point system analysis.

94. Neither applicant claims points as an established local applicant or state-wide network. LPF and CCSA each claim two points for diversity of ownership. With respect to technical parameters, LPF's proposed 60 dBu contour would encompass 1,468 square kilometers with a population of 6,907. CCSA's proposed 60 dBu contour would encompass 6,518 square kilometers with a population of 5,529. Because neither applicant's proposal would serve at least 10% more area and population than the other, we do not award points for this criterion. Accordingly, LPF and CCSA are each credited with a total of two points and proceed to a tie-breaker analysis.

95. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. LPF certifies that it has attributable interests in 32 radio authorizations, and CCSA certifies that it has attributable interests in ten radio authorizations. CCSA therefore prevails based on this first tie-breaker and is the tentative selectee in Group 201.

96. **Group 206.** This group consists of two applications to serve the same community in Utah. Castle Valley Inc. (CVI) and University of Utah (UU) each propose to serve Moab. Because the applicants proposes to serve the same community, CVI and UU proceed to a point system analysis.

97. CVI and UU each claim three points as an established local applicant, but CVI does not submit documentation to support its claim. Accordingly, we will not award CVI points under this criterion.<sup>86</sup> CVI and UU each claim two points for diversity of ownership with CVI's claim based on a pledge to divest LPMF station KCVD-LP, Castle Valley, Utah and UU's claim based on a pledge to divest FM translator stations K219KR, Moab, Utah, and K215EL, North Moab, Utah. Neither applicant claims points as a state-wide network. With respect to technical parameters, UU's proposed 60 dBu contour would encompass 4,995 square kilometers with a population of 9,850. CVI's proposed 60 dBu contour would include a population of 8,379. CVI does not provide information regarding its proposed area served. To allow us to compare the proposals, and not unfairly disadvantage UU, we will only consider the proposed population served. We therefore award UU one point under the best technical

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<sup>84</sup> See File No. 167127 (amended February 16, 2022); see also CCSA Opposition to Objection, Pleading No. 189092 (filed April 8, 2022). CCSA's amendment reduced its first NCE service population count from 5,529 to 5,470 people.

<sup>85</sup> In his Reply to CCSA's Opposition, David acknowledges that CCSA corrected the population figures and states that he "does not object to the amended figures being used in a determination of a fair distribution preference." See Pleading No. 189432 (filed April 18, 2022). David, however, argues that the initial inaccurate figures "appears to qualify as a willful false statement," and the subsequent correction "does not appear to nullify what was committed in the first place." *Id.* We disagree. Although it is undisputed that CCSA made a mistake in its initial population count, a mistake standing alone is not a misrepresentation. In this case, there is no evidence of any intent to deceive. See, e.g., *Fox River Broadcasting*, Order, 93 FCC 23 127 (1983).

<sup>86</sup> We note that even if we were to award CVI points as an established local applicant, it would not change the outcome of this group.

proposal criterion because it proposes to serve at least 10% more population than the CVI proposal.<sup>87</sup> Accordingly, UU is credited with a total of six points, and CVI is credited with a total of two points. UU is, therefore, the tentative selectee in Group 206.

98. **Group 219.** This group consists of three applications proposing service to two different communities in Washington. Iglesia Case de Milagros (ICM) proposes to serve Leavenworth. Upper Columbia Mission Society of Seventh-Day Adventists (UPMS) and First Baptist Church of Riverview (FBC) each proposes to serve Wenatchee. No applicant claims a fair distribution preference. Accordingly, ICM, UPMS and FBC proceed to a point system analysis.

99. UPMS claims three points as an established local applicant; ICM and FBC do not claim points under this criterion. Each applicant claims two points for diversity of ownership. No applicant claims points as a state-wide network. With respect to technical parameters, ICM's proposed 60 dBu contour would encompass 1,666 square kilometers with a population of 72,249. UPMS's proposed 60 dBu contour would encompass 294 square kilometers with a population of 67,368. FBC's proposed 60 dBu contour would encompass 172 square kilometers with a population of 64,836. No applicant is eligible for points under the best technical proposal criterion because no applicant proposes to serve at least 10% more area and population than the next best proposal. Thus, UPMS is credited with a total of five points, and ICM and FBC are each credited with two points. Accordingly, UPMS is the tentative selectee in Group 219.

100. **Group 220.** This group consists of two applications to serve different communities in Washington. Iglesia Casa de Milagros (ICM) proposes to serve Chelan, and Northwest Communities Education Center (NCEC) proposes to serve Manson. Neither applicant claims eligibility for a fair distribution preference. Accordingly, ICM and NCEC proceed to a point system analysis.

101. Neither applicant claims points as an established local applicant or state-wide network. ICM and NCEC claim two points each for diversity of ownership. With respect to technical parameters, ICM's proposed 60 dBu contour would encompass 817 square kilometers with a population of 10,451. NCEC's proposed 60 dBu contour would encompass 993 square kilometers with a population of 13,307. NCEC qualifies for one point as the best technical proposal because it proposes to serve at least 10% more area and population than the ICM proposal. Accordingly, ICM is credited with two points, and NCEC is credited with a total of three points. NCEC is, therefore, the tentative selectee in Group 220.

102. **Group 223.** This group consists of eight applications to serve different communities in Wisconsin. The Salvation Poem Foundation, Inc. (SPF) proposes to serve Cedar Grove. Call Communications Group, Inc. (Call) proposes to serve Eden. Educational Media Foundation (EMF) proposes to serve Fond Du Lac. State of Wisconsin - Educational Communications Board (State) proposes to serve Plymouth. Vanguard Association of Sunbelt Colleges Corporation (Vanguard) proposes to serve Rosendale. Immanuel Bible Church (Immanuel) proposes to serve Sheboygan. Finally, Waupun Baptist Church (Waupun) and Wrvm, Inc. (WRVM) each proposes to serve Waupun. SPF, Vanguard, and WRVM each claims eligibility for a fair distribution of service preference based on first NCE service population totals.<sup>88</sup> The other applicants do not. Accordingly, Call, EMF, State, Immanuel, and Waupun are each eliminated. SPF would provide a first NCE service to 2,929 people; Vanguard to 18,092 people; and WRVM to 19,906 people. Because Vanguard and WRVM would each provide a first

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<sup>87</sup> We note that even if, due to CVI's incomplete application, we did not compare the proposals and award points under the best technical proposal criterion, it would not change the outcome of the group. UU would remain the tentative selectee for Group 206.

<sup>88</sup> See File Nos. 167767, 167734, and 166135, Fair Distribution of Service Section, and associated exhibits. SPF claims that it would provide a first NCE service to 2,929 of the 27,330 people within its proposed 60 dBu contour; Vanguard to 18,092 of the 163,678 people; and WRVM to 19,906 of the 170,548 people within its proposed 60 dBu contour. Thus, each applicant would provide first NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

NCE service to at least 5,000 more people than SPF, SPF is eliminated. The Vanguard and WRVM first service proposals are comparable because neither exceeds the other by at least 5,000 people. Accordingly, we consider combined first and second NCE service population totals. Vanguard would provide a first or second NCE service to 69,122 people (18,092 first service plus 51,030 second service); WRVM to 72,677 people (19,906 first service plus 52,771 second service). Because neither proposal exceeds the other by at least 5,000 people, Vanguard and WRVM proceed to the point system analysis.

103. Neither applicant claims points as an established local applicant or state-wide network. Vanguard and WRVM each claim two points for diversity of ownership. With respect to technical parameters, Vanguard's proposed 60 dBu contour would encompass 3,324 square kilometers with a population of 163,678 people. WRVM's proposed 60 dBu contour would encompass 3,963 square kilometers with a population of 170,548 people. Because neither applicant's proposal would serve at least 10% more area and population than the other, we do not award points for this criterion. Accordingly, Vanguard and WRVM are each credited with two points and proceed to the tie-breaker analysis.

104. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. Vanguard certifies that it has no attributable interests, and WRVM certifies that it has attributable interests in 30 radio authorizations. Vanguard is, therefore, the tentative selectee for Group 223.<sup>89</sup>

#### IV. NEXT STEPS

105. **Acceptability Studies and Filing of Petitions.** Once the Bureau or Commission identifies a tentative selectee pursuant to the fair distribution analysis or point system, the next step is to consider whether the selectee's application has defects.<sup>90</sup> The Commission has studied the application of each tentative selectee identified herein for application defects. Each tentative selectee identified in this Order and its Appendix appears to be fully qualified to become the licensee of the new NCE FM station it has proposed. We tentatively conclude that the grant of these applications would serve the public interest, convenience and necessity. Accordingly, upon the release of this Order, the tentative selectees are accepted for filing. This triggers a 30-day period for the filing of petitions to deny.<sup>91</sup>

106. Any argument that the tentatively selected application should not be granted should be raised in such a petition, even if the objection relates only indirectly to the tentative selectee's qualifications. For example, an applicant that concedes that the tentative selectee is qualified for the points received but believes its own proposal should have received a greater number of points than the tentative selectee's would make its argument in a petition to deny. Likewise a disappointed applicant that believes the tentative selectee should have received fewer points would make such an argument in a petition to deny. Parties should not raise such matters as petitions for reconsideration of the instant Order

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<sup>89</sup> On December 15, 2021, Call filed an Informal Objection to Vanguard's application, and on January 11, 2022, WRVM filed a Petition to Deny the Vanguard application. See Pleading Nos. 177311 and 179670. We generally do not consider objections at this stage, but rather, review the merits of any objection if/when the subject application becomes accepted for filing. We will review the merits of Call and WRVM's pleadings after Vanguard's application is accepted for filing.

<sup>90</sup> If a tentative selectee's application is found unacceptable for filing, it is dismissed. The applicant then has one opportunity to submit a curative amendment and a petition for reconsideration requesting reinstatement *nunc pro tunc* within 30 days, provided that the amendment is minor and does not alter the fair distribution analysis. See 47 CFR § 73.3522(b)(1). A tentative selectee that is unable to cure the defect is disqualified. 47 CFR § 73.7004(d).

<sup>91</sup> 47 CFR § 73.7004.

because the point hearings herein take no final action on any application, and petitions for reconsideration do not lie against such interlocutory decisions.<sup>92</sup>

107. **Forthcoming Staff Action.** We direct the Bureau staff, once the petition to deny period has run, to conduct a final study of each tentatively selected application in accordance with its routine processing procedures. The staff studies should consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected application would serve the public interest. If the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact, and that a grant of the application would be consistent with the public interest, convenience, and necessity, it shall make the grant on the basis of the fair distribution analyses and point system determinations made herein, dismiss all competing applications, deny any petition to deny, and issue a concise statement of the reasons for denying such petition and disposing of all substantial issues raised by the petition.<sup>93</sup>

108. With the exception of issues that are novel or require Commission consideration as specified below, the staff shall act on the tentatively selected applications pursuant to delegated authority. We delegate to the staff authority to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies.<sup>94</sup> The staff need not refer such matters to the full Commission unless the staff determines that the issues are new or novel, or raise a substantial and material question regarding the award of points. Generally, the staff should refer issues to the Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the particular NCE group, or where a new or novel question or substantial and material question of fact otherwise exists.<sup>95</sup> In such cases, the staff would refer the mutually exclusive group to the Commission for resolution of the novel issue and/or the determination of a successor tentative selectee.

109. **Severance for Purposes of Petitions, Appeals and Finality.** We are including a provision in the ordering clauses herein that each decision involving a mutually exclusive group is to be considered distinct and separate for purposes of petitions to deny, petitions for reconsideration, review on the Commission's own motion, and appeals. The timing of any action disposing of a petition or appeal affecting a particular group will not delay the finality of our decision for purposes of administrative or judicial review under section 1.103(b) of our rules with respect to any other group.<sup>96</sup>

## V. ORDERING CLAUSES

110. Accordingly, IT IS ORDERED, that each decision involving a mutually exclusive group in this *Memorandum Opinion and Order* shall be deemed a distinct and separate decision for purposes of petitions to deny, subsequent petitions for reconsideration and reconsideration by the Commission or

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<sup>92</sup> See *NCE Order on Reconsideration*, 35 FCC Rcd 10180, para. 13 (“A tentative selection is not final until the entire administrative process of resolving petitions to deny, and any subsequent pleadings, is complete”); 47 CFR § 1.106 (a)(1). See also *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007).

<sup>93</sup> 47 U.S.C. § 309(d).

<sup>94</sup> See, e.g., *Central Florida Educational Foundation, Inc.*, Letter, 23 FCC Rcd 1695 (MB 2008) (staff dismissal of defective application tentatively selected in a point hearing, and staff award of permit on a non-comparative basis to only remaining acceptable applicant).

<sup>95</sup> See generally *NCE Omnibus*, 22 FCC Rcd at 6162, n.230 (2007) (“If the Bureau finds that there are no new or novel questions, or material questions that would cause the tentative selectee to have fewer than or the same number of points as another applicant in the group, the staff would act on the petition(s) to deny, and by public notice grant the application of the tentative selectee and dismiss the competing mutually exclusive application. This function is consistent with the Bureau’s delegated authority. See 47 C.F.R. §§ 0.61(h), 0.283.”).

<sup>96</sup> See 47 CFR § 1.103(b).

Bureau on its own motion, applications for review and review on the Commission's own motion, and appeals.<sup>97</sup> If any decision in this *Memorandum Opinion and Order* is declared invalid for any reason, the remaining portions shall be severable from the invalid part and SHALL REMAIN in full force and effect to the fullest extent permitted by law.

111. **Group 14.** Accordingly, IT IS ORDERED, That the Application filed by Gentry Communications Network, Inc. (File No. 167736) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Sulphur Springs, Arkansas, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Centro Familiar de Restauracion y Vida (File No. 167086) and Citizenship Tulsa, Inc. (File No. 167841), and TO GRANT the application of Gentry Communications Network, Inc. (File No. 167736) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations, and PROVIDED THAT, Gentry Communications Network, Inc. must surrender or otherwise divest itself of its license for KOZR-LP, Gentry, Arkansas, prior to commencement of program tests of the full service NCE FM station.

112. **Group 16.** Accordingly, IT IS ORDERED, that the Application filed by Remanente Broadcasting Network (File No. 167141) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Dudleyville, Arizona, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Arizona Board of Regents for Benefit of University of Arizona (File No. 167743), and TO GRANT the application of Remanente Broadcasting Network (File No. 167141) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

113. **Group 32.** Accordingly, IT IS ORDERED, that the Application filed by Hatch Workshop (File No. 167448) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Terminous, California, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications

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<sup>97</sup> See 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 CFR §§ 1.106-08, 1.113, 1.115, 1.117 73.7004. In cases that involve separate mutually exclusive groups, but present common issues, the petitions or appeals may be filed jointly or may be consolidated at the discretion of the Commission or the court. See, e.g., FED. R. APP. P. 3(b).

of Delta 2000 (File No. 167856) and Iglesia del Valle (File No. 165739), and TO GRANT the application of Hatch Workshop (File No. 167448) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

114. **Group 34.** Accordingly, IT IS ORDERED, that the Application filed by Remanente Broadcasting Network (File No. 167635) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Boron, California, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Cedar Broadcasting, Inc. (File No. 166110) and Nevada Public Radio (File No. 167275), and TO GRANT the application of Remanente Broadcasting Network (File No. 167635) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

115. **Group 49B.** Accordingly, IT IS ORDERED, that the Application filed by Calvary Baptist Church of Spotsylvania (File No. 167280) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Spotsylvania, Virginia, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Positive Alternative Radio, Inc. (File No. 167369) and Redeemer Broadcasting, Inc. (File No. 166860), and TO GRANT the application of Calvary Baptist Church of Spotsylvania (File No. 167280) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

116. **Group 50.** Accordingly, IT IS ORDERED, that the Application filed by Inverse Focus Ministry, Inc. (File No. 167485) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Starke, Florida, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Putnam Radio Ministries, Inc. (File No. 166157), and TO GRANT the application of Inverse Focus Ministry, Inc. (File No. 167485) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

117. **Group 51.** Accordingly, IT IS ORDERED, that the Application filed by Teleamerica Communications West Palm Beach Corp. (File No. 167478) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Key West, Florida, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to

deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Newland Broadcasters Incorporated (File No. 166303), and TO GRANT the application of Teleamerica Communications West Palm Beach Corp. (File No. 167478) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

118. **Group 54.** Accordingly, IT IS ORDERED, that the Application filed by New Humanity Association Inc. (File No. 166731) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Weeki Wachee, Florida, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the applications serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Ethree Group, Inc. (File No. 167131), Call Communications Group, Inc. (File No. 167753), and Central Baptist Church Of Ocala Inc. (File No. 166338), and TO GRANT the application of New Media Humanity Association Inc. (File No. 166731) CONDITIONED UPON the selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and PROVIDED THAT, New Media Humanity Association Inc. must surrender or otherwise divest itself of its license for WYPW-LP, Brandon, Florida prior to commencement of program tests of the full service NCE FM station.

119. **Group 55.** Accordingly, IT IS ORDERED, that the Application filed by Key West Radio (File No. 167215) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Key West, Florida, and its applications IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Ethree Group, Inc. (File No. 166738), Specialized Educational Broadcasting (File No. 166812), and Frequency Zero, Inc. (File No. 166105), and TO GRANT the application of Key West Radio (File No. 167215) CONDITIONED UPON the selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

120. **Group 63.** Accordingly, IT IS ORDERED, that the Application filed by Sanctuary Church (File No. 165972) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Darien, Georgia and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Inverse Focus Ministry, Inc. (File No. 167489) and Frequency Zero, Inc. (File No. 166102), and TO

GRANT the application of Sanctuary Church (File No. 165972) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and PROVIDED THAT, Sanctuary Church must surrender or otherwise divest itself of its license for WWZR-LP, Brunswick, Georgia, prior to commencement of program tests of the full service NCE FM station.

121. **Group 79.** Accordingly, IT IS ORDERED, that the Applications filed by Friendship Baptist Church (File No. 167757), Calvary Chapel Iowa (File No. 166692), and Extend The Dream Foundation (File No. 167226) are TENTATIVELY SELECTED to be awarded construction permits on a TIME-SHARING BASIS for a new NCE FM stations in Cedar Rapids, Iowa, and Swisher, Iowa, and their applications ARE ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectees' applications, and it is determined that grant of the applications serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Bible Broadcasting Network, Inc. (File No. 167295), Community Public Radio, Inc. (File No. 166734), Rising Tide Broadcasting, Inc. (File No. 167391), and Vida Ministry Inc. (File No. 167106). IT IS FURTHER ORDERED, that the tentative selectee applicants electronically submit, within 90 days of the release of this Order, a time-sharing agreement among themselves, in accordance with section 73.7003(c)(4) of the Commission's rules, 47 CFR § 73.7003(c)(4), and pursuant to an acceptable agreement, we direct the Media Bureau, by public notice, TO GRANT the applications of Friendship Baptist Church (File No. 167757), Calvary Chapel Iowa (File No. 166692), and Extend the Dream Foundation (File No. 167226) CONDITIONED UPON each selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and PROVIDED THAT, Calvary Chapel Iowa and Extend the Dream Foundation must each surrender or otherwise divest itself of the licenses for KEWR-LP, Cedar Rapids, Iowa, and KICI-LP, Iowa City, Iowa, respectively, prior to commencement of program tests of the full service NCE FM station. If the tentative selectees are unable to reach a voluntary time-sharing agreement within the 90-day period, the tentative selectees will proceed to mandatory time-sharing, in accordance with section 73.7003(c)(5) of the Commission's rules, 47 CFR § 73.7003(c)(5).

122. **Group 83.** Accordingly, IT IS ORDERED, that the Application filed by Salt & Light Radio, Inc. (File No. 167208) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Mountain Home, Idaho, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of First Baptist Church Of Riverview (File No. 167589), and TO GRANT the application of Salt & Light Radio, Inc. (File No. 167208) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions. IT IS FURTHER ORDERED, that the Petition to Deny, filed by Salt & Light Radio, Inc., is DISMISSED AS MOOT.

123. **Group 92.** Accordingly, IT IS ORDERED, that the Application filed by Appalachian Educational Communication Corporation (File No. 167454) is TENTATIVELY SELECTED to be

awarded a construction permit for a new NCE FM station in Paris, Illinois, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Covenant Network (File No. 167843), 2820 Communications Inc (File No. 166175), and Olivet Nazarene University (File No. 166138), and TO GRANT the application of Appalachian Educational Communication Corporation (File No. 167454) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

124. **Group 106.** Accordingly, IT IS ORDERED, that the Application filed by Radio Sharon Foundation (File No. 167597) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Narragansett Pier, Rhode Island, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Horizon Christian Fellowship (File No. 167259), and TO GRANT the application of Radio Sharon Foundation (File No. 167597) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

125. **Group 124.** Accordingly, IT IS ORDERED, that the Application filed by One Day Church Project, Inc. (File No. 167673) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Mankato, Minnesota, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Minnesota State University, Mankato (File No. 167682), Southern Minnesota Catholic Radio (File Nos. 167620 and 167625), Fairmont Area Catholic Radio (File No. 167070), and Minn-Iowa Christian Broadcasting (File No. 165778), and TO GRANT the application of One Day Church Project, Inc. (File No. 167673) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and PROVIDED THAT, One Day Church Project, Inc. must surrender or otherwise divest itself of its license for LPFM station KCJL-LP, Dodge Center, Minnesota prior to commencement of program tests of the full service NCE FM station.

126. **Group 137B.** Accordingly, IT IS ORDERED, that the Application filed by Church Planters of America (File No. 167094) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in McLeansville, North Carolina, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or

other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Hitquake Community Radio Network (File No. 166837) and Hispanic American Christian Network, Inc. (File No. 167572), and TO GRANT the application of Church Planters of America (File No. 167094) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

127. **Group 137C.** Accordingly, IT IS ORDERED, that the Application filed by Hitquake Community Radio Network (File No. 166834) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Danville, Virginia, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Positive Alternative Radio, Inc. (File No. 167367) and Church Planters of America (File No. 167093), and TO GRANT the application of Hitquake Community Radio Network (File No. 166834) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

128. **Group 144.** Accordingly, IT IS ORDERED, that the Application filed by Rejuvenation Outreach Center Inc. (File No. 167401) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Lakewood, New Jersey, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Radio Vision Cristiana Management Corporation (File No. 166943), Community Public Radio, Inc. (File No. 166754), and Cantico Nuevo Ministry, Inc. (File No. 165806), and TO GRANT the application of Rejuvenation Outreach Center Inc. (File No. 167401) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

129. **Group 145.** Accordingly, IT IS ORDERED, that the Application filed by Calvary Chapel Morris Hills (File No. 167028) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Bernardsville, New Jersey, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Casa de Destino (File No. 167880), Redeemer Broadcasting, Inc. (File No. 166759), Transmission Communications Network (File No. 166781), and Cantico Nuevo Ministry, Inc. (File No. 165805), and TO GRANT the application of Calvary Chapel Morris Hills (File No. 167028) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47

CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations, and PROVIDED THAT, Calvary Chapel Morris Hills must surrender or otherwise divest itself of its license for LPFM station WCFT-LP, Dover, New Jersey prior to commencement of program tests of the full service NCE FM station.

130. **Group 153.** Accordingly, IT IS ORDERED, that the Application filed by City of Hobbs, NM (File No. 167469) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Hobbs, New Mexico, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Off the Cuff Educational Broadcasting (File No. 167821) and The Association for Community Education, Inc. (File No. 167312), and TO GRANT the application of City of Hobbs, NM (File No. 167469) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and PROVIDED THAT, City of Hobbs, NM must surrender or otherwise divest itself of its license for LPFM station KHBX-LP, Hobbs, New Mexico, prior to commencement of program tests of the full service NCE FM station.

131. **Group 156.** Accordingly, IT IS ORDERED, that the Application filed by The Rock Christian Outreach of Las Vegas (File No. 166077) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Las Vegas, New Mexico, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Northern New Mexico Radio Foundation (File No. 167494) and The Association for Community Education, Inc. (File No. 167010), and TO GRANT the application of The Rock Christian Outreach of Las Vegas (File No. 166077) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and PROVIDED THAT, The Rock Christian Outreach of Las Vegas must surrender or otherwise divest itself of its license for KLYN-LP, Las Vegas, New Mexico, prior to commencement of program tests of the full service NCE FM station.

132. **Group 174.** Accordingly, IT IS ORDERED, that the Application filed by Woodward Catholic Radio, Inc. (File No. 167721) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Woodward, Oklahoma, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Great Plains Christian Radio, Inc. (File No. 165757), and TO GRANT the

application of Woodward Catholic Radio, Inc. (File No. 167721) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and PROVIDED THAT, Woodward Catholic Radio, Inc. must surrender or otherwise divest itself of its license for KFPP-LP, Woodward, Oklahoma, prior to commencement of program tests of the full service NCE FM station.

133. **Group 177.** Accordingly, IT IS ORDERED, that the Application filed by Western Oklahoma Catholic Faith Foundation (File No. 167817) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Elk City, Oklahoma, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Outside the Doors Ministry Foundation (File No. 167013) and Top O' Texas Educational Broadcasting Foundation, Inc. (File No. 166005), and TO GRANT the application of Western Oklahoma Catholic Faith Foundation (File No. 167817) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and PROVIDED THAT, Western Oklahoma Catholic Faith Foundation must surrender or otherwise divest itself of its license for KPFS-LP, Elk City, Oklahoma, prior to commencement of program tests of the full service NCE FM station.

134. **Group 181.** Accordingly, IT IS ORDERED, that the Application filed by Coos Commons Protection Council (File No. 167441) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Bandon, Oregon, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Southern Oregon University (File No. 167389), and TO GRANT the application of Coos Commons Protection Council (File No. 167441) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

135. **Group 184.** Accordingly, IT IS ORDERED, that the Application filed by Baker Art Guild (File No. 166621) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Baker City, Oregon, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of First Baptist Church of Riverview (File No. 167571) and Idaho Conference of Seventh-Day Adventists, Inc. (File No. 167277), and TO GRANT the application of Baker Art Guild (File No. 166621) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use

of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

136. **Group 185.** Accordingly, IT IS ORDERED, that the Application filed by Modoc Broadcasting Corporation (File No. 167163) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Altamont, Oregon, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Ondas de Vida, Inc. (File No. 167246), and TO GRANT the application of Modoc Broadcasting Corporation (File No. 167163) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

137. **Group 192.** Accordingly, IT IS ORDERED, that the Application filed by Hallettsville Right to Life, Inc. (File No. 167303) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Hallettsville, Texas, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Vida Ministry Inc. (File No. 167108), and TO GRANT the application of Hallettsville Right to Life, Inc. (File No. 167303) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

138. **Group 198.** Accordingly, IT IS ORDERED, that the Application filed by Vida Ministry Inc. (File No. 167109) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Thorndale, Texas, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Ixoye Productions, Inc. (File No. 165569), and TO GRANT the application of Vida Ministry Inc. (File No. 167109) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

139. **Group 200.** Accordingly, IT IS ORDERED, that the Application filed by Vida Ministry Inc. (File No. 167104) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Central Gardens, Texas, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public

interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Call Communications Group, Inc. (File No. 167747), Christian Ministries of the Valley, Inc. (File No. 166728), and CCS Radio, Inc. (File No. 166698), and TO GRANT the application of Vida Ministry Inc. (File No. 167104) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

140. **Group 201.** Accordingly, IT IS ORDERED, that the Application filed by Centro Cristiano de Vida Eterna San Antonio (File No. 167127) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Rock Springs, Texas, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Radio Inc. (File No. 166362), La Promesa Foundation (File No. 167328), Hispanic American Christian Network, Inc. (File No. 167616), and Sun Radio Foundation (File No. 167690), and TO GRANT the application of Centro Cristiano de Vida Eterna San Antonio (File No. 167127) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations. IT IS FURTHER ORDERED, that the Informal Objection, filed by Albert David, is DISMISSED AS MOOT.

141. **Group 206.** Accordingly, IT IS ORDERED, that the Application filed by University of Utah (File No. 166310) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Moab, Utah, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Castle Valley Inc. (File No. 167701), and TO GRANT the application of University of Utah (File No. 166310) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and PROVIDED THAT, University of Utah must surrender or otherwise divest itself of its licenses for FM translator stations K219KR, Moab, Utah, and K215EL, North Moab, Utah, prior to commencement of program tests of the full service NCE FM station.

142. **Group 219.** Accordingly, IT IS ORDERED, that the Application filed by Upper Columbia Mission Society of Seventh-Day Adventists (File No. 167882) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Wenatchee, Washington, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Iglesia Casa de Milagros (File No. 167612)

and First Baptist Church of Riverview (File No. 167593) and TO GRANT the application of Upper Columbia Mission Society of Seventh-Day Adventists (File No. 167882) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

143. **Group 220.** Accordingly, IT IS ORDERED, that the Application filed by Northwest Communities Education Center (File No. 167564) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Manson, Washington, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Iglesia Casa de Milagros (File No. 167599), and TO GRANT the application of Northwest Communities Education Center (File No. 167564) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

144. **Group 223.** Accordingly, IT IS ORDERED, that the Application filed by Vanguard Association of Sunbelt Colleges Corporation (File No. 167734) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Rosendale, Wisconsin, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of Salvation Poem Foundation, Inc. (File No. 167767), Call Communications Group, Inc. (File No. 167822), Educational Media Foundation (File No. 166014), State of Wisconsin – Educational Communications Board (File No. 166857), Immanuel Bible Church (File No. 167658), Waupun Baptist Church (File No. 167816), and Wrvn, Inc. (File No. 166135), and TO GRANT the application of Vanguard Association of Sunbelt Colleges Corporation (File No. 167734) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

Federal Communications Commission

FCC

\*If applicant's claim differs from points awarded, claimed points appear first followed by (awarded points) e.g. 2,(0) means that the applicant claimed 2 but received 0 points.

Noncommercial Educational Groups

MX GROUP	FILE NO.	CITY	ST	APPLICANT NAME	307(B) STUDY				POINT SYSTEM ANALYSIS				TIE BREAKER					
					307(b) Eligibility	1st Service	1st + 2nd Service	Established Local Applicant	Diversity Ownership	Diversity Area Sq Km	State Network	Area Population Served	Best Technical Proposal	Total Points	1st Tie Breaker (Auths)	2nd Tie Breaker (Apps)	3rd Tie Breaker (Prior NCE A)	

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Promoting Telehealth in Rural America ) WC Docket No. 17-310  
 )

**ORDER ON RECONSIDERATION, SECOND REPORT AND ORDER,  
ORDER, AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

**Adopted: January 26, 2023**

**Released: January 27, 2023**

**Comment Date: (30 days after publication in the Federal Register)**

**Reply Comment Date: (60 days after publication in the Federal Register)**

By the Commission: Chairwoman Rosenworcel and Commissioners Carr and Starks issuing separate statements.

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## I. INTRODUCTION

1. In this Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking, we continue the Commission’s efforts to improve the Rural Health Care (RHC) Program. The RHC Program supports rural health care providers with the costs of broadband and other communications services so that they can serve patients in rural areas that may have limited resources, fewer doctors, and higher rates for broadband and communications services than urban areas. Telehealth and telemedicine services, which expanded considerably during the COVID-19 pandemic, have also become essential tools for the delivery of health care to millions of rural Americans. These services bridge the vast geographic distances that separate health care facilities, enabling patients to receive high-quality medical care without sometimes lengthy or burdensome travel. The RHC Program promotes telehealth by providing financial support to eligible health care providers for broadband and telecommunications services.

2. In today’s Order on Reconsideration, we address petitions for reconsideration of the 2019 *Promoting Telehealth Report and Order*.<sup>1</sup> We grant petitions challenging the database of urban and rural rates (Rates Database) for the Telecommunications Program (Telecom Program) established in the *Promoting Telehealth Report and Order*, return the Telecom Program to the rate determination rules in place before the adoption of the Rates Database, and deny petitions for reconsideration of other issues from the *Promoting Telehealth Report and Order*. In the Report and Order, we adopt proposals from the February 2022 *Further Notice* to amend RHC Program invoicing processes and the internal cap application and prioritization rules to promote efficiency, reduce delays in funding commitments, and prioritize support for the current funding year.<sup>2</sup> In the Order, we dismiss as moot Applications for Review of the Commission’s guidance to the Universal Service Administrative Company (the Administrator) regarding the Rates Database. Lastly, in the Second Further Notice of Proposed Rulemaking, we propose revisions to the rate determination rules, seek comment on reinstating the cap on support for satellite services, propose to make it easier for health care providers to receive RHC Program funding as soon as they become eligible, propose to align the deadline to request a Service Provider Identification Number (SPIN) change with the invoice filing deadline, and seek comment on revisions to data collected in the Telecom Program.

## II. BACKGROUND

3. The RHC Program consists of two component programs: (1) the Telecom Program; and (2) the Healthcare Connect Fund (HCF) Program. The Telecom Program was established in 1997 and

<sup>1</sup> *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335 (2019) (*Promoting Telehealth Report and Order*).

<sup>2</sup> *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Further Notice of Proposed Rulemaking, FCC 22-15 (Feb. 18, 2022) (*Further Notice*).

subsidizes the difference between the rates in the health care provider's rural area and rates for comparable services available in urban areas within that state.<sup>3</sup> The HCF Program was created in 2012 to promote the use of broadband services and facilitate the formation of health care provider consortia that include both rural and urban health care providers<sup>4</sup> by providing a flat 65% discount on an array of advanced telecommunications and information services.<sup>5</sup>

4. In August 2019, the Commission adopted the *Promoting Telehealth Report and Order*, which included several reforms to RHC Program rules and procedures with the goals of ensuring transparency and consistency in the Program and simplifying the calculation of urban and rural rates used to determine the amount of support available to health care providers under the Telecom Program. Specifically, the Commission directed the Administrator to create the Rates Database and determined that the urban and rural rates would be the median of all rates for functionally similar services<sup>6</sup> in the relevant state within the health care provider's applicable rural area.<sup>7</sup> Other significant reforms included new rules for prioritizing RHC Program support for rural areas in the event Program demand exceeds available funding,<sup>8</sup> reforms to ensure competitive bidding is fair and open,<sup>9</sup> and adopting Program-wide rules and procedures to simplify application processes and provide clarity regarding procedures.<sup>10</sup> Alaska Communications; the North Carolina Telehealth Network Association and Southern Ohio Health Care Network (collectively, NCTN/SOHCN); the Schools, Health and Libraries Broadband Coalition (SHLB); the State of Alaska Office of the Governor; and USTelecom – The Broadband Association (USTelecom) filed petitions for reconsideration seeking reconsideration of various aspects of the *Promoting Telehealth Report and Order*.<sup>11</sup> GCI Communication Corp. (GCI) and Alaska Communications subsequently filed

<sup>3</sup> See 47 U.S.C. § 254(h)(1)(A); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9093-161, paras. 608-749 (1997) (*Universal Service First Report and Order*).

<sup>4</sup> See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16680, paras. 1-2 (2012) (*Healthcare Connect Fund Order*).

<sup>5</sup> See 47 U.S.C. § 254(h)(2)(A); 47 CFR § 54.611; *Healthcare Connect Fund Order*, 27 FCC Rcd at 16680-81, paras. 1-3.

<sup>6</sup> The Commission instructed the Administrator to determine whether services are functionally similar based on a “technology-agnostic inquiry” from the perspective of the end user experience and specifically noted that rates used to determine the median rate should include rates for private carriage and information services. *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7345, para. 18. Section 54.605 of the Commission's rules directs applicants to use the lower of either the rural rate in the database or the rural rate included in a service agreement between the health care provider and the service provider. 47 CFR § 54.605(a).

<sup>7</sup> See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7372-73, para. 78; 47 CFR §§ 54.604(a), 54.605(a). Under the Commission's rules, the rurality tiers are defined as Less Rural, Rural, Extremely Rural, and Frontier. Less Rural areas are those that contain an urban area with a population of 25,000 or greater but are within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000. Rural areas are those that are within a Core Based Statistical Area that does not have an Urban Area with a population of 25,000 or greater. Extremely Rural areas are those that are entirely outside of a Core Based Statistical Area. Frontier areas are located in Alaska only, in areas outside of a Core Based Statistical Area that are inaccessible by road as determined by the Alaska Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs. See 47 CFR § 54.605(a)(1)(i)-(iv).

<sup>8</sup> See 47 CFR § 54.621(b); *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7390-7403, paras. 116-43.

<sup>9</sup> See 47 CFR §§ 54.622-54.623; *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7406-15, paras. 153-71.

<sup>10</sup> See 47 CFR §§ 54.624-627; *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7429-33, paras. 203-12.

<sup>11</sup> See Alaska Communications Petition for Reconsideration, WC Docket No. 17-310 (filed Nov. 12, 2019) (Alaska Communications Petition); North Carolina Telehealth Network Association and Southern Ohio Health Care Network Petition for Reconsideration and Clarification, WC Docket No. 17-310 (filed Nov. 12, 2019) (NCTNA/SOHCN Petition); Schools, Health and Libraries Broadband Coalition Petition for Reconsideration and Clarification, WC Docket No. 17-310 (filed Nov. 12, 2019) (SHLB Petition); State of Alaska, Office of the

(continued....)

Applications for Review<sup>12</sup> of a guidance letter the Wireline Competition Bureau (Bureau) sent to the Administrator regarding implementation of the Rates Database.<sup>13</sup>

5. Due to significant anomalies in the initial median urban and rural rate calculations in the Rates Database, the Bureau issued a series of waivers of the rules requiring use of the Rates Database through funding year 2023, initially for Alaska and subsequently for the entire United States.<sup>14</sup> In lieu of the Rates Database, Program participants determined urban and rural rates using the rules that were in effect before the adoption of the *Promoting Telehealth Report and Order*.<sup>15</sup> Participants also had the option to use a rate that had previously been approved under those rules.<sup>16</sup>

6. In the *Further Notice*, we provided an overview of concerns about the Rates Database and sought comment on several issues related to determining support in the Telecom Program, including defining rurality, categorizing service technologies, various approaches to rate determination, and the potential transition period.<sup>17</sup> We also sought comment on proposals to reform the RHC Program's internal cap on multi-year commitments and upfront payments, harmonize invoicing procedures, and sought general comment on additional steps to improve application processing, funding decisions, and appeals.<sup>18</sup>

### III. ORDER ON RECONSIDERATION

7. In this Order on Reconsideration, we restore the mechanisms for calculating rural and urban rates that existed before adoption of the *Promoting Telehealth Report and Order*. We uphold the *Promoting Telehealth Report and Order*'s rule changes regarding what services are similar to one another. We maintain the rurality tiers adopted in the *Promoting Telehealth Report and Order*, which, due to the elimination of the Rates Database, now apply only to the prioritization of funding requests. We also keep the internal cap and funding prioritization systems and invoice certifications requirements from the *Promoting Telehealth Report and Order*.

(Continued from previous page) \_\_\_\_\_  
Governor Petition for Reconsideration, WC Docket No. 17-310 (filed Nov. 12, 2019) (State of Alaska Petition); USTelecom – The Broadband Association Petition for Reconsideration and Clarification, WC Docket No. 17-310 (filed Nov. 12, 2019) (USTelecom Petition). A Public Notice seeking comment on the Petitions for Reconsideration was released on December 5, 2019. Petitions for Reconsideration for Action in Proceeding, WC Docket No. 17-310, Public Notice, Report No. 3136 (rel. Dec. 5, 2019); *see also* Federal Communications Commission, Petitions for Reconsideration of Action in Proceeding, 84 FR 69697 (Dec. 19, 2019).

<sup>12</sup> *See* Application for Review of GCI Communication Corp., WC Docket No. 17-310 (filed July 30, 2020) (GCI Application for Review); Application for Review of Alaska Communications, WC Docket No. 17-310 (filed July 30, 2020) (Alaska Communications Application for Review).

<sup>13</sup> Letter from Kris Anne Monteith, Chief, Wireline Competition Bureau, to Radha Seka, Chief Executive Officer, Universal Service Administrative Company, WC Docket No. 17-310 (June 30, 2020) (*Rates Database Implementation Letter*).

<sup>14</sup> *See Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order, DA 21-83 (WCB 2021) (*Alaska Rates Database Waiver Order*); *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order, DA 21-394 (WCB 2021) (*Nationwide Rates Database Waiver Order*); *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order, DA 22-401 (WCB Apr. 12, 2022) (*Alaska Rates Database Waiver Extension Order*); *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order, DA 22-580 (WCB May 25, 2022) (*Nationwide Rates Database Extension Order*).

<sup>15</sup> *See Nationwide Rates Database Waiver Order*.

<sup>16</sup> *See id.*

<sup>17</sup> *Further Notice* at 8-23, paras. 16-63.

<sup>18</sup> *Id.* at 23-29, paras. 64-78.

**A. Rates Determination**

8. As an initial matter, we grant in part petitions seeking reconsideration of the rules the Commission adopted in the *Promoting Telehealth Report and Order* to implement the Rates Database and restore the three methods for calculating rural rates in the Telecom Program. We deny petitions for reconsideration seeking review of clarifications and rules adopted in the *Promoting Telehealth Report and Order* regarding similar services and site and service substitution rules and dismiss as moot all remaining petitions related to the rules governing the Rates Database.

**1. Urban and Rural Rates Determination Mechanism**

9. We grant in part petitions seeking reconsideration of the adoption of the Rates Database in the *Promoting Telehealth Report and Order*. We amend the current sections 54.504 and 54.505 of the Commission's rules to eliminate the use of the Rates Database to determine urban and rural rates and rescind the Commission's direction to the Administrator in the *Promoting Telehealth Report and Order* to create the Rates Database.<sup>19</sup> Based on the record before us, we find that reinstating the Commission's previous rules for calculating urban and rural rates, effective for RHC Program funding year 2024, is the best option for ensuring sufficient, reasonable rural and urban rates.<sup>20</sup>

10. Section 254(h)(1)(A) of the Communications Act requires that Telecom Program support must be based on the difference between the urban rate, which must be "reasonably comparable to the rates charged for similar services in urban areas in that State," and "rates for similar services provided to other customers in comparable rural areas," i.e., the rural rate. Because the Rates Database was deficient in its ability to set adequate rates, we find that restoration of the previous rural rate determination rules, which health care providers have continued to use to determine rural rates in recent funding years under the applicable Rates Database waivers,<sup>21</sup> is the best available option pending further examination in the Second Further Notice, to ensure that healthcare providers have adequate, predictable support.<sup>22</sup>

11. *Rural rates.* We first find that the rural rates generated by the Rates Database could result in inadequate or inconsistent Telecom Program support for rural health care providers that undermines the goals of the Telecom Program. We agree with SHLB and the State of Alaska's general arguments that the Rates Database would not accurately reflect the costs of delivering telecommunications services and would not provide sufficient funding for most rural health care providers because the Rates Database's geographic rurality tiers were too broad and did not accurately represent the cost of serving dissimilar communities.<sup>23</sup> The Commission created the rurality tiers to prevent median rates for more rural areas of a state from being unfairly reduced due to the inclusion of rates for similar services in less rural areas.<sup>24</sup> This approach to rate determination was based on "the reasonable assumption that the cost to provide telecommunications services increases as the density of an

<sup>19</sup> See 47 CFR §§ 54.504, 50.505; *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7372-73, paras. 76-78.

<sup>20</sup> Until 2019, these rules had been codified in section 54.607. Because that section number has since been re-assigned, the new rules for determining rural rates will replace the current section 54.605.

<sup>21</sup> See *Alaska Rates Database Waiver Order*; *Nationwide Rates Database Waiver Order*; *Alaska Rates Database Waiver Extension*; *Nationwide Rates Database Extension Order*.

<sup>22</sup> The Bureau permitted the use of previously-approved rural rates in the waivers of the Rates Database. *Nationwide Rates Database Waiver Order*, at 7-8, para. 17. Because the rules we are restoring today did not allow for the use of previously-approved rural rates, this option will not be available to RHC Program participants.

<sup>23</sup> SHLB Petition at 13-14; State of Alaska Petition at 4-5. Commenters responding to the *Further Notice* also argued that the Rates Database provided inadequate support for health care providers. See SHLB Comments at 5; SHLB Reply Comments at 7-8; Windstream Comments at 5-7; Alaska Communications Comments at 27; ANHB Comments at 7; GCI Comments at 5. We address arguments made in petitions for reconsideration that the Rates Database provided inadequate support and therefore do not address these comments.

<sup>24</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7351, para. 33.

area decreases, as rates are generally a function of population density.”<sup>25</sup> However, we find that in light of the significant anomalies in the Rates Database uncovered by the Bureau, including many situations where support amounts for more rural areas were less than those for less rural areas,<sup>26</sup> the petitioners are correct that the geographic tiers used in the Rates Database do not result in rates that accurately reflect the cost of delivering telecommunications services for many rural health care providers.<sup>27</sup>

12. Under the rules we reinstate today, healthcare providers may use one of three methods for calculating the rural rates in the Telecom Program, depending on the circumstances: (1) the average of rates that the carrier actually charges to other non-health care provider commercial customers for the same or similar services provided in the rural area where the health care provider is located (Method 1); (2) if the carrier does not have any commercial customers in the health care provider’s rural area, the average of tariffed and other publicly available rates charged by other service providers for the same or similar services provided over the same distance in the rural health care provider’s area (Method 2); or (3) if there are no such rates or the carrier reasonably determines that those rates would be unfair, a cost-based rate that is approved by the Commission for interstate services (or the relevant state commission for intrastate services) (Method 3).<sup>28</sup> A carrier seeking approval of a rural rate under Method 3 will be required to provide “a justification of the proposed rural rate that includes an itemization of the costs of providing the requested service.”<sup>29</sup>

13. We reiterate the requirements previously associated with this methodology. Methods 1, 2, and 3 must be applied sequentially. Method 1 must be used to determine a rural rate unless the service provider selected is not actually charging non-health care provider customers rates for same or similar services in the rural area where the eligible health care provider is located.<sup>30</sup> In that case, health care providers and service providers must attempt to calculate a rural rate using Method 2.<sup>31</sup> If it is not possible to determine a rural rate because there are no tariffed or publicly available<sup>32</sup> rates charged by other service providers for same or similar services in the rural area where the eligible health care provider is located, or if the service provider reasonably determines that the rural rate calculated using

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<sup>25</sup> *Id.*; see also *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17717 n.220 (2011) (noting that the same characteristics, such as lack of density, that make it expensive to provide voice service make it expensive to provide broadband service as well); Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 136 (2010) (observing that “[b]ecause service providers in these areas cannot earn enough revenue to cover the costs of deploying and operating broadband networks, including expected returns on capital, there is no business case to offer broadband services in these areas”).

<sup>26</sup> See *Nationwide Rates Database Waiver Order*, para. 13 and *Nationwide Rates Database Extension Order*, para. 8.

<sup>27</sup> But see *infra* Section III.B (retaining rurality tiers for purposes of prioritization of funding in the event demand exceeds available funding).

<sup>28</sup> See Appendix A, Final Rules, 47 CFR § 54.605, as adopted herein; see also 47 CFR § 54.607 (2019).

<sup>29</sup> See Appendix A, Final Rules, 47 CFR § 54.605(b)(1), as adopted herein; see also 47 CFR § 54.607(b)(1) (2019).

<sup>30</sup> See Appendix A, Final Rules, 47 CFR § 54.605(a), as adopted herein; see also 47 CFR § 54.607(a) (2019).

<sup>31</sup> See Appendix A, Final Rules, 47 CFR § 54.605(b), as adopted herein; see also 47 CFR § 54.607(b) (2019).

<sup>32</sup> Available rates include tariff rates and rates posted on service providers’ websites, rate cards, and publicly available contracts such as state master contracts, as well as undiscounted rates charged to E-Rate Program applicants, and prior funding year RHC Program pricing data. This list of possible sources of available rates is not intended to be exhaustive and other sources may be possible. *The Wireline Competition Bureau Provides Guidance Regarding the Commission’s Rules for Determining Rural Rates in the Rural Health Care Telecommunications Program*, WC Docket No. 02-60, Public Notice, 34 FCC Rcd 533, 537 (WCB 2019) (*Rural Rates Public Notice*).

Method 2 is unfair, then health care providers and service providers may calculate a rural rate using Method 3.<sup>33</sup>

14. Reinstating these rules promotes administrative efficiency and protects the Fund while we consider long-term solutions. We clarify that a rural rate approval for a service will be required only in the first year of an evergreen contract or another form of a multi-year contract unless the rural rates in the contract increase or other substantive terms of the contract change.<sup>34</sup> The rural rate approval for the initial year of the multi-year contract will constitute approval for all subsequent years of the contract, including voluntary extensions so long as the duration of the contract does not exceed five years. Given that service providers may not be expected to submit additional bids for the selected service within the duration of the multi-year contract, we believe that it is reasonable to eliminate rural rate approvals during that period as well. Therefore, previously approved rates for preexisting multi-year contracts do not need to be resubmitted for approval under the rate setting mechanisms we reinstate today.

15. We decline to adopt other options proposed by stakeholders or the Commission because they could lead to Program waste or pose implementation challenges. Alaska Communications and SHLB's suggestion to rely on competitive bidding alone to determine fair market rural rates could result in inflated rural rates.<sup>35</sup> As the Commission previously explained in the *Promoting Telehealth Report and Order*, only a small percentage of Telecom Program funding requests receive competing bids from multiple service providers, and in the few instances where carriers do compete, they are most likely to compete on non-price characteristics of service.<sup>36</sup> Therefore, we find that relying on competitive bidding without any other checks on rural rates would give service providers unfettered discretion to set their rates. Additionally, we find that the implementation challenges associated with the options raised in the *Further Notice*, such as a regression model<sup>37</sup> or a discount tier mechanism prevent us at this time from adopting these mechanisms.

16. *Rural rates waiver.* We find that Bureau's temporary measure of permitting the use of previously-approved rural rates and urban rates for funding year 2023 is appropriate given that competitive bidding for funding year 2023 has already started.<sup>38</sup> To further alleviate burdens on RHC Program participants as they prepare for funding years 2024 and 2025 we waive the Commission's rules

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<sup>33</sup> See Appendix A, Final Rules, 47 CFR § 54.605(b), as adopted herein; see also 47 CFR § 54.607(b) (2019).

<sup>34</sup> See Letter from Richard Cameron, Counsel, Alaska Communications to Marlene Dortch, Secretary, FCC, WC Docket No. 17-310, 3 (filed Jan. 19, 2023) (*Alaska Communications Ex Parte*); Letter from Gina Spade, Counsel, ENA Healthcare to Marlene Dortch, Secretary, FCC, WC Docket No. 17-310, 1 (filed Jan. 18, 2023) (*ENA Ex Parte*); Letter from John Nakahata, Counsel, GCI Communication Corp. to Marlene Dortch, Secretary, FCC, WC Docket No. 17-310, 3 (filed Jan. 17, 2023) (*GCI Jan. 17, 2023 Ex Parte*); Letter from Kristen Corra, Policy Counsel, Schools, Health & Libraries Broadband (SHLB) Coalition to Marlene Dortch, Secretary, FCC, WC Docket No. 17-310, 2 (filed Jan. 19, 2023) (*SHLB Jan. 19, 2023 Ex Parte*).

<sup>35</sup> Alaska Communications Petition at 6-7; Letter from Richard R. Cameron, Counsel, Alaska Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310, 2 (filed Feb. 18, 2020). SHLB Petition at 13.

<sup>36</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7367, para. 65. Because rural healthcare providers do not pay the rural rate, they have little incentive to select a service provider based solely on its rural rate. See *id.*

<sup>37</sup> See GCI Reply Comments at 12.

<sup>38</sup> See *Nationwide Rates Database Extension Order*, para. 14; *Alaska Rates Database Extension Order*, para. 11. The Bureau also granted waiver to permit the use of rural and urban rates for funding years 2021 and 2022. See *Nationwide Rates Database Waiver Order*; *Nationwide Rates Database Waiver Order*.

to permit the use of previously-approved rates for any funding year 2024 or 2025 rural rates that would otherwise require approval under Method 3.<sup>39</sup>

17. Generally, the Commission's rules may be waived or suspended for good cause shown.<sup>40</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>41</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>42</sup> Waiver of the Commission's rules is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.<sup>43</sup> As noted by several commenters,<sup>44</sup> potentially having three different sets of rules for determining cost-based rural rates within three or four funding years could present unnecessary administrative burdens. Continuing to permit the use of previously-approved rural rates for Method 3, the most complex rural rates verification process, would significantly curtail those burdens.<sup>45</sup> Furthermore, according to commenters, market conditions appear to indicate that it is unlikely that pricing for Telecom Program funded services will significantly decrease over funding years 2024 or 2025, so utilizing rural rates approved for funding year 2023 in funding years 2024 and 2025 is unlikely to cause wasteful expenditures.<sup>46</sup>

18. A waiver permitting the use of previously-approved rates for funding years 2024 and 2025 Method 3 cost-based rural rates would also serve the public interest. Although there are significant program integrity benefits to rural rates reviews, we find that two years of such benefits is outweighed for funding years 2024 and 2025 by the administrative burdens on both program applicants and the Commission to prepare and approve cost studies. In addition, we find that it is not in the public interest to require service providers to absorb these burdens for funding years 2024 and 2025 given that the Commission is considering additional changes to its rural rate rules for future funding years in today's Second Further Notice of Proposed Rulemaking.<sup>47</sup>

19. In addition, we find that the public interest would not be served by extending this waiver to Method 1 and 2 rural rate or urban rate approvals because the administrative burden and time required for these justifications are considerably less than for Method 3 justifications.<sup>48</sup> Therefore we find that for Method 1 and 2 and urban rate justifications, the program integrity benefits to requiring rate justifications outweigh any administrative burdens associated with complying with these rules for funding years 2024

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<sup>39</sup> See Appendix A, Final Rules, 47 CFR § 54.605(b), as adopted herein. Should the Commission adopt new rules for determining rural rates in advance of funding year 2024 or 2025, the Commission reserves the right to have those rules supersede this waiver.

<sup>40</sup> 47 CFR § 1.3.

<sup>41</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>42</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>43</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>44</sup> See Letter from John Nakahata, Counsel, GCI Communication Corp. to Marlene Dortch, Secretary, FCC, WC Docket No. 17-310, 2 (filed Jan. 19, 2023) (GCI Jan. 19, 2023 *Ex Parte*) (requesting that the Commission permit the use of previously-approved rural rates in lieu on Method 3 for funding year 2024). See also SHLB Jan. 19, 2023 *Ex Parte* at 2 and Alaska Communications *Ex Parte* at 2 (both requesting that the Commission permit the use of previously-approved rural rates for all methods indefinitely until new rules are implemented).

<sup>45</sup> See GCI Jan. 19, 2023 *Ex Parte* at 2 (explaining complexities of Method 3 approvals).

<sup>46</sup> See Alaska Communications *Ex Parte* at 2; SHLB Jan. 19, 2023 *Ex Parte* at 4.

<sup>47</sup> See *infra* section VI.B.

<sup>48</sup> See GCI Jan. 19, 2023 *Ex Parte* at 2 (describing administrative burdens unique to Method 3). *But see* Alaska Communications *Ex Parte* at 2-3; SHLB Jan. 19, 2023 *Ex Parte* at 2 (both filings requesting that previously-approved rates be permitted for all rural and urban rates).

and 2025. Furthermore, we find that a waiver under Methods 1 or 2 is not necessary because, when a service provider cannot find justifying rates under Methods 1 or 2, as some parties contend is common,<sup>49</sup> the service provider has the option to rely on a previously approved Method 3 rate pursuant to the waiver we issue herein.

20. When this Method 3 waiver applies, a service provider may use a previously-approved rural rate from the most recent funding commitment for the facility/service combination at issue provided that funding commitment was issued in funding years 2021, 2022, or 2023. If there is no approved rate for a particular facility/service combination, the health care provider and its carrier may use a rural rate for the most recent funding commitment for the same or similar services to the facility with the same or similar geographic characteristics provided the funding commitment was issued in funding years 2021, 2022, or 2023. If no such comparable rates are available, this waiver is not applicable and the rural rate must be established using a Method 3 cost study pursuant to section 54.605(b) of our rules.<sup>50</sup>

21. For the reasons stated above, we find that restoring the previous rate methodology rules while we consider long-term solutions would best serve Program participants. Program participants are already familiar with the requirements of these methods, which will ease administrative burdens on the Commission, Administrator, and Program participants.

22. Although the rules that we reinstate today do not rely on a median approach to determine rural rates, as a general matter, we disagree with petitioners' concerns with using a median-based approach to determine rural rates. The Rates Database's use of medians was a reasonable application of section 254(h)(1)(A) to prevent outlier prices from skewing support.<sup>51</sup> Alaska Communications argued that, by basing support on a median rate rather than the actual rate charged, the Rates Database would not fulfill the requirements of section 254(h)(1)(A) of the Communications Act that telecommunications carriers receive the difference between the urban rate paid by the healthcare provider and the rate "similar services provided to other customers in comparable rural areas."<sup>52</sup> Similarly, USTelecom raised several concerns about the sufficiency of the median rate approach.<sup>53</sup> Although we agree with petitioners that the Rates Database and geographic tiers established in the *Promoting Telehealth Report and Order* did not accurately reflect the cost of delivering telecommunications services, we find that a median approach to calculate rural rates can satisfy the requirements of section 254(h)(1)(A) because a median can approximate the rates charged in "comparable rural areas in the state."<sup>54</sup> The fact that section 254(h)(1)(A) describes the services provider's obligation to charge "rates" reasonably comparable to urban rates rather than a more restrictive standard such as "the rate charged to an urban health care provider" suggests the Commission could meet the requirements of section 254(h)(1)(A) as long as the level of support in the aggregate would make up the urban-rural differential.

23. *Urban rates.* We also grant petitions seeking rescission of the rules implementing the Rates Database to determine urban rates. Petitioners seeking reconsideration of the *Promoting Telehealth*

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<sup>49</sup> See SHLB Jan. 19, 2023 *Ex Parte* at 3 (describing difficulties with obtaining justifying rates under Methods 1 and 2). We note that GCI, which serves rural health care providers throughout remote parts of Alaska and is the largest recipient of Telecom Program funding, projects that approximately 75% of its funding year 2024 TERRA and satellite funding requests will be submitted pursuant to Methods 1 or 2. GCI Jan. 19, 2023 *Ex Parte* at 2.

<sup>50</sup> See Appendix A, Final Rules, 47 CFR § 54.605(b).

<sup>51</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7366, para. 63.

<sup>52</sup> Alaska Communications Petition at 3 (*citing* 47 U.S.C. §254(h)(1)(A)). See also Alaska Communications Petition at 4.

<sup>53</sup> USTelecom Petition at 4-7. USTelecom also argued that the Rates Database could result in carriers being prohibited from charging tariffed rates in violation of state law. See *id.* Because we reconsider the Rates Database on other grounds, we need not reach this argument.

<sup>54</sup> 47 U.S.C. § 254(h)(1)(A).

*Report and Order* raised concerns about the Administrator's ability to determine urban rates using the Rates Database.<sup>55</sup> Furthermore, after the Rates Database launched, specific concerns about the urban rates it generated arose.<sup>56</sup> In the *Nationwide Rates Database Waiver Order*, the Bureau acknowledged urban rate anomalies in the Rates Database in some states, including instances where urban rates for lower bandwidths exceeded urban rates for higher bandwidths for the same service, and examples of urban rates exceeding rural rates in a state.<sup>57</sup> The Bureau concluded that these examples did not amount to convincing evidence of "pervasive nationwide anomalies with urban rates" but did "merit further inquiry and investigation" and therefore waived use of the Rates Database of determining urban rates.<sup>58</sup> In comments in response to the *Further Notice*, SHLB reiterated that the Rates Database had significant urban rate anomalies, including instances in many states in which the median urban rate for a service exceeded at least one rural rate.<sup>59</sup> ADS encouraged the Commission to reinstate a "safe harbor" approach for urban rates.<sup>60</sup>

24. We conclude that reinstating the previous urban rate determination rules is the best way to ensure consistency and predictability in the rate determination process while we consider alternative options for an urban rates determination mechanism going forward.<sup>61</sup> None of the petitions for reconsideration suggested a mechanism for determining urban rates to be used if we were to eliminate the Rates Database, and none opposed returning to the pre-*Promoting Telehealth Report and Order* method for determining urban rates. As with rural rates, health care providers and service providers are already familiar with the pre-2019 rules for determining urban rates, and introducing a completely new set of rules while we consider additional changes could lead to confusion and cause an undue administrative burden. Therefore, going forward, the urban rate for an eligible service submitted by the healthcare provider on FCC Form 466 should be "no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in [a] state."<sup>62</sup> Healthcare providers must document the urban rate with "tariff pages, contracts, a letter on company letterhead from the urban service provider, rate pricing information printed from the urban service provider's website or similar documentation showing how the urban rate was obtained."<sup>63</sup> We believe reinstatement of the prior urban rate setting methodology is the best available solution as we seek comment on potential revisions to the urban rate determination rules in the Second

<sup>55</sup> See SHLB Comments at 20-21; USTelecom Comments at 14-15; Alaska Communications Comments 19-21.

<sup>56</sup> See Letter from Gina Spade, Counsel, SHLB, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310, at 3-9 (filed Mar. 27, 2021); Letter from John Windhausen, Jr., Executive Director, SHLB, to Jessica Rosenworcel, Acting Chairwoman, FCC, et al., WC Docket No. 17-310 at 4 (filed Jan. 25, 2021); Letter from Kristi Walker, Senior Project Manager, Community Care of West Virginia, to Jessica Rosenworcel, Acting Chairwoman, FCC, et al., WC Docket No. 17-310, at 2 (filed Feb. 18, 2021); Letter from Carl Baranowski, Vice President and Chief Legal Officer, University of Texas Health Science Center at Tyler, to Jessica Rosenworcel, Acting Chairwoman, FCC, et al., WC Docket No. 17-310, at 1 (filed Jan. 27, 2021).

<sup>57</sup> *Nationwide Rates Database Waiver Order* at 9, para. 21.

<sup>58</sup> *Id.* at 9, paras. 21-22.

<sup>59</sup> SHLB Comments at 4.

<sup>60</sup> ADS Comments at 4. This "safe harbor" refers to the Administrator's practice under the pre-2019 rules of posting to its website examples of urban rates for certain services in various states that health care providers could use instead of obtaining urban rates through other means.

<sup>61</sup> Until 2019, these rules had been codified in section 54.605. The current section 54.604, which governs determinations of urban rates using the Rates Database, will be amended to reflect the new rules.

<sup>62</sup> See 47 CFR § 54.604(a), Appendix A, Final Rules, 47 CFR § 54.605(a) (2019), as adopted herein.

<sup>63</sup> See FCC Form 466 Instructions at 8 (2019).

Further Notice of Proposed Rulemaking herein. As with rural rates, we also affirm the Bureau's decision to permit the use of previously-approved urban rates for funding year 2023.<sup>64</sup>

25. In adopting the Rates Database, the Commission identified several concerns with the rate-setting rules in place at the time, including potential issues with transparency, administrative efficiency, and program integrity.<sup>65</sup> While the Rates Database proved to be an inadequate solution for provisioning sufficient support to RHC Program participants, we remain cognizant of those concerns, and we therefore continue our work to improve the Telecom Program rate determination methodology as discussed in the Second Further Notice of Proposed Rulemaking herein.

## 2. Similar Services

26. Though RHC Program applicants and participating service providers will no longer use the Rates Database to calculate rural and urban rates, they will continue to need to identify rates for the same or similar services to support rural and urban rates submitted to the Administrator. We therefore address petitions for reconsideration of the Commission's conclusions regarding similar services in the *Promoting Telehealth Report and Order*.<sup>66</sup> We find that the Commission properly determined that similar services can include non-telecommunications services that deliver the same or similar functionality as the requested service and can include services with advertised speeds 30% above or below the speed of the requested service. We instruct the Administrator to apply these requirements to its review of Method 1 and Method 2 submissions and urban rates going forward.

27. *Non-telecommunications services.* We affirm the Commission's finding that, to calculate the most accurate rates, the pool of rates taken into consideration should include rates for services that deliver the functionality sought by the applicant. We therefore deny USTelecom's request to reverse the decision that non-telecommunications services that are functionally similar to eligible telecommunications services be considered similar services for purposes of calculating rates.<sup>67</sup> We reaffirm the Commission's conclusion in the *Promoting Telehealth Report and Order* that similarity of services is a "technology-agnostic inquiry" that should be viewed from the perspective of the end user experience as opposed to regulatory classification.<sup>68</sup>

28. The Telecom Program provides support in accordance with section 254(h)(1)(A) of the Communications Act based on the difference between the urban rate, which must be "reasonably comparable to the rates charged for *similar services* in urban areas in that State," and "rates for *similar services* provided to other customers in comparable rural areas," i.e., the rural rate.<sup>69</sup> Congress did not define the term "similar services."<sup>70</sup> In 2003, the Commission interpreted similar services to mean services that are functionally similar from the perspective of the end user.<sup>71</sup> This interpretation deviated

<sup>64</sup> See *Nationwide Rates Database Extension Order*, para. 14 and *Alaska Rates Database Extension Order*, para. 11.

<sup>65</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7363, para. 53.

<sup>66</sup> See USTelecom Petition at 11-15 (seeking reconsideration of the Commission's decision that non-telecommunications services can be similar to telecommunications services for purposes of rates determinations); SHLB Petition at 16-17 (seeking reconsideration of the Commission's decision that services with advertised speeds 30% above or below the speed of the requested service be considered functionally similar to the requested service).

<sup>67</sup> USTelecom Petition at 11-15; Letter from B. Lynn Follansbee, Vice President – Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310, 3 (filed July 25, 2019) (USTelecom *Ex Parte*).

<sup>68</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7345, para. 18.

<sup>69</sup> 47 U.S.C. § 254(h)(1)(A) (emphasis added); *Universal Service First Report and Order*, 12 FCC Rcd at 9119-9133, paras. 657-685; 47 CFR § 54.602(a).

<sup>70</sup> See generally 47 U.S.C. § 254(h)(7).

<sup>71</sup> See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24563-64, paras. 31-34 (2003) (2003 *Internet*

(continued....)

from the Commission's previous policy of calculating support based on the difference between the urban and rural rates for "technically" similar services.<sup>72</sup> Without any discussion as to why non-telecommunications services were not considered "functionally similar," the Commission stated that "[e]ligible health care providers must purchase telecommunications services and compare their service to a functionally equivalent telecommunications service in order to receive this discount" and created a voluntary "safe harbor" for categories of services based on transmission speed that would be considered by the Commission functionally similar for purposes of calculating urban and rural rates.<sup>73</sup>

29. In the *2017 Notice of Proposed Rulemaking*, the Commission sought comment on changes to the interpretation of similar services.<sup>74</sup> The Commission specifically proposed to "retain the concept of 'functionally similar as viewed from the perspective of the end user'" and additionally proposed to "require healthcare providers to analyze similarity under specific criteria."<sup>75</sup> In the *Promoting Telehealth Report and Order*, the Commission ultimately retained the "functionally similar" standard for defining similar services and, after acknowledging the prior interpretation in 2003, made clear that because the functionally similar standard is technology agnostic and does not turn on regulatory classification, both telecommunications and non-telecommunications services must be considered when identifying similar services for calculating urban and rural rates.<sup>76</sup>

30. USTelecom argues that the Commission did not provide an opportunity for notice and comment, as required by the Administrative Procedure Act (APA), before expanding the inquiry of functionally similar services to include non-telecommunications services.<sup>77</sup> On the contrary, the Commission did provide notice in the *2017 Notice of Proposed Rulemaking* of its intent to consider changes to the statutory interpretation of similar services.<sup>78</sup> And as explained in the *Promoting Telehealth Report and Order*, revisiting this decision would inevitably involve a consideration of the types of services that would fall within the scope of this statutory term.<sup>79</sup> We therefore disagree with USTelecom

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*Access Order*) (discussing "Interpretation of 'Similar Services'"). The Commission revised its rules on the determination of urban and rural rates consistent with this interpretation in 2003 to reference functionally similar services instead of similar services. *Id.* at 24586-89 (revising rule sections 54.605 and 54.609).

<sup>72</sup> *Id.* at 24563, para. 31.

<sup>73</sup> *Id.* at 24563-64, para. 33-34; *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 10631, 10655, para. 73 (2017) ("To implement this [functionally similar] standard, the Commission established a voluntary 'safe harbor' whereby a healthcare provider could claim that two services are similar if they both fall within one of five speed tiers.") (*2017 Notice of Proposed Rulemaking*).

<sup>74</sup> See *2017 Notice of Proposed Rulemaking*, 32 FCC Rcd at 10655-56, paras. 73-78.

<sup>75</sup> *Id.* at 10655, para. 75 (emphasis in original).

<sup>76</sup> See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7341-46, paras. 15-20.

<sup>77</sup> 5 U.S.C. § 553; USTelecom Petition at 11-14.

<sup>78</sup> See *2017 Notice of Proposed Rulemaking*, 32 FCC Rcd at 10655, paras. 73-75 & n.104 ("By functionally similar from the perspective of the end user, we mean these services offer features and functions that provide a similar user experience."); *id.* at 10656, para. 77 ("We seek comment on other criteria we could use to establish 'similar services.'").

<sup>79</sup> See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7343, para. 18, n.55. The Commission also specifically sought comment on using performance criteria associated with packet-based services that are often provided on a non-common carrier basis in the marketplace, e.g., as private carrier or information services. See *2017 Notice of Proposed Rulemaking*, 32 FCC Rcd at 10656, para. 77. This would provide an additional indication to the public that the Commission was considering a functionally similar standard that would not turn on the regulatory classification of the service.

that the Commission violated the APA when it clarified the scope of similar services to include not only telecommunications but also non-telecommunications services.<sup>80</sup>

31. The Commission's decision to expand the inquiry of functionally similar services in urban and rural rate determinations was not arbitrary and capricious, as USTelecom separately contends.<sup>81</sup> We also disagree with USTelecom that the fact that the Telecom Program does not fund information and private carriage services precludes consideration of rates for those services in the rate determination process.<sup>82</sup> As to both arguments, the Commission fully considered these issues in the *Promoting Telehealth Report and Order* and explained that the end-user experience, not regulatory classification, guides our analysis of whether services are functionally equivalent.<sup>83</sup> The Commission further explained that including information services, which may be less expensive, with functionally similar telecommunications services is consistent with the statutory requirement that the Commission ensure access to telecommunications services for health care providers at rates that are "reasonably comparable" to those charged for "similar services in urban areas" because including rates for such functionally similar information services would more accurately reflect the prices available in urban areas for services that deliver the same functionality to end users regardless of classification, and place rural health care providers on equal footing with their urban counterparts.<sup>84</sup>

32. *30 percent threshold.* We also deny SHLB's request that we reconsider the Commission's determination that services with advertised speeds 30% above or below the speed of the requested service be considered functionally similar to the requested service.<sup>85</sup> SHLB argues that this approach is overbroad and will include services that are dissimilar in function and cost. SHLB, however, does not offer any examples.<sup>86</sup> Comments filed after the Rates Database launched addressing the 30% threshold in response to the *Further Notice* were mixed. Alaska Communications described the 30% bandwidth range as "not unreasonable," but cautioned that there is too little rural rate data in Alaska to "make this the basis for a complete rural rate methodology."<sup>87</sup> NTCA argues that the 30% threshold is too broad and urges the Commission to implement a smaller margin based on health care provider use cases, but also does not offer examples of overly broad results.<sup>88</sup>

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<sup>80</sup> Assuming, *arguendo*, that there was insufficient notice and comment, the Commission's defining of similar services and functionally similar services as referenced in the Commission's rules, to include telecommunications and non-telecommunications services that are functionally similar from the perspective of the end user could have been adopted as an interpretation not subject to the APA's notice-and-comment requirements. See 5 U.S.C. § 553(b)(A) (stating that the notice-and-comment requirement do not apply to "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."); *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 97 (2015) ("[T]he critical feature of interpretive rules is that they are 'issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers.'"). The Commission's rules use the term "functionally similar" so the clarification made in the *Promoting Telehealth Report and Order* could be viewed as a revised interpretation of the Commission's rules to include non-telecommunications services. 47 CFR §§ 54.604(a), 54.605(a); *Perez*, 575 U.S. at 100 (holding that an interpretive rule can interpret not only a statute but also a prior agency rule).

<sup>81</sup> USTelecom Petition at 14.

<sup>82</sup> USTelecom Petition at 14; USTelecom *Ex Parte* at 2.

<sup>83</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7344-45, paras. 18-20.

<sup>84</sup> *Id.* at 7345, para. 19; see also 47 U.S.C. § 254(h)(1)(A).

<sup>85</sup> SHLB Petition at 16.

<sup>86</sup> *Id.*

<sup>87</sup> Alaska Communications Comments at 18.

<sup>88</sup> NTCA Comments at 9.

33. Taking these arguments into account, we conclude that we should not deviate from the Commission's prior conclusion in the *Promoting Telehealth Report and Order* that the 30% range allows for rate predictability while accounting for the rising demand for faster connectivity.<sup>89</sup> Having a standard for determining similar services based on a range is preferable to having speed tiers, which would need to be frequently refreshed so they would not become out of date, as was the case with the speed tiers that existed before the *Promoting Telehealth Report and Order*. Moreover, based on the record previously developed, a range of 30% provides a sufficiently large number of inputs for determining rates under Methods 1 and 2.<sup>90</sup> Reducing the range as NTCA requests would likely mean that few services with even slight variations in bandwidth would be similar to one another.<sup>91</sup> Additionally, maintaining the current threshold for similar services of advertised speeds being 30% above or below the speed of the requested service will ease program administration because health care providers are already familiar with this standard.

34. We also disagree with SHLB's assertion that the *Promoting Telehealth Report and Order* fails to account for price variations based on contract term or volume discounts, which SHLB maintains will distort rural rate determinations.<sup>92</sup> The *Promoting Telehealth Report and Order* did account for these price variations when explaining that section 254(h)(1)(A) requires service providers to provide telecommunications services to eligible providers at "rates that are reasonably comparable to rates charged for similar services in urban areas."<sup>93</sup>

35. Finally, as requested by GCI, we clarify that, in the event there is no comparable rural rate within 30% of the speed of the requested service, the Commission will allow service providers to justify the requested rural rate using the rate for a service that is otherwise similar to the requested service if the requested service has a higher bandwidth than that service.<sup>94</sup> Similarly, as requested by SHLB,<sup>95</sup> we clarify that if there is no comparable urban rate within the 30% range available, the Commission will allow service providers to use the rate for a higher bandwidth service that falls outside the 30% range but is otherwise similar to the requested service.<sup>96</sup> We find that providing this flexibility will ease administrative burdens without additional cost to the Universal Service Fund.

### 3. Site and Service Substitution

36. We deny Alaska Communications' petition for reconsideration to the extent it seeks clarification that "the Commission intended to include service delivery dates" in the adopted site and

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<sup>89</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7343-44, para. 16. SHLB also asserts that determining rates on a per-Mbps basis could be used within the 30% advertising speed range. SHLB Petition at 16. The Commission rejected the per-Mbps approach in the *Promoting Telehealth Report and Order* as contrary to the purpose of the similar services inquiry, which is to identify services that are functionally similar to the end user and not to identify services that are similarly priced. *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7366, n.179.

<sup>90</sup> *See id.* at 7343-44, para. 16.

<sup>91</sup> *See* NTCA Comments at 9.

<sup>92</sup> SHLB Petition at 16-17.

<sup>93</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7344, n.49 (emphasis added). SHLB is mistaken in claiming that section 254(h)(1)(A) only "describes the urban rate" and not the determination of permissible rural rates. *See* SHLB Petition at 17. The very purpose of section 254(h)(1)(A) is to establish the means of determining rural rates by comparison to urban rates (i.e., "[rural] rates that are reasonably comparable to rates charged for similar services in urban areas in the State."). 47 U.S.C. § 254(h)(1)(A).

<sup>94</sup> *See* GCI Jan. 17, 2023 *Ex Parte* at 3.

<sup>95</sup> *See* SHLB Jan. 19, 2023 *Ex Parte* at 4.

<sup>96</sup> The Commission allowed this flexibility in previous waiver orders. *See, e.g., Nationwide Rates Database Waiver Order*, para. 18.

service substitution rule.<sup>97</sup> Alaska Communications explains that service date or evergreen contract date changes are some of the most common changes requested in the RHC Program.<sup>98</sup> Alaska Communications further explains that applicants are required to submit a funding request and include anticipated service dates at the time the request is submitted to the Administrator, but there may be delays for a planned transition or deployment of upgraded services and the anticipated service start or termination dates may change.<sup>99</sup> In response, we clarify that under section 54.624(a) of our rules, RHC Program applicants may be able to substitute the requested service when there is a delay in the deployment of the original service and that the funding request could be modified to reflect the substituted service when such a delay may occur.<sup>100</sup> Section 54.624(a) is intended to allow applicants flexibility to substitute requested services and to receive RHC Program support for substituted services when the requirements are met.<sup>101</sup>

37. However, we deny Alaska Communications' request to clarify that section 54.624(a) allows changes to service dates and evergreen contract dates as "service substitution" changes because section 54.624(a) does not address service dates or evergreen contract dates.<sup>102</sup> With respect to service date changes, Program participants are already permitted to change the dates for which services are provided. RHC Program participants are required to provide dates of service and contract dates on the Request for Funding (FCC Form 466 or FCC Form 462) for the requested services.<sup>103</sup> If there are changes to the dates for which services were provided or evergreen contract dates, RHC Program participants already modify service dates through other means unrelated to the service substitution process.<sup>104</sup> Therefore, there is already a mechanism for all RHC Program participants to substitute a service if there is

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<sup>97</sup> Alaska Communications Petition at 21. *See also* 47 CFR § 54.624.

<sup>98</sup> *Id.* at 21-24.

<sup>99</sup> *Id.* at 21-25.

<sup>100</sup> *See* 47 CFR § 54.624(a) (providing that health care providers or Consortium Leaders may request a site or service substitution if: (1) The substitution is provided for within the contract, within the change clause, or constitutes a minor modification; (2) The site is an eligible health care provider and the service is an eligible service under the Telecommunications Program or Healthcare Connect Fund Program; (3) The substitution does not violate any contract provision or state, Tribal, or local procurement laws; and (4) The requested change is within the scope of the controlling Request for Services, including any applicable RFP used in the competitive bidding process). In addition, "support is restricted to qualifying site and service substitutions that do not increase the total amount of support under the applicable funding commitment." *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7425, para. 194.

<sup>101</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7425, para. 195 (explaining that the site and service substitution rule provided RHC Program participants with greater flexibility to substitute services when certain conditions are met).

<sup>102</sup> Alaska Communications Petition at 25. *See also* SHLB Jan. 19, 2023 *Ex Parte* at 4-5 (requesting that the Commission direct USAC to create a mechanism to allow modification of evergreen contract dates).

<sup>103</sup> *See* Health Care Providers Universal Service Funding Request and Certification Form, FCC Form 466, Line 30-31, 32, OMB Control No. 3060-0604 (2019), [https://www.usac.org/wp-content/uploads/rural-health-care/documents/FCC-Forms/Form\\_466\\_2019.pdf](https://www.usac.org/wp-content/uploads/rural-health-care/documents/FCC-Forms/Form_466_2019.pdf) (requesting contract start and end dates and service installation date); Rural Health Care (RHC) Universal Service HCF Funding Request Form, FCC Form 462, Lines 19b-19e, OMB Control No. 3060-0804 (2019), [https://www.usac.org/wp-content/uploads/rural-health-care/documents/FCC-Forms/Form\\_462\\_2019.pdf](https://www.usac.org/wp-content/uploads/rural-health-care/documents/FCC-Forms/Form_462_2019.pdf) (requesting service start date as well as contract start and end dates).

<sup>104</sup> In the HCF Program, participants report updated service start dates on their invoicing forms. FCC Form 463 Guide for Service Providers, at 2, <https://www.usac.org/wp-content/uploads/rural-health-care/documents/forms-guides/FCC-Form-463-Guide-Service-Provider.pdf> (providing instructions for reporting the service start date/shipping date or last day of work). We expect that the new invoice form for the Telecom Program discussed in the Report and Order below will also allow the reporting of updated service start dates. Participants may also request a service delivery date extension prior to the end of the same funding year by contacting the Administrator.

a delay in implementing the new service and modify the service dates for the substituted service. Contrary to Alaska Communications' assertion that this process creates additional administrative burdens due to the potential for an appeal, this process is no more administratively burdensome than the service substitution request process. Under both processes, if the Administrator denies a request, the health care provider could file an appeal.<sup>105</sup> With respect to evergreen contract dates, although section 54.624 cannot reasonably be interpreted as addressing modifications to evergreen contract dates, we seek comment in the Second Further Notice of Proposed Rulemaking below about whether a mechanism to modify evergreen contract dates is appropriate and what such a mechanism might be.<sup>106</sup> Accordingly, we deny the request to modify section 54.624 to add modification of service dates and evergreen contract dates as an allowable service substitution.

38. Alaska Communications further requests that when the Administrator contacts a health care provider with questions or requests for additional information regarding urban or rural rates or the terms of the service, the Administrator also be required to communicate the question or information request with the relevant service provider.<sup>107</sup> Health care providers are encouraged to work with their service providers to respond to information requests from the Administrator regarding, for example, additional information on urban and rural rates and terms of service.<sup>108</sup> Thus, service providers are allowed to provide the requested information needed during the funding application review process.<sup>109</sup> We decline, however, to require the Administrator to issue information requests to the relevant service providers. We conclude that it would be administratively burdensome and a poor use of limited administrative resources to require the Administrator to send these requests to service providers. Applicants that would like assistance from service providers should reach out to providers to pose questions related to the Administrator's review of health care providers' funding applications.<sup>110</sup>

#### 4. Remaining Requests for Reconsideration of the Rates Database

39. We dismiss as moot all other challenges to the Rates Database raised in the petitions for reconsideration that are not applicable to rural rate determinations under Method 1, Method 2, or Method 3 or urban rate determinations.<sup>111</sup> Our decision above to eliminate the use of the Rates Database to calculate urban and rural rates renders these challenges moot.<sup>112</sup>

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<sup>105</sup> See 47 CFR § 54.719.

<sup>106</sup> See *infra*. Section VI.E.2.

<sup>107</sup> Alaska Communications Petition at 23.

<sup>108</sup> See, e.g., USAC, Rural Health Care, Telecommunications Program, *Telecom Program: Urban and Rural Rates*, <https://www.usac.org/wp-content/uploads/rural-health-care/documents/handouts/TelecomRuralUrbanRateInfo-1.pdf> (explaining that health care providers should work with their service providers to respond to questions regarding the rural rates) (last visited Jan. 26, 2023); USAC, Rural Health Care, Telecommunications Program, *Step 4: Submit Funding Requests*, <https://www.usac.org/rural-health-care/telecommunications-program/step-4-submit-funding-requests/> (providing that “[y]ou may need to work with your service provider to obtain information and documentation necessary to complete the FCC Form 466”) (last visited Jan. 26, 2023).

<sup>109</sup> See *id.*

<sup>110</sup> See *id.*

<sup>111</sup> See Alaska Communications Petition at 6-8 (arguing that rural rates should be based on the average, not the median, rate in each rurality tier); *id.* at 6-7 (arguing that the Administrator should approve rates that are derived from competitive bids or published rates without using the Rates Database); *id.* at 8-10 (opposing the decision to rely on rates in a less rural geographic tier when not rates are available in the same tier); *id.* at 10-11 (arguing that Rates Database inputs should be limited to rates from the previous calendar year); SHLB Petition at 20-24, USTelecom Petition at 11-14; Alaska Communications Petition at 12-21 (all arguing that the Rates Database is an impermissible delegation of authority to the Administrator); SHLB Petition at 13-15 (arguing that the Rates Database rurality tiers are arbitrary and too broad and would produce rates not tied to any real estimates of service costs).

**B. Rurality**

40. We next deny requests to reconsider aspects of the geographically-based rurality tiers adopted in the *Promoting Telehealth Report and Order*.<sup>113</sup> Though the termination of the Rates Database moots the use of rurality tiers for purposes of rates determination, rurality tiers are also used to prioritize support in the event that demand exceeds available support, a mechanism that is unchanged by today's actions.<sup>114</sup>

41. In the *Promoting Telehealth Report and Order*, the Commission established three tiers of rurality to determine comparable rural areas in a state or territory for purposes of the Rates Database: (1) Extremely Rural (areas entirely outside of a Core Based Statistical Area); (2) Rural (areas within a Core Based Statistical Area that does not have an Urban Area with a population of 25,000 or greater); and (3) Less Rural (areas in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but are within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000).<sup>115</sup> For health care providers in Alaska, the Commission bifurcated the Extremely Rural tier to include a Frontier tier for areas not accessible by road.<sup>116</sup>

42. Arguments against the rurality tiers adopted by the Commission in the *Promoting Telehealth Report and Order* focused on their impact on rates determinations in the Rates Database.<sup>117</sup> With the elimination of the Rates Database, the only remaining relevance of rurality tiers is for purposes of prioritizing support in the event that demand ever exceeds available funding.<sup>118</sup> We find that the rurality tiers as adopted in the *Promoting Telehealth Report and Order* are appropriate for purposes of prioritization of support and deny petitions for reconsideration to the extent they request that the Commission eliminate rurality tiers from its rules for all purposes. The rurality tiers will properly target RHC Program funding to less populous areas in the event that prioritization of funds is needed, and the

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<sup>112</sup> Additionally, we dismiss the petition for reconsideration filed by USTelecom to the extent it seeks modification of the FCC Form 465 or clarification of its instructions. See USTelecom Petition at 23-25. These requests are outside the scope of the *Promoting Telehealth Report and Order*. See 47 CFR § 1.429(l)(5) (allowing dismissal of petitions for reconsideration that relate to matters outside the scope of the order for which reconsideration is sought). Furthermore, the FCC Forms 461 and 465 already capture the range of bandwidths the health care provider seeks bids for. See Request for Services Form, FCC Form 461, OMB Control No. 3060-0604; Description of Services Requested and Certification Form, FCC Form 465, OMB Control No. 3060-0604.

<sup>113</sup> See State of Alaska Petition at 4-7; NCTNA/SOHCN Petition at 10-13; SHLB Petition at 12-15.

<sup>114</sup> See 47 CFR § 54.621(b).

<sup>115</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7346-47, para. 21.

<sup>116</sup> *Id.* at 7352, para. 34. The Commission defined Frontier areas as those that are outside of a Core Based Statistical Area that are inaccessible by road. To determine which communities are connected by roads, the Commission stated that it would use data provided by the Alaska Department of Commerce Community and Economic Development, Division of Community and Regional Affairs. *Id.* at 7352-53, para. 35.

<sup>117</sup> See SHLB Petition at 13-14 (contending that the tiers are overly broad because they group together areas of states with differing topography and infrastructure and are therefore not tied to the actual cost of service); State of Alaska Petition at 4-6 (arguing that Alaska should be differentiated geographically based on fiber availability); NCTNA/SOHCN Petition at 10-13 (requesting that the Commission use United States Census Bureau designation that divides Core-Based Statistical Areas into Metropolitan Statistical Areas and Micropolitan Statistical Areas, arguing that relying on Census-recognized designations would allow applicants and the Administrator to pre-qualify sites and determine funding priority for each site).

<sup>118</sup> See 47 CFR § 54.621(b) (setting tiers for prioritization based on rurality tiers and designation as a Medically Underserved Area or Population).

record contains no alternative mechanism for better parsing rurality for this limited purpose.<sup>119</sup>

43. NCTNA/SOHCN suggests that switching to a method based on metropolitan and micropolitan designations would “allow [the Administrator] to pre-qualify sites and to demonstrate rurality and to determine the funding priority each site will receive” and that switching from designations based on census blocks instead of census tracts would be more precise. However, the Administrator has already created a tool that allows health care providers to determine their priority tier based on the current rurality designations, so a change is not necessary to provide this administrative convenience.<sup>120</sup> While we recognize the benefit of precision in parsing rurality, we find that the potential confusion and administrative burdens to all Program participants that would result from abandoning the use of the current rurality tiers, which are consistent with the Commission’s long-held definition of “rural,” outweighs the impact this change would have on the limited number of health care providers whose rural status would change.<sup>121</sup>

44. Given our decision on reconsideration to eliminate the rules establishing the Rates Database, we make two ministerial changes to our rules to reflect the limited use of rurality tiers for prioritization purposes.<sup>122</sup> First, we eliminate the concept of Frontier Areas from our rules because it does not apply to prioritizing support. A “Frontier Area” is an area in Alaska outside of a Core Based Statistical Area that is inaccessible by road. The Commission adopted this concept for purposes of the Rates Database only.<sup>123</sup> Second, we amend our codified rules so that rurality tiers are addressed only in rules related to prioritization. The rurality tiers currently appear in two separate sections of our rules: section 54.605(a), which addresses rural rates, and section 54.621(b), which addresses prioritization of support. We delete references to the rurality tiers from section 54.605(a) but retain them in section 54.621(b). We also make minor changes to the text of section 54.621(b) so that it more closely reflects the text of section 54.605(a).<sup>124</sup>

### C. Funding Prioritization

#### 1. Internal Cap on Multi-Year Commitments and Upfront Payments

45. We deny NCTNA/SOHCN’s petition for reconsideration requesting an increase to the internal cap on funding available to HCF applicants seeking support for upfront payments and multi-year commitments.<sup>125</sup> This internal cap limits funding for multi-year commitments and upfront payment to an

<sup>119</sup> Because there has been sufficient funding to satisfy demand since the prioritization rules adopted in the *Promoting Telehealth Report and Order*, the prioritization system has never been used.

<sup>120</sup> See USAC website, Rurality Tier Search Tool, <https://www.usac.org/rural-health-care/resources/tools/rurality-tier-search-tool/> (last visited Jan. 26, 2023).

<sup>121</sup> See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7350, para. 32.

<sup>122</sup> We find additional notice and comment for these changes is not needed because it would be unnecessary given that they are ministerial reflections of other changes to the rules. See 5 U.S.C. § 553(b)(B); see also 47 CFR § 1.412(c).

<sup>123</sup> Compare 47 CFR §54.605(a)(1)(iv) to 47 CFR §54.621(b). For purposes of prioritization, Frontier Areas were treated as part of the Extremely Rural Tier.

<sup>124</sup> Section 54.605(a) defined the Extremely Rural Tier as “areas” entirely outside of a Core Based Statistical Area whereas section 54.621(a) defined it as “counties” entirely outside of Core Based Statistical Area. We apply the nomenclature that appeared in section 54.605(a) to section 54.621(a).

<sup>125</sup> NCTNA/SOHCN Petition at 7. NCTNA/SOHCN also urge the Commission to “revisit” the overall annual cap under the RHC Program. See *id.* at 3-6; see also 47 CFR § 54.619(a) (setting the funding cap at \$571 million per funding year and adjusting that figure annually for inflation beginning in funding year 2018). We decline to do so here as the time for reconsideration of our decision to increase the cap on overall funding, which was adopted in 2018, has passed. See *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 33 FCC Rcd 6574 (2018) (*RHC Program Cap Order*).

amount adjusted annually for inflation, which is calculated at \$161 million for funding year 2022.<sup>126</sup> The Commission retained the internal cap in the *Promoting Telehealth Report and Order* after determining that the cap protected against possible underfunding of single-year funding requests and that an increase in the dollar amount of the internal cap may adversely affect single-year requests.<sup>127</sup> The Commission did, however, adopt a rule adjusting the cap annually for inflation as a hedge against loss of purchasing power in the event of price inflation.<sup>128</sup> NCTNA/SOHCN maintain that the decision to not further increase the internal cap is “based on an incorrect reading of the purpose of [the] cap” – namely, that the principal purpose of establishing the cap was to guard against fluctuations in demands from potentially large upfront infrastructure projects.<sup>129</sup> NCTNA/SOHCN also argue that the Commission should reconsider the cap “in light of its original purpose and data accumulated since 2013 when it was first implemented”<sup>130</sup> and therefore should remove multi-year funding commitments from being subject to the cap.<sup>131</sup>

46. We deny NCTNA/SOHCN’s request.<sup>132</sup> The internal cap on multi-year commitments and upfront payments in its current form is serving its stated purpose: to limit major fluctuations in demand so as to protect single-year funding requests. In the *Promoting Telehealth Report and Order*, the Commission noted that the internal cap was first exceeded in funding year 2018 and, but for the cap, all funding requests for that year would have been prorated to bring the total demand for RHC Program support below the Program’s overall funding cap.<sup>133</sup> We also find that the record does not support removing multi-year commitments from the internal cap. NCTNA/SOHCN point to efficiencies that are inherent to some multi-year funding commitments.<sup>134</sup> However, USAC data indicates that demand for multi-year commitments accounted for a significant portion of the total demand for multi-year

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<sup>126</sup> See 47 CFR § 54.619(a) (establishing an internal cap of \$150 million for funding requests for upfront payment and multi-year commitments); 47 CFR § 54.619(a)(2) (requiring the internal cap to be adjusted annually for inflation). See also *Wireline Competitive Bureau Announces E-Rate and RHC Programs’ Inflation-Based Caps for Funding Year 2022*, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, DA 22-271 (WCB Mar. 14, 2022) (announcing an internal cap of \$161 million for funding year 2022).

<sup>127</sup> See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7401, para. 138.

<sup>128</sup> See *id.* at para. 139. To measure increases in the rate of inflation for purposes of adjusting the internal cap on multi-year commitments and upfront payments, the Commission uses the Gross Domestic Product Chain-type Price Index (GDP-CPI). See 47 CFR § 54.619(a)(2).

<sup>129</sup> NCTNA/SOHCN Petition at 7.

<sup>130</sup> *Id.* at 9.

<sup>131</sup> *Id.* at 8.

<sup>132</sup> While we deny NCTNA/SOHCN’s request to increase the internal cap, the internal cap application rule we adopt today in the Report and Order below reduces the chance that the internal cap will create a cut in funding for multi-year commitment and upfront payment requests, because as long as the total available funding is greater than the total demand, the internal cap will not apply. See *infra* Part IV.B; Appendix A, Final Rules, 47 CFR § 54.619(a), as adopted herein.

<sup>133</sup> Since then, program demand for multi-year commitments and upfront payments has exceeded the internal cap in funding year 2019 and 2020, though full funding of single-year requests was not inhibited. See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 2659, 2662, para. 8 (2020) (*Funding Year 2019 Demand Order*) (funding year 2019 funding cap on upfront payment and multi-year commitments exceeded by approximately \$60 million); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 11696, 11698-99, paras. 7, 11 (WCB 2020) (*Funding Year 2020 Demand Order*) (funding year 2020 funding cap on upfront payments and multi-year commitments exceeded by approximately \$43 million); *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7400, para. 138.

<sup>134</sup> See NCTNA/SOHCN Petition at 8.

commitments and upfront payments from funding year 2016 to funding year 2021.<sup>135</sup> As demonstrated by demand in recent funding years, removing multi-year commitments from being subject to the internal cap could result in costly multi-year commitment requests usurping funding from single-year requests. We affirm the Commission's earlier decision to retain the internal cap on multi-year commitments and upfront payments and, accordingly, deny that portion of the NCTNA/SOHCN petition.<sup>136</sup> In the Report and Order below, we amend our rules so that the internal cap applies only when demand exceeds available funding, and when the internal cap does apply, upfront costs and the first year of a multi-year commitment request are prioritized over the second and third year of a multi-year commitment request.<sup>137</sup>

## 2. Prioritization System

47. We next deny SHLB's request that we reconsider the prioritization system adopted by the Commission in the *Promoting Telehealth Report and Order*.<sup>138</sup> RHC Program prioritization rules require that, in funding years when demand exceeds the funding cap, funding be prioritized based on rurality tiers and whether the area is a Medically Underserved Area/Population.<sup>139</sup> SHLB first argues that the prioritization rules will result in HCF consortia, which include non-rural health care providers that are prioritized last when demand exceeds available funding, bearing the entire burden of RHC Program funding shortfalls initially.<sup>140</sup> SHLB further argues that this impact will erode the consortia model and reduce the benefits of consortia for rural health care providers.<sup>141</sup> We disagree and find the Commission reasonably concluded that, to further the goals of section 254(h) of the Act, it should prioritize funding based on the rurality of the health care provider's location, as well as on the level of medical care need in that location.<sup>142</sup> This prioritization scheme targets support to rural areas that are less likely to have access to telecommunications and advanced services while still providing support for health care consortia that

<sup>135</sup> Letter from Mark Sweeney, Vice President, Rural Health Care Division, USAC, to Jodie Griffin, Chief, Telecommunication Access Policy Division, FCC Wireline Competition Bureau, and Bryan Boyle, Deputy Chief, Telecommunication Access Policy Division, FCC Wireline Competition Bureau, WC Docket 17-310, Table 5 (filed Apr. 1, 2022).

<sup>136</sup> NCTNA/SOHN also request that the Commission consider a "carry-forward process" by which unused funding from upfront payments and multi-year commitments be carried forward specifically for commitments above the internal cap in a given funding year. NCTNA/SOHN Petition at 10. We decline to adopt an HCF-specific carry-forward process because of the funding flexibility already afforded to us with the RHC Program-wide carry-forward provision, which is designed to fund future year requests in accordance with the public interest. See 47 CFR § 54.619(a)(4); see also *Funding Year 2019 Demand Order*, 35 FCC Rcd at 2663-64, para. 12 (carrying forward unused funds to cover funding year 2019 demand).

<sup>137</sup> See *infra* Part IV.B.

<sup>138</sup> SHLB Petition at 2-3.

<sup>139</sup> 47 CFR § 54.621(b); *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7390, para. 116.

<sup>140</sup> SHLB Petition at 2-3 ("The Order adopts a new system for prioritizing limited RHC funding that, in effect, imposes 100 percent of the burden of any RHC funding shortfalls initially on HCF consortia.").

<sup>141</sup> *Id.* at 3.

<sup>142</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7389, para. 115. Congress intended for section 254(h) to assist health care providers in rural areas with affordable access to modern communications services to enable them to provide medical services to all parts of the nation. See 47 U.S.C. § 254(h); H.R. Rep. No. 104-458, at 131 (1996) (Conf. Rep.) (explaining that Congress intended section 254(h) "to ensure that health care providers for rural areas . . . have affordable access to modern telecommunications services that will enable them to provide medical . . . services to all parts of the Nation" and that "[t]he ability of . . . rural health care providers to obtain access to advanced telecommunications services is critical to ensuring that these services are available on a universal basis."); see also *Universal Service First Report and Order*, 12 FCC Rcd at 8795, para. 31 (stating the "level of discounts correlated to indicators of poverty and high cost [i.e., rurality] for schools and libraries . . . satisfies section 254(h)(1)(B)'s directive that the discount be an amount that is 'appropriate and necessary to ensure affordable access to and use of' the services eligible for the discount.").

include non-rural health care providers.<sup>143</sup> Thus, while SHLB is correct in noting the benefits that rural health care providers receive as members of consortia,<sup>144</sup> we are not persuaded that these consortia warrant higher funding priority over the most rural and medically underserved health care providers. When the Commission adopted the rules permitting HCF consortia, it limited program participation in a “fiscally responsible” manner so as not to jeopardize funding for rural healthcare providers.<sup>145</sup> The prioritization system adopted in the *Promoting Telehealth Report and Order* aligns with this fiscally responsible approach and we decline to reconsider it here.<sup>146</sup>

### 3. Medically Underserved Areas and Populations

48. We decline to revise our use of the Medically Underserved Areas and Populations (MUA/P) designation to determine funding prioritization based on medical need. The U.S. Department of Health and Human Services Health Resources and Services Administration (HRSA) designates an area as MUA/P when the area lacks sufficient primary care services.<sup>147</sup> SHLB requests that we revise HRSA’s data by clarifying that all areas in counties with a population density below twenty persons per square mile will be considered to be MUA/P, arguing that many such sparsely populated areas have never sought MUA/P designation but are nonetheless underserved.<sup>148</sup> We decline to adopt SHLB’s requested modification. As the Commission explained in the *Promoting Telehealth Report and Order*, the MUA/P designation is well-suited for determining prioritization in the Telecom Program because it is objective data from another Federal agency that shows the areas that currently lack health care services and therefore would most benefit from the availability of telehealth services.<sup>149</sup> In addition, relying on HRSA’s determination is straight-forward and easy to administer.<sup>150</sup> SHLB did not provide any data that would enable the Commission to verify its claim that many sparsely populated areas have declined to seek a MUA/P designation from HRSA.<sup>151</sup> Furthermore, we decline to add administrative complexity to this paradigm by adding population density into the determination.

#### D. Certifications

49. We deny USTelecom’s request that we reconsider the requirement adopted in the *Promoting Telehealth Report and Order* that service providers certify on invoices submitted to the Administrator that consultants or third parties hired by a service provider do not have an ownership interest, sales commission arrangement, or other financial stake in the service provider or, in the

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<sup>143</sup> See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7389, para. 115. (“Prioritizing limited funding [to health care providers in more rural areas] fulfills the Commission’s statutory mandate to preserve and advance universal service.”).

<sup>144</sup> See SHLB Petition at 8.

<sup>145</sup> See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16707, para. 61.

<sup>146</sup> SHLB also argues that the Commission “ignor[ed] serious practical challenges USAC [the Administrator] will likely face implementing the new prioritization regime as it applies to consortia.” SHLB Petition at 6. We disagree and note that the Administrator has created IT systems to implement the Commission’s prioritization rules. While we decline to reconsider the prioritization system, the amendment to our rules we adopt today in the Report and Order to have the internal cap apply only when overall demand exceeds available funding alleviates the impact on non-rural health care providers when funding requests for upfront payments and multi-year commitments must be prioritized. See *infra* Part IV.B; Appendix A, Final Rules, 47 CFR § 54.621(b), as adopted herein.

<sup>147</sup> See HRSA website, Health Workforce Shortage Areas, <https://data.hrsa.gov/topics/health-workforce/shortage-areas?tab=muapHeader> (last visited Jan. 26, 2023). HRSA uses the Index of Medical Underservice and recommendations from state governors to make this designation. See *id.*

<sup>148</sup> SHLB Petition at 24-25.

<sup>149</sup> See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7390, para. 116.

<sup>150</sup> See *id.* at 7394, paras. 122-123.

<sup>151</sup> SHLB Petition at 25 & nn. 68-70.

alternative, that we clarify that this certification applies only on a forward-looking basis.<sup>152</sup> In response to this request, the Bureau clarified that the prohibition on third party commission arrangements does not apply to competitive bidding processes completed before funding year 2020.<sup>153</sup>

50. We decline, however, to eliminate this certification and now address the arguments that USTelecom raised in its petition for reconsideration. We disagree with USTelecom's argument that the Commission did not provide adequate notice for this new requirement.<sup>154</sup> The Commission sought comment in the *2017 Notice of Proposed Rulemaking* on "whether to require healthcare providers and service providers to certify that the consultants and outside experts they hire do not have an ownership interest, sales commission arrangement, or other financial stake in the vendor chosen to provide the requested service."<sup>155</sup> USTelecom's argument ignores that the certification language adopted in the *Promoting Telehealth Report and Order* stems directly from the language used in the *Notice of Proposed Rulemaking*.

51. Second, while USTelecom acknowledges that the use of consultants that have financial relationships with vendors raises conflict of interest concerns for RHC Program applicants, we disagree with USTelecom that there are no such concerns for commissioned consultants working for service providers.<sup>156</sup> Similar concerns are applicable to service providers who have commissioned sales agreements with other third parties based on contracts awarded through the Program. For example, there have been previous instances where a service provider's sales agent apparently shared other carriers' confidential pricing information to provide an unfair competitive advantage to that service provider when it responded to a health care provider's request for services.<sup>157</sup> In addition, commissioned consultants or sales agents who simultaneously represent multiple service providers could direct business toward the service provider that pays the highest commission or has the highest bid to maximize their earnings.<sup>158</sup> Such conflicts of interest and anti-competitive conduct violate the Program's longstanding fair and open competitive bidding requirement, which the Commission codified in the *Promoting Telehealth Report and Order*.<sup>159</sup> We therefore clarify that agents compensated solely by commission, and not just those that

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<sup>152</sup> USTelecom Petition at 15-16, 18; *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7414, para. 170; 47 CFR §§ 54.627l(3)(ii)(I), 54.627(d)(1)(ii)(G).

<sup>153</sup> See *Wireline Competition Bureau Clarifies Rural Health Care Program Certification Requirement*, WC Docket No. 17-310, Public Notice, 35 FCC Rcd 5394 (WCB 2020).

<sup>154</sup> USTelecom Petition at 15-16.

<sup>155</sup> *2017 Notice of Proposed Rulemaking*, 32 FCC Rcd at 10659, para. 88.

<sup>156</sup> USTelecom Petition at 16.

<sup>157</sup> See, e.g., *Network Services Solutions, LLC*, File No. EB-IHD-15-0001913, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd 12238, 12255-56, para. 52 (2016) (detailing an example of a service provider's sales agent sharing another telecommunications carrier's confidential pricing with Network Services Solutions LLC (NSS) to provide NSS with an unfair competitive advantage in responding to the health care provider's request for services).

<sup>158</sup> See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Windstream Communications LLC*, WC Docket No. 02-60, Order, 35 FCC Rcd 10312, 10315-16, para. 7 (WCB 2020) (explaining that Windstream's non-exclusive sales agent was entitled to receive 20% of the monthly recurring revenue from the RHC Program contracts awarded to Windstream).

<sup>159</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7410, para. 161. See also *Requests for Review of Decisions of the Universal Service Administrator by Hospital Networks Management, Inc.*, WC Docket No. 02-60, 31 FCC Rcd 5731, 5741-42, para. 20 (WCB 2016) (finding that "the principles underlying the *Mastermind Order* and other orders addressing fair and open competitive bidding not only apply to the E-Rate program (more formally known as the schools and libraries universal service program), but also to participants in the rural healthcare program.") (internal citations omitted).

are compensated partly by commission are covered by the rules.<sup>160</sup> Finally, we note that USTelecom argues that because the E-Rate Program does not prohibit the use of commissioned consultants or sales agents by service providers and that the Commission has sought to harmonize the E-Rate and RHC Programs, the RHC Program should not prohibit their use. We disagree. While USTelecom is generally correct that the Commission has sought to harmonize requirements between RHC and E-Rate, the greater likelihood of RHC consultant misconduct justifies a different requirement in the RHC Program at this time.<sup>161</sup> As such, we affirm the certification rule and deny USTelecom's request to strike this requirement, which applies to competitive bidding practices from funding year 2020 forward.

52. Additionally, we deny USTelecom's request to clarify that a service provider certification addressing "eligible services" does not include an attestation that the services for which the disbursement is sought are eligible for Program support.<sup>162</sup> In the *Promoting Telehealth Report and Order*, the Commission adopted a requirement that service providers certify they have "charged the health care provider for only eligible services prior to submitting the invoice form and accompanying documentation."<sup>163</sup> USTelecom argues that this certification should be interpreted not to apply to the eligibility of the services, arguing that service providers are not responsible for determining the eligibility of services, and that requiring service providers to make such a certification will preclude them from including both eligible services and services not supported by the Program on the same bill submitted to the applicant.<sup>164</sup> On the contrary, the new certification, one of several added to invoicing forms to improve the invoicing process and ensure compliance with Commission rules,<sup>165</sup> does not create a new burden because service providers are already required to abide by Program service eligibility rules.<sup>166</sup> While service providers may include ineligible services and eligible services on the invoices they submit to health care providers, it is critical that service providers engage in due diligence to ensure that they seek reimbursement from the Administrator for eligible services only. Service providers are in the best position to evaluate whether the services they provide are eligible for RHC Program support because they understand the technical details of the services they provide. We therefore confirm that service providers are certifying to the eligibility of the services provided when they certify that they "charged the health care provider for only eligible services prior to submitting the invoice form and accompanying

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<sup>160</sup> See USTelecom Petition at 17, n.4 (suggesting that the prohibition may not apply to agents working solely on commission).

<sup>161</sup> Rural health care consultants sometimes provide bids from multiple service providers for a single health care provider, which raises concerns that the consultant could withhold lower-priced bids from the health care provider to maximize the sales commission. See Petition for Expedited Declaratory Ruling Regarding the Application of 47 C.F.R. § 54.627 and 47 C.F.R. § 54.622 of The Rural Health Care Program or in the Alternative a Waiver, WC Docket 17-310 (filed Feb. 9, 2021). We further note that financial relationships between service providers and a consultant that is retained by the applicant violate the E-Rate program's competitive bidding rules and are not allowed given the control a consultant may have over the applicant's competitive bid process. See *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Akisha Networks, Inc., et al.*, Order, 27 FCC Rcd 8294, 8295-96, para. 2 (WCB 2012) ("A consultant, acting on behalf of the applicant, exerts great influence on an applicant's bidding process and thus, should not have a financial relationship with a service provider which it selects (or recommends) on behalf of the applicant.").

<sup>162</sup> *Id.* at 21-22.

<sup>163</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7424-25, paras. 192-93; 47 CFR §§ 54.627(c)(3)(ii)(G), 54.627(d)(1)(ii)(E).

<sup>164</sup> USTelecom Petition at 21-22.

<sup>165</sup> See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7424-25, paras. 192-93.

<sup>166</sup> See, e.g., 47 CFR § 54.603(b) (providing that only telecommunications services are eligible for support through the Telecom Program); 47 CFR § 54.606(a) (providing that universal support under the Telecom Program will be provided for only *eligible* telecommunications services at the difference between the urban rate and the rural rate charged for the service) (emphasis added).

documentation.”<sup>167</sup> We clarify that with respect to billing, service providers may include both eligible and ineligible services on a single bill to the health care provider but RHC Program reimbursement may only be sought for eligible services.<sup>168</sup>

53. Finally, we make one minor change to the Telecom Program certifications and issue an additional clarification as sought by USTelecom. First, in order to eliminate the potential for confusion, we grant USTelecom’s request<sup>169</sup> to update Telecom Program certifications to add the word “form” after “invoice” to bring the certification in line with the HCF Program certifications.<sup>170</sup> Second, we clarify, as USTelecom requests, that a service provider need not ensure that a health care provider is current on its payments before certifying that the health care provider has “paid the appropriate urban rate.”<sup>171</sup> Having outstanding balances on payments owed to a service provider does not necessarily mean that the health care provider did not pay the appropriate urban rate.

#### IV. SECOND REPORT AND ORDER

54. In this Second Report and Order, we amend the Telecom Program invoicing process to harmonize the RHC invoicing process across the Telecom Program and the HCF Program. We also amend our funding cap and prioritization rules to limit the application of the internal cap and prioritize health care providers’ current year financial need over their future year need when the internal cap is exceeded. Additionally, we make minor changes to the text of the RHC Program rules regarding the number of health care provider types that are eligible in the RHC Program. These actions will promote efficiency, reduce delays in funding commitments, and minimize the possibility that some health care providers may not receive their current year’s support in the event of prioritization to upfront payment and multi-year commitment requests, while strengthening protections against waste, fraud, and abuse.

##### A. Invoicing

55. To closer harmonize the invoicing process across the Telecom Program and the HCF Program, we eliminate the use of Health Care Provider Support Schedules (HSSs) in the Telecom Program and require the participating service provider and health care provider to submit an invoice for service to the Administrator after services are provided consistent with the HCF Program effective for funding year 2024.<sup>172</sup> In the *Further Notice*, we proposed to fully harmonize the invoicing process between the Telecom Program and the HCF Program by having participants in both programs invoice the Administrator for services actually provided using the FCC Form 463 (Invoice and Request for Disbursement Form).<sup>173</sup> Additionally, we proposed to retire the FCC Form 467 (Connection Certification), which is currently used for invoicing in the Telecom Program.<sup>174</sup>

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<sup>167</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7425, para. 193. 47 CFR §§ 54.627(c)(3)(ii)(G)), 54.627(d)(1)(ii)(E).

<sup>168</sup> Service providers submit the FCC Form 463 (for the HCF Program) or the Telecommunications Program invoice form (Telecom Program) to the Administrator to request reimbursement through the RHC Program. The service provider’s customer bill to the health care provider is not submitted to the Administrator for reimbursement. Thus, the customer bill may include both eligible and ineligible services, but the invoice form (i.e., the FCC Form 463 or the Telecom Program invoice form) submitted to the Administrator must seek reimbursement for only eligible services and/or equipment. Any ineligible items on the customer bill may not be included in the invoice form submitted to the Administrator.

<sup>169</sup> USTelecom Petition at 22.

<sup>170</sup> See Appendix A, Final Rules, 47 CFR § 54.627(c)(1)(i)(D), as adopted herein.

<sup>171</sup> USTelecom Petition at 23.

<sup>172</sup> See *Further Notice* at paras. 72-76 (proposing to eliminate HSSs in the Telecom Program and harmonizing the invoicing process across both Rural Healthcare Program programs).

<sup>173</sup> See *id.* at para. 76.

56. We adopt our proposal to eliminate HSSs in the Telecom Program and retire the FCC Form 467.<sup>175</sup> Eliminating the use of HSSs in the Telecom Program will stop payments being disbursed automatically with minimal action from the health care provider or service provider.<sup>176</sup> Because the FCC Form 467 is the form filed before a health care provider can receive an HSS, it will no longer be necessary and will be eliminated.<sup>177</sup> However, rather than adopt the FCC Form 463 for the Telecom Program as proposed, we instead direct the Administrator, upon approval from the Bureau, to adopt a new invoice form for the Telecom Program that will be filed after services have been provided, and will allow participants to indicate when services have started, and will more clearly identify what services RHC Program applicants receive during the funding year while maintaining separation between the HCF Program and Telecom Program invoicing processes.

57. Creating a new Telecom Program invoicing form, which is distinct from, but functionally similar to, the FCC Form 463 will ensure that invoicing in the Telecom Program occurs after services have actually started, that service providers are reimbursed for actual costs rather than predetermined amounts established by the HSS, and that participants need not take action to change an HSS if the services are terminated or never begin. Having distinct forms for each program will account for the fact that there are consortium applications in the HCF Program but not in the Telecom Program. Additionally, we find that adopting this process for invoicing in the Telecom Program will further alleviate inefficiencies and protect against waste, fraud, and abuse in the RHC Program. This new process for invoicing will eliminate the need for health care providers to file, and subsequently amend, an FCC Form 467. It will also reduce the likelihood of improper disbursements because disbursements will be based on charges for services that were actually provided rather than expected charges for services *anticipated* to be provided.<sup>178</sup>

58. Service providers will initiate the invoicing process by preparing the new Telecom invoicing form and service providers and health care providers will continue to make the same certifications on the new form that they have previously made on Telecom invoicing forms.<sup>179</sup> As with HCF Program invoices, invoices in the Telecom Program can be submitted any time after services have been provided and the service provider sends an invoice to the health care provider. A service provider can submit an invoice form to the Administrator after each month of service or, if it elects to, may alternatively wait until the end of the funding year to submit a single invoice for all services provided during the funding year. All invoices for services actually incurred must be submitted before the invoice filing deadline, consistent with Commission rules.<sup>180</sup>

59. Some commenters raised concerns that adopting a system in which disbursements are

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<sup>174</sup> See *id.* at para. 76.

<sup>175</sup> See *id.* at paras. 75-76. See also Windstream Comment at 8-9 (supporting the elimination of the HSS; CHC Comments at 2 (supporting the streamlining of the Telecom Program invoice process and discussing the elimination of the FCC Form 467). Some commenters opposed this proposal, claiming that harmonizing the two programs' invoicing processes would increase administrative burdens and possibly disrupt funding disbursements. See ENA Comments at 8-9, GCI Comments at 18, SLHB Comments at 21. See also ADS Reply Comments at 3. For the reasons discussed herein, we find that preventing improper payments outweighs added administrative burdens.

<sup>176</sup> See *id.* at para. 74 (describing the invoicing process in the Telecom Program, which relies on a predetermined schedule rather than invoicing against actual costs incurred).

<sup>177</sup> See *id.* at para. 76 ("If the proposal to eliminate HSSs is adopted, the use of the FCC Form 467 would be unnecessary because health care providers would no longer need to file the form to receive HSSs.").

<sup>178</sup> This invoicing process allows service providers to bill for actual charges even if the actual charges are lower than the anticipated charges that the funding commitment is based on.

<sup>179</sup> See 47 CFR § 54.627(c)(3).

<sup>180</sup> See 47 CFR § 54.627(b).

made based on invoices filed after services are provided, rather than a predetermined HSS for the Telecom Program, would increase administrative burdens, and these burdens could be exacerbated by the fact that invoices in the Telecom Program can be submitted only on an individual basis, rather than on a consortium basis.<sup>181</sup> Other commenters supported harmonizing the invoicing processes so long as there are mechanisms to reduce increased administrative burdens.<sup>182</sup> We recognize that adopting an invoicing system based upon actual expenses incurred will likely require more invoice-related filings from program participants, but the history of improper disbursements from the use of the HSS justifies any potential added burden.<sup>183</sup> To mitigate any administrative burdens,<sup>184</sup> we direct the Bureau to work with the Administrator to develop a mechanism for filing this new form and to provide service providers the functionality to file invoices for multiple funding requests for multiple health care providers in a single filing.

### **B. Internal Cap Application And Prioritization**

60. We adopt the changes to the RHC Program internal cap application and prioritization proposed in the *Further Notice* effective funding year 2023.<sup>185</sup> We amend RHC Program rules to limit the application of the internal cap on multi-year commitments and upfront payments to funding years for which the total demand exceeds the remaining support available.<sup>186</sup> We also prioritize upfront payments and the first year of multi-year commitments, and then fund the second and third years of multi-year commitments with any remaining funding in a given funding year.<sup>187</sup> Although demand has been fully satisfied in every funding year since the adoption of the *Promoting Telehealth Report and Order*, these changes will ensure a smoother, fairer process in the event that prioritization is ever necessary.

61. First, we amend our funding cap rules to limit the application of the internal cap to those application filing window periods during which total demand exceeds total remaining support available for the funding year.<sup>188</sup> All commenters who discussed this proposal supported it.<sup>189</sup> If total demand during a filing window period does not exceed total remaining support available for the funding year, the internal cap will not apply. The total remaining support available for the first filing window period of a funding year is the sum of the inflation-adjusted RHC Program aggregate cap in section 54.619(a)<sup>190</sup> of

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<sup>181</sup> See ENA Healthcare Comments at 8-9. See also SHLB Reply Comments at 10; GCI Reply Comments at 18. We also reject SHLB's request to direct USAC to change its systems to bill for actual charges instead of funding commitment amounts in lieu of making a rule change. See Letter from Kristen Corra, Policy Counsel, Schools, Health & Libraries Broadband (SHLB) Coalition to Marlene Dortch, Secretary, FCC, WC Docket No. 17-310, 3-4 (filed Jan. 17, 2023). Our comprehensive reform will more effectively streamline the Telecom Program invoicing process and better protect Program integrity than SHLB's proposal.

<sup>182</sup> See ANTHC Comments at 2, 5; see also Windstream Comments at 8-9 ("Not only do Health Care Provider Support Schedules ('HSSs') 'compromise the ability of USAC to administer the Telecom Program effectively and efficiently,' but they also complicate the invoicing process for participating service providers, particularly those that also participate in the HCF Program, where only FCC Form 463 is used.").

<sup>183</sup> See, e.g., *TeleQuality Communications, LLC*, EB-IHD-19-00028870, Order and Consent Decree, 35 FCC Rcd 503, 515 (EB 2020) (*TeleQuality Consent Decree*) (describing invoicing violations in which TeleQuality Communications, LLC invoiced USAC for services that were disconnected before the end of the funding period or were not actually installed and provided).

<sup>184</sup> See ANTHC Comments at 2 (requesting that changes to the invoice process mitigate administrative burdens on Tribal entities).

<sup>185</sup> *Further Notice*, at 24-25, paras. 65-66.

<sup>186</sup> *Id.*

<sup>187</sup> *Further Notice* at 25-26, paras. 67-68.

<sup>188</sup> See Appendix A, Final Rules, 47 CFR § 54.619(a), as adopted herein.

<sup>189</sup> See PCIA Comments at 2; WNY Comments at 1; SHLB Reply Comments at 5.

our rules and the proportion of unused funding determined for use in the RHC Program pursuant to section 54.619(a)(5).<sup>191</sup>

62. This approach will preserve the internal cap's intended purpose of preventing multi-year and upfront payment requests from encroaching on the funding available for single-year requests,<sup>192</sup> because the internal cap would only apply when the total demand exceeds the total remaining support available. No requests will be reduced, even if the internal cap is exceeded, as long as there is sufficient total funding to meet total demand. This approach will also ensure funding for single-year requests in the next funding year.<sup>193</sup> Allowing upfront payment and multi-year commitment requests to be fully funded if funding is available for all demand in the current funding year will also alleviate demand in the next funding year given that funding multi-year commitment requests in the current funding year eliminates demand for those services under the next funding year's cap.

63. Second, we amend our rules to prioritize support for current-year funding requests over future-year funding requests when the internal cap is exceeded.<sup>194</sup> Specifically, we amend section 54.621 of our rules to fund eligible upfront payment requests and the first-year of all multi-year requests before funding the second or third year of any multi-year requests when the internal cap applies and is exceeded.<sup>195</sup> Additionally, we amend our rules to allow the underlying contracts associated with those multi-year commitment requests that are not fully funded to be designated as "evergreen."<sup>196</sup>

64. The amendment to the prioritization process we adopt today increases the chance that health care providers who requested support for upfront payments and multi-year commitments will have their current year's financial need satisfied in the event that prioritization is necessary. The previous prioritization process would have resulted in some health care providers, likely those in the lower

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<sup>190</sup> 47 CFR § 54.619(a).

<sup>191</sup> 47 CFR § 54.619(a)(5). In the event that a second filing window is opened during a funding year, the total remaining support available for the second filing window is the total remaining support after allocating funding to eligible funding requests during the first filing window. 47 CFR § 54.621(a)(2). The last funding year in which there was a second filing window was funding year 2016, and a second filing window is not currently planned for future funding years given that there has been no available funding for a second filing window in recent funding years. See *Wireline Competition Bureau Provides a Filing Window Period Schedule for Funding Requests Under the Telecommunications Program and the Healthcare Connect Fund*, WC Docket No. 02-60, Public Notice, 31 FCC Rcd 9588, 9591 (WCB 2016) (directing USAC to open a second filing window period for funding year 2016). If the total demand during a second filing window exceeds the total remaining support available for the funding year, funding for upfront payment and multi-year commitment requests submitted during the second filing window will be capped at the remaining support available within the internal cap. For example, if the internal cap for the funding year is \$161 million and support for eligible upfront payments and multi-year commitments during the first filing window is \$130, the remaining support available within the internal cap is \$31 million.

<sup>192</sup> See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7401, para. 138 ("the \$150 million cap did the job the Commission intended when it was established – to prevent multi-year and upfront payment requests from usurping the funding available for single-year requests for recurring services and safeguard against large fluctuations in demand for RHC Program funds."); *Healthcare Connect Fund Order*, 27 FCC Rcd at 16802, para. 298.

<sup>193</sup> See Alaska Communications Comments at 34 (stating that any attempt to retain the internal cap must prevent multi-year and upfront payment requests from encroaching on single-year requests).

<sup>194</sup> See Appendix A, Final Rules, 47 CFR § 54.621(b), as adopted herein.

<sup>195</sup> See *id.* Commenters support this proposal. See PCIA Comments at 2; WNY Comments at 1. Under this approach, the second and third years of a request for a multi-year commitment that fall within the same prioritization tier would be treated equally.

<sup>196</sup> See Appendix A, Final Rules, 47 CFR § 54.621(b)(4), as adopted herein. As noted below, such contracts must satisfy the criteria set forth in section 54.622(i)(3)(ii) of the Commission's rules. 47 CFR § 54.622(i)(3)(ii). Commenters also support this proposal. See WNY Comments at 2.

prioritization categories, losing all or a portion of their requested support for the current funding year while other health care providers receive commitments for the second and third years of multi-year commitments, even though they could request funding for these services in subsequent funding years. This change mitigates such adverse impact to those health care providers. By prioritizing support for upfront payment requests and the first year of multi-year commitment requests when the internal cap applies and is exceeded, health care providers in the lower prioritization categories will more likely receive the current year's requested support. Additionally, the action we take today will further promote broadband network development led by HCF consortia that include non-rural members by lessening the impact of prioritization to those non-rural health care providers and by giving preference to upfront costs such as network construction. We recognize that this amendment will inconvenience some health care providers in the higher prioritization categories that may have to file applications in future funding years for services that otherwise would fall under the second and third year of a multi-year commitment. We conclude, however, that such concerns are outweighed by the benefit to health care providers who, without this rule change, could have their current year funding requests denied or prorated.

65. To mitigate any potential adverse impact to health care providers whose multi-year commitment requests are affected, we also amend our rules<sup>197</sup> to allow the underlying contracts associated with those multi-year commitment requests that are not fully funded to be designated as “evergreen,” provided that the contracts satisfy the criteria set forth in section 54.622(i)(3)(ii) of the Commission's rules.<sup>198</sup> The evergreen designation will exempt applicants from having to complete the competitive bidding process for multi-year contracts that are not initially fully funded due to our new internal cap rules when the applicant subsequently files requests for support pursuant to these contracts.<sup>199</sup> As a result, applicants can request single or multi-year commitments pursuant to these contracts in the next funding year without going through the competitive bidding process.

66. We agree with Alaska Communications, GCI, and WNY that the internal cap prevents multi-year commitment requests from usurping funding available for single-year requests,<sup>200</sup> and we reject requests by some commenters to eliminate the internal cap or to remove multi-year commitments from the internal cap. This latter group of commenters claims that eliminating the internal cap or removing multi-year commitments from the internal cap would encourage more multi-year commitments, which these commenters claim are more efficient for both the RHC program and individual HCPs.<sup>201</sup> We find that retaining the current internal cap with the limitations we institute today is more fiscally responsible than eliminating the internal cap or removing multi-year commitments from the internal cap. Eliminating the cap or removing multi-year commitments from the internal cap will result in less funding being made available for single year commitments. Multi-year requests tend to be more expensive and without any constraints, those requests will make it more likely that the overall cap is exceeded. In any event, the

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<sup>197</sup> See Appendix A, Final Rules, 47 CFR § 54.621(b)(4), as adopted herein.

<sup>198</sup> 47 CFR § 54.622(i)(3)(ii); see also *Further Notice* at 26, para. 69. In funding year 2018, when the Commission directed USAC to fully fund only the upfront payments and the first year of the multi-year commitments, it also directed USAC to designate the eligible underlying contracts as “evergreen.” See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, 34 FCC Rcd 4136, 4138-39, para. 9 (2019).

<sup>199</sup> 47 CFR § 54.622(i)(3).

<sup>200</sup> Alaska Communications Comments at 34 (“Absent a cap, HCF applicants seeking multi-year commitments could artificially inflate demand, potentially harming other applicants that seek one-year funding commitments”); WNY Comments at 2 (“Based on the proposed rules we believe it would be better to keep the internal cap in place with the newly proposed rules”); GCI Reply Comments at 17 (“the Commission should not remove internal caps on funding for upfront and multi-year commitments.”).

<sup>201</sup> SHLB Comments at 14 (“network construction of more advanced, future-proof technologies often leads to lower ongoing costs, thus saving money for both the program and for individual HCPs.”); NETC Reply Comments at 4 (“Multi-year funding requests are immensely more efficient for both USAC and applicants.”).

changes we adopt for the internal cap today will likely result in making more funding available for multi-year commitments because, going forward, the internal cap will only apply when total demand exceeds total support available and thus will not apply at all in funding years when total support available can satisfy total demand, leaving open the possibility for additional funding for multi-year commitments beyond the internal cap.

67. We also reject some commenters' requests to suspend the funding prioritization system until the Commission addresses the allocation of shared network costs for consortia program participants.<sup>202</sup> As an initial matter, we did not seek comment in the *Further Notice* on suspending the funding prioritization scheme. We find, however, that a rule change is not necessary for the Commission to ensure that consortium members can allocate shared network costs when some members do not receive funding due to prioritization. In any event, as discussed in the Order on Reconsideration above, our funding prioritization approach remains necessary as it will target support where it is most needed (i.e., those more rural areas with greater medical shortages) in cases where available program funding is exceeded in a given funding year.<sup>203</sup> We therefore reject the requests to suspend the funding prioritization system.

68. Some commenters argued that an increase to the overall RHC Program cap is appropriate.<sup>204</sup> We find that the current annually inflation-adjusted overall cap combined with the process to carry-forward unused funding strikes the necessary balance between providing sufficient funding to health care providers and minimizing increased burden on USF contributors.<sup>205</sup> With the availability of carryover funding, demand has been fully satisfied since funding year 2019.<sup>206</sup> While we continue to monitor overall Program demand, we decline to increase the overall RHC Program cap at this time.

### C. Technical Changes to Previously Codified RHC Rules

69. We also take this opportunity to make two minor corrections to the text of the RHC Program rules. First, we amend the text of section 54.622(e)(1)(i) to reflect the correct number of health care provider types that are eligible. The Rural Healthcare Connectivity Act of 2016 amended the Communications Act of 1934 to add skilled nursing facilities to the list of health care provider types eligible to receive RHC Program support.<sup>207</sup> In response to this new law, in 2017, the Commission amended section 54.600(a) of its rules to reflect that skilled nursing facilities are eligible for RHC support, which increased the number of eligible health care provider types from seven to eight.<sup>208</sup> In

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<sup>202</sup> NETC Reply Comments at 4-5; SHLB Comments at 13-14. See also Jeffrey Mitchell, Counsel, New England Telehealth Consortium (NETC) to Marlene Dortch, Secretary, FCC, WC Docket No. 17-310, 2 (filed January 19, 2023) (NETC *Ex Parte*) at 2.

<sup>203</sup> See *supra* Part III.C.2

<sup>204</sup> See SHLB Comments at 17; ADS Comments at 5.

<sup>205</sup> See *RHC Program Cap Order*, 33 FCC Rcd at 6580, para. 13. In 2018, the Commission decided to annually adjust the RHC Program funding cap to reflect inflation and established a process to carry-forward unused RHC Program funds on an annual basis for use in future funding years. See *id.* at 6578, para. 9.

<sup>206</sup> See *Funding Year 2019 Demand Order*, 35 FCC Rcd at 2659, 2662, paras. 3, 9; *Funding Year 2020 Demand Order*, 35 FCC Rcd at 11696, 11699, paras. 3, 9; *Wireline Competition Bureau Announces the Availability of Unused Funds to Fully Satisfy Demand for Rural Health Care Program Funding For Funding Year 2022*, WC Docket No. 02-60, Public Notice, DA 22-792, 2022 WL 2965199, at \*1 (WCB July 22, 2022).

<sup>207</sup> See Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act, Title II – Rural Healthcare Connectivity, Pub. L. No. 114-182 (2016) (Rural Healthcare Connectivity Act of 2016) (amending the Act to include skilled nursing facilities as a health care provider type) (codified at 47 U.S.C. § 254(h)(7)(B)). Section 254 was added to the Act by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

<sup>208</sup> See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Memorandum Opinion and Order, 32 FCC Rcd 5260 (2017). See also 47 CFR § 54.600(a) (2018).

enacting this change, the Commission did not amend a different rule addressing certifications on a Request for Services that refers to “one of the *seven* categories set forth in the definition of health care provider.”<sup>209</sup> We now correct that omission by striking the word “seven” from section 54.622(e)(1)(i) of our rules. Striking the word “seven” rather than replacing it with “eight” is appropriate because quantifying the number of eligible health care provider types in section 54.622(e)(1)(i) adds no substantive benefit to RHC Program participants but could potentially lead to confusion if there are future amendments to the health care provider types eligible for the RHC Program. Second, we correct the cross-reference in section 54.622(a) so that it properly references section 54.622(i).<sup>210</sup> We find that there is good cause to make these changes without notice and comment because seeking comment on these technical amendments, which only serve to conform these references to the current requirements of the rules would be unnecessary.<sup>211</sup>

## V. ORDER

70. By this Order, we dismiss the Applications for Review of the Bureau’s guidance to the Administrator on implementation of the Rates Database<sup>212</sup> submitted by Alaska Communications and GCI.<sup>213</sup> Our decision above to eliminate the use of the Rates Database to calculate urban and rural rates renders these Applications for Review moot.<sup>214</sup>

## VI. SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

71. In this Second Further Notice of Proposed Rulemaking, we first propose modifications to the three rural rate determination methods in the Telecom Program, including changes to the market-based approach of Methods 1 and 2 and new evidentiary requirements for justifying cost-based rates under Method 3. We also propose to simplify urban rate rules by eliminating the “standard urban distance” distinction and seek specific comment on sources for urban rates as well as general comment on our urban rate rules. Next, we seek comment on reinstating the cap on support for satellite services that the Commission eliminated when it adopted the Rates Database and on amending HCF Program rules to make equipment supporting Telecom Program services eligible. In addition, to make it easier for health care providers to receive RHC Program funding as soon as they become eligible entities, we propose a conditional eligibility process to allow entities that will be eligible health care providers in the future to engage in competitive bidding and file Requests for Funding before they become eligible. We also propose to align the deadline to request a Service Provider Identification Number (SPIN) change with the invoice filing deadline and seek comment on a post-commitment process to amend evergreen contract dates. We conclude by seeking comment on proposed revisions to FCC Form 466 intended to improve the quality of Telecom Program data.

### A. Rural Rates

72. In the Order on Reconsideration above, we grant the petitions seeking reconsideration of the Telecom Program Rates Database and restore Methods 1, 2, and 3 for calculating rural rates in the

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<sup>209</sup> See 47 CFR § 54.603(b)(1)(i) (2018) (emphasis added). This section has subsequently been re-codified as 47 CFR § 54.622(e)(1)(i). See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7451, Appx. A.

<sup>210</sup> See 47 CFR § 54.622(a) (currently citing to “an exemption listed in paragraph (j) in this section” despite the fact that competitive bidding exemptions are listed in section 54.622(i).

<sup>211</sup> See 5 U.S.C. § 553(b)(B); see also 47 CFR § 1.412(c).

<sup>212</sup> See *Rates Database Implementation Letter*. Because the Rates Database has been rescinded, this letter no longer has any legal effect.

<sup>213</sup> See GCI Application for Review; Alaska Communications Application for Review.

<sup>214</sup> Because we dismiss the Applications for Review as moot, we need not determine whether the Applications for Review, which asked the Commission to review guidance by the Bureau directed to the Administrator, met the procedural requirements of section 1.115 of our rules. See 47 CFR § 1.115.

Telecom Program effective for funding year 2024. Although we believe restoring Methods 1, 2, and 3 is the best of our currently available options to ensure that healthcare providers have adequate, predictable support in the short term, we also recognize that improvements to these methods may be necessary for the long term given the issues that the Commission has previously cited with respect to these rate calculation methodologies.<sup>215</sup> Therefore, in the following sections, we propose modifications to the three methods to improve the overall calculation of rural rates, make rate calculations simpler to administer, and reduce waste, fraud, and abuse in the Telecom Program for funding year 2024 and beyond. Our proposals are similar to the now-reinstated Methods 1 through 3 in that they contain multiple ways to calculate rural rates that are applied sequentially. While we seek comment specifically on our proposed modification to the methods, at the outset we seek comment generally on alternative rural rate calculation methods. In proposing alternative rate methodologies, commenters should be specific, point the Commission to available data sources to support any alternative methodology, and explain how any alternative methodology would be more advantageous in protecting the Fund against waste, fraud, and abuse.

73. As an initial matter, we address several matters applicable to rural rates regardless of the method used. For both market-based calculations and cost-based rates, we propose that the rural rate not exceed the monthly rate in the contract or other applicable agreement between the service provider and health care provider.<sup>216</sup> This safeguard exists in the rules related to the Rates Database<sup>217</sup> and ensures that rural rates will drop if market prices drop. We seek comment on this proposal. Are there situations in which it would be appropriate to base support on an amount higher than the monthly rate in the contract or other applicable agreement?

74. Additionally, we propose that service providers with multi-year contracts, including evergreen contracts, continue to be required to justify rural rates only in the first year of the contract. Given that service providers would not be expected to submit additional bids within the duration of the multi-year contract, we believe it would be reasonable to exempt such contracts from requiring additional rural rates justifications during the duration of the contract. We seek comment on this proposal. We also seek comment on whether a rural rate approval for a single year contract for the same health care provider for the same service should be effective for multiple funding years to reduce administrative burdens associated with filing rural rate justifications every year. If so, for how many years should an approval be effective?

75. We seek comment on whether the Commission should offer guidance on which point in the procurement and funding cycle service providers should determine rural rates.<sup>218</sup> The Bureau previously advised that service providers should determine the rural rate before responding to a health care provider's request for bids.<sup>219</sup> If the Commission offers further guidance, should it alter the guidance the Bureau previously offered? We also seek comment on whether additional clarification is needed regarding what constitutes "comparable rural areas" for determining rural rates.<sup>220</sup> Are health care providers and service providers currently able to determine what constitute a "comparable rural area?" If the Commission were to offer a clarification on what constitutes "comparable rural areas," what should the clarification state?

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<sup>215</sup> See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7363-65, paras. 55-58.

<sup>216</sup> See Appendix B, 47 CFR § 54.605(d) as proposed herein.

<sup>217</sup> See 47 CFR § 54.605(a).

<sup>218</sup> See *Alaska Communications Ex Parte* at 4 (requesting that the Commission seek comment on when a rate determination should be performed).

<sup>219</sup> See *Rural Rates Public Notice*, 34 FCC Rcd at 532.

<sup>220</sup> See 47 U.S.C. § 254(h)(1)(A). See also *Alaska Communications Ex Parte* at 3 (requesting that the Commission seek comment on defining the rural area where a health care provider is located).

## 1. Market-Based Calculations

76. The rules that we reinstate today require health care and service providers to first calculate the rural rate by averaging rates offered by the service provider for an identical or similar service in the rural area in which the health care provider was located (Method 1), and in the event the service provider does not provide such a service, the average of rates offered by carriers other than the service provider (Method 2).<sup>221</sup> We now propose alternative sequential methods for determining rural rates, which we call “Method A” and “Method B” for purposes of this Second Further Notice.<sup>222</sup>

Method A: The rural rate shall be the median of publicly available rates charged by other service providers<sup>223</sup> for the same or similar services over the same distance in the rural area where the health care provider is located.

Method B: If there are no publicly available rates charged by other service providers for the same or similar services (that is, rates that can be used under Method A), the rural rate shall be the median of the rates that the carrier actually charges to non-health care provider commercial customers for the same or similar services provided in the rural area where the health care provider is located.

This proposal differs from Methods 1 and 2 in two primary respects. First, our new proposed calculations would be based on the *median* of inputs, rather than their average. Calculating rural rates using the median will mute the effect that a small number of abnormally high or low inputs would have on the calculated rural rate.<sup>224</sup> We seek comment on this methodology. Would calculating rural rates using averages be preferable to using medians? If so, why? Are there other ways that we should consider calculating rural rates?

77. The second major way that our proposal varies from Methods 1 and 2 is that the default calculation in our proposal is based on rates charged by other service providers, meaning that a service provider would only be able to use its own rates to calculate the rural rate if there are no applicable rates from other service providers. This change could improve program integrity and provide administrative benefits. As to program integrity, shifting the default rural rates calculation to rates from other service providers could ensure that rural rates in the Telecom Program better reflect market conditions. A service provider would not enjoy inflated rural rates simply because it charges inflated rates to customers outside of the Telecom Program. We seek stakeholder feedback on program integrity implications of our proposal to use rates charged by other service providers as the default for calculating rural rates. Are there any concerns with service providers using competitor’s rates to determine rural rates instead of using their own rates? What are the benefits? Are there benefits to using the service provider’s own rates as the default as Method 1 does?

78. As to administration, the availability of rural rates on the Open Data platform on the Administrator’s website could simplify the rates determination process if the Administrator were to build a tool that allows the filer of a Request for Funding to select the specific funding requests, i.e., prices from past request that would be used as inputs to Method A. The tool would then determine the rural rate under Method A on behalf of the health care provider before it certifies its Request for Funding. Unlike the Rates Database, which we have eliminated in the Order on Reconsideration above, this automated process would not pre-determine which health care provider is in a similar rural area as the health care provider applicant. That would be left to the service provider to determine. During application review,

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<sup>221</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7363, para. 54.

<sup>222</sup> See Appendix B, 47 CFR § 54.605(a)(1) and (2) as proposed herein.

<sup>223</sup> “Other service providers” are considered any service provider with a different SPIN.

<sup>224</sup> See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7366, para. 63.

the Administrator would verify that the sites from the inputs are in a similar rural area to the health care provider, just as it has done under the now reinstated Methods 1 and 2.

79. We seek comment on developing an automated process to calculate rural rates, to the extent possible, by having USAC's website auto-generate the rural rate after the health care and/or service provider selects sites that are in the same rural area as the HCP. Would this help alleviate administrative burdens associated with calculating rural rates? Should filers be permitted to add rural rates outside of Open Data to be included in the calculation? Are there any circumstances in which a filer should be permitted to exclude a rate even if the rate is for the same or similar services over the same distance in the rural area where the health care provider is located? Are there any disadvantages to automating the rate calculation process in this way? Would a challenge process outside of the normal appeals process be necessary? If so, how should such a challenge process operate? Do commenters have any alternative methods of administering these proposed rate methodology changes that would increase efficiency and transparency? Commenters are encouraged to provide specific suggestions and feedback on how we can best administer changes to the rates determination process.

80. We seek comment on other iterations of the proposed Methods A and B above. For instance, one alternative to our proposal would be to use the lower of the rural rates calculated under Methods A and B. This alternative would ensure that the Fund reaps the benefits of reductions in pricing from the service provider for the applicable funding request or in the overall market. We seek comment on the advantages and disadvantages of this approach.

81. We also seek comment on the rates that should be used for Methods A and B under our proposal. For Method A, are there other sources of publicly available rate information that we should consider, such as tariffed rates? Should Method A inputs be limited to data available in Open Data? Do commenters agree that the data available in Open Data would be sufficient for Program participants to determine a rural rate under Method A? If not, what additional information would be required in Open Data to make such a rate determination? For the proposed Method B, we seek comment on whether we should include the median of *all* of the service provider's own rates for the same or similar services, including rates for USF-supported services, which are currently excluded from Method 1 calculations either in situations where there are no publicly available rates or tariffed rates outside of the service provider's own rates or in all situations. For Method B, should service providers use additional information available in their own records to make a more granular similarity determination?

82. For both proposed Methods A and B, we seek comment on whether we should include both healthcare provider and non-healthcare provider commercial customers in the rural area in which the healthcare provider is located to calculate the rural rate. Do commenters have any concerns with allowing service providers to rely on all of their own rates, including health care provider rates? How should Methods A and B account for the potential price variations caused by term and volume discounts? Do commenters have any concerns that the proposed Methods would not be suitable for health care providers in Alaska? Commenters are encouraged to be specific with their concerns.

## 2. Cost-Based Rates

83. We propose that service providers continue to have the option to submit a cost-based rate if they cannot calculate a rural rate using Methods A or B. Under the rate determination rules we reinstate today, service providers may request approval of a cost-based rate under Method 3 from the Commission (for interstate services) or a state commission (for intrastate services) if there are no rates for the same or similar services in the rural area in which the health care provider is located, or the service provider reasonably determines that the calculated rural rate would not be compensatory.<sup>225</sup> The Commission's rules require the service provider to submit a justification of its requested rural rate, including an

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<sup>225</sup> See Appendix A, Final Rules, 47 CFR § 54.605(b), as adopted herein.

itemization of the costs of providing the service requested by the eligible health care provider.<sup>226</sup> To comply with this requirement, the request for approval of a cost-based rural rate requires service providers to include a cost study that demonstrates how the costs of providing services were allocated to RHC Program customers.<sup>227</sup>

84. In the *Promoting Telehealth Report and Order*, the Commission eliminated the cost-based method of determining rates and instead concluded that submitting a cost-based rate should serve only as a safety valve for service providers that have no other means of determining a rural rate.<sup>228</sup> The Commission reasoned that implementation of the Rates Database made it unlikely that service providers would be unable to determine a rural rate with the data provided in the database.<sup>229</sup> The Commission established a waiver process that allowed service providers to use a cost-based rate mechanism in “extreme cases” where the provider could show that the applicable rural rate from the Rates Database “would result in objective, measurable economic injury.”<sup>230</sup> Now that we have eliminated the Rates Database and reinstated the previous rate determination rules, we propose to modify the cost-based rate-determination method to include specific evidentiary requirements to increase transparency in how service providers calculate cost-based rates when a rural rate cannot be calculated under Methods A or B or the carrier reasonably determines that the rural rate calculated under Methods A or B would not generate a reasonably compensatory rate.

85. We propose a revised cost-based method that will require service providers seeking approval of a cost-based rate to satisfy the same evidentiary requirements that the Commission adopted as required for waiver of the Rates Database rules in the *Promoting Telehealth Report and Order*.<sup>231</sup> When service providers submit a cost-based rate, we propose to require service providers to include all financial data and other information to verify the service provider’s assertions, including, at a minimum, the following information:

- “Company-wide and rural health care service gross investment, accumulated depreciation, deferred state and federal income taxes, and net investment; capital costs by category expressed as annual figures (e.g., depreciation expense, state and federal income tax expense,

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<sup>226</sup> See Appendix A, Final Rules, 47 CFR § 54.605(b)(1), as adopted herein (“The carrier must provide, to the state commission, [f]or intrastate rates, or to the Commission, for interstate rates, a justification of the proposed rural rate, including an itemization of the costs of providing the requested service”).

<sup>227</sup> In 2019, the Commission released a public notice providing guidance to program applicants on what should be included in the cost study. At a minimum, the cost study required a service provider to submit information on the following: “a) The company’s total capital expenditures (CAPEX) and operational expenditures (OPEX), with a breakdown of the total figure’s components (e.g., depreciation, taxes, return on investment); b) An explanation of how the total CAPEX/OPEX figure is allocated between customers, together with the resulting allocated figures, as necessary to show how the company has allocated CAPEX/OPEX costs to its RHC Program customers; c) The company’s total common costs and a breakdown of that total figure’s components; and d) An explanation of how the company’s total common costs are allocated between customers, together with the resulting allocated figures, as necessary to show how the company has allocated common costs to RHC facilities and to RHC Program customers.” *Rural Rates Public Notice*, 34 FCC Rcd 533. However, these specific evidentiary requirements were not codified.

<sup>228</sup> The Commission eliminated the cost-based support mechanism and concluded that cost-based reviews “should not be an alternative method of determining a rural rate under our rules but instead should be reserved for extreme cases where a carrier can demonstrate that determining Telecom Program support under the new rural rate rules adopted by this Report and Order would result in an objective, measurable economic injury.” *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7369, para. 71.

<sup>229</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7369, para. 70.

<sup>230</sup> *Id.* at 7369, para. 71.

<sup>231</sup> *Id.* at 7369-72, paras. 71-75.

return on net investment); operating expenses by category (e.g., maintenance expense, administrative and other overhead expenses, and tax expense other than income tax expense); the applicable state and federal income tax rates; fixed charges (e.g., interest expense); and any income tax adjustments;

- An explanation and a set of detailed spreadsheets showing the direct assignment of costs to the rural health care service and how company-wide common costs are allocated among the company's services, including the rural health care service, and the result of these direct assignments and allocations as necessary to develop a rate for the rural health care service;
- The company-wide and rural health care service costs for the most recent calendar year for which full-time actual, historical cost data are available;
- Projections of the company-wide and rural health care service costs for the funding year in question and an explanation of these projections;
- Actual monthly demand data for the rural health care service for the most recent three calendar years (if applicable);
- Projections of the monthly demand for the rural health care service for the funding year in question, and the data and details on the methodology used to make that projection;
- The annual revenue requirement (capital costs and operating expenses expressed as an annual number plus a return on net investment) and the rate for the funded service (annual revenue requirement divided by annual demand divided by 12 equals the monthly rate for the service), assuming one rate element for the service, based on the projected rural health care service costs and demands;
- Audited financial statements and notes to the financial statements, if available, and otherwise unaudited financial statements for the most recent three fiscal years, specifically, the cash flow statement, income statement, and balance sheets. Such statements shall include information regarding costs and revenues associated with, or used as a starting point to develop, the rural health care service rate; and
- Density characteristics of the rural area or other relevant geographical areas including square miles, road miles, mountains, bodies of water, lack of roads, remoteness, challenges and costs associated with transporting fuel, satellite and backhaul availability, extreme weather conditions, challenging topography, short construction season, or any other characteristics that contribute to the high cost of servicing the health care providers.<sup>232</sup>

86. We understand that stakeholders generally disfavored the evidentiary requirements for the cost-based waiver for determining rural rates because of the burdensome nature of the information requested, the possibility that the cost-based method would not provide sufficient support for those that could not calculate their rates using the Rates Database and the fact that these evidentiary requirements go far beyond the evidentiary requirements for Method 3.<sup>233</sup> However, the Commission adopted the waiver process as a safety valve given how infrequently the cost-based method has been used in the Telecom Program's history and the small likelihood that providers could not determine the rural rate using the

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<sup>232</sup> 34 FCC Rcd at 7371-72, para. 74.

<sup>233</sup> See Alaska Communications Application for Review, WC Docket No. 17-310 at 18 (filed July 30, 2020) (Alaska Communications AFR). See also Application for Review of GCI Communication Corp. (GCI), WC Docket No. 17-310, at 22 (filed July 30, 2020) (GCI AFR) (arguing that the waiver process is "flawed and untested" and did not provide an adequate remedy for program applicants especially given the pervasiveness of the database's arbitrary results).

Rates Database.<sup>234</sup> We believe that such a comprehensive cost-based process would likely incentivize service providers to make every effort to justify their rates under Methods A or B, which would be much simpler for both the Administrator and service providers. Nonetheless, in addition to our proposal, we seek comment on alternative evidentiary requirements that can assist the Bureau and Administrator in evaluating cost-based rates in the event that service providers have no other way of determining rates. Do commenters have any recommendations that would increase transparency and efficiency in submitting and reviewing cost-based rates? How common would it be for service providers to have to use this cost-based rates process? Are there changes that we can make to the proposed cost-based rates submission process that would mitigate administrative burdens on service providers without compromising Program integrity? How should service providers and the Bureau use the cost data to determine a cost-based rate to be charged to an individual customer? Should there be a deadline by which the Bureau must complete its cost-based rate review and issue a rate determination? If so, how would such a deadline operate in the event that a service provider submitted incomplete or inaccurate information that required additional submissions to the Bureau? Would the use of cost studies to determine maximum rural rates decrease incentives for new infrastructure investment in hard to serve areas? Do commenters have any concerns that the proposed cost-based rate would not be suitable for health care providers in Alaska? Commenters are strongly encouraged to share specific recommendations.

#### **B. Urban Rates**

87. We next propose to simplify and seek further comment on future urban rate determination rules for the Telecom Program. The Telecom Program subsidizes the difference between the urban rate for a service in the health care provider's State, which must be "reasonably comparable to the rates charged for similar services in urban areas in that State," and the rural rate, which is "the rate for similar services provided to other customers in comparable rural areas" in the State.<sup>235</sup> The rules that we restore on reconsideration today state that urban rates "shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state."<sup>236</sup> Following the decision in today's Order on Reconsideration to eliminate the Rates Database and restore the previous rules for determining urban rates effective funding year 2024, we propose to simplify the urban rate rule by eliminating the "standard urban distance" distinction from it and now seek comment on whether any additional changes to those rules are warranted.

88. *Standard urban distance.* The rules that we reinstate today provide that, if the service is provided over a distance greater than the standard urban distance, which is the average of the longest diameters of all cities with a population of 50,000 or more within a state, the urban rate is the rate no higher than the highest tariffed or publicly-available rate provided *over the standard urban distance*.<sup>237</sup> The *Promoting Telehealth Report and Order* eliminated the standard urban distance distinction in adopting the Rates Database.<sup>238</sup> We propose to eliminate this distinction between services provided over and within the standard urban distance and to base all urban rates calculations on rates provided in a city, rather than over the standard urban distance. We expect that eliminating this distinction will simplify the process for determining an urban rate and will not adversely impact most health care providers because

<sup>234</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7369, para. 70.

<sup>235</sup> 47 U.S.C. § 254(h)(1)(A).

<sup>236</sup> 47 CFR § 54.605(a) (2018). Appendix A, Final Rules, 47 CFR § 54.604, as adopted herein.

<sup>237</sup> See Appendix A, Final Rules, 47 CFR § 54.604(b), (c), as adopted herein. Compare to Appendix A, Final Rules, 47 CFR § 54.604(a), as adopted herein (if the distance is less than or equal to the standard urban distance, the "'urban rate' for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service *in any city* with a population of 50,000 or more in that state.") (emphasis added).

<sup>238</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7362-63, para. 52.

few Telecom Program participants calculate urban rates using the standard urban distance. We seek comment on the impact that this would have on urban rates and administrative burdens. Before the adoption of the Rates Database, how common was it to base urban rates calculations on services in a city (rather than services over the standard urban distance)? Would urban rates increase unduly if we make this change? We seek comment below on whether to change the standard for “urban” from a city with a population of at least 50,000. Will changes to the standard for “urban” in conjunction with the elimination of the standard urban distance cause an increase in urban rates?

89. *Sources of urban rates.* Under the pre-funding year 2020 urban rate rules that we reinstate today, documentation may be required to substantiate the applicable urban rate.<sup>239</sup> The urban rate is determined by the health care provider, often with the assistance of a consultant or carrier, and reported on the FCC Form 466. To document the urban rate, health care providers may use “tariff pages, contracts, a letter on company letterhead from the urban service provider, rate pricing information printed from the urban service provider’s website or similar documentation showing how the urban rate was obtained.”<sup>240</sup> In the alternative, health care providers have historically utilized the urban rates listed on the Administrator’s website for certain services in certain states.<sup>241</sup> These urban rates are determined by reviewing tariff information on file with the Commission.<sup>242</sup> One advantage of utilizing the urban rates posted to the Administrator’s website is that health care providers did not need to provide additional documentation on their FCC Form 466. With the Commission’s decision to eliminate the Rates Database, should the Administrator post urban rates as it did prior to the *Promoting Telehealth Report and Order* or is the posting of urban rates of limited utility and unnecessary? Are there changes or updates the Administrator should make to the urban rates it posts on its website? While the Commission has made the decision to eliminate the Rates Database, the database contains urban rates that were collected as part of the database creation process. If the Administrator resumes posting urban rates, should the urban rates currently found in the Rates Database be included in the posted list, or have too many anomalies been identified that will preclude the use of those rates by participants in the Telecom Program?

90. On a forward going basis, should there be any changes to the now-reinstated urban rate rules? When exploring additional sources of urban rates, should the Commission allow health care providers to use the median of urban rates in the Rates Database as the urban rate? Parties lodging complaints about the use of the Rates Database to determine rural rates had relatively few complaints about its use to determine urban rates.<sup>243</sup> Should the Commission require the Administrator to maintain a Rates Database for urban rates and require that urban rates be calculated utilizing the Rates Database? Alternatively, should a rate survey be used to determine current urban rates instead of relying on the Administrator to determine and post rates? If so, after the initial compilation of the survey, how often should it be updated? Are there any additional factors that we should take into account for calculating urban rates in the Telecom Program?

91. *Threshold for “urban.”* The standard for “urban” of being “functionally similar service in any city with a population of 50,000 or more in that state” that we reinstate today<sup>244</sup> was originally adopted in 2003.<sup>245</sup> Should the Commission maintain 50,000 as the population threshold for determining

<sup>239</sup> See FCC Form 466 Instructions at 8 (2019).

<sup>240</sup> See *Dataconnex, LLC*, Notice of Apparent Liability for Forfeiture and Order, 33 FCC Rcd 1575, 1580, para. 10 (2018); see also FCC Form 466 Instructions, at 8 (2019).

<sup>241</sup> These rates were frequently referred to as “safe harbor urban rates.” See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7356, para. 41.

<sup>242</sup> *Id.*

<sup>243</sup> But see SHLB Comments at 4-5; USTelecom Comments at 14-15.

<sup>244</sup> 47 CFR § 54.605(a) (2018). Appendix A, Final Rules, 47 CFR § 54.604(a), as adopted herein.

<sup>245</sup> 2003 *Internet Access Order*, 18 FCC Rcd at 24566, para. 37.

an urban area? Is there another population number that better captures the full spectrum of urban areas or is there a value collected by a different agency that better captures the picture of an urban area?

### C. Network Function

92. We next seek comment on two matters related to how networks function. First, we seek comment on reinstating the cap on support for satellite services that was in place before the adoption of the Rates Database. We then seek comment on the eligibility in the HCF Program of equipment that supports services funded in the Telecom Program.

#### 1. Satellite Services

93. We seek comment on reinstating the cap on support for satellite services in the Telecom Program at the amount of support the health care provider would have received for similar terrestrial-based services.<sup>246</sup> When the Commission established the RHC Program, satellite service was the only available telecommunications service available in some rural areas. However, rural health care providers in those areas generally did not receive Telecom Program discounts because satellite service rates typically did not vary between urban and rural areas.<sup>247</sup> In 2003, the Commission revised its rules to allow eligible rural health care providers to base Telecom Program support for satellite services on urban rates for functionally similar wireline services.<sup>248</sup> However, because satellite services were often significantly more expensive than terrestrial-based services, in rural areas where a functionally similar terrestrial-based service was available the Commission capped support for satellite service at the amount that the health care provider would receive had it chosen the terrestrial-based service.<sup>249</sup> If an eligible rural health care provider chose a satellite-based service that was more expensive than the available equivalent terrestrial-base service, the health care provider was responsible for the additional cost.<sup>250</sup> In the *Promoting Telehealth Report and Order*, the Commission eliminated this cap, effective for funding year 2020, explaining that the limitation on support for satellite services was no longer necessary because rural rates would be determined by the Rates Database and costs for satellite services were decreasing, while also acknowledging that eliminating the cap furthered technological neutrality and that improvements to competitive bidding rules would reduce the need for the cap.<sup>251</sup>

94. We seek comment on reinstating the cap on satellite services at the lower of the satellite service rate or the terrestrial service rate and allow rural health care providers to receive discounts for satellite service up to the amount providers would have received if they purchased functionally similar terrestrial-based alternatives, even where terrestrial-based services are available. It appears that the constraints on the price of satellite services that the Commission predicted when it eliminated the cap on satellite services did not come into fruition. Since the elimination of the cap and the waiver of the rates database, Telecom Program support for satellite services has increased significantly. The table below shows that commitments for satellite services dipped slightly in funding year 2020 but increased significantly after that.<sup>252</sup>

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<sup>246</sup> See 47 CFR § 54.609(d) (2018); see also *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7378-79, paras. 92-97; Appendix A, Final Rules, 47 CFR § 54.609(d), as adopted herein.

<sup>247</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7379, para. 92 (citing *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Notice of Proposed Rulemaking, 17 FCC Rcd 7806, 7820, para. 38 (2002)).

<sup>248</sup> *2003 Internet Access Order*, 18 FCC Rcd at 24568, paras. 43-44; 47 CFR § 54.609 (2018).

<sup>249</sup> *2003 Internet Access Order*, 18 FCC Rcd at 24568, para. 44; 47 CFR § 54.609(d) (2018).

<sup>250</sup> 47 CFR § 47.609(d)(3) (2018).

<sup>251</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7380-81, para. 97.

<sup>252</sup> Letter from Mark Sweeney, Vice President, Universal Service Administrative Company, to Jodie Griffin, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau and Bryan Boyle, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, WC Docket 17-310 (filed Jan. 4, 2023).

**Commitments for Satellite Services**  
Funding Years 2019-22

Funding Year	Commitment Amount
2019	\$28,726,457
2020	\$26,583,278
2021	\$39,487,136
2022	\$60,098,460

95. This steady growth in demand for satellite services may demonstrate the need to reinstitute the satellite funding cap. Without the constraints on support for satellite services imposed by the Rates Database, it appears that commitments for satellite services could increase to an unsustainable level. As an initial matter, we seek comment on the significance of the increase in commitments for satellite services. Does this increase reflect that the prices charged for satellite services in the Telecom Program increased after the cap was eliminated or are health care providers selecting satellite services because those services are now more competitive with terrestrial-based services? Are service providers less likely to bid on or upgrade networks for terrestrial services because the cap was lifted? Have rates for satellite services due to the availability of low Earth orbit (LEO) satellites dropped enough to make the cap no longer necessary? If that is the case, why did demand for satellite services increase so significantly in recent years? Are there other factors we should consider in determining whether to retain the cap on support for satellite services? For example, is it appropriate to apply the cap in cases where satellite service provides redundancy in the absence of alternative terrestrial-based route diversity? Could reinstatement of the cap discourage investment in LEO satellites? What impact should the RHC Program's historical preference for technological neutrality and the fact that there previously was a cap on satellite services have on this determination? If we reinstitute this cap, are there other changes we should make to it? Should the Commission not apply the cap to funding requests supported by satellite service contracts that were entered into before reinstatement of the cap? Do commenters in Alaska have any concerns with reinstating the cap, given the importance of satellite service in Alaska?

## 2. HCF Program Eligible Equipment

96. We also seek comment on whether we should amend HCF Program rules to make eligible network equipment necessary to make functional an eligible service supported under the Telecom Program.<sup>253</sup> Current HCF Program rules restrict the eligibility of network equipment for individual applicants to equipment necessary to make functional an eligible service supported under the *HCF Program*.<sup>254</sup> There is no analogous rule in the Telecom Program that provides support for network equipment. Should we consider allowing HCF-eligible equipment to support both HCF and Telecom Program services? Would such a change improve the reliability of Telecom Program supported services? If we were to make network equipment for Telecom Program supported services eligible, what would the financial impact be on the RHC Program? Would HCF Program funding for equipment supporting Telecom Program services reduce Telecom Program expenditures? Expanding the universe of supported equipment would make it more likely that the internal cap would be exceeded. Given the significantly higher discount rates already offered in the Telecom Program, would it be sensible to increase the likelihood of exceeding the internal cap to provide HCF Program funding to support networks that

<sup>253</sup> See Jeffrey Mitchell, Counsel, ADS Advanced Data Services, Inc. (ADS) to Marlene Dortch, Secretary, FCC, WC Docket No. 17-310, 2 (filed January 13, 2023) (ADS *Ex Parte*).

<sup>254</sup> See 47 CFR § 54.613(a).

traditionally have been supported in the Telecom Program only? If we implement this change, are there additional safeguards we should consider?

**D. Conditional Approval of Eligibility for Future Eligible Health Care Providers**

97. We propose to amend RHC Program rules for determining eligibility to allow entities that are not yet but will become eligible health care providers in the near future to begin receiving RHC Program funding shortly after they become eligible.<sup>255</sup> Under the Bureau-level *Hope Community Order*, entities that are not yet eligible health care providers cannot receive an eligibility approval, which is a prerequisite to initiating competitive bidding and filing a Request for Funding, until they are eligible health care providers.<sup>256</sup> As a result of this restriction, if a health care provider does not receive an eligibility approval in time to complete competitive bidding and file a Request for Funding by the close of the application filing window on April 1,<sup>257</sup> the health care provider would have to wait until a subsequent funding year to receive RHC Program funding, which could result in a delay of a full calendar year.<sup>258</sup>

98. In order to address this delay in funding, we propose to amend sections 54.601 and 54.622 of our rules to allow entities that will soon be eligible health care providers to request and receive a “conditional approval of eligibility.”<sup>259</sup> Once the Administrator approves an applicant’s conditional eligibility, the applicant could proceed to conduct competitive bidding and submit a Request for Funding during the application filing window. To ensure that no funding is disbursed for entities that are not yet eligible, the Administrator would not issue a funding decision for the funding request until the entity updates its eligibility request by providing documentation showing that it is an eligible health care

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<sup>255</sup> Eligible health care providers, as defined in section 254(h)(7)(B) of the Communications Act and implemented in the Commission’s rules, are limited to public or non-profit entities falling into one of the following categories: (1) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools; (2) community health centers or health centers providing health care to migrants; (3) local health departments or agencies; (4) community mental health centers; (5) not-for-profit hospitals; (6) rural health clinics; (7) skilled nursing facilities; and (8) consortia of health care providers consisting of one or more entities falling into the first seven categories. See 47 U.S.C. §§ 254(h)(1)(A), (h)(2)(A), (h)(4), (h)(7)(B); 47 CFR §§ 54.600(b), 54.601(a).

<sup>256</sup> *Hope Community Resources, Inc.– Barrow MH, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 31 FCC Rcd 7883, 7887-88, para. 9 (WCB 2016) (*Hope Community Order*) (“while Hope Community asserts the Barrow site provides outpatient mental health services, the prospective language ... indicate that outpatient services will be provided at a future time,” and “we affirm [the Administrator’s] decision and find that Hope Barrow did not demonstrate that it was eligible as a ‘community mental health center,’ at the time of its FCC Form 465 submission for funding year 2013, and therefore was ineligible to receive RHC Telecommunications Program support.”).

<sup>257</sup> 47 CFR § 54.621(a)(1).

<sup>258</sup> See Letter from Kristen Corra, Policy Counsel, SHLB, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310, at 4 (filed Dec. 9, 2022); SHLB Reply Comments at 11. Under current rules, if a health care provider becomes an eligible health care provider and receives an eligibility approval on March 5, 2024, for example, there would not be enough time to conduct competitive bidding, which includes a minimum 28-day waiting period for posting an FCC Form 461 or 465 on the Administrator’s website, before the April 1, 2024 close of the application filing window for funding year 2024. The health care provider would have to wait until funding year 2025, which begins on July 1, 2025, to receive RHC Program funding. When the *Hope Community Order* was adopted, there was a rolling application deadline, which allowed entities to begin receiving RHC Program funding within months of becoming eligible health care providers. See *Hope Community Order*, 31 FCC Rcd at 7885, para. 4. After receiving an eligibility approval, the health care provider could wait the required 28 days for competitive bidding and then file a Request for Funding any time during the funding year.

<sup>259</sup> See *infra* Appendix B, 47 CFR § 54.601(c). In connection with the proposed amendments to section 54.601 of the Commission’s rules, we also propose to amend section 54.622(e)(1)(i) of the Commission’s rules to allow applicants seeking conditional approval of eligibility to certify their eligibility when submitting a Request for Services. See *infra* Appendix B, 47 CFR § 54.622(e)(1)(i).

provider and the Administrator issues a final eligibility approval. The conditional approval of eligibility process would use the same forms used to request eligibility approvals, which are the FCC Form 460 (Eligibility and Registration Form) in the HCF Program and the FCC Form 465 (Description of Services Requested and Certification Form) in the Telecom Program.

99. We seek comment on the potential impact of and mechanics of the proposed rule changes. How many entities would be impacted by this change? Are there any potential problems associated with this proposal or any potential negative impact on the overall RHC Program? Are any additional safeguards necessary beyond the restriction against the Administrator issuing funding commitments before an entity receives a final eligibility approval? Are there alternatives to our conditional eligibility proposal that would more effectively allow entities that are not yet eligible health care providers to receive RHC Program funding? Finally, are there any RHC Program rule changes beyond those that we propose that would be needed to implement our conditional eligibility proposal?

#### **E. Administrative Deadlines**

100. We next address two matters involving RHC Program deadlines. We propose to push back the deadline for requesting Service Provider Identification Number (SPIN) changes to align with the invoice deadline. We also seek comment on whether a mechanism to allow post-commitment changes to evergreen contract dates is necessary.

##### **1. Service Provider Identification Number Change Deadlines**

101. We propose to revise the current deadline for requesting Service Provider Identification Number (SPIN) changes from the service delivery deadline to the invoice filing deadline. A SPIN is a unique number that the Administrator assigns to an eligible service provider seeking to participate in the universal service support programs.<sup>260</sup> An applicant under the HCF Program or Telecom Program may request either a “corrective SPIN change” (in cases not involving a change to the service provider associated with the applicant’s funding request number) or “operational SPIN change” (in cases involving a change to the service provider associated with the applicant’s funding request number).<sup>261</sup> The current filing deadline to submit a SPIN change request is no later than the service delivery deadline, which, with limited exceptions, is June 30 of the funding year for which program support is sought.<sup>262</sup> The Commission established a SPIN change deadline aligned with the service delivery deadline to ensure consistency with the E-Rate Program and reduce the number of requests for extension of the invoice deadline.<sup>263</sup>

102. SHLB requests that the Commission change the current deadline to make a corrective SPIN change from the service delivery deadline to the invoice filing deadline, which typically falls on October 28.<sup>264</sup> SHLB maintains that the nature of corrective SPIN changes creates a “recurring hardship

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<sup>260</sup> To obtain a SPIN, a service provider must file an FCC Form 498 with the Administrator, which refers to a provider’s SPIN as its 498 ID. See USAC, *Obtain a 498 ID*, <https://www.usac.org/rural-health-care/service-providers/step-1-participating-in-the-rhc-program/> (last visited Jan. 26, 2023).

<sup>261</sup> 47 CFR § 54.625(a), (b). For example, a corrective SPIN change is requested to correct ministerial errors or update a SPIN that resulted from a merger or acquisition of companies, and an operational SPIN change is requested when the applicant has a legitimate reason to change service providers, as in the case of a breach of contract. *Id.* The Commission adopted RHC Program SPIN change rules modeled after those of the E-Rate Program in the *Promoting Telehealth Report and Order*. See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7426-27, paras. 197-99.

<sup>262</sup> *Id.* § 54.625(c). The service delivery deadline is defined in section 54.626(a) of the Commission’s rules. *Id.* § 54.626(a).

<sup>263</sup> See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7427, paras. 198-99.

<sup>264</sup> SHLB January 17, 2023 *Ex Parte*. The invoice filing deadline is 120 days after the later of: (1) the service delivery deadline, or (2) the date of a revised funding commitment letter issued pursuant to an approved post-

(continued....)

for applicants” unable to meet the deadline which, in turn, results in deadline waiver requests filed with the Commission.<sup>265</sup> According to SHLB, two commonly recurring situations support a change to the corrective SPIN change deadline: (1) mergers and acquisitions that can occur at any time during the funding year and (2) a service provider that assigns one of its multiple SPINs to a funding request without advising the healthcare provider as to the correct SPIN before invoicing begins, a situation that, in many instances, occurs after the service delivery deadline has passed.<sup>266</sup> SHLB maintains that changing the deadline to request a corrective SPIN change to October 28 will provide the Administrator with sufficient time to process the change request without the need for applicants to request deadline waivers from the Commission.<sup>267</sup>

103. We tentatively agree with SHLB that the current deadline for requesting corrective SPIN changes imposes unnecessary burdens that a later-in-time deadline will largely eliminate. Delaying the deadline by 120 days (from June 30 to October 28 in most cases) would reduce the need for applicants to seek, and for the Commission to address, waivers of the current corrective SPIN change deadline that result from the types of situations described by SHLB, while still maintaining an administratively reasonable date by which such change requests must be made. Although SHLB focused its request on corrective SPIN changes only, we conclude that it may be needlessly confusing to establish two different SPIN change request deadlines depending on whether the request is corrective or operational in nature. Accordingly, we propose to change the deadline for requesting both corrective and operational SPIN changes from the current service delivery deadline to the invoicing filing deadline.<sup>268</sup> We seek comment on this proposal. Are there other benefits to this change? We anticipate that one potentially undesirable consequence of this change is that it may cause Program participants to delay in filing SPIN change requests, which could result in Program participants missing the invoice deadline. If the SPIN change deadline is moved to the invoice deadline and the health care provider files a SPIN change request so close to the deadline that the Administrator cannot process the request before the invoice deadline, the health care provider will not be able to submit invoices. Does the flexibility this change would offer to health care providers justify the disadvantage to health care providers who are unable to invoice because they filed a SPIN change request too close to the deadline? Parties often indicate that alignment between RHC Program rules and E-Rate Program rules eliminates confusion. Would bringing these deadlines out of alignment create confusion? Are there other reasons not to adopt the same deadline for both corrective and operational SPIN changes?

## 2. Evergreen Contract Date Changes

104. We seek comment on whether there should be a process for health care providers to change evergreen contract dates following a funding commitment. Evergreen contracts are multi-year agreements under which covered services are exempt from the competitive bidding requirements for the life of the contract.<sup>269</sup> When the Administrator issues a funding commitment letter, it sets the period for an evergreen contract based on the estimated service start and end dates provided by the health care provider on the FCC Form 462.<sup>270</sup> However, services sometimes start after the estimated service start

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commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request. 47 CFR § 54.627(a).

<sup>265</sup> SHLB Jan. 17, 2023 *Ex Parte* at 4.

<sup>266</sup> *Id.* at 5.

<sup>267</sup> *Id.*

<sup>268</sup> See Appendix B, 47 CFR § 54.625 as proposed herein.

<sup>269</sup> 47 CFR § 54.622(i)(3). To be designated an evergreen contract by the Administrator, a contract must be entered into as a result of competitive bidding, contain certain contractual terms, and meet other requirements. *Id.* § 54.622(i)(3)(ii).

<sup>270</sup> See SHLB Jan. 19, 2023 *Ex Parte* at 4-5.

date, which means that the evergreen status of the contract expires before it would have if the evergreen designation period was based on the actual service start date.<sup>271</sup> We seek comment on whether there should be a means for a healthcare provider to change evergreen contract dates. Is such an alternative necessary and, if so, how could it be accomplished? Would an alternative means require a change in our rules or could our current rules be interpreted to allow for evergreen contract date changes? What would be the impact of such a change on the duration of evergreen contracts? Would allowing program participants to change evergreen contract dates make it more difficult for the Administrator to process funding requests submitted pursuant to such contracts?

#### F. FCC Form 466

105. We next seek comment on proposed revisions to the Funding Request and Certification Form (FCC Form 466), including service-specific details that could both improve the accuracy of similar service categorizations under the existing Method 1 and Method 2, or the alternatives we propose in this Second Further Notice, and also result in more accurate cost-based rates. To ensure the reporting of accurate data, we propose to begin collecting this data from service providers because they are in the best position to furnish it.

106. In the *Further Notice*, we sought general comment on both existing Telecom Program data collected through current program forms as well as potential changes to the categorization and details of Telecom Program services and data reported on the FCC Form 466.<sup>272</sup> Certain data currently collected appears to be too vague and fails to capture details of the purchased services, resulting in significantly different monthly rates for services broadly categorized that report comparable bandwidths but likely vary significantly.<sup>273</sup> We requested feedback on updating the Telecom Program's categorization of services to more accurately reflect the functionality and cost of services purchased by incorporating data points such as details of service level agreements (SLAs).<sup>274</sup> We also sought comment on collecting data that would classify services based upon functionality, regardless of the commercial name used by the service provider to describe the service.<sup>275</sup> We then sought general comment on revisions to the FCC Form 466 and other Telecom Program forms and corresponding USAC online portals that would improve the accuracy of urban and rural rate determinations and ensure program integrity.<sup>276</sup>

107. Commenters agreed that collecting more detailed data would result in more accurate categorization of services purchased by health care providers and improve program transparency.<sup>277</sup> Alaska Communications agreed that service categorizations should be more granular and explained that services broadly categorized as "dedicated" include a range of services and features, particularly security and reliability, that significantly impact rates.<sup>278</sup> Alaska Communications also noted that the factors identified in the *Further Notice* "can have a profound effect on the functionality of the service from the perspective of the end user."<sup>279</sup> GCI suggested that the Commission could collect data on network type, prioritization, and term and volume discounts.<sup>280</sup> GCI also argued that the Commission should collect

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<sup>271</sup> *See id.* at 5.

<sup>272</sup> *Further Notice* at 14-17, paras. 35-43.

<sup>273</sup> *Id.* at 15, para. 36.

<sup>274</sup> *Id.* at 15-16, paras. 37, 39.

<sup>275</sup> *Id.* at 16, para. 38.

<sup>276</sup> *Id.* at 16-17, para 41.

<sup>277</sup> *See* ANHB Comments at 7; ANTHC Comments at 3; GCI Comments at 6, 53.

<sup>278</sup> Alaska Communications Comments at 19-20

<sup>279</sup> *Id.* at 18-19.

<sup>280</sup> GCI Comments at 54.

data on services purchased rather than requiring healthcare providers to submit highly detailed forms when requesting service.<sup>281</sup>

108. We propose revisions to the FCC Form 466 to improve the quality, consistency, and level of detail of RHC Program data. Improved data will also increase the accuracy of rural rates calculated through the current three rate determination methods or through any rate determination process that is established in the future. Through our continued review of data currently collected on the FCC Form 466 we have identified five primary issues impacting the ability to calculate rates: (1) services reported by healthcare providers are not defined by a single factor such as technology or speed; (2) some reported rates are based on distance whereas others are not; (3) value-added services beyond data transmission are not reported; (4) bundled prices offered by service providers make “apples-to-apples” rate comparisons difficult; and (5) the form does not measure the impact of SLAs on the rates offered.

109. To address these issues and collect more detailed, accurate data, we propose to revise the FCC Form 466 to collect more granular information about the services purchased by health care providers. We propose to collect the following service details for each connection endpoint.<sup>282</sup> We seek comment on collecting this data on the FCC Form 466 and welcome comments on additional or alternative service data that could improve the accuracy and fairness of Telecom Program rates. We especially request recommendations for additional individual descriptors for the items listed below. The following items are being considered:

- Contract Type. In many instances services reimbursed under the RHC Program are often part of a contract that bundles many services together. We propose adding a field that would indicate if the underlying contract includes a bundle and what services the bundle covers. Data collected would include the total number of end points serviced, an indicator of the geographic region of coverage, the contract’s duration, discounts and service level agreements that apply to the contract, and the contract’s total price including RHC supported services.
- Service Details - Connection Endpoint Information. There would be one entry for each endpoint.
  - Location of Endpoint – Geographically identifiable latitude and longitude.
  - Distance (If Applicable) – The distance would be in line miles from this endpoint to the far termination endpoint of the link or the central server node. This would be reported if the service provider uses it in the price calculation for this item. This field would be reported in line miles and not straight-line or “crow fly” miles.
  - Connectivity – Point-to-Point, Point-to-Multipoint, Multipoint-to-Multipoint
  - Application – Voice, Data, or Both
  - Service or Product – This is the service at the Endpoint. The user would select from the following options: Link (a point-to-point transmission), Device (at an endpoint for a link, such as a router or switch other network-supporting equipment), or Service (provided capabilities using the Links and Devices).
  - Equipment Vendor/Model – If a device or other equipment is used to extend the eligible service to the endpoint, the user would list it here. All devices would be required to be listed.

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<sup>281</sup> *Id.* at 6, 54.

<sup>282</sup> We define a “connection endpoint” to mean termination points set up as part of the requested communication service. For example, a request for a service based upon an MPLS solution could have 10 termination points for several rural clinics, a central hospital, and a diagnostic center. Under our proposal, each of the ten “connection endpoints” would be reported separately. For a simple point-to-point (1:1) connection, two endpoints would be reported. Additionally, an end point can be a location where a separate device, such as a repeater, modem, router, switch, or other supporting service, such as a server, monitoring device, etc., is located that is part of the contract.

- Technology – The user would report the technology at the endpoint selecting from items such as: DSL (Digital Subscriber Line), DOCSIS (Data Over Cable Service Interface Specifications), PON (Passive Optical Network), GPON (Gigabit Passive Optical Network and its variants), and similar, as well as Other (Describe) and N/A.
- Bandwidth (Down/Up) – This would be expressed in Mbps.
- SLA Coverage – The user would select “Yes” or “No” to indicate if this endpoint is covered.
- Access Media – The user would describe the transmission media that is present at the termination of the endpoint at each individual facility. This can often, but not always, be considered the last mile. The user would select from: copper, cable, microwave, fiber, high Earth orbit satellite, LEO satellite, power line, other, and N/A.
- Monthly Price – This field contains the monthly price in dollars and cents. This price would not include any uplift for SLA coverage, which will be collected elsewhere in the form. If the overall contract price is for a service such as MPLS, the price for each endpoint would be a pro-rated amount associated with each endpoint. Any service portion that cannot be associated with an endpoint, such as MPLS management, would be separately reported as an individual line item(s) in the “Additional Services and Differentiators” section. MPLS and similar multi-point solutions would not be reported as a single item. These services would be pro-rated to individual endpoints.
- Additional Services and Differentiators – This question would only be used if the service cannot be described in the “Service Details” question.
  - Service Name – This would be a free text descriptor for the provider’s name of this item.
  - Class – This would be a product, service, or differentiator not listed in the “Service Details” section because it is not associated with a single endpoint.
  - Coverage Scope – This field would refer to the scope of the network and contract that this item covers.
  - Period – This field would indicate the period length in months over which this item will occur. For example, if an “Installation” service is provided for the first year and one-half is part of the contract, “18” months would be shown.
  - SLA Coverage – The user would provide a “Yes” or “No” answer to indicate if this service/differentiator is covered under an SLA.
  - Monthly Price – This would be expressed in dollars and cents. The provider would pro-rate the monthly average cost for each item if the overall contract price is a single number.

110. We also propose to collect SLA details on the FCC Form 466, which currently captures whether there is an SLA, but does not collect specific details about it. The specifics of an SLA appear to significantly impact telecommunications service rates and therefore are likely to be a key factor when determining whether services are similar. SLAs are typically sold at varying levels (sometimes with descriptors such as Gold, Silver, or Bronze) and include availability and reliability metrics, service maintenance and management, delineations of service provider and customer responsibilities, and penalties for non-performance. We seek comment on adding the following fields to the FCC Form 466 and also seek comment on any additional SLA data that could improve the accuracy and fairness of Telecom Program rural rates, with one line for each SLA coverage area or item:

- Target Measurement – The user would report the item or class of items to be measured such as Availability (Network Level Outage), Availability (Link or Endpoint Level Outage), Repair/Restore Times (MTTR – Mean Time To Repair), or On Site Spares (Response Time for Equipment Under Contract).
- SLA Level – High, Medium, or Low that may correspond to individual provider schemes, such as
  - Bronze, Silver, Gold.

- Basic, Standard, Premium.
  - As classified by any system the service provider may use.
- What Functions are Covered?
  - The user selects between Operations, Performance, Maintenance, Install, Administration, and Compliance.
- Period – The user would indicate the period length in months over which this item will occur. For example, if an “Installation” service is provided for 18 months, then “18 months” would be shown.
- Penalties For Non-Performance? (Yes/No) – The user would indicate whether there are specific monetary or other penalties for carrier non-performance of specific SLA requirements written in the contract. The user would select from a drop-down menu. General statements of intent would not constitute a penalty.
- SLA Scope – The user would report the scope of the contract that this item covers. Examples of options filers would select from include: Performance (what is delivered), Operations (how it is managed), and Maintenance (how it is repaired).
- Description of Target SLA Measurement – An optional free text field the provider could use to enter further clarification for the specific SLA item.
- Price Uplift – The user would report the increase to the contract service price (usually represented as a percentage) that the SLA impacts. If it is not a separate line item in the contract, then the price would be estimated and/or pro-rated by the provider over the period and scope of SLA coverage.

111. We seek comment on whether we should apply the proposed revisions to FCC Form 466 to the HCF Funding Request Form (FCC Form 462) for consistency. What are the benefits and/or drawbacks of revising FCC Form 462 to collect more granular service data?

112. *Service Provider Filing.* We propose to require service providers to report the technical service details described above on the FCC Form 466. In the *Further Notice*, we sought comment on whether service providers should report certain technical information about services purchased that rural health care providers either cannot access or lack the technical expertise to report.<sup>283</sup> Commenters expressed concerns about increasing technical reporting burdens on healthcare providers. GCI argued that any new collection process should not burden rural health care providers, who are often “not well positioned to supply technical and granular details about the services they need,” and suggested collecting additional data through the FCC Form 466.<sup>284</sup> Alaska Communications acknowledged that reporting technical service data would be complicated for health care providers.<sup>285</sup> ANHB and ANTHC both supported increased data collection but cautioned against increasing reporting burdens on Tribal and other health care providers.<sup>286</sup>

113. We agree with commenters that proposed increases in the level of detailed technical data required on the FCC Form 466 would likely exceed the technical expertise of most health care providers. The service providers are in the best position to understand the difference between a commercial term and a functional capability as well as the difference between a capability and the underlying technology. We therefore propose that service providers input service information into the FCC Form 466. We tentatively conclude that shifting the responsibility for providing technical details to the service provider would reduce burdens on healthcare providers and improve data quality and consistency. We propose that service providers provide the technical connection endpoint data listed above as well as any other

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<sup>283</sup> *Further Notice* at 17, para. 43.

<sup>284</sup> GCI Comments at 54.

<sup>285</sup> Alaska Communications Comments at 19-20.

<sup>286</sup> ANHB Comments at 7; ANTHC Comments at 4.

technical service data that is recommended by commenters and ultimately adopted by the Commission as part of this proceeding. Additionally, we propose that the service providers include the actual contract as an attachment to the FCC Form 466. This would be treated confidentially and would document the carrier's answers in an official company document. To ensure the accuracy of the information provided, we propose that the service provider certify to the accuracy of service provider-supplied information. We seek comment on these proposals.

114. We also seek comment on the logistics of service providers filling out portions of the FCC Form 466. We propose that the FCC Form 466 be transferred to the service provider after the health care provider completes the certifications on its portion of the FCC Form 466. We seek comment on how service providers completing part of the FCC Form 466 would impact program deadlines. Should the filing window close denote the health care provider's deadline for completing its portion of the FCC Form 466? If so, how much time should service providers have to complete their portion of it? Finally, we seek comment on the extent to which there might be a miscommunication between health care and service providers about the requested services. In limited circumstances, service providers may be selected to provide RHC Program supported services without submitting a bid in response to an RFP.<sup>287</sup> If there is no contract, how can we ensure that health care providers and service providers agree as to the specific services that will be provided?

### G. Digital Equity and Inclusion

115. The Commission, as part of its continuing effort to advance digital equity for all,<sup>288</sup> including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations<sup>289</sup> and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

## VII. PROCEDURAL MATTERS

116. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>290</sup> requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a

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<sup>287</sup> For example, if a health care provider does not receive responsive bids to its RFP, it may use a pre-existing contract as a "standing bid." *Request for Review of the Decision of the Universal Service Administrator by Kalamazoo Public Schools, Kalamazoo, Michigan, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order on Reconsideration, 17 FCC Rcd 22154 (WCB 2002).

<sup>288</sup> Section 1 of the Communications Act of 1934 as amended provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

<sup>289</sup> The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

<sup>290</sup> The RFA, *see* 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

significant economic impact on a substantial number of small entities.”<sup>291</sup> Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning rule and policy changes in the Order on Reconsideration and Second Report and Order. The FRFA is set forth in Appendix C. It has also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in the this Second Further Notice of Proposed Rulemaking. The IRFA is set forth in Appendix D.

117. *Paperwork Reduction Act.* This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

118. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A). The Commission will send a copy of this Order on Reconsideration and Second Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

119. *Ex Parte Rules – Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>292</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

120. *Comment Period and Filing Requirements.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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<sup>291</sup> 5 U.S.C. § 605(b).

<sup>292</sup> 47 CFR § 1.1200 *et seq.*

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788, 2788-89 (OS 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

121. *People with Disabilities*: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

122. *Contact Person*. For further information about this proceeding, please contact, Bryan P. Boyle, Deputy Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, at [Bryan.Boyle@fcc.gov](mailto:Bryan.Boyle@fcc.gov).

123. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*. The reporting, recordkeeping, and other compliance requirements proposed in this Further Notice likely would positively and negatively financially impact both large and small entities, including healthcare providers and service providers, and any resulting financial burdens may disproportionately impact small entities given their typically more limited resources. In weighing the likely financial benefits and burdens of our proposed requirements, however, we have determined that our proposed changes would result in more equitable, effective, efficient, clear, and predictable distribution of RHC support, far outweighing any resultant financial burdens on small entity participants.

## VIII. ORDERING CLAUSES

124. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(j), 214, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(j), 214, 254, and 405 and sections 1.115 and 1.429 of the Commission's rules, 47 CFR §§ 1.115, 1.429, that this Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking IS ADOPTED.

125. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petition for Reconsideration filed by Alaska Communications on November 12, 2019 is GRANTED IN PART, DENIED IN PART, and DISMISSED IN PART to the extent described herein.

126. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petition for Reconsideration and Clarification filed by the Schools, Health & Libraries Broadband Coalition on November 12, 2019 is GRANTED IN PART, DENIED IN PART, and DISMISSED IN PART to the extent described herein.

127. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petition for Reconsideration filed by State of Alaska, Office of the Governor on November 12, 2019 is GRANTED IN PART, DENIED IN PART and DISMISSED IN PART to the extent described herein.

128. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petition for Reconsideration and Clarification filed by North Carolina Telehealth Network Association/Southern Ohio Health Care Network on November 12, 2019 is DENIED to the extent described herein.

129. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petition for Reconsideration and Clarification filed by USTelecom – The Broadband Association on November 12, 2019 is GRANTED IN PART, DENIED IN PART, and DISMISSED IN PART to the extent described herein.

130. IT IS FURTHER ORDERED that pursuant to the authority in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, that sections 54.605(b) of the Commission's rules as amended herein, 47 CFR §§ 54.605(b) IS WAIVED to the extent provided herein.

131. IT IS FURTHER ORDERED, that pursuant to section 1.103 of the Commission's rules, the provisions of this Order on Reconsideration, Second Report and Order, Order and Second Further Notice of Proposed Rulemaking WILL BECOME EFFECTIVE thirty (30) days from the date of publication in the Federal Register unless indicated otherwise herein.

132. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, 303(r), and 403, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 1302, Part 54 of the Commission's rules, 47 C.F.R. Part 54, is AMENDED as set forth in Appendix A, and such rule amendments shall be effective (30) days after the publication of the Order and Reconsideration and Second Report and Order in the Federal Register, except for sections 54.604, 54.605, and 54.627, which are subject to the PRA and will become effective upon announcement in the Federal Register of OMB approval of the subject information collection requirements.

133. IT IS FURTHER ORDERED that, pursuant to section 1.115 of the Commission's rules, 47 CFR § 1.115, the Application for Review filed by GCI Communications Corp. on July 30, 2020 is DISMISSED as moot.

134. IT IS FURTHER ORDERED that, pursuant to section 1.115 of the Commission's rules, 47 CFR § 1.115, the Application for Review filed by Alaska Communications on July 30, 2020 is DISMISSED as moot.

135. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR. §§ 1.415, 1.419, interested parties may file comments on this Second Further Notice of Proposed Rulemaking on or before 30 days from publication of this item in the Federal Register, and reply comments on or before 60 days from publication of this item in the Federal Register.

136. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking, including the Final and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

137. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this Order on Reconsideration and Second Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A**  
**FINAL RULES**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 to read as follows:

**PART 54 – UNIVERSAL SERVICE**

1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. §§ 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.604 to read as follows:

**§ 54.604 Determining the urban rate.**

- (a) Effective funding year 2024, if a rural health care provider requests support for an eligible service to be funded from the Telecommunications Program that is to be provided over a distance that is less than or equal to the “standard urban distance,” as defined in paragraph (c) of this section, for the state in which it is located, the “urban rate” for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.
- (b) If a rural health care provider requests an eligible service to be provided over a distance that is greater than the “standard urban distance,” as defined in paragraph (c) of this section, for the state in which it is located, the urban rate for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service provided over the standard urban distance in any city with a population of 50,000 or more in that state, calculated as if the service were provided between two points within the city.
- (c) The “standard urban distance” for a state is the average of the longest diameters of all cities with a population of 50,000 or more within the state.
- (d) The Administrator shall calculate the “standard urban distance” and shall post the “standard urban distance” and the maximum supported distance for each state on its website.

3. Amend § 54.605 to read as follows:

**§ 54.605 Determining the rural rate.**

- (a) Effective funding year 2024, the rural rate shall be the average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided by the telecommunications carrier providing the service in the rural area in which the health care provider is located. The rates included in this average shall be for services provided over the same distance as the eligible service. The rates averaged to calculate the rural rate must not include any rates reduced by universal service support mechanisms. The “rural rate” shall be used as described in this subpart to determine the credit or reimbursement due to a telecommunications carrier that provides eligible telecommunications services to eligible health care providers.
- (b) If the telecommunications carrier serving the health care provider is not providing any identical or similar services in the rural area, then the rural rate shall be the average of the tariffed and other

publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area over the same distance as the eligible service by other carriers. If there are no tariffed or publicly available rates for such services in that rural area, or if the carrier reasonably determines that this method for calculating the rural rate is unfair, then the carrier shall submit for the state commission's approval, for intrastate rates, or for the Commission's approval, for interstate rates, a cost-based rate for the provision of the service in the most economically efficient, reasonably available manner.

- (1) The carrier must provide, to the state commission, for intrastate rates, or to the Commission, for interstate rates, a justification of the proposed rural rate, including an itemization of the costs of providing the requested service.
- (2) The carrier must provide such information periodically thereafter as required, by the state commission for intrastate rates or the Commission for interstate rates. In doing so, the carrier must take into account anticipated and actual demand for telecommunications services by all customers who will use the facilities over which services are being provided to eligible health care providers.

4. Amend § 54.619 by revising paragraph (a) to read as follows:

**§ 54.619 Cap.**

- (a) *Amount of the annual cap.* The aggregate annual cap on federal universal service support for health care providers shall be \$571 million per funding year. When total demand during a filing window period exceeds the total remaining support available for the funding year, an internal cap of \$150 million per funding year for upfront payments and multi-year commitments under the Healthcare Connect Fund Program shall apply.

- (1) \* \* \*
- (2) \* \* \*
- (3) \* \* \*
- (4) \* \* \*
- (5) \* \* \*

5. Amend § 54.621 by revising subsection (b) to read as follows:

**§ 54.621 Filing window for requests and prioritization of support.**

- (a) \* \* \* \* \*
- (b) *Prioritization of support.* The Administrator shall act in accordance with this section when a filing window period for the Telecommunications Program and the Healthcare Connect Fund Program, as described in paragraph (a) of this section, is in effect. When a filing period described in paragraph (a) of this section closes, the Administrator shall calculate the total demand for Telecommunications Program and Healthcare Connect Fund Program support submitted by all applicants during the filing window period.
- (1) *Circumstances in which prioritization applies.* If the total demand during the filing window period exceeds the total remaining support available for the funding year, prioritization will apply in the following circumstances:

- (i) *Internal cap.* If the internal cap is exceeded, the Administrator shall determine whether demand for upfront payments and the first year of multi-year commitments exceeds the internal cap. If such demand exceeds the internal cap, the Administrator shall not fund the second and third year of multi-year commitment requests and then apply the prioritization schedule in paragraph (b)(2) of this section to all eligible requests for upfront payments and the first-year of multi-year commitments to limit the demand for upfront payments and the first year of multi-year commitments within the internal cap. If demand for upfront payments and the first year of multi-year commitments does not exceed the internal cap, the Administrator shall apply the prioritization schedule in paragraph (b)(2) of this section to the second and third year of all eligible requests for multi-year commitments until the internal cap is reached, to ensure that the internal cap is not exceeded.
- (ii) *Overall cap.* If the internal cap is not exceeded or if, after demand for upfront payments and multi-year commitments is limited within the internal cap in paragraph (b)(1)(i) of this section, the total remaining demand still exceeds the total remaining support available for the funding year, the Administrator shall apply the prioritization schedule in paragraph (b)(2) of this section to all remaining eligible funding requests.
- (2) *Application of prioritization schedule.* When prioritization is necessary under paragraph (b)(1) of this section, the Administrator shall fully fund all applicable eligible requests falling under the first prioritization category of Table 1 before funding requests in the next lower prioritization category. The Administrator shall continue to process all applicable requests by prioritization category until there are no applicable funds remaining. If there is insufficient funding to fully fund all requests in a particular prioritization category, then the Administrator will pro-rate the applicable remaining funding among all applicable eligible requests in that prioritization category only pursuant to the proration process described in paragraph (b)(3) of this section.

TABLE 1 TO PARAGRAPH (b)—PRIORITIZATION SCHEDULE

<b>Health Care Provider Site is Located in:</b>	<b>In a Medically Underserved Area/Population (MUA/P)</b>	<b>Not in MUA/P</b>
<i>Extremely Rural Tier</i> (areas entirely outside of a Core Based Statistical Area)	<i>Priority 1</i>	<i>Priority 4</i>
<i>Rural Tier</i> (areas within a Core Based Statistical Area that does not have an urban area or urban cluster with a population equal to or greater than 25,000)	<i>Priority 2</i>	<i>Priority 5</i>
<i>Less Rural Tier</i> (areas within a Core Based Statistical Area with an urban area or urban cluster with a population equal to or greater than 25,000, but where the census tract does not contain any part of an urban area or urban cluster with population equal to or greater than 25,000)	<i>Priority 3</i>	<i>Priority 6</i>
<i>Non-Rural Tier</i> (all other non-rural areas)	<i>Priority 7</i>	<i>Priority 8</i>

- (3) *Pro-rata reductions.* When proration is necessary under paragraph (b)(2) of this section, the Administrator shall take the following steps:

- (i) The Administrator shall divide the total applicable remaining funds available for the funding year by the applicable demand within the specific prioritization category to produce a pro-rata factor; and
  - (ii) The Administrator shall multiply the pro-rata factor by the dollar amount of each applicable funding request in the prioritization category to obtain prorated support for each funding request.
- (4) The Administrator shall designate the underlying contracts associated with any multi-year commitment requests that are not fully funded as a result of the prioritization process in this section as “evergreen” provided that those contracts meet the requirements under § 54.622(i)(3)(ii).

6. Amend § 54.622(a) as follows:

**§ 54.622 Competitive Bidding Requirements and Exemptions.**

(a) Competitive bidding requirement. All applicants are required to engage in a competitive bidding process for supported services, facilities, or equipment, as applicable, consistent with the requirements set forth in this section and any additional applicable state, Tribal, local, or other procurement requirements, unless they qualify for an exemption listed in paragraph (i) in this section. In addition, applicants may engage in competitive bidding even if they qualify for an exemption. Applicants who utilize a competitive bidding exemption may proceed directly to filing a funding request as described in § 54.623.

(b) \* \* \*

(c) \* \* \*

(d) \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) The health care provider seeking supported services is a public or nonprofit entity that falls within one of the categories set forth in the definition of health care provider, listed in § 54.600.

7. Amend § 54.627 to delete subsections (c)(1) and (c)(2), renumber current subsection (c)(3) as subsection (c), and revise the new subsection (c)(1)(D), all to read as follows:

**§ 54.627 Invoicing Process and Certifications.**

(a) \* \* \*

(1) \* \* \*

(b) \* \* \*

(c) *Telecommunications Program.*

(1) Certifications. Before the Administrator may process and pay an invoice, both the health care provider and the service provider must make the following certifications.

(i) The health care provider must certify that:

(A) The service has been or is being provided to the health care provider;

(B) The universal service credit will be applied to the telecommunications service billing account of the health care provider or the billed entity as directed by the health care provider;

(C) It is authorized to submit this request on behalf of the health care provider;

(D) It has examined the invoice form and supporting documentation and that to the best of its

knowledge, information and belief, all statements of fact contained in the invoice form and supporting documentation are true;

- (E) It or the consortium it represents satisfies all of the requirements and will abide by all of the relevant requirements, including all applicable Commission rules, with respect to universal service benefits provided under 47 U.S.C. 254; and
- (F) It understands that any letter from the Administrator that erroneously states that funds will be made available for the benefit of the applicant may be subject to rescission.
- (ii) The service provider must certify that:
  - (A) The information contained in the invoice is correct and the health care providers and the Billed Account Numbers have been credited with the amounts shown under "Support Amount to be Paid by USAC;"
  - (B) It has abided by all of the relevant requirements, including all applicable Commission rules;
  - (C) It has received and reviewed the invoice form and accompanying documentation, and that the rates charged for the telecommunications services, to the best of its knowledge, information and belief, are accurate and comply with the Commission's rules;
  - (D) It is authorized to submit the invoice;
  - (E) The health care provider paid the appropriate urban rate for the telecommunications services;
  - (F) The rural rate on the invoice does not exceed the appropriate rural rate;
  - (G) It has charged the health care provider for only eligible services prior to submitting the invoice for payment and accompanying documentation;
  - (H) It has not offered or provided a gift or any other thing of value to the applicant (or to the applicant's personnel, including its consultant) for which it will provide services; and
  - (I) The consultants or third parties it has hired do not have an ownership interest, sales commission arrangement, or other financial stake in the service provider chosen to provide the requested services, and that they have otherwise complied with Rural Health Care Program rules, including the Commission's rules requiring fair and open competitive bidding.
  - (J) As a condition of receiving support, it will provide to the health care providers, on a timely basis, all documents regarding supported equipment or services that are necessary for the health care provider to submit required forms or respond to Commission or Administrator inquiries.
- (d) \* \* \*

**APPENDIX B**  
**PROPOSED RULES**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 to read as follows:

**PART 54 – UNIVERSAL SERVICE**

1. Amend § 54.601 to add a new paragraph (c) to read as follows:

**§ 54.601 Health care provider eligibility.**

\* \* \*

- (c) *Conditional Approval of Eligibility.* (1) An entity that is not a public or non-profit health care provider may request and receive a conditional approval of eligibility from the Administrator if the entity satisfies the following requirements:
- (i) The entity is or will be physically located in a rural area defined in §54.600(e) of this subpart by an estimated eligibility date or, for the HCF Program only, is not located in a rural area but is or will be a member of a majority-rural Healthcare Connect Fund Program consortium that satisfies the eligible rural health care provider composition requirement set forth in §54.607(b) of this subpart by the estimated eligibility date;
  - (ii) The entity must provide documentation showing that it will qualify as a public or non-profit health care provider as defined in §54.600(b) of this subpart by the estimated eligibility date; and
  - (iii) The estimated eligibility date must be in the same funding year as or in the next funding year of the date that the entity requests the conditional approval of eligibility.
- (2) An entity that receives conditional approval of eligibility may conduct competitive bidding for the site. An entity engaging in competitive bidding with conditional approval of eligibility must provide a written notification to potential bidders that the entity's eligibility is conditional and specify the estimated eligibility date.
- (3) An entity that receives conditional approval of eligibility may file a request for funding for the site during an application filing window opened for a funding year that ends after the estimated eligibility date. The Administrator shall not issue any funding commitments to applicants that have received conditional approval of eligibility only. Funding commitments may be issued only after such applicants receive formal approval of eligibility as described in paragraph (c)(4) of this section.
- (4) An entity that receives conditional approval of eligibility is expected to notify the Administrator, along with supporting documentation for the eligibility, within 30 days of its actual eligibility date. The actual eligibility date is the date that the entity qualifies as a public or non-profit health care provider as defined in §54.600(b) of this subpart and may be a different date from the estimated eligibility date. The Administrator shall formally approve the entity's eligibility if the entity meets the requirements for a public or non-profit health care provider defined in §54.600(b) of this subpart, provided that the entity still satisfies the requirement under paragraph (c)(1)(i) of this section. Upon the entity receiving a formal approval of eligibility, the Administrator may issue funding commitments covering a time period that starts no earlier than the entity's actual eligibility date and that is within the funding year for which support was requested.
2. Amend § 54.604 by replacing paragraphs (a) – (d) to read as follows:

**§ 54.604. Determining the urban rate.**

(a) If a rural health care provider requests support for an eligible service to be funded from the Telecommunications Program the “urban rate” for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.

3. Amend § 54.605 by replacing paragraph (a) – (c) to read as follows:

**§ 54.605. Determining the rural rate.**

\* \* \* \* \*

- (a) The rural rate shall be used as described in this subpart to determine the credit or reimbursement due to a telecommunications carrier that provides eligible telecommunications services to eligible health care providers.
- (1) The rural rate shall be the median of publicly available rates charged by other service providers for the same or functionally similar services over the same distance in the rural area where the health care provider is located (Method A).
- (2) If there are no publicly available rates charged by other service providers for the same or functionally similar services, the rural rate shall be the median of the rates that the carrier actually charges to non-health care provider commercial customers for the same or functionally similar services provided in the rural area where the health care provider is located (Method B).
- (3) *Cost-based rate.* If the telecommunications carrier serving the health care provider is not providing any identical or similar services in the rural area or it reasonably determines that the rural rate calculated under sections (a)(1) or (2) would not generate a reasonably compensatory rate, then the carrier shall submit to a state commission, for intrastate rates, or the Commission, for interstate rates, a cost-based rate for the provision of the service.
- (i) The carrier must provide to the state commission, for intrastate rates, or the Commission, for interstate rates, a justification of the proposed rural rate, which must include all financial data and other information to verify the service provider’s assertions, including at a minimum, the following information:
- (A) Company-wide and rural health care service gross investment, accumulated depreciation, deferred state and federal income taxes, and net investment; capital costs by category expressed as annual figures (e.g., depreciation expense, state and federal income tax expense, return on net investment); operating expenses by category (e.g., maintenance expense, administrative and other overhead expenses, and tax expense other than income tax expense); the applicable state and federal income tax rates; fixed charges (e.g., interest expense); and any income tax adjustments;
- (B) An explanation and a set of detailed spreadsheets showing the direct assignment of costs to the rural health care service and how company-wide common costs are allocated among the company’s services, including the rural health care service, and the result of these direct assignments and allocations as necessary to develop a rate for the rural health care service;
- (C) The company-wide and rural health care service costs for the most recent calendar year for which full-time actual, historical cost data are available;

- (D) Projections of the company-wide and rural health care service costs for the funding year in question and an explanation of those projections;
  - (E) Actual monthly demand data for the rural health care service for the most recent three calendar years (if applicable);
  - (F) Projections of the monthly demand for the rural health care service for the funding year in question, and the data and details on the methodology used to make those projections;
  - (G) The annual revenue requirement (capital costs and operating expenses expressed as an annual number plus a return on net investment) and the rate for the funded service (annual revenue requirement divided by annual demand divided by twelve equals the monthly rate for the service), assuming one rate element for the service), based on the projected rural health care service costs and demands;
  - (H) Audited financial statements and notes to the financial statements, if available, and otherwise unaudited financial statements for the most recent three fiscal years, specifically, the cash flow statement, income statement, and balance sheets. Such statements shall include information regarding costs and revenues associated with, or used as a starting point to develop, the rural health care service rate; and
  - (I) Density characteristics of the rural area or other relevant geographical areas including square miles, road miles, mountains, bodies of water, lack of roads, remoteness, challenges and costs associated with transporting fuel, satellite and backhaul availability, extreme weather conditions, challenging topography, short construction season or any other characteristics that contribute to the high cost of servicing the health care providers.
- (2) The carrier must provide such information periodically thereafter as required by the state commission, for intrastate rates, or the Commission, for interstate rates. In doing so, the carrier must take into account anticipated and actual demand for telecommunications services by all customers who will use the facilities over which services are being provided to eligible health care providers.
- (b) The rural rate shall not exceed the monthly rate in the service agreement that the health care provider enters into with the service provider when requesting funding.
- (c) Service providers engaged in multi-year or evergreen contracts are required to justify the rural rate only in the first year of the contract.

4. Amend § 54.622(e)(1)(i) to read as follows:

**§ 54.622 Competitive Bidding Requirements and Exemptions.**

\* \* \*

(e) \* \* \*

(1) \* \* \*

- (i) The entity seeking supported services is a public or nonprofit health care provider that falls within one of the categories set forth in the definition of health care provider listed in § 54.600, or will be such a public or nonprofit health care provider before the end of the funding year for which the supported services are requested provided that the entity is requesting or has received a conditional approval of eligibility pursuant to § 54.601(c) of this subpart;

5. Amend § 54.625 by replacing paragraph (c) to read as follows:

**§ 54.625 Service Provider Identification Number (SPIN) changes.**

\* \* \* \* \*

(c) *Filing Deadline.* An applicant must file its request for a corrective or operational SPIN change with the Administrator no later than the invoice filing deadline as defined by section 54.627.

## APPENDIX C

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the February 2022 Further Notice of Proposed Rulemaking (*Further Notice*).<sup>2</sup> The Commission sought written public comment on the proposals in the *Further Notice* including comment on the IRFA. The Commission did not receive any relevant comments in response to this IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objectives of, the Second Report and Order**

2. Through this Second Report and Order, the Commission seeks to further improve the Rural Health Care (RHC) Program's capacity to distribute telecommunications and broadband support to health care providers— especially small, rural healthcare providers (HCPs) – in the most equitable and efficient manner as possible. Over the years, telehealth has become an increasingly vital component of healthcare delivery to rural Americans. Rural healthcare facilities are typically limited by the equipment and supplies they have and the scope of services they can offer which ultimately can have an impact on the availability of high-quality health care. Therefore, the RHC Program plays a critical role in overcoming some of the obstacles healthcare providers face in healthcare delivery in rural communities. Considering the significance of RHC Program support, the Commission implements several measures to most effectively meet HCPs' needs while responsibly distributing the RHC Program's limited funds.

3. In the Second Report and Order, we adopt proposals from the February 2022 *Further Notice* to amend RHC Program administrative processes and internal cap application and prioritization rules to promote efficiency, reduce delays in funding commitments, and prioritize support for the current funding year as well as make a minor technical change to the text of our rules.<sup>4</sup>

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

4. There were no comments filed that specifically address the rules and policies proposed in the IRFA.

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

5. Pursuant to the Small Business Jobs Act of 2010,<sup>5</sup> which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.<sup>6</sup> The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

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<sup>1</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 - 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See *Further Notice*, WC Docket No. 17-310, Further Notice of Proposed Rulemaking, FCC 22-15 (2022) (*Further Notice*).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> See *Further Notice* at paras 64-76.

<sup>5</sup> 5 U.S.C. § 604(a)(3).

<sup>6</sup> *Id.*

**D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

6. 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 proposed rules, if adopted.<sup>7</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>8</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>9</sup> A “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>10</sup>

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>11</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>12</sup> These types of small businesses represent 99.9 percent of all businesses in the United States which translates to 31.7 million businesses.<sup>13</sup>

8. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>14</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>15</sup> Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>16</sup>

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<sup>7</sup> 5 U.S.C. § 603(b)(3).

<sup>8</sup> 5 U.S.C. § 601(6).

<sup>9</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>10</sup> See 15 U.S.C. § 632.

<sup>11</sup> See 5 U.S.C. § 601(3)-(6).

<sup>12</sup> See U.S. Small Business Administration, Office of Advocacy, *What’s New With Small Business?* (Oct. 2020), <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/10/22094424/Whats-New-With-Small-Business-2020.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> 5 U.S.C. § 601(4).

<sup>15</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See IRS, *Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), Who May File Form 990-N to Satisfy Their Annual Reporting Requirement*, <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard> (last visited Jan. 26, 2023). We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>16</sup> See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO

(continued....)

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>17</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>18</sup> indicates that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>19</sup> Of this number there were 39,931 general purpose governments (county<sup>20</sup>, municipal and town or township<sup>21</sup>) with populations of less than 50,000 and 12,040 special purpose governments (independent school districts<sup>22</sup>) with populations of less than 50,000.<sup>23</sup> Based on the 2017 U.S. Census Bureau data we estimate that at least 48,971 entities fall in the category of “small governmental jurisdictions.”<sup>24</sup>

10. Small entities potentially affected by the proposals herein include eligible rural non-profit and public health care providers and the eligible service providers offering them services, including telecommunications service providers, Internet Service Providers (ISPs), and vendors of the services and equipment used for dedicated broadband networks.<sup>25</sup>

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BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>17</sup> 5 U.S.C. § 601(5).

<sup>18</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7.” See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>19</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes Local Governments by Type and State\_2017.

<sup>20</sup> See *id.* at Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>21</sup> See *id.* at Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>22</sup> See *id.* at Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes Special Purpose Local Governments by State Census Years 1942 to 2017.

<sup>23</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10. While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>24</sup> *Id.*

<sup>25</sup> 47 CFR §§ 54.601, 54.621.

## 1. Healthcare Providers

11. *Offices of Physicians (except Mental Health Specialists).* This U.S. industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of general or specialized medicine (except psychiatry or psychoanalysis) or surgery. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>26</sup> The SBA has created a size standard for this industry, which is annual receipts of \$12 million or less.<sup>27</sup> According to 2012 U.S. Economic Census, 152,468 firms operated throughout the entire year in this industry.<sup>28</sup> Of that number, 147,718 had annual receipts of less than \$10 million, while 3,108 firms had annual receipts between \$10 million and \$24,999,999.<sup>29</sup> Based on this data, we conclude that a majority of firms operating in this industry are small under the applicable size standard.

12. *Offices of Dentists.* This U.S. industry comprises establishments of health practitioners having the degree of D.M.D. (Doctor of Dental Medicine), D.D.S. (Doctor of Dental Surgery), or D.D.Sc. (Doctor of Dental Science) primarily engaged in the independent practice of general or specialized dentistry or dental surgery. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. They can provide either comprehensive preventive, cosmetic, or emergency care, or specialize in a single field of dentistry.<sup>30</sup> The SBA has established a size standard for that industry of annual receipts of \$8 million or less.<sup>31</sup> The 2012 U.S. Economic Census indicates that 115,268 firms operated in the dental industry throughout the entire year.<sup>32</sup> Of that number 114,417 had annual receipts of less than \$5 million, while 651 firms had annual receipts between \$5 million and \$9,999,999.<sup>33</sup> Based on this data, we conclude that a majority of business in the dental industry are small under the applicable standard.

13. *Offices of Chiropractors.* This U.S. industry comprises establishments of health practitioners having the degree of D.C. (Doctor of Chiropractic) primarily engaged in the independent practice of chiropractic. These practitioners provide diagnostic and therapeutic treatment of neuromusculoskeletal and related disorders through the manipulation and adjustment of the spinal column and extremities, and operate private or group practices in their own offices (e.g., centers, clinics) or in the

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<sup>26</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621111 Offices of Physicians (except Mental Health Specialists)” <https://www.census.gov/naics/?input=621111&year=2017&details=621111>.

<sup>27</sup> See 13 CFR § 121.201, NAICS Code 621111.

<sup>28</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621111, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621111&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>29</sup> *Id.* The available U.S. Census data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$12 million or less.

<sup>30</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621210 Offices of Dentists”, <https://www.census.gov/naics/?input=621210&year=2017&details=621210>.

<sup>31</sup> See 13 CFR § 121.201, NAICS Code 621210.

<sup>32</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621210, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621210&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>33</sup> *Id.* The available U.S. Census data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$8 million or less.

facilities of others, such as hospitals or HMO medical centers.<sup>34</sup> The SBA has established a size standard for this industry, which is annual receipts of \$8 million or less.<sup>35</sup> The 2012 U.S. Economic Census statistics show that in 2012, 33,940 firms operated throughout the entire year.<sup>36</sup> Of that number 33,910 operated with annual receipts of less than \$5 million per year, while 26 firms had annual receipts between \$5 million and \$9,999,999.<sup>37</sup> Based on this data, we conclude that a majority of chiropractors are small.

14. *Offices of Optometrists.* This U.S. industry comprises establishments of health practitioners having the degree of O.D. (Doctor of Optometry) primarily engaged in the independent practice of optometry. These practitioners examine, diagnose, treat, and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions. Offices of optometrists prescribe and/or provide eyeglasses, contact lenses, low vision aids, and vision therapy. They operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers, and may also provide the same services as opticians, such as selling and fitting prescription eyeglasses and contact lenses.<sup>38</sup> The SBA has established a size standard for businesses operating in this industry, which is annual receipts of \$8 million or less.<sup>39</sup> The 2012 Economic Census indicates that 18,050 firms operated the entire year.<sup>40</sup> Of that number, 17,951 had annual receipts of less than \$5 million, while 70 firms had annual receipts between \$5 million and \$9,999,999.<sup>41</sup> Based on this data, we conclude that a majority of optometrists in this industry are small.

15. *Offices of Mental Health Practitioners (except Physicians).* This U.S. industry comprises establishments of independent mental health practitioners (except physicians) primarily engaged in (1) the diagnosis and treatment of mental, emotional, and behavioral disorders and/or (2) the diagnosis and treatment of individual or group social dysfunction brought about by such causes as mental illness, alcohol and substance abuse, physical and emotional trauma, or stress. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>42</sup> The SBA has created a size standard for this industry, which is annual

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<sup>34</sup> See U.S. Census Bureau, 2017 NAICS Definition, “621310 “Offices of Chiropractors”, <https://www.census.gov/naics/?input=621310&year=2017&details=621310>.

<sup>35</sup> See 13 CFR § 121.201, NAICS Code 621310.

<sup>36</sup> See U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621310, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621310&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.

<sup>37</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>38</sup> See U.S. Census Bureau, 2017 NAICS Definition “621320 Offices of Optometrists”, <https://www.census.gov/naics/?input=621320&year=2017&details=621320>.

<sup>39</sup> See 13 CFR § 121.201, NAICS Code 621320.

<sup>40</sup> See U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621320, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621320&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>41</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>42</sup> See U.S. Census Bureau, 2017 NAICS Definition, “621330 Offices of Mental Health Practitioners (except Physicians)”, <https://www.census.gov/naics/?input=621330&year=2017&details=621330>.

receipts of \$8 million or less.<sup>43</sup> The 2012 U.S. Economic Census indicates that 16,058 firms operated throughout the entire year.<sup>44</sup> Of that number, 15,894 firms received annual receipts of less than \$5 million, while 111 firms had annual receipts between \$5 million and \$9,999,999.<sup>45</sup> Based on this data, we conclude that a majority of mental health practitioners who do not employ physicians are small.

16. *Offices of Physical, Occupational and Speech Therapists and Audiologists.* This U.S. industry comprises establishments of independent health practitioners primarily engaged in one of the following: (1) providing physical therapy services to patients who have impairments, functional limitations, disabilities, or changes in physical functions and health status resulting from injury, disease or other causes, or who require prevention, wellness or fitness services; (2) planning and administering educational, recreational, and social activities designed to help patients or individuals with disabilities, regain physical or mental functioning or to adapt to their disabilities; and (3) diagnosing and treating speech, language, or hearing problems. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>46</sup> The SBA has established a size standard for this industry, which is annual receipts of \$8 million or less.<sup>47</sup> The 2012 U.S. Economic Census indicates that 20,567 firms in this industry operated throughout the entire year.<sup>48</sup> Of this number, 20,047 had annual receipts of less than \$5 million, while 270 firms had annual receipts between \$5 million and \$9,999,999.<sup>49</sup> Based on this data, we conclude that a majority of businesses in this industry are small.

17. *Offices of Podiatrists.* This U.S. industry comprises establishments of health practitioners having the degree of D.P.M. (Doctor of Podiatric Medicine) primarily engaged in the independent practice of podiatry. These practitioners diagnose and treat diseases and deformities of the foot and operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>50</sup> The SBA has established a size standard for businesses in this industry, which is annual receipts of \$8 million or less.<sup>51</sup> The 2012 U.S. Economic Census indicates that 7,569 podiatry firms operated throughout the entire year.<sup>52</sup> Of that number, 7,545

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<sup>43</sup> See 13 CFR § 121.201, NAICS Code 621330.

<sup>44</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621330, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>45</sup> *Id.* The available U.S. Census data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>46</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621340 Offices of Physical, Occupational and Speech Therapists and Audiologists”, <https://www.census.gov/naics/?input=621340&year=2017&details=621340>.

<sup>47</sup> See 13 CFR § 121.201, NAICS Code 621340.

<sup>48</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621340, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>49</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$8 million or less.

<sup>50</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621391 Offices of Podiatrists”, <https://www.census.gov/naics/?input=621391&year=2017&details=621391>.

<sup>51</sup> See 13 CFR § 121.201, NAICS Code 621391.

<sup>52</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621391,

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firms had annual receipts of less than \$5 million, while 22 firms had annual receipts between \$5 million and \$9,999,999.<sup>53</sup> Based on this data, we conclude that a majority of firms in this industry are small.

18. *Offices of All Other Miscellaneous Health Practitioners.* This U.S. industry comprises establishments of independent health practitioners (except physicians; dentists; chiropractors; optometrists; mental health specialists; physical, occupational, and speech therapists; audiologists; and podiatrists). These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>54</sup> The SBA has established a size standard for this industry, which is annual receipts of \$8 million or less.<sup>55</sup> The 2012 U.S. Economic Census indicates that 11,460 firms operated throughout the entire year.<sup>56</sup> Of that number, 11,374 firms had annual receipts of less than \$5 million, while 48 firms had annual receipts between \$5 million and \$9,999,999.<sup>57</sup> Based on this data, we conclude the majority of firms in this industry are small.

19. *Family Planning Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing a range of family planning services on an outpatient basis, such as contraceptive services, genetic and prenatal counseling, voluntary sterilization, and therapeutic and medically induced termination of pregnancy.<sup>58</sup> The SBA has established a size standard for this industry, which is annual receipts of \$12 million or less.<sup>59</sup> The 2012 Economic Census indicates that 1,286 firms in this industry operated throughout the entire year.<sup>60</sup> Of that number 1,237 had annual receipts of less than \$10 million, while 36 firms had annual receipts between \$10 million and \$24,999,999.<sup>61</sup> Based on this data, we conclude that the majority of firms in this industry is small.

20. *Outpatient Mental Health and Substance Abuse Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient services related to the diagnosis and treatment of mental health disorders and alcohol and other substance abuse. These

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<https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621391&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.

<sup>53</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$8 million or less.

<sup>54</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621399 Offices of All Other Miscellaneous Health Practitioners"*, <https://www.census.gov/naics/?input=621399&year=2017&details=621399>.

<sup>55</sup> See 13 CFR § 121.201, NAICS Code 621399.

<sup>56</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621399, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621399&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>57</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>58</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621410 Family Planning Centers"*, <https://www.census.gov/naics/?input=621410&year=2017&details=621410>.

<sup>59</sup> See 13 CFR § 121.201, NAICS Code 621410.

<sup>60</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621410, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621410&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>61</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$12 million or less.

establishments generally treat patients who do not require inpatient treatment. They may provide a counseling staff and information regarding a wide range of mental health and substance abuse issues and/or refer patients to more extensive treatment programs, if necessary.<sup>62</sup> The SBA has established a size standard for this industry, which is \$16.5 million or less in annual receipts.<sup>63</sup> The 2012 U.S. Economic Census indicates that 4,446 firms operated throughout the entire year.<sup>64</sup> Of that number, 4,069 had annual receipts of less than \$10 million while 286 firms had annual receipts between \$10 million and \$24,999,999.<sup>65</sup> Based on this data, we conclude that a majority of firms in this industry are small.

21. *HMO Medical Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in providing a range of outpatient medical services to the health maintenance organization (HMO) subscribers with a focus generally on primary health care. These establishments are owned by the HMO. Included in this industry are HMO establishments that both provide health care services and underwrite health and medical insurance policies.<sup>66</sup> The SBA has established a size standard for this industry, which is \$35 million or less in annual receipts.<sup>67</sup> The 2012 U.S. Economic Census indicates that 14 firms in this industry operated throughout the entire year.<sup>68</sup> Of that number, 5 firms had annual receipts of less than \$25 million, while 1 firm had annual receipts between \$25 million and \$99,999,999.<sup>69</sup> Based on this data, we conclude that approximately one-third of the firms in this industry are small.

22. *Freestanding Ambulatory Surgical and Emergency Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in (1) providing surgical services (e.g., orthoscopic and cataract surgery) on an outpatient basis or (2) providing emergency care services (e.g., setting broken bones, treating lacerations, or tending to patients suffering injuries as a result of accidents, trauma, or medical conditions necessitating immediate medical care) on an outpatient basis. Outpatient surgical establishments have specialized facilities, such as operating and recovery rooms, and specialized equipment, such as anesthetic or X-ray equipment.<sup>70</sup> The SBA has

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<sup>62</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621420 Outpatient Mental Health and Substance Abuse Centers”, <https://www.census.gov/naics/?input=621420&year=2017&details=621420>.

<sup>63</sup> See 13 CFR § 121.201, NAICS Code 621420.

<sup>64</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621420, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621420&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>65</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>66</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621491 HMO Medical Centers”, <https://www.census.gov/naics/?input=621491&year=2017&details=621491>.

<sup>67</sup> See 13 CFR § 121.201, NAICS Code 621491.

<sup>68</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621491, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621491&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>69</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>70</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621493 Freestanding Ambulatory Surgical and Emergency Centers”, <https://www.census.gov/naics/?input=621493&year=2017&details=621493>.

established a size standard for this industry, which is annual receipts of \$16.5 million or less.<sup>71</sup> The 2012 U.S. Economic Census indicates that 3,595 firms in this industry operated throughout the entire year.<sup>72</sup> Of that number, 3,222 firms had annual receipts of less than \$10 million, while 289 firms had annual receipts between \$10 million and \$24,999,999.<sup>73</sup> Based on this data, we conclude that a majority of firms in this industry are small.

23. *All Other Outpatient Care Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing general or specialized outpatient care (except family planning centers, outpatient mental health and substance abuse centers, HMO medical centers, kidney dialysis centers, and freestanding ambulatory surgical and emergency centers). Centers or clinics of health practitioners with different degrees from more than one industry practicing within the same establishment (i.e., Doctor of Medicine and Doctor of Dental Medicine) are included in this industry.<sup>74</sup> The SBA has established a size standard for this industry, which is annual receipts of \$22 million or less.<sup>75</sup> The 2012 U.S. Economic Census indicates that 4,903 firms operated in this industry throughout the entire year.<sup>76</sup> Of this number, 4,269 firms had annual receipts of less than \$10 million, while 389 firms had annual receipts between \$10 million and \$24,999,999.<sup>77</sup> Based on this data, we conclude that a majority of firms in this industry are small.

24. *Blood and Organ Banks.* This U.S. industry comprises establishments primarily engaged in collecting, storing, and distributing blood and blood products and storing and distributing body organs.<sup>78</sup> The SBA has established a size standard for this industry, which is annual receipts of \$35 million or less.<sup>79</sup> The 2012 U.S. Economic Census indicates that 314 firms operated in this industry throughout the entire year.<sup>80</sup> Of that number, 235 operated with annual receipts of less than \$25 million,

<sup>71</sup> See 13 CFR § 121.201, NAICS Code 621493.

<sup>72</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621493, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621493&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>73</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>74</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621498 All Other Outpatient Care Centers”, <https://www.census.gov/naics/?input=621498&year=2017&details=621498>.

<sup>75</sup> See 13 CFR § 121.201, NAICS Code 621498.

<sup>76</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621498, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621498&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>77</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>78</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621991 Blood and Organ Banks”, <https://www.census.gov/naics/?input=621991&year=2017&details=621991>.

<sup>79</sup> See 13 CFR § 121.201, NAICS Code 621991.

<sup>80</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621991, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621991&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

while 41 firms had annual receipts between \$25 million and \$49,999,999.<sup>81</sup> Based on this data, we conclude that approximately three-quarters of firms that operate in this industry are small.

25. *All Other Miscellaneous Ambulatory Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing ambulatory health care services (except offices of physicians, dentists, and other health practitioners; outpatient care centers; medical and diagnostic laboratories; home health care providers; ambulances; and blood and organ banks).<sup>82</sup> The SBA has established a size standard for this industry, which is annual receipts of \$16.5 million or less.<sup>83</sup> The 2012 U.S. Economic Census indicates that 2,429 firms operated in this industry throughout the entire year.<sup>84</sup> Of that number, 2,318 had annual receipts of less than \$10 million, while 56 firms had annual receipts between \$10 million and \$24,999,999.<sup>85</sup> Based on this data, we conclude that a majority of the firms in this industry is small.

26. *Medical Laboratories.* This U.S. industry comprises establishments known as medical laboratories primarily engaged in providing analytic or diagnostic services, including body fluid analysis, generally to the medical profession or to the patient on referral from a health practitioner.<sup>86</sup> The SBA has established a size standard for this industry, which is annual receipts of \$35 million or less.<sup>87</sup> The 2012 U.S. Economic Census indicates that 2,599 firms operated in this industry throughout the entire year.<sup>88</sup> Of this number, 2,465 had annual receipts of less than \$25 million, while 60 firms had annual receipts between \$25 million and \$49,999,999.<sup>89</sup> Based on this data, we conclude that a majority of firms that operate in this industry are small.

27. *Diagnostic Imaging Centers.* This U.S. industry comprises establishments known as diagnostic imaging centers primarily engaged in producing images of the patient generally on referral from a health practitioner.<sup>90</sup> The SBA has established size standard for this industry, which is annual receipts of \$16.5 million or less.<sup>91</sup> The 2012 U.S. Economic Census indicates that 4,209 firms operated in

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<sup>81</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>82</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621999 All Other Miscellaneous Ambulatory Health Care Services”, <https://www.census.gov/naics/?input=621999&year=2017&details=621999>.

<sup>83</sup> See 13 CFR § 121.201, NAICS Code 621999.

<sup>84</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621999, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621999&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>85</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>86</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621511 Medical Laboratories”, <https://www.census.gov/naics/?input=621511&year=2017&details=621511>.

<sup>87</sup> See 13 CFR § 121.201, NAICS Code 621511.

<sup>88</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621511, <https://www.census.gov/naics/?input=621511&year=2017&details=621511>.

<sup>89</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>90</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621512 Diagnostic Imaging Centers”, <https://www.census.gov/naics/?input=621512&year=2017&details=621512>.

<sup>91</sup> See 13 CFR § 121.201, NAICS Code 621512.

this industry throughout the entire year.<sup>92</sup> Of that number, 3,876 firms had annual receipts of less than \$10 million, while 228 firms had annual receipts between \$10 million and \$24,999,999.<sup>93</sup> Based on this data, we conclude that a majority of firms that operate in this industry are small.

28. *Home Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy.<sup>94</sup> The SBA has established a size standard for this industry, which is annual receipts of \$16.5 million or less.<sup>95</sup> The 2012 U.S. Economic Census indicates that 17,770 firms operated in this industry throughout the entire year.<sup>96</sup> Of that number, 16,822 had annual receipts of less than \$10 million, while 590 firms had annual receipts between \$10 million and \$24,999,999.<sup>97</sup> Based on this data, we conclude that a majority of firms that operate in this industry are small.

29. *Ambulance Services.* This U.S. industry comprises establishments primarily engaged in providing transportation of patients by ground or air, along with medical care. These services are often provided during a medical emergency but are not restricted to emergencies. The vehicles are equipped with lifesaving equipment operated by medically trained personnel.<sup>98</sup> The SBA has established a size standard for this industry, which is annual receipts of \$16.5 million or less.<sup>99</sup> The 2012 U.S. Economic Census indicates that 2,984 firms operated in this industry throughout the entire year.<sup>100</sup> Of that number, 2,926 had annual receipts of less than \$15 million, while 133 firms had annual receipts between \$10 million and \$24,999,999.<sup>101</sup> Based on this data, we conclude that a majority of firms in this industry is small.

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<sup>92</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621512, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621512&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>93</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>94</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621610 Home Health Care Services"*, <https://www.census.gov/naics/?input=621610&year=2017&details=621610>.

<sup>95</sup> See 13 CFR § 121.201, NAICS Code 621610.

<sup>96</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621610, <https://www.census.gov/naics/?input=621991&year=2017&details=6214991>.

<sup>97</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>98</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621910 Ambulance Services"*, <https://www.census.gov/naics/?input=621910&year=2017&details=621910>.

<sup>99</sup> See 13 CFR § 121.201, NAICS Code 621910.

<sup>100</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621910, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621910&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>101</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

30. *Kidney Dialysis Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient kidney or renal dialysis services.<sup>102</sup> The SBA has established a size standard for this industry, which is annual receipts of \$41.5 million or less.<sup>103</sup> The 2012 U.S. Economic Census indicates that 396 firms operated in this industry throughout the entire year.<sup>104</sup> Of that number, 379 had annual receipts of less than \$25 million, while 7 firms had annual receipts between \$25 million and \$49,999,999.<sup>105</sup> Based on this data, we conclude that a majority of firms in this industry are small.

31. *General Medical and Surgical Hospitals.* This U.S. industry comprises establishments known and licensed as general medical and surgical hospitals primarily engaged in providing diagnostic and medical treatment (both surgical and nonsurgical) to inpatients with any of a wide variety of medical conditions. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. These hospitals have an organized staff of physicians and other medical staff to provide patient care services. These establishments usually provide other services, such as outpatient services, anatomical pathology services, diagnostic X-ray services, clinical laboratory services, operating room services for a variety of procedures, and pharmacy services.<sup>106</sup> The SBA has established a size standard for this industry, which is annual receipts of \$41.5 million or less.<sup>107</sup> The 2012 U.S. Economic Census indicates that 2,800 firms operated in this industry throughout the entire year.<sup>108</sup> Of that number, 877 has annual receipts of less than \$25 million, while 400 firms had annual receipts between \$25 million and \$49,999,999.<sup>109</sup> Based on this data, we conclude that approximately one-quarter of firms in this industry are small.

32. *Psychiatric and Substance Abuse Hospitals.* This U.S. industry comprises establishments known and licensed as psychiatric and substance abuse hospitals primarily engaged in providing diagnostic, medical treatment, and monitoring services for inpatients who suffer from mental illness or substance abuse disorders. The treatment often requires an extended stay in the hospital. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. Psychiatric, psychological, and social work services are available at the facility. These hospitals usually provide other services, such as outpatient services, clinical laboratory services,

<sup>102</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621492 Kidney Dialysis Centers"*, <https://www.census.gov/naics/?input=621492&year=2017&details=621492>.

<sup>103</sup> See 13 CFR § 121.201, NAICS Code 621492.

<sup>104</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621492, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621492&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.

<sup>105</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>106</sup> See U.S. Census Bureau, *2017 NAICS Definition, "622110 General Medical and Surgical Hospitals"*, <https://www.census.gov/naics/?input=622110&year=2017&details=622110>.

<sup>107</sup> See 13 CFR § 121.201, NAICS Code 622110.

<sup>108</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 622110, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=622110&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.

<sup>109</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$41.5 million or less.

diagnostic X-ray services, and electroencephalograph services.<sup>110</sup> The SBA has established a size standard for this industry, which is annual receipts of \$41.5 million or less.<sup>111</sup> The 2012 U.S. Economic Census indicates that 404 firms operated in this industry throughout the entire year.<sup>112</sup> Of that number, 185 had annual receipts of less than \$25 million, while 107 firms had annual receipts between \$25 million and \$49,999,999.<sup>113</sup> Based on this data, we conclude that more than one-half of the firms in this industry are small.

33. *Specialty (Except Psychiatric and Substance Abuse) Hospitals.* This U.S. industry consists of establishments known and licensed as specialty hospitals primarily engaged in providing diagnostic, and medical treatment to inpatients with a specific type of disease or medical condition (except psychiatric or substance abuse). Hospitals providing long-term care for the chronically ill and hospitals providing rehabilitation, restorative, and adjustive services to physically challenged or disabled people are included in this industry. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. These hospitals may provide other services, such as outpatient services, diagnostic X-ray services, clinical laboratory services, operating room services, physical therapy services, educational and vocational services, and psychological and social work services.<sup>114</sup> The SBA has established a size standard for this industry, which is annual receipts of \$41.5 million or less.<sup>115</sup> The 2012 U.S. Economic Census indicates that 346 firms operated in this industry throughout the entire year.<sup>116</sup> Of that number, 146 firms had annual receipts of less than \$25 million, while 79 firms had annual receipts between \$25 million and \$49,999,999.<sup>117</sup> Based on this data, we conclude that more than one-half of the firms in this industry are small.

34. *Emergency and Other Relief Services.* This industry comprises establishments primarily engaged in providing food, shelter, clothing, medical relief, resettlement, and counseling to victims of domestic or international disasters or conflicts (e.g., wars).<sup>118</sup> The SBA has established a size standard for

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<sup>110</sup> See U.S. Census Bureau, 2017 NAICS Definition, “622210 Psychiatric and Substance Abuse Hospitals”, <https://www.census.gov/naics/?input=622210&year=2017&details=622210>.

<sup>111</sup> See 13 CFR § 121.201, NAICS Code 622210.

<sup>112</sup> See U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 622210, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=622210&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>113</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>114</sup> See U.S. Census Bureau, 2017 NAICS Definition, “622310 Specialty (Except Psychiatric and Substance Abuse) Hospitals”, <https://www.census.gov/naics/?input=622310&year=2017&details=622310>.

<sup>115</sup> See 13 CFR § 121.201 NAICS Code 622310.

<sup>116</sup> See U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 622310, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=622310&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.

<sup>117</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>118</sup> See U.S. Census Bureau, 2017 NAICS Definition, “624230 Emergency and Other Relief Services”, <https://www.census.gov/naics/?input=624230&year=2017&details=624230>.

this industry which is annual receipts of \$35 million or less.<sup>119</sup> The 2012 U.S. Economic Census indicates that 541 firms operated in this industry throughout the entire year.<sup>120</sup> Of that number, 509 had annual receipts of less than \$25 million, while 7 firms had annual receipts between \$25 million and \$49,999,999.<sup>121</sup> Based on this data, we conclude that a majority of firms in this industry are small.

## 2. Providers of Telecommunications and Other Services

### a. Telecommunications Service Providers

35. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.<sup>122</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>123</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year.<sup>124</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>125</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.<sup>126</sup> Of this total, an estimated 1,006 have 1,500 or fewer employees.<sup>127</sup> Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

36. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers.<sup>128</sup> The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>129</sup> U.S. Census Bureau data for 2012 indicate

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<sup>119</sup> See 13 CFR § 121.201, NAICS Code 624230.

<sup>120</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 624230, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=624230&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>121</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>122</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>123</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>124</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>125</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>126</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*) [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>127</sup> *Id.*

<sup>128</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>129</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

that 3,117 firms operated for the entire year.<sup>130</sup> Of that number, 3,083 operated with fewer than 1,000 employees.<sup>131</sup> According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>132</sup> Of this total, an estimated 317 have 1,500 or fewer employees.<sup>133</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

37. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is Wired Telecommunications Carriers and under the size standard, such a business is small if it has 1,500 or fewer employees.<sup>134</sup> U.S. Census Bureau data for 2012 indicates that 3,117 firms operated during that year.<sup>135</sup> Of that number, 3,083 operated with fewer than 1,000 employees.<sup>136</sup> Consequently, the Commission estimates that most competitive access providers are small businesses that may be affected by our actions. According to Commission data the *2010 Trends in Telephone Report*, 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services.<sup>137</sup> Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or few employees and 186 have more than 1,500 employees.<sup>138</sup> Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

38. *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 voice over Internet protocol (VoIP) services; wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television

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<sup>130</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>131</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>132</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>133</sup> *Id.*

<sup>134</sup> See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>135</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers), [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5/naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517110).

<sup>136</sup> *Id.*

<sup>137</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table 5.3, page 5.5 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>138</sup> *Id.*

distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>139</sup> 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.<sup>140</sup> U.S. Census data for 2012 show that there were 3,117 firms that operated that year.<sup>141</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>142</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

39. *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.<sup>143</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>144</sup> For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.<sup>145</sup> Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed of 1000 employees or more.<sup>146</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

40. *The Commission’s own data*—available in its Universal Licensing System—indicate that, as of August 31, 2018, there are 265 Cellular licensees that will be affected by our actions.<sup>147</sup> The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>148</sup> Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more

<sup>139</sup> See 13 CFR § 120.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>140</sup> See 13 CFR § 120.201, NAICS Code 517311.

<sup>141</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePrevious=false>.

<sup>142</sup> *Id.*

<sup>143</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite)”, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>144</sup> See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

<sup>145</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePrevious=false&vintage=2012>.

<sup>146</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>147</sup> See Federal Communications Commission, *Universal Licensing System*, <http://wireless.fcc.gov/uls>. For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

<sup>148</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

than 1,500 employees.<sup>149</sup> Thus, using available data, we estimate that the majority of wireless firms can be considered small.

41. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite).<sup>150</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>151</sup> For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.<sup>152</sup> Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more.<sup>153</sup> Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.<sup>154</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>155</sup> Therefore, more than half of these entities can be considered small.

42. *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.”<sup>156</sup> Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$35 million or less in average annual receipts, under SBA rules.<sup>157</sup> 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.<sup>158</sup> Of this total, 299 firms had annual receipts of less than \$25 million.<sup>159</sup> Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

43. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services,

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<sup>149</sup> See *id.*

<sup>150</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (except Satellite)”*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>151</sup> See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

<sup>152</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

<sup>153</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>154</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>155</sup> *Id.*

<sup>156</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517410 Satellite Telecommunications”*, <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

<sup>157</sup> See 13 CFR § 121.201, NAICS Code 517410.

<sup>158</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517410, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517410&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false&vintage=2012>.

<sup>159</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

such as satellite tracking, communications telemetry, and radar station operation.<sup>160</sup> 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.<sup>161</sup> Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>162</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with annual receipts of \$35 million or less.<sup>163</sup> For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.<sup>164</sup> Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49, 999,999.<sup>165</sup> Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

#### b. Internet Service Providers

44. *Internet Service Providers (Broadband).* Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers.<sup>166</sup> Wired Telecommunications Carriers are comprised of 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 telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.<sup>167</sup> The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.<sup>168</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.<sup>169</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>170</sup> Consequently, under this size standard the majority of firms in this industry can be considered small.

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<sup>160</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications”, <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>164</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, [https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012\\_EC1251SSSZ4&hidePreview=false](https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012_EC1251SSSZ4&hidePreview=false).

<sup>165</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>166</sup> See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition show the NAICS code as 517311. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>167</sup> *Id.*

<sup>168</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>169</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, [https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012\\_EC1251SSSZ5&hidePreview=false](https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012_EC1251SSSZ5&hidePreview=false).

<sup>170</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

45. *Internet Service Providers (Non-Broadband)*. Internet access service providers such as Dial-up Internet service providers, VoIP service providers using client-supplied telecommunications connections and Internet service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) fall in the category of All Other Telecommunications.<sup>171</sup> The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of \$35 million or less.<sup>172</sup> For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.<sup>173</sup> Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>174</sup> Consequently, under this size standard a majority of firms in this industry can be considered small.

**c. Vendors and Equipment Manufacturers**

46. *Vendors of Infrastructure Development or “Network Buildout.”* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are “Radio and Television Broadcasting and Wireless Communications Equipment” with a size standard of 1,250 employees or less<sup>175</sup> and “Other Communications Equipment Manufacturing” with a size standard of 750 employees or less.”<sup>176</sup> U.S. Census Bureau data for 2012 shows that for Radio and Television Broadcasting and Wireless Communications Equipment firms 841 establishments operated for the entire year.<sup>177</sup> Of that number, 828 establishments operated with fewer than 1,000 employees, and 7 establishments operated with between 1,000 and 2,499 employees.<sup>178</sup> For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2012, show that 383 establishments operated for

<sup>171</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517919 All Other Telecommunications”*, <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>172</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>173</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

<sup>174</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>175</sup> See 13 CFR § 121.201, NAICS Code 334220; see also U.S. Census Bureau, *2017 NAICS Definition, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”*, <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

<sup>176</sup> See 13 CFR § 121.201, NAICS Code 334290; see also U.S. Census Bureau, *2017 NAICS Definition, “334290 Other Communications Equipment Manufacturing”*, <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

<sup>177</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220, <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1231SG2&y=2012&n=334220&vintage=2012&hidePreview=false>.

<sup>178</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard of employment of 1,250 or fewer employees. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or services are provided. It is not necessarily identical with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

the year.<sup>179</sup> Of that number 379 operated with fewer than 500 employees and 4 had 500 to 999 employees.<sup>180</sup> Based on this data, we conclude that the majority of Vendors of Infrastructure Development or “Network Buildout” are small.

47. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.<sup>181</sup> These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.<sup>182</sup> The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which consists of all such companies having 1,250 or fewer employees.<sup>183</sup> U.S. Census Bureau data for 2012 show that there were 266 establishments that operated that year.<sup>184</sup> Of this total, 262 operated with fewer than 1,000 employees.<sup>185</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

48. *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.<sup>186</sup> Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment,

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<sup>179</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334290, <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1231SG2&y=2012&n=334290&vintage=2012&hidePreview=false>.

<sup>180</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard of employment of 750 or fewer employees. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or services are provided. It is not necessarily identical with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

<sup>181</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “334210 Telephone Apparatus Manufacturing,” <https://www.census.gov/naics/?input=334210&year=2017&details=334210>.

<sup>182</sup> *Id.*

<sup>183</sup> See 13 CFR § 121.201, NAICS Code 334210.

<sup>184</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334210, <https://data.census.gov/cedsci/table?n=334210&tid=ECNSIZE2012.EC1231SG2&hidePreview=false&vintage=2012>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or services are provided. It is not necessarily identical with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

<sup>185</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard of employment of 1,250 or fewer employees.

<sup>186</sup> See U.S. Census Bureau, *2017 NAICS Definitions*, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”, <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

paggers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.<sup>187</sup> The SBA has established a small business size standard for this industry of 1,250 or fewer employees.<sup>188</sup> U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year.<sup>189</sup> Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.<sup>190</sup> Based on this data, we conclude that a majority of manufacturers in this industry are small.

49. *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).<sup>191</sup> 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.<sup>192</sup> The SBA has established a size standard for this industry as all such firms having 750 or fewer employees.<sup>193</sup> U.S. Census Bureau data for 2012 shows that 383 establishments operated in that year.<sup>194</sup> Of that number, 379 operated with fewer than 500 employees and 4 had 500 to 999 employees.<sup>195</sup> Based on this data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

50. The rules adopted in the Second Report and Order will not result in modified reporting, recordkeeping, or other compliance requirements for small or large entities.

**F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

51. 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,

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<sup>187</sup> *Id.*

<sup>188</sup> See 13 CFR § 121.201, NAICS Code 334220.

<sup>189</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220, <https://data.census.gov/cedsci/table?text=EC1231SG2&n=334220&tid=ECNSIZE2012.EC1231SG2&hidePreview=false>.

<sup>190</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>191</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “334290 Other Communications Equipment Manufacturing”, <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

<sup>192</sup> *Id.*

<sup>193</sup> See 13 CFR 121.201, NAICS Code 334290.

<sup>194</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334290, <https://data.census.gov/cedsci/table?text=EC1231SG2&n=334290&tid=ECNSIZE2012.EC1231SG2&hidePreview=false&vintage=2012>.

<sup>195</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

consolidation, or simplification of compliance and reporting requirements under the rule for such 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 such small entities.”<sup>196</sup>

52. In this Second Report and Order, we take steps to minimize the economic impact on small entities with the rule changes that we have adopted. We amend our invoicing process to harmonize the process across the Telecom Program and the HCF Program. We minimize the impact of this change on small entities by ensuring that there is a mechanism to allow multiple invoices to be filed in a single submission. We also amend our funding cap and prioritization rules to limit the application of the internal cap and prioritize health care providers’ current year financial need over their future year need when the internal cap is exceeded. This change will help small entities by reducing the instances in which the internal cap applies and prioritizing funding for the current funding year when it does. These actions will promote efficiency, reduce delays in funding commitments, and minimize the possibility that some health care providers may not receive their current year’s support in the event of prioritization to upfront payment and multi-year commitment requests, while strengthening protections against waste, fraud and abuse.

#### **G. Report to Congress**

53. The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>197</sup> In addition, the Commission will send a copy of the Second Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.

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<sup>196</sup> 5 U.S.C. § 603(c)(1) - (4).

<sup>197</sup> 5 U.S.C. § 801(a)(1)(A).

**APPENDIX D****Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Second Further Notice of Proposed Rulemaking (*Second Further Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice* provided on the first page of the item. The Commission will send a copy of the *Second Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *Second Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. Through this *Second Further Notice*, the Commission seeks to further improve the Rural Health Care (RHC) Program's capacity to distribute telecommunications and broadband support to health care providers—especially small, rural healthcare providers (HCPs)—in the most equitable and efficient manner as possible. Over the years, telehealth has become an increasingly vital component of healthcare delivery to rural Americans. Rural healthcare facilities are typically limited by the equipment and supplies they have and the scope of services they can offer which ultimately can have an impact on the availability of high-quality health care. Therefore, the RHC Program plays a critical role in overcoming some of the obstacles healthcare providers face in healthcare delivery in rural communities. Considering the significance of RHC Program support, the Commission proposes and seeks comment on several measures to most effectively meet HCPs' needs while responsibly distributing the RHC Program's limited funds.

3. In this Second Further Notice of Proposed Rulemaking, we seek comment on proposed revisions to rate determination rules, the cap on support for satellite services, and revisions to data collected in the Telecom Program. We also propose changes to allow health care providers to receive funding shortly after they become eligible, allow participants with multi-year and evergreen contracts to only justify rural rates in the first year of the contract, and propose changes to administrative deadlines such as changes to amend program rules to align the deadline for filing a Service Provider Identification Number (SPIN) change with the invoice deadline.

**B. Legal Basis**

4. The legal basis for the Second Further Notice is contained in sections 1 through 4(g)(D)(i)-(j), 201-205, 254, 303I, and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151 through 154(i), (j), 201 through 205, 254, 303(r), and 403.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

5. 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 proposed rules, if adopted.<sup>4</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small

<sup>1</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> 5 U.S.C. § 603(b)(3).

organization,” and “small governmental jurisdiction.”<sup>5</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>6</sup> A “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>7</sup>

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>8</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>9</sup> These types of small businesses represent 99.9 percent of all businesses in the United States which translates to 31.7 million businesses.<sup>10</sup>

7. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>11</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>12</sup> Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>13</sup>

8. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special

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<sup>5</sup> 5 U.S.C. § 601(6).

<sup>6</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>7</sup> See 15 U.S.C. § 632.

<sup>8</sup> See 5 U.S.C. § 601(3)-(6).

<sup>9</sup> See U.S. Small Business Administration, Office of Advocacy, *What’s New With Small Business?* (Oct. 2020), <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/10/22094424/Whats-New-With-Small-Business-2020.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> 5 U.S.C. § 601(4).

<sup>12</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See IRS, *Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), Who May File Form 990-N to Satisfy Their Annual Reporting Requirement*, <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard> (last visited Jan. 26, 2023). We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>13</sup> See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

districts, with a population of less than fifty thousand.”<sup>14</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>15</sup> indicates that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>16</sup> Of this number there were 39,931 general purpose governments (county<sup>17</sup>, municipal and town or township<sup>18</sup>) with populations of less than 50,000 and 12,040 special purpose governments (independent school districts<sup>19</sup>) with populations of less than 50,000.<sup>20</sup> Based on the 2017 U.S. Census Bureau data we estimate that at least 48,971 entities fall in the category of “small governmental jurisdictions.”<sup>21</sup>

9. Small entities potentially affected by the proposals herein include eligible rural non-profit and public health care providers and the eligible service providers offering them services, including telecommunications service providers, Internet Service Providers (ISPs), and vendors of the services and equipment used for dedicated broadband networks.<sup>22</sup>

### 1. Healthcare Providers

10. *Offices of Physicians (except Mental Health Specialists).* This U.S. industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of general or specialized medicine (except psychiatry or psychoanalysis) or surgery. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical

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<sup>14</sup> 5 U.S.C. § 601(5).

<sup>15</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7.” See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>16</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes Local Governments by Type and State\_2017.

<sup>17</sup> See *id.* at Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>18</sup> See *id.* at Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>19</sup> See *id.* at Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes Special Purpose Local Governments by State Census Years 1942 to 2017.

<sup>20</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10. While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>21</sup> *Id.*

<sup>22</sup> 47 CFR §§ 54.601, 54.621.

centers.<sup>23</sup> The SBA has created a size standard for this industry, which is annual receipts of \$12 million or less.<sup>24</sup> According to 2012 U.S. Economic Census, 152,468 firms operated throughout the entire year in this industry.<sup>25</sup> Of that number, 147,718 had annual receipts of less than \$10 million, while 3,108 firms had annual receipts between \$10 million and \$24,999,999.<sup>26</sup> Based on this data, we conclude that a majority of firms operating in this industry are small under the applicable size standard.

11. *Offices of Dentists.* This U.S. industry comprises establishments of health practitioners having the degree of D.M.D. (Doctor of Dental Medicine), D.D.S. (Doctor of Dental Surgery), or D.D.Sc. (Doctor of Dental Science) primarily engaged in the independent practice of general or specialized dentistry or dental surgery. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. They can provide either comprehensive preventive, cosmetic, or emergency care, or specialize in a single field of dentistry.<sup>27</sup> The SBA has established a size standard for that industry of annual receipts of \$8 million or less.<sup>28</sup> The 2012 U.S. Economic Census indicates that 115,268 firms operated in the dental industry throughout the entire year.<sup>29</sup> Of that number 114,417 had annual receipts of less than \$5 million, while 651 firms had annual receipts between \$5 million and \$9,999,999.<sup>30</sup> Based on this data, we conclude that a majority of business in the dental industry are small under the applicable standard.

12. *Offices of Chiropractors.* This U.S. industry comprises establishments of health practitioners having the degree of D.C. (Doctor of Chiropractic) primarily engaged in the independent practice of chiropractic. These practitioners provide diagnostic and therapeutic treatment of neuromusculoskeletal and related disorders through the manipulation and adjustment of the spinal column and extremities, and operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>31</sup> The SBA has established a size standard for this industry, which is annual receipts of \$8 million or less.<sup>32</sup> The 2012 U.S. Economic Census

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<sup>23</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621111 Offices of Physicians (except Mental Health Specialists)"* <https://www.census.gov/naics/?input=621111&year=2017&details=621111>.

<sup>24</sup> See 13 CFR § 121.201, NAICS Code 621111.

<sup>25</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621111, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621111&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>26</sup> *Id.* The available U.S. Census data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$12 million or less.

<sup>27</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621210 Offices of Dentists"*, <https://www.census.gov/naics/?input=621210&year=2017&details=621210>.

<sup>28</sup> See 13 CFR § 121.201, NAICS Code 621210.

<sup>29</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621210, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621210&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>30</sup> *Id.* The available U.S. Census data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$8 million or less.

<sup>31</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621310 "Offices of Chiropractors"*, <https://www.census.gov/naics/?input=621310&year=2017&details=621310>.

<sup>32</sup> See 13 CFR § 121.201, NAICS Code 621310.

statistics show that in 2012, 33,940 firms operated throughout the entire year.<sup>33</sup> Of that number 33,910 operated with annual receipts of less than \$5 million per year, while 26 firms had annual receipts between \$5 million and \$9,999,999.<sup>34</sup> Based on this data, we conclude that a majority of chiropractors are small.

13. *Offices of Optometrists.* This U.S. industry comprises establishments of health practitioners having the degree of O.D. (Doctor of Optometry) primarily engaged in the independent practice of optometry. These practitioners examine, diagnose, treat, and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions. Offices of optometrists prescribe and/or provide eyeglasses, contact lenses, low vision aids, and vision therapy. They operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers, and may also provide the same services as opticians, such as selling and fitting prescription eyeglasses and contact lenses.<sup>35</sup> The SBA has established a size standard for businesses operating in this industry, which is annual receipts of \$8 million or less.<sup>36</sup> The 2012 Economic Census indicates that 18,050 firms operated the entire year.<sup>37</sup> Of that number, 17,951 had annual receipts of less than \$5 million, while 70 firms had annual receipts between \$5 million and \$9,999,999.<sup>38</sup> Based on this data, we conclude that a majority of optometrists in this industry are small.

14. *Offices of Mental Health Practitioners (except Physicians).* This U.S. industry comprises establishments of independent mental health practitioners (except physicians) primarily engaged in (1) the diagnosis and treatment of mental, emotional, and behavioral disorders and/or (2) the diagnosis and treatment of individual or group social dysfunction brought about by such causes as mental illness, alcohol and substance abuse, physical and emotional trauma, or stress. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>39</sup> The SBA has created a size standard for this industry, which is annual receipts of \$8 million or less.<sup>40</sup> The 2012 U.S. Economic Census indicates that 16,058 firms operated throughout the entire year.<sup>41</sup> Of that number, 15,894 firms received annual receipts of less than \$5

<sup>33</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621310, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621310&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.

<sup>34</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>35</sup> See U.S. Census Bureau, *2017 NAICS Definition "621320 Offices of Optometrists"*, <https://www.census.gov/naics/?input=621320&year=2017&details=621320>.

<sup>36</sup> See 13 CFR § 121.201, NAICS Code 621320.

<sup>37</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621320, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621320&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>38</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>39</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621330 Offices of Mental Health Practitioners (except Physicians)"*, <https://www.census.gov/naics/?input=621330&year=2017&details=621330>.

<sup>40</sup> See 13 CFR § 121.201, NAICS Code 621330.

<sup>41</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621330, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

million, while 111 firms had annual receipts between \$5 million and \$9,999,999.<sup>42</sup> Based on this data, we conclude that a majority of mental health practitioners who do not employ physicians are small.

15. *Offices of Physical, Occupational and Speech Therapists and Audiologists.* This U.S. industry comprises establishments of independent health practitioners primarily engaged in one of the following: (1) providing physical therapy services to patients who have impairments, functional limitations, disabilities, or changes in physical functions and health status resulting from injury, disease or other causes, or who require prevention, wellness or fitness services; (2) planning and administering educational, recreational, and social activities designed to help patients or individuals with disabilities, regain physical or mental functioning or to adapt to their disabilities; and (3) diagnosing and treating speech, language, or hearing problems. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>43</sup> The SBA has established a size standard for this industry, which is annual receipts of \$8 million or less.<sup>44</sup> The 2012 U.S. Economic Census indicates that 20,567 firms in this industry operated throughout the entire year.<sup>45</sup> Of this number, 20,047 had annual receipts of less than \$5 million, while 270 firms had annual receipts between \$5 million and \$9,999,999.<sup>46</sup> Based on this data, we conclude that a majority of businesses in this industry are small.

16. *Offices of Podiatrists.* This U.S. industry comprises establishments of health practitioners having the degree of D.P.M. (Doctor of Podiatric Medicine) primarily engaged in the independent practice of podiatry. These practitioners diagnose and treat diseases and deformities of the foot and operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>47</sup> The SBA has established a size standard for businesses in this industry, which is annual receipts of \$8 million or less.<sup>48</sup> The 2012 U.S. Economic Census indicates that 7,569 podiatry firms operated throughout the entire year.<sup>49</sup> Of that number, 7,545 firms had annual receipts of less than \$5 million, while 22 firms had annual receipts between \$5 million and \$9,999,999.<sup>50</sup> Based on this data, we conclude that a majority of firms in this industry are small.

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<sup>42</sup> *Id.* The available U.S. Census data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>43</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621340 Offices of Physical, Occupational and Speech Therapists and Audiologists”, <https://www.census.gov/naics/?input=621340&year=2017&details=621340>.

<sup>44</sup> See 13 CFR § 121.201, NAICS Code 621340.

<sup>45</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621340, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>46</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$8 million or less.

<sup>47</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621391 Offices of Podiatrists”, <https://www.census.gov/naics/?input=621391&year=2017&details=621391>.

<sup>48</sup> See 13 CFR § 121.201, NAICS Code 621391.

<sup>49</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621391, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621391&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.

<sup>50</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$8 million or less.

17. *Offices of All Other Miscellaneous Health Practitioners.* This U.S. industry comprises establishments of independent health practitioners (except physicians; dentists; chiropractors; optometrists; mental health specialists; physical, occupational, and speech therapists; audiologists; and podiatrists). These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>51</sup> The SBA has established a size standard for this industry, which is annual receipts of \$8 million or less.<sup>52</sup> The 2012 U.S. Economic Census indicates that 11,460 firms operated throughout the entire year.<sup>53</sup> Of that number, 11,374 firms had annual receipts of less than \$5 million, while 48 firms had annual receipts between \$5 million and \$9,999,999.<sup>54</sup> Based on this data, we conclude the majority of firms in this industry are small.

18. *Family Planning Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing a range of family planning services on an outpatient basis, such as contraceptive services, genetic and prenatal counseling, voluntary sterilization, and therapeutic and medically induced termination of pregnancy.<sup>55</sup> The SBA has established a size standard for this industry, which is annual receipts of \$12 million or less.<sup>56</sup> The 2012 Economic Census indicates that 1,286 firms in this industry operated throughout the entire year.<sup>57</sup> Of that number 1,237 had annual receipts of less than \$10 million, while 36 firms had annual receipts between \$10 million and \$24,999,999.<sup>58</sup> Based on this data, we conclude that the majority of firms in this industry is small.

19. *Outpatient Mental Health and Substance Abuse Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient services related to the diagnosis and treatment of mental health disorders and alcohol and other substance abuse. These establishments generally treat patients who do not require inpatient treatment. They may provide a counseling staff and information regarding a wide range of mental health and substance abuse issues and/or refer patients to more extensive treatment programs, if necessary.<sup>59</sup> The SBA has established a size standard for this industry, which is \$16.5 million or less in annual receipts.<sup>60</sup> The 2012 U.S.

<sup>51</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621399 Offices of All Other Miscellaneous Health Practitioners"*, <https://www.census.gov/naics/?input=621399&year=2017&details=621399>.

<sup>52</sup> See 13 CFR § 121.201, NAICS Code 621399.

<sup>53</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621399, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621399&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>54</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>55</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621410 Family Planning Centers"*, <https://www.census.gov/naics/?input=621410&year=2017&details=621410>.

<sup>56</sup> See 13 CFR § 121.201, NAICS Code 621410.

<sup>57</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621410, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621410&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>58</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$12 million or less.

<sup>59</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621420 Outpatient Mental Health and Substance Abuse Centers"*, <https://www.census.gov/naics/?input=621420&year=2017&details=621420>.

<sup>60</sup> See 13 CFR § 121.201, NAICS Code 621420.

Economic Census indicates that 4,446 firms operated throughout the entire year.<sup>61</sup> Of that number, 4,069 had annual receipts of less than \$10 million while 286 firms had annual receipts between \$10 million and \$24,999,999.<sup>62</sup> Based on this data, we conclude that a majority of firms in this industry are small.

20. *HMO Medical Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in providing a range of outpatient medical services to the health maintenance organization (HMO) subscribers with a focus generally on primary health care. These establishments are owned by the HMO. Included in this industry are HMO establishments that both provide health care services and underwrite health and medical insurance policies.<sup>63</sup> The SBA has established a size standard for this industry, which is \$35 million or less in annual receipts.<sup>64</sup> The 2012 U.S. Economic Census indicates that 14 firms in this industry operated throughout the entire year.<sup>65</sup> Of that number, 5 firms had annual receipts of less than \$25 million, while 1 firm had annual receipts between \$25 million and \$99,999,999.<sup>66</sup> Based on this data, we conclude that approximately one-third of the firms in this industry are small.

21. *Freestanding Ambulatory Surgical and Emergency Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in (1) providing surgical services (e.g., orthoscopic and cataract surgery) on an outpatient basis or (2) providing emergency care services (e.g., setting broken bones, treating lacerations, or tending to patients suffering injuries as a result of accidents, trauma, or medical conditions necessitating immediate medical care) on an outpatient basis. Outpatient surgical establishments have specialized facilities, such as operating and recovery rooms, and specialized equipment, such as anesthetic or X-ray equipment.<sup>67</sup> The SBA has established a size standard for this industry, which is annual receipts of \$16.5 million or less.<sup>68</sup> The 2012 U.S. Economic Census indicates that 3,595 firms in this industry operated throughout the entire year.<sup>69</sup> Of that number, 3,222 firms had annual receipts of less than \$10 million, while 289 firms had annual

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<sup>61</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621420, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621420&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>62</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>63</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621491 HMO Medical Centers”, <https://www.census.gov/naics/?input=621491&year=2017&details=621491>.

<sup>64</sup> See 13 CFR § 121.201, NAICS Code 621491.

<sup>65</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621491, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621491&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>66</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>67</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621493 Freestanding Ambulatory Surgical and Emergency Centers”, <https://www.census.gov/naics/?input=621493&year=2017&details=621493>.

<sup>68</sup> See 13 CFR § 121.201, NAICS Code 621493.

<sup>69</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621493, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621493&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

receipts between \$10 million and \$24,999,999.<sup>70</sup> Based on this data, we conclude that a majority of firms in this industry are small.

22. *All Other Outpatient Care Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing general or specialized outpatient care (except family planning centers, outpatient mental health and substance abuse centers, HMO medical centers, kidney dialysis centers, and freestanding ambulatory surgical and emergency centers). Centers or clinics of health practitioners with different degrees from more than one industry practicing within the same establishment (i.e., Doctor of Medicine and Doctor of Dental Medicine) are included in this industry.<sup>71</sup> The SBA has established a size standard for this industry, which is annual receipts of \$22 million or less.<sup>72</sup> The 2012 U.S. Economic Census indicates that 4,903 firms operated in this industry throughout the entire year.<sup>73</sup> Of this number, 4,269 firms had annual receipts of less than \$10 million, while 389 firms had annual receipts between \$10 million and \$24,999,999.<sup>74</sup> Based on this data, we conclude that a majority of firms in this industry are small.

23. *Blood and Organ Banks.* This U.S. industry comprises establishments primarily engaged in collecting, storing, and distributing blood and blood products and storing and distributing body organs.<sup>75</sup> The SBA has established a size standard for this industry, which is annual receipts of \$35 million or less.<sup>76</sup> The 2012 U.S. Economic Census indicates that 314 firms operated in this industry throughout the entire year.<sup>77</sup> Of that number, 235 operated with annual receipts of less than \$25 million, while 41 firms had annual receipts between \$25 million and \$49,999,999.<sup>78</sup> Based on this data, we conclude that approximately three-quarters of firms that operate in this industry are small.

24. *All Other Miscellaneous Ambulatory Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing ambulatory health care services (except offices of physicians, dentists, and other health practitioners; outpatient care centers; medical and diagnostic

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<sup>70</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>71</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621498 All Other Outpatient Care Centers”, <https://www.census.gov/naics/?input=621498&year=2017&details=621498>.

<sup>72</sup> See 13 CFR § 121.201, NAICS Code 621498.

<sup>73</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621498, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621498&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>74</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>75</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621991 Blood and Organ Banks”, <https://www.census.gov/naics/?input=621991&year=2017&details=621991>.

<sup>76</sup> See 13 CFR § 121.201, NAICS Code 621991.

<sup>77</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621991, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621991&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>78</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

laboratories; home health care providers; ambulances; and blood and organ banks).<sup>79</sup> The SBA has established a size standard for this industry, which is annual receipts of \$16.5 million or less.<sup>80</sup> The 2012 U.S. Economic Census indicates that 2,429 firms operated in this industry throughout the entire year.<sup>81</sup> Of that number, 2,318 had annual receipts of less than \$10 million, while 56 firms had annual receipts between \$10 million and \$24,999,999.<sup>82</sup> Based on this data, we conclude that a majority of the firms in this industry is small.

25. *Medical Laboratories.* This U.S. industry comprises establishments known as medical laboratories primarily engaged in providing analytic or diagnostic services, including body fluid analysis, generally to the medical profession or to the patient on referral from a health practitioner.<sup>83</sup> The SBA has established a size standard for this industry, which is annual receipts of \$35 million or less.<sup>84</sup> The 2012 U.S. Economic Census indicates that 2,599 firms operated in this industry throughout the entire year.<sup>85</sup> Of this number, 2,465 had annual receipts of less than \$25 million, while 60 firms had annual receipts between \$25 million and \$49,999,999.<sup>86</sup> Based on this data, we conclude that a majority of firms that operate in this industry are small.

26. *Diagnostic Imaging Centers.* This U.S. industry comprises establishments known as diagnostic imaging centers primarily engaged in producing images of the patient generally on referral from a health practitioner.<sup>87</sup> The SBA has established size standard for this industry, which is annual receipts of \$16.5 million or less.<sup>88</sup> The 2012 U.S. Economic Census indicates that 4,209 firms operated in this industry throughout the entire year.<sup>89</sup> Of that number, 3,876 firms had annual receipts of less than \$10

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<sup>79</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621999 All Other Miscellaneous Ambulatory Health Care Services"*, <https://www.census.gov/naics/?input=621999&year=2017&details=621999>.

<sup>80</sup> See 13 CFR § 121.201, NAICS Code 621999.

<sup>81</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621999, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621999&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>82</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>83</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621511 Medical Laboratories"*, <https://www.census.gov/naics/?input=621511&year=2017&details=621511>.

<sup>84</sup> See 13 CFR § 121.201, NAICS Code 621511.

<sup>85</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621511, <https://www.census.gov/naics/?input=621511&year=2017&details=621511>.

<sup>86</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>87</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621512 Diagnostic Imaging Centers"*, <https://www.census.gov/naics/?input=621512&year=2017&details=621512>.

<sup>88</sup> See 13 CFR § 121.201, NAICS Code 621512.

<sup>89</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621512, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621512&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

million, while 228 firms had annual receipts between \$10 million and \$24,999,999.<sup>90</sup> Based on this data, we conclude that a majority of firms that operate in this industry are small.

27. *Home Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy.<sup>91</sup> The SBA has established a size standard for this industry, which is annual receipts of \$16.5 million or less.<sup>92</sup> The 2012 U.S. Economic Census indicates that 17,770 firms operated in this industry throughout the entire year.<sup>93</sup> Of that number, 16,822 had annual receipts of less than \$10 million, while 590 firms had annual receipts between \$10 million and \$24,999,999.<sup>94</sup> Based on this data, we conclude that a majority of firms that operate in this industry are small.

28. *Ambulance Services.* This U.S. industry comprises establishments primarily engaged in providing transportation of patients by ground or air, along with medical care. These services are often provided during a medical emergency but are not restricted to emergencies. The vehicles are equipped with lifesaving equipment operated by medically trained personnel.<sup>95</sup> The SBA has established a size standard for this industry, which is annual receipts of \$16.5 million or less.<sup>96</sup> The 2012 U.S. Economic Census indicates that 2,984 firms operated in this industry throughout the entire year.<sup>97</sup> Of that number, 2,926 had annual receipts of less than \$15 million, while 133 firms had annual receipts between \$10 million and \$24,999,999.<sup>98</sup> Based on this data, we conclude that a majority of firms in this industry is small.

29. *Kidney Dialysis Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient kidney or renal dialysis services.<sup>99</sup> The SBA has established

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<sup>90</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>91</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621610 Home Health Care Services"*, <https://www.census.gov/naics/?input=621610&year=2017&details=621610>.

<sup>92</sup> See 13 CFR § 121.201, NAICS Code 621610.

<sup>93</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621610, <https://www.census.gov/naics/?input=621991&year=2017&details=6214991>.

<sup>94</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>95</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621910 Ambulance Services"*, <https://www.census.gov/naics/?input=621910&year=2017&details=621910>.

<sup>96</sup> See 13 CFR § 121.201, NAICS Code 621910.

<sup>97</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621910, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621910&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>98</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>99</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621492 Kidney Dialysis Centers"*, <https://www.census.gov/naics/?input=621492&year=2017&details=621492>.

assize standard for this industry, which is annual receipts of \$41.5 million or less.<sup>100</sup> The 2012 U.S. Economic Census indicates that 396 firms operated in this industry throughout the entire year.<sup>101</sup> Of that number, 379 had annual receipts of less than \$25 million, while 7 firms had annual receipts between \$25 million and \$49,999,999.<sup>102</sup> Based on this data, we conclude that a majority of firms in this industry are small.

30. *General Medical and Surgical Hospitals.* This U.S. industry comprises establishments known and licensed as general medical and surgical hospitals primarily engaged in providing diagnostic and medical treatment (both surgical and nonsurgical) to inpatients with any of a wide variety of medical conditions. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. These hospitals have an organized staff of physicians and other medical staff to provide patient care services. These establishments usually provide other services, such as outpatient services, anatomical pathology services, diagnostic X-ray services, clinical laboratory services, operating room services for a variety of procedures, and pharmacy services.<sup>103</sup> The SBA has established a size standard for this industry, which is annual receipts of \$41.5 million or less.<sup>104</sup> The 2012 U.S. Economic Census indicates that 2,800 firms operated in this industry throughout the entire year.<sup>105</sup> Of that number, 877 has annual receipts of less than \$25 million, while 400 firms had annual receipts between \$25 million and \$49,999,999.<sup>106</sup> Based on this data, we conclude that approximately one-quarter of firms in this industry are small.

31. *Psychiatric and Substance Abuse Hospitals.* This U.S. industry comprises establishments known and licensed as psychiatric and substance abuse hospitals primarily engaged in providing diagnostic, medical treatment, and monitoring services for inpatients who suffer from mental illness or substance abuse disorders. The treatment often requires an extended stay in the hospital. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. Psychiatric, psychological, and social work services are available at the facility. These hospitals usually provide other services, such as outpatient services, clinical laboratory services, diagnostic X-ray services, and electroencephalograph services.<sup>107</sup> The SBA has established a size

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<sup>100</sup> See 13 CFR § 121.201, NAICS Code 621492.

<sup>101</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621492, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621492&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.

<sup>102</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>103</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “622110 General Medical and Surgical Hospitals”, <https://www.census.gov/naics/?input=622110&year=2017&details=622110>.

<sup>104</sup> See 13 CFR § 121.201, NAICS Code 622110.

<sup>105</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 622110, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=622110&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.

<sup>106</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$41.5 million or less.

<sup>107</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “622210 Psychiatric and Substance Abuse Hospitals”, <https://www.census.gov/naics/?input=622210&year=2017&details=622210>.

standard for this industry, which is annual receipts of \$41.5 million or less.<sup>108</sup> The 2012 U.S. Economic Census indicates that 404 firms operated in this industry throughout the entire year.<sup>109</sup> Of that number, 185 had annual receipts of less than \$25 million, while 107 firms had annual receipts between \$25 million and \$49,999,999.<sup>110</sup> Based on this data, we conclude that more than one-half of the firms in this industry are small.

32. *Specialty (Except Psychiatric and Substance Abuse) Hospitals.* This U.S. industry consists of establishments known and licensed as specialty hospitals primarily engaged in providing diagnostic, and medical treatment to inpatients with a specific type of disease or medical condition (except psychiatric or substance abuse). Hospitals providing long-term care for the chronically ill and hospitals providing rehabilitation, restorative, and adjustive services to physically challenged or disabled people are included in this industry. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. These hospitals may provide other services, such as outpatient services, diagnostic X-ray services, clinical laboratory services, operating room services, physical therapy services, educational and vocational services, and psychological and social work services.<sup>111</sup> The SBA has established a size standard for this industry, which is annual receipts of \$41.5 million or less.<sup>112</sup> The 2012 U.S. Economic Census indicates that 346 firms operated in this industry throughout the entire year.<sup>113</sup> Of that number, 146 firms had annual receipts of less than \$25 million, while 79 firms had annual receipts between \$25 million and \$49,999,999.<sup>114</sup> Based on this data, we conclude that more than one-half of the firms in this industry are small.

33. *Emergency and Other Relief Services.* This industry comprises establishments primarily engaged in providing food, shelter, clothing, medical relief, resettlement, and counseling to victims of domestic or international disasters or conflicts (e.g., wars).<sup>115</sup> The SBA has established a size standard for this industry which is annual receipts of \$35 million or less.<sup>116</sup> The 2012 U.S. Economic Census indicates

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<sup>108</sup> See 13 CFR § 121.201, NAICS Code 622210.

<sup>109</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 622210, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=622210&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>110</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>111</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “622310 Specialty (Except Psychiatric and Substance Abuse) Hospitals”, <https://www.census.gov/naics/?input=622310&year=2017&details=622310>.

<sup>112</sup> See 13 CFR § 121.201 NAICS Code 622310.

<sup>113</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 622310, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=622310&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.

<sup>114</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>115</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “624230 Emergency and Other Relief Services”, <https://www.census.gov/naics/?input=624230&year=2017&details=624230>.

<sup>116</sup> See 13 CFR § 121.201, NAICS Code 624230.

that 541 firms operated in this industry throughout the entire year.<sup>117</sup> Of that number, 509 had annual receipts of less than \$25 million, while 7 firms had annual receipts between \$25 million and \$49,999,999.<sup>118</sup> Based on this data, we conclude that a majority of firms in this industry are small.

## 2. Providers of Telecommunications and Other Services

### a. Telecommunications Service Providers

34. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.<sup>119</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>120</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year.<sup>121</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>122</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.<sup>123</sup> Of this total, an estimated 1,006 have 1,500 or fewer employees.<sup>124</sup> Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

35. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers.<sup>125</sup> The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>126</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.<sup>127</sup> Of that number, 3,083 operated with fewer than 1,000

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<sup>117</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 624230, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=624230&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>118</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>119</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers", <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>120</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>121</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>122</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>123</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*) [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>124</sup> *Id.*

<sup>125</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers", <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>126</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>127</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110,

(continued....)

employees.<sup>128</sup> According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>129</sup> Of this total, an estimated 317 have 1,500 or fewer employees.<sup>130</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

36. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is Wired Telecommunications Carriers and under the size standard, such a business is small if it has 1,500 or fewer employees.<sup>131</sup> U.S. Census Bureau data for 2012 indicates that 3,117 firms operated during that year.<sup>132</sup> Of that number, 3,083 operated with fewer than 1,000 employees.<sup>133</sup> Consequently, the Commission estimates that most competitive access providers are small businesses that may be affected by our actions. According to Commission data the *2010 Trends in Telephone Report*, 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services.<sup>134</sup> Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or few employees and 186 have more than 1,500 employees.<sup>135</sup> Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

37. *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 voice over Internet protocol (VoIP) services; wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television

(Continued from previous page)

<https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>128</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>129</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).  
[https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>130</sup> *Id.*

<sup>131</sup> See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>132</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers).  
[https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5/naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517110).

<sup>133</sup> *Id.*

<sup>134</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table 5.3, page 5.5 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>135</sup> *Id.*

distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>136</sup> 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.<sup>137</sup> U.S. Census data for 2012 show that there were 3,117 firms that operated that year.<sup>138</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>139</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

38. *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.<sup>140</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>141</sup> For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.<sup>142</sup> Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed of 1000 employees or more.<sup>143</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

39. The Commission’s own data—available in its Universal Licensing System—indicate that, as of August 31, 2018, there are 265 Cellular licensees that will be affected by our actions.<sup>144</sup> The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>145</sup> Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more

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<sup>136</sup> See 13 CFR § 120.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>137</sup> See 13 CFR § 120.201, NAICS Code 517311.

<sup>138</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePrevious=false>.

<sup>139</sup> *Id.*

<sup>140</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite)”, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>141</sup> See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

<sup>142</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePrevious=false&vintage=2012>.

<sup>143</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>144</sup> See Federal Communications Commission, *Universal Licensing System*, <http://wireless.fcc.gov/uls>. For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

<sup>145</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

than 1,500 employees.<sup>146</sup> Thus, using available data, we estimate that the majority of wireless firms can be considered small.

40. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite).<sup>147</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>148</sup> For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.<sup>149</sup> Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more.<sup>150</sup> Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.<sup>151</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>152</sup> Therefore, more than half of these entities can be considered small.

41. *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.”<sup>153</sup> Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$35 million or less in average annual receipts, under SBA rules.<sup>154</sup> 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.<sup>155</sup> Of this total, 299 firms had annual receipts of less than \$25 million.<sup>156</sup> Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

42. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services,

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<sup>146</sup> See *id.*

<sup>147</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (except Satellite)”*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>148</sup> See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

<sup>149</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

<sup>150</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>151</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>152</sup> *Id.*

<sup>153</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517410 Satellite Telecommunications”*, <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

<sup>154</sup> See 13 CFR § 121.201, NAICS Code 517410.

<sup>155</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517410, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517410&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false&vintage=2012>.

<sup>156</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

such as satellite tracking, communications telemetry, and radar station operation.<sup>157</sup> 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.<sup>158</sup> Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>159</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with annual receipts of \$35 million or less.<sup>160</sup> For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.<sup>161</sup> Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49, 999,999.<sup>162</sup> Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

#### **b. Internet Service Providers**

43. *Internet Service Providers (Broadband).* Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers.<sup>163</sup> Wired Telecommunications Carriers are comprised of 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 telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.<sup>164</sup> The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.<sup>165</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.<sup>166</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>167</sup> Consequently, under this size standard the majority of firms in this industry can be considered small.

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<sup>157</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications”, <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>161</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

<sup>162</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>163</sup> See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition show the NAICS code as 517311. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>164</sup> *Id.*

<sup>165</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>166</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>167</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

44. *Internet Service Providers (Non-Broadband)*. Internet access service providers such as Dial-up Internet service providers, VoIP service providers using client-supplied telecommunications connections and Internet service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) fall in the category of All Other Telecommunications.<sup>168</sup> The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of \$35 million or less.<sup>169</sup> For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.<sup>170</sup> Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>171</sup> Consequently, under this size standard a majority of firms in this industry can be considered small.

### c. Vendors and Equipment Manufacturers

45. *Vendors of Infrastructure Development or “Network Buildout.”* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are “Radio and Television Broadcasting and Wireless Communications Equipment” with a size standard of 1,250 employees or less<sup>172</sup> and “Other Communications Equipment Manufacturing” with a size standard of 750 employees or less.”<sup>173</sup> U.S. Census Bureau data for 2012 shows that for Radio and Television Broadcasting and Wireless Communications Equipment firms 841 establishments operated for the entire year.<sup>174</sup> Of that number, 828 establishments operated with fewer than 1,000 employees, and 7 establishments operated with between 1,000 and 2,499 employees.<sup>175</sup> For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2012, show that 383 establishments operated for

<sup>168</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517919 All Other Telecommunications”*, <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>169</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>170</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

<sup>171</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>172</sup> See 13 CFR § 121.201, NAICS Code 334220; see also U.S. Census Bureau, *2017 NAICS Definition, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”*, <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

<sup>173</sup> See 13 CFR § 121.201, NAICS Code 334290; see also U.S. Census Bureau, *2017 NAICS Definition, “334290 Other Communications Equipment Manufacturing”*, <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

<sup>174</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220, <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1231SG2&y=2012&n=334220&vintage=2012&hidePreview=false>.

<sup>175</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard of employment of 1,250 or fewer employees. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or services are provided. It is not necessarily identical with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

the year.<sup>176</sup> Of that number 379 operated with fewer than 500 employees and 4 had 500 to 999 employees.<sup>177</sup> Based on this data, we conclude that the majority of Vendors of Infrastructure Development or “Network Buildout” are small.

46. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.<sup>178</sup> These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.<sup>179</sup> The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which consists of all such companies having 1,250 or fewer employees.<sup>180</sup> U.S. Census Bureau data for 2012 show that there were 266 establishments that operated that year.<sup>181</sup> Of this total, 262 operated with fewer than 1,000 employees.<sup>182</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

47. *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.<sup>183</sup> Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment,

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<sup>176</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334290, <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1231SG2&y=2012&n=334290&vintage=2012&hidePreview=false>.

<sup>177</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard of employment of 750 or fewer employees. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or services are provided. It is not necessarily identical with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

<sup>178</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “334210 Telephone Apparatus Manufacturing,” <https://www.census.gov/naics/?input=334210&year=2017&details=334210>.

<sup>179</sup> *Id.*

<sup>180</sup> See 13 CFR § 121.201, NAICS Code 334210.

<sup>181</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334210, <https://data.census.gov/cedsci/table?n=334210&tid=ECNSIZE2012.EC1231SG2&hidePreview=false&vintage=2012>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or services are provided. It is not necessarily identical with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

<sup>182</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard of employment of 1,250 or fewer employees.

<sup>183</sup> See U.S. Census Bureau, *2017 NAICS Definitions*, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”, <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

paggers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.<sup>184</sup> The SBA has established a small business size standard for this industry of 1,250 or fewer employees.<sup>185</sup> U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year.<sup>186</sup> Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.<sup>187</sup> Based on this data, we conclude that a majority of manufacturers in this industry are small.

48. *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).<sup>188</sup> 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.<sup>189</sup> The SBA has established a size standard for this industry as all such firms having 750 or fewer employees.<sup>190</sup> U.S. Census Bureau data for 2012 shows that 383 establishments operated in that year.<sup>191</sup> Of that number, 379 operated with fewer than 500 employees and 4 had 500 to 999 employees.<sup>192</sup> Based on this data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

**D. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

49. 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 such 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 such small entities.” We expect to consider all of these factors when we have received substantive comment from the public and potentially affected entities.

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<sup>184</sup> *Id.*

<sup>185</sup> See 13 CFR § 121.201, NAICS Code 334220.

<sup>186</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220, <https://data.census.gov/cedsci/table?text=EC1231SG2&n=334220&tid=ECNSIZE2012.EC1231SG2&hidePreview=false>.

<sup>187</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>188</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “334290 Other Communications Equipment Manufacturing”, <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

<sup>189</sup> *Id.*

<sup>190</sup> See 13 CFR 121.201, NAICS Code 334290.

<sup>191</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334290, <https://data.census.gov/cedsci/table?text=EC1231SG2&n=334290&tid=ECNSIZE2012.EC1231SG2&hidePreview=false&vintage=2012>.

<sup>192</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

50. Largely, the proposals in this *Second Further Notice* if adopted would have no impact on or would reduce the economic impact of current regulations on small entities. Certain proposals could have a positive economic impact on small entities. In the instances in which a proposed change would increase the financial burden on small entities, we have determined that the net financial and other benefits from such changes would outweigh the increased burdens on small entities.

51. *Determining Accurate Rates in the Telecom Program.* We propose modifications to the three rural rate determination methods in the Telecom Program, including changes to the market-based approach of Methods 1 and 2 and new evidentiary requirements for justifying cost-based rates under Method 3. We also propose that participants with multi-year contracts and evergreen contracts would only have to justify rural rates in the first year of the contract. We also propose to simplify the calculation of urban rate rules by eliminating the “standard urban distance” requirement and seek specific comment on sources of urban rates as well as general comment on our urban rate rules. We propose to keep the cap on support for satellite services reinstated and seek comment on potential changes to it. Lastly, we seek comment on proposed revisions to FCC Form 466 intended to improve the quality of Telecom Program data.

52. *Administrative Deadlines.* We also propose to amend program rules align the deadline for filing a SPIN change with the invoice deadline. If implemented, this proposal would have a positive impact on small health care providers because it would reduce the need for them to seek waivers of the current SPIN change deadline. We also seek comment on whether a mechanism to allow post-commitment changes to evergreen contract dates is necessary.

53. *Future Eligibility.* We also propose a mechanism whereby entities that are not yet eligible health care providers can engage in competitive bidding and file requests for funding, which would allow them to receive RHC Program funding shortly after they become eligible. If implemented, this proposal would have a positive economic impact on small health care providers because it would allow them to receive RHC Program funding shortly after they become eligible.

**E. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

54. None.

## APPENDIX E

*2022 Promoting Telehealth Further Notice of Proposed Rulemaking  
Comments and Reply Comments*

<i>Commenter</i>	<u>Comments</u>	<i>Abbreviation</i>	<i>Date Filed</i>
Michigan Health & Hospital Association		MHA	Apr. 14, 2022
NTCA – The Rural Broadband Association		NTCA	Apr. 14, 2022
Southern Ohio Health Care Network		SOHCN	Apr. 14, 2022
Advanced Data Services, Inc.		ADS	Apr. 15, 2022
Alaska Communications Systems Group, Inc.		ACS	Apr. 15, 2022
Alaska Native Health Board		ANHB	Apr. 15, 2022
Alaska Native Tribal Health Consortium		ANTHC	Apr. 15, 2022
Community Hospital Corporation		CHC	Apr. 15, 2022
ENA Healthcare Services, LLC		ENA	Apr. 15, 2022
General Communication, Inc.		GCI	Apr. 15, 2022
National Rural Health Association		NRHA	Apr. 15, 2022
Prostate Cancer Impact Alliance		PCIA	Apr. 15, 2022
The Rural Policy Research Institute		RUPRI	Apr. 15, 2022
Schools, Health & Libraries Broadband (SHLB) Coalition		SHLB	Apr. 15, 2022
Western New York Rural Broadband Healthcare Network		WNY RBHN	Apr. 15, 2022
Windstream Services, LLC		Windstream	Apr. 15, 2022

<i>Commenter</i>	<u>Reply Comments</u>	<i>Abbreviation</i>	<i>Date Filed</i>
Advanced Data Services, Inc.		ADS	May 17, 2022
Alaska Communications Systems Group, Inc.		ACS	May 17, 2022
General Communication, Inc.		GCI	May 17, 2022
New England Telehealth Consortium		NETC	May 17, 2022
Schools, Health & Libraries Broadband (SHLB) Coalition		SHLB	May 17, 2022

**STATEMENT OF  
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Promoting Telehealth in Rural America*, Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking, WC Docket No. 17-310 (January 26, 2023).

What do we bring with us beyond the pandemic? It is a question we are asking in every sector of the economy, in every corner of this country. Our experience with this virus has transformed so much. It has changed where we live, how we work, and what we value in our lives. It also has deepened our dependence on communications. You see this across the board, but especially in healthcare.

That's because telemedicine has moved into the mainstream. Getting an appointment online, checking in with your provider, and having a practitioner diagnose at a distance are all now more common than ever before—and we have embraced the power of telehealth like never before.

This technology, however, is not all new. For more than a quarter of a century, the Federal Communications Commission has been supporting telemedicine. Our groundbreaking Rural Health Care programs have long been a force for good, bringing affordable care to some of the most remote areas of the country by using communications technology to connect patient and provider.

The oldest part of our Rural Health Care Program is known as the Telecom Program. It offers support to rural healthcare providers for the difference between the rates they are charged for communications and those they would pay for the same facilities in urban areas. This program has been a quiet dynamo, helping some of the furthest-flung places in this country stay connected to first class care. I know, I have seen it in action in some of the most isolated communities in Alaska and Montana. This program is a lifesaver.

But a few years ago, here in Washington, this agency got ahead of itself. It tried to “fix” the Telecom Program by setting up a series of databases designed to tell communities exactly what communications services should cost. But this “fix” was littered with anomalies. For instance, in Alaska the database featured a rate for a dedicated transmission service in the Extremely Rural tier that was lower than the rate for the same service in the Less Rural tier. In California, the database showed that a 50 Mbps connection was cheaper than a 20 Mbps connection. Rural healthcare authorities, the providers serving them, and members of Congress spoke up. They pointed out what should have been obvious: this database had serious flaws. More than that, they noted that using it could lead to real problems sustaining connections essential for healthcare in some of the most remote locations in the United States.

So for the last two years the Commission has waived the use of this database. Today, we fix it for good. In fact, we bid it goodbye and return to the earlier system that worked for providers and helped grow this telemedicine program into what it is today. We also continue to allow participants to use already-approved rates for an additional two funding years, to ensure smooth operation of the program. Finally, we take steps to simplify our invoicing rules and reduce funding delays and we ask questions about how to improve the program going forward.

This is good news. The Rural Health Care Program is one of the great gems of this agency. It was early to demonstrate the power of telemedicine and its value in rural communities. And now those communities are no longer outliers when it comes to telehealth technologies. Because the pandemic has demonstrated just how vital they are for everyone, everywhere.

Thank you to the staff responsible for this effort, including Matt Baker, Phil Bonomo, Bryan Boyle, Cheryl Callahan, Callie Coker, Adam Copeland, Chas Eberle, Jodie Griffin, Trent Harkrader, Avis Mitchell, Kiara Ortiz, Hayley Steffen, and Helen Zhang from the Wireline Competition Bureau; Valerie Hill, Richard Mallen, William Richardson, Derek Yeo, and Chin Yoo from the Office of General Counsel; Stacy Jordan, Eugene Kiselev, Paulo Lopes, Alec MacDonnell, Eric Ralph, Don Stockdale,

Shane Taylor, and Stephen Tolbert from the Office of Economics and Analytics; and Cara Grayer and Joy Ragsdale from the Office of Communications Business Opportunities.

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

Re: *Promoting Telehealth in Rural America*, Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking, WC Docket No. 17-310 (January 26, 2023).

Bethel, Alaska sits along the banks of the slow-moving Kuskokwim River—about 40 meandering miles upstream from the Bering Sea and 400 air miles west of Anchorage. The town of about 6,000 people is completely cut off from the road system. You can get there by air, by sea, or in the winter, if you're brave enough, by ice road.

Last summer, both Commissioner Simington and I had the chance to spend time in Bethel on a visit led by Senator Sullivan. That's where we met with the health care providers at the Yukon-Kuskokwim Delta Regional Hospital. It's a 50-bed hospital that provides critical care to individuals in Bethel and other remote communities that are spread across a geographic area the size of Oregon. The hospital houses the only emergency room in the region and, for many, it is the only source of trauma care and surgical services. Much like other facilities in Alaska, the hospital's connections and telehealth services are supported by the FCC's Rural Health Care Program.

With respect to closing the digital divide in Alaska, I don't think the FCC has always gotten it right when it comes to our statutory obligations. We have been working hard to correct course, though. Today's decision is another good step in the right direction. I want to thank my colleagues for working with my office to improve today's item both for the providers in Alaska and for those across the country. There is more work to be done, and I am committed to working with all stakeholders to get this program right over the long term.

In closing, I want to recognize the staff and leadership of the Wireline Competition Bureau for their hard work on this item. You have my thanks, and the item has my support.

**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS**

Re: *Promoting Telehealth in Rural America*, Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking, WC Docket No. 17-310 (January 26, 2023).

We are currently in the midst of a winter season that has seen many, including children, battling what some public health experts have termed a “triple-demic”—COVID, RSV, and a resurgent flu. I can’t think of a better time, then, for the Commission to update, and improve, our Rural Health Care Program. Telehealth continues to save and improve lives for those in rural America relying on broadband for their next doctor’s appointment. Growing up in a family of doctors, who serve many patients that live in rural America, I’ve seen and heard how important it is to ensure that rural health care providers have the same connectivity as their urban counterparts. This Program is doing that hard work.

This item has its roots in an *Order* the Commission adopted in 2019. At that time, I joined then-Commissioner Rosenworcel in dissenting from the majority’s plan to adopt a new method to determine support for the Telecommunications Program, often called the “Rates Database.”

<sup>1</sup> I was worried that the Rates Database could negatively impact program participants and that further study was needed before we should take action.<sup>2</sup> Unfortunately, almost immediately, my fears were realized and the Commission began issuing waivers due to significant anomalies that arose in the initial median urban and rural rate calculations in the Rates Database.

The item we adopt today will provide Rural Health Care Program participants with much-needed clarity and certainty going forward. We return the Telecom Program to the rate determination rules that existed prior to the 2019 *Order*. We eliminate the need to rely on waivers and make additional changes to improve the Rural Health Care Program rules to increase efficiency and reduce delay.

At the same time, we take this opportunity to improve, in a thoughtful manner, the rate determination rules. Importantly, in proposing to update the rules going forward in today’s Further Notice, we propose and seek comment on two new methods to determining rural rates. We propose rational methods that should make the process simpler while also protecting the Universal Service Fund from waste, fraud, and abuse. These proposals should make it easier for eligible health care providers to receive support as soon as they become eligible. But, in proposing these changes in the Further Notice, we give those who serve some of the most remote health care providers an opportunity to weigh in and help inform our rulemaking. I hope they do so.

Last, in 2019, and 2022, I repeatedly called for the Commission to collect and use the best data available to analyze proposals as we consider changes to our rules and programs. I’m glad that in this item we seek comment on how to revise FCC Form 466 to improve the data we collect. As we consider additional changes to the Rural Health Care Program, we must ensure that our efforts mitigate and eliminate unintended consequences. To that end, I’m glad that commenters have already favorably weighed in to support collecting more detailed data. Only through a methodical and deliberative process with roots in accurate data can we ensure that the spirit and goals of the Rural Health Care Program are achieved.

I thank the Chairwoman for her leadership and strongly support this item. My thanks to the dedicated FCC staff for their fantastic work.

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<sup>1</sup> *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, Statement of Commissioner Geoffrey Starks Approving in Part, Dissenting in Part (2019).

<sup>2</sup> *Id.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
Ensuring the Reliability and Resiliency of the 988 ) PS Docket No. 23-5
Suicide & Crisis Lifeline )
)
Amendments to Part 4 of the Commission's Rules ) PS Docket No. 15-80
Concerning Disruptions to Communications )
)
Implementation of the National Suicide Hotline ) WC Docket No. 18-336
Improvement Act of 2018 )

NOTICE OF PROPOSED RULEMAKING

Adopted: January 26, 2023

Released: January 27, 2023

Comment Date: (30 days after date of publication in the Federal Register)

Reply Comment Date: (60 days after date of publication in the Federal Register)

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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APPENDIX A - Proposed Rules

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## I. INTRODUCTION

1. The 988 Suicide & Crisis Lifeline (988 Lifeline) is a national network of more than 200 crisis centers that helps thousands of people overcome crisis situations every day. Dialing “9-8-8” serves as a crucial lifeline for people in need of immediate help. The ability to call 988 and reach help on a timely, consistent basis is of utmost importance to provide support and care to those who may be experiencing a suicidal crisis or mental health-related distress. On December 1, 2022, however, the 988 Lifeline suffered a nationwide outage that lasted several hours, rendering this vital service inaccessible to voice callers.<sup>1</sup> The Department of Health and Human Services announced the outage on Twitter, indicating they were “tracking a widespread national system outage at Intrado, a contractor for crisis providers that supports emergency response needs across the country, including the 988 Suicide & Crisis Lifeline...”<sup>2</sup> The outage left callers reliant on alternative means to contact the hotline, such as text or webchat hosted at 988lifeline.org, to which the public were directed by the Department of Health and Human Services’ Substance Abuse and Mental Health Services Administration (SAMHSA)<sup>3</sup> once it was made aware of the outage.<sup>4</sup>

2. To address this serious issue, in this Notice of Proposed Rulemaking, we propose rules designed to ensure that the Federal Communications Commission (Commission) and those parties that provide life-saving crisis intervention services to people calling the 988 Lifeline, which includes the Veterans Crisis Lifeline, receive timely and actionable information about 988 service outages that potentially affect those services’ ability to meet the immediate health needs of people in suicidal crisis and mental health distress.

## II. BACKGROUND

3. According to the Centers for Disease Control and Prevention (CDC), the suicide rate in this country increased by 35% from 1999 to 2018.<sup>5</sup> In 2020, suicide was a leading cause of death in the United States for people aged 10 to 64 and the second leading cause of death among young people aged 10 to 24.<sup>6</sup> Suicide claimed the lives of nearly 46,000 Americans in 2020, resulting in about one death

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<sup>1</sup> See, e.g., Associated Press, *Widespread outage shuts down 988 mental health hotline*, (Dec. 1, 2022), <https://apnews.com/article/health-mental-service-outages-government-and-politics-d39ecadd27541c7c37c71caff95f975e> (“Those trying to reach the line for help with suicide, depression, or other mental health crises [were] greeted with a message that [said] the line is ‘experiencing a service outage’”).

<sup>2</sup> Sarah Lovenheim (@HHS-Spox), Twitter (Dec. 1, 2022, 2:02 PM), [https://twitter.com/HHS\\_Spox/status/1598392052903026689?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1598392056510029824%7Ctwgr%5E9fd47fdbff186683a34e9b324826c395adb0af67%7Ctwcon%5Es2\\_&ref\\_url=https%3A%2F%2Fwww.washingtonexaminer.com%2Fnews%2F988-mental-health-hotline-shuts-down-amid-widespread-outage](https://twitter.com/HHS_Spox/status/1598392052903026689?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1598392056510029824%7Ctwgr%5E9fd47fdbff186683a34e9b324826c395adb0af67%7Ctwcon%5Es2_&ref_url=https%3A%2F%2Fwww.washingtonexaminer.com%2Fnews%2F988-mental-health-hotline-shuts-down-amid-widespread-outage).

<sup>3</sup> The Substance Abuse and Mental Health Services Administration (SAMHSA) is the agency within the U.S. Department of Health and Human Services responsible for overseeing the National Suicide Prevention Lifeline.

<sup>4</sup> See Amanda Seitz, Associated Press, *National 911 mental health hotline back up after outage*, (Dec. 2, 2022), <https://apnews.com/article/health-business-mental-government-and-politics-f94c8b5d5bc74e7df254bb5e846bf3a1>.

<sup>5</sup> Holly Hedegaard, Sally C. Curtin, and Margaret Warner, *Increase in Suicide Mortality in the United States, 1999-2018*, National Center for Health Statistics (NCHS) Data Brief No. 362, at 1 (Apr. 2020), <https://www.cdc.gov/nchs/data/databriefs/db362-h.pdf>.

<sup>6</sup> Centers for Disease Control and Prevention, *Suicide Prevention*, <https://www.cdc.gov/suicide/> (last visited Dec. 15, 2022). See also The Trevor Project, *Facts About LGBTQ Youth Suicide*, <https://www.thetrevorproject.org/resources/article/facts-about-lgbtq-youth-suicide/> (Dec. 15, 2021).

every 11 minutes.<sup>7</sup> And each year, many more Americans think about or attempt suicide. For every one person who dies by suicide annually, 316 people seriously consider suicide.<sup>8</sup>

4. Suicide also disproportionately impacts various at-risk populations. In 2020, there were 6,146 Veteran suicides – an average of 16.8 per day – and adjusting for population age and sex differences, the suicide rate for Veterans was 57.3% greater than for non-veteran U.S. adults.<sup>9</sup> LGBTQ youth are “four times more likely to seriously consider suicide, to make a plan for suicide, and to attempt suicide versus their peers.”<sup>10</sup> A large proportion of youths ages 13-24 have attempted suicide, with the proportion particularly high among Native/Indigenous youths or youths who are members of certain minorities. Twelve percent of white youth attempted suicide compared to 31% of Native/Indigenous youth, 21% of Black youth, 21% of multiracial youth, 18% of Latinx youth, and 12% of Asian/Pacific Islander youth.<sup>11</sup> The American Academy of Child and Adolescent Psychiatry has found that suicide rates in 10-19 year old Black males has increased by 60% over the past two decades.<sup>12</sup> Suicide rates are also higher among Native Americans as well as rural Americans. According to the CDC, American Indians/Alaska Natives have the highest rates of suicide of any racial or ethnic group in the United States, and the rates of suicide among this population have been increasing since 2003.<sup>13</sup> And in 2017, the suicide rate for the most rural counties in the country was nearly double the rate for the most urban counties.<sup>14</sup> Recent research also highlights that adults with disabilities are more likely to consider suicide. For example, a 2021 survey found that adults with disabilities are three times more likely to report suicidal ideation in the past month compared to persons without disabilities.<sup>15</sup> A 2020 study showed that

<sup>7</sup> Centers for Disease Control and Prevention, *Preventing Suicide Fact Sheet*, [https://www.cdc.gov/suicide/pdf/NCIPC-Suicide-FactSheet-508\\_FINAL.pdf](https://www.cdc.gov/suicide/pdf/NCIPC-Suicide-FactSheet-508_FINAL.pdf) (last visited Dec. 15, 2022).

<sup>8</sup> 988 Suicide & Crisis Lifeline, *Suicide Prevention by the Numbers*, <https://988lifeline.org/by-the-numbers/> (last visited Dec. 15, 2022).

<sup>9</sup> U.S. Dept. of Veterans Affairs, Veterans Health Administration, Office of Mental Health and Suicide Prevention, National Veteran Suicide Prevention Annual Report at 7 (2022), <https://www.mentalhealth.va.gov/docs/data-sheets/2022/2022-National-Veteran-Suicide-Prevention-Annual-Report-FINAL-508.pdf>.

<sup>10</sup> The Trevor Project, *Estimate of How Often LGBTQ Youth Attempt Suicide in the U.S.*, <https://www.thetrevorproject.org/research-briefs/estimate-of-how-often-lgbtq-youth-attempt-suicide-in-the-u-s/> (March 11, 2021).

<sup>11</sup> The Trevor Project, *National Survey on LGBTQ Youth Mental Health 2021*, <https://www.thetrevorproject.org/survey-2021/> (last visited Dec. 15, 2022).

<sup>12</sup> American Academy of Child & Adolescent Psychiatry, *AACAP Policy Statement on Increased Suicide Among Black Youth in the U.S.*, [https://www.aacap.org/aacap/Policy\\_Statements/2022/AACAP\\_Policy\\_Statement\\_Increased\\_Suicide\\_Among\\_Black\\_Youth\\_US.aspx](https://www.aacap.org/aacap/Policy_Statements/2022/AACAP_Policy_Statement_Increased_Suicide_Among_Black_Youth_US.aspx) (March 2022).

<sup>13</sup> Rachel A. Leavitt, Allison Ertl, Kameron Sheats, Emiko Petrosky, Asha Ivey-Stephenson, and Katherine A. Fowler, *Suicides Among American Indian/Alaska Natives – National Violent Death Reporting System, 18 States, 2003-2014*, Morbidity and Mortality Weekly Report, Centers for Disease Control and Prevention, 67(8) (Mar. 2, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/mm6708a1.htm#>.

<sup>14</sup> See Centers for Disease Control and Prevention, *Disparities in Suicide*, <https://www.cdc.gov/suicide/facts/disparities-in-suicide.html#print>, (Nov. 2, 2022) citing Stone DM, Jones CM, Mack KA. *Changes in Suicide Rates — United States, 2018–2019*, MMWR Morb Mortal Wkly Rep 2021;70:261–268. DOI, <http://dx.doi.org/10.15585/mmwr.mm7008a1>; see also Letter from Brandon E. Presley, Commissioner, Northern District, Miss. Public Service Commission, to Hon. Ajit Pai, Chairman, FCC, WC Docket No. 18-336, at 1 (dated Feb. 26, 2020) (expressing concern about how the suicide rates are affecting the health and welfare of rural communities throughout Mississippi and across the nation).

<sup>15</sup> Mark É. Czeisler, Amy Board, JoAnn M. Thierry, Charles A. Czeisler, Shantha M.W. Rajaratnam, Mark E. Howard, and Kristie E.N. Clarke, *Mental Health and Substance Use Among Adults with Disabilities During the COVID-19 Pandemic — United States, February–March 2021*, Morbidity and Mortality Weekly Report, Centers for (continued....)

college students who are deaf or hard of hearing are twice as likely to consider or attempt suicide than students without hearing loss.<sup>16</sup>

5. *988 Suicide & Crisis Lifeline.* In 2005, SAMHSA, a public health agency housed in the U.S. Department of Health and Human Services, and Vibrant Emotional Health (Vibrant) a New York-based mental health non-profit, launched the National Suicide Prevention Lifeline, a 24/7 hotline accessed through a toll-free number (1-800-273-TALK). This hotline, now known as the 988 Suicide & Crisis Lifeline and administered by Vibrant (988 Lifeline administrator) under a grant from SAMHSA, is “available to people in suicidal crisis or emotional distress at any time of the day or night.”<sup>17</sup> Since 2005, the 988 Lifeline has received over 23 million calls from people in distress looking for support.<sup>18</sup>

6. *Veterans Crisis Line.* The Veterans Crisis Line is overseen by the Department of Veterans Affairs (VA) and offers Service Members, Veterans, and their families “supportive, timely, high quality crisis intervention services” on a 24/7 basis, nationwide.<sup>19</sup> Today callers can reach the Veterans Crisis Line by dialing 988 or by dialing the 988 Lifeline toll-free number and then pressing option 1.<sup>20</sup> Veterans can also access the Veterans Crisis Line via text at 838255 and via online chat by visiting [www.veteranscrisisline.net](http://www.veteranscrisisline.net). The Veterans Crisis Line consists of three call centers located in Canandaigua, New York; Atlanta, Georgia; and Topeka, Kansas.<sup>21</sup> Following completion of a call to the Veterans Crisis Line, an electronic consult may be submitted to the Suicide Prevention Coordinator located close to the Veteran, and the Veteran’s local Suicide Prevention Coordinator will respond to this consult within 24 business hours. Since its launch in 2007, the Veterans Crisis Line has answered more than 6.4 million calls, and since launching chat services in 2009 and text services in 2011, the Veterans Crisis Line has answered more than 772,000 chats and 269,000 texts.<sup>22</sup>

7. *988 Designated as the 3-digit Dialing Code and routing calls.* In 2018, Congress, recognizing the need to enhance access to SAMHSA’s and the VA’s suicide hotline services, directed the Commission, in coordination with SAMHSA and the VA, to analyze the effectiveness of the existing Lifeline and examine the feasibility of designating an easy to remember 3-digit dialing code to be used for the national suicide prevention and mental health crisis hotline system.<sup>23</sup> The Commission issued a report recommending that designating a 3-digit dialing code solely for the purpose of a national suicide

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Disease Control and Prevention, 70(34), at 1142 (Aug. 27, 2021),  
<https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7034a3-H.pdf>.

<sup>16</sup> Meghan L. Fox, Tyler G. James, and Steven L. Barnett, *Suicidal Behaviors and Help- Seeking Attitudes Among Deaf and Hard-of-Hearing College Students*, *American Association of Suicidology Journal*, 50(2), 387-396 (Apr. 2020).

<sup>17</sup> See National Suicide Prevention Lifeline, *Our Network*, <https://988lifeline.org/our-network/> (last visited Dec. 9, 2022) (explaining that the Lifeline “is a national network of over 200 local crisis centers, allowing the Lifeline to provide local resources with innovative best practices and quality care across the United States”).

<sup>18</sup> 988 Suicide & Crisis Lifeline, *Suicide Prevention By the Numbers*, <https://988lifeline.org/by-the-numbers/> (last visited Dec. 8, 2022).

<sup>19</sup> U.S. Dept. of Veterans Affairs, Veterans Health Administration, *Report to the Federal Communications Commission*, WC Docket No. 18-336, CC Docket No. 92-105 at 4 (Feb. 7, 2019) (VA Report).

<sup>20</sup> In 2007, SAMHSA and the VA partnered to establish 1-800-273-8255 (TALK) as the access point for the Veterans Crisis Line. SAMHSA Report at 3; see also VA Report at 4.

<sup>21</sup> VA Report at 4.

<sup>22</sup> Veterans Crisis Line DIAL 988 then PRESS 1, *About Us*, <https://www.veteranscrisisline.net/about/about-us/> (last visited Dec. 12, 2022).

<sup>23</sup> National Suicide Hotline Improvement Act of 2018, Pub. L. No. 115-233, 132 Stat. 2424 (2018) (Suicide Hotline Improvement Act).

prevention and mental health hotline would likely make it easier for Americans in crisis to access potentially life-saving resources and initiated a rulemaking to consider designating 988 as this 3-digit code.<sup>24</sup> In 2020 Congress amended the Communications Act of 1934 (the Act) to designate 988 as the universal telephone number for the national suicide prevention and mental health crisis hotline system.<sup>25</sup> In response to this Congressional directive, the Commission adopted rules establishing 9-8-8 as the national suicide prevention and mental health crisis hotline and required all telecommunications carriers, interconnected Voice over Internet Protocol (VoIP) providers, and one-way VoIP providers to make any network changes necessary to ensure that people were able dial 988 to reach the 988 Lifeline by July 16, 2022.<sup>26</sup>

8. In August 2022, the first full month that all providers needed to ensure that people could dial 988 to reach the 988 Lifeline, over 256,000 calls were routed to the Lifeline via the 988 code, a 49% increase relative to August 2021.<sup>27</sup> In November 2022, the latest month for which data is available, 222,285 calls, 72,134 chats, and 52,922 texts (totaling 347,341 contacts) were routed to a 988 Lifeline counseling center after the person listened to the greeting (call) or a counselor (chat/text).<sup>28</sup> Over 317,900 interactions resulted in engagements with a counselor for an average contact time of 21 minutes.<sup>29</sup> In addition, in the same month, 55,457 988 Lifeline calls were offered to the Veterans Crisis Line, for a total of 402,798 routed contacts to the 988 Lifeline.<sup>30</sup> According to SAMHSA, “the Lifeline works... Almost 98% of people who call, chat or text the 988 Lifeline get the crisis support they need and do not require additional services in that moment.”<sup>31</sup>

9. *Calling the 988 Lifeline.* When someone dials 988, the call is routed by the calling party’s originating service provider – such as a wireline, wireless, or VoIP provider – to 1-800-273-8255, which is the toll free access number for the 988 Lifeline and Veterans Crisis Line.<sup>32</sup> Once the call is received at the 988 Lifeline, the caller encounters an interactive voice response system, where the caller selects routing options. A caller may press “1” for Veterans Affairs, which routes the call to the Veterans Crisis Line, press “2” for Spanish, or stay on the line to be routed to a specialist. The call is routed to the

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<sup>24</sup> Federal Communications Commission, *Report on the National Suicide Hotline Improvement Act of 2018*, (WCB, OEA, Aug. 14, 2019).

<sup>25</sup> See National Suicide Hotline Designation Act of 2020, Pub. L. No. 116-172, 134 Stat. 832 § 3 (2020) (adding subsection (e)(4) to section 251 of the Communications Act of 1934, as amended (the Act)).

<sup>26</sup> *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Report and Order, 35 FCC Rcd 7373, 7385-92, paras. 28-36 and 41-45 (2020) (*988 Report and Order*) (Commission adopts centralized routing approach, which requires providers to route 988 calls to 1-800-273-8255 (TALK), the toll free access number for the Lifeline and the Veterans Crisis Line rather than routing calls directly to the local crisis centers.)

<sup>27</sup> See 988 Suicide & Crisis Lifeline, *Vibrant Emotional Health Report Aug 1-Aug 31, 2021*, [https://988lifeline.org/wp-content/uploads/2022/10/FINAL-2021-08\\_988-National-Report.pdf](https://988lifeline.org/wp-content/uploads/2022/10/FINAL-2021-08_988-National-Report.pdf) and *988 Suicide & Crisis Lifeline, Vibrant Emotional Health, Report Aug 1-Aug 31, 2022*, [https://988lifeline.org/wp-content/uploads/2022/10/FINAL-2022-08\\_988-National-Report.pdf](https://988lifeline.org/wp-content/uploads/2022/10/FINAL-2022-08_988-National-Report.pdf).

<sup>28</sup> SAMHSA Substance Abuse and Mental Health Services Administration, *988 Suicide & Crisis Lifeline, 988 Lifeline Performance Metrics*, <https://www.samhsa.gov/find-help/988/performance-metrics#answered> (Dec. 21, 2022).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> SAMHSA, *988 Suicide & Crisis Lifeline, 988 Frequently Asked Questions, Does calling/texting/chatting the 988 Lifeline really help?* <https://www.samhsa.gov/find-help/988/faqs> (last visited Dec. 19, 2022).

<sup>32</sup> 47 CFR § 52.200(b). The Commission’s rules do not require multi-line telephone systems (MLTS) to allow callers to reach the Lifeline by dialing 988 and no other digits. *988 Report and Order* at note 187.

closest accredited local crisis center according to the caller's area code, and if the closest center is unable to respond due to call volume is experiencing a disruption in service, or the center has temporarily removed itself the network, the system automatically routes callers to a backup center.<sup>33</sup> Trained 988 Lifeline counselors "assess callers for suicidal risk, provide crisis counseling, crisis intervention, engage emergency services when necessary, and offer referrals to mental health and/or substance use services."<sup>34</sup> In addition to taking calls, 30 crisis centers answer online chats on a 24/7 basis.<sup>35</sup>

10. *Text-to-988.* In November of 2021, the Commission expanded the availability of critical mental health and crisis counseling resources by requiring covered text providers<sup>36</sup> to allow Americans to reach the 988 Lifeline by texting 988.<sup>37</sup> The Commission determined that "[t]ext messaging to the Lifeline will facilitate access to critical mental health resources for all, and particularly for at-risk populations who tend to prefer communicating through text rather than phone calls."<sup>38</sup> The Commission highlighted that "individuals who send texts or online chats to the Lifeline both skew younger and are more likely to experience current suicidal ideation relative to the categories of individuals who typically access the 988 Lifeline via phone."<sup>39</sup> The Commission's rules require covered text providers to route covered 988 text messages to the 988 Lifeline's current 10-digit number.<sup>40</sup> In May 2022, the Wireline Competition Bureau granted a waiver to allow covered text providers to route covered 988 text messages<sup>41</sup> to the Lifeline using the short code protocol without translation to the Lifeline's current toll free access number, which allows return texts from the Lifeline to appear on consumer devices as coming from 988 rather than 1-800-273-TALK.<sup>42</sup>

11. *Outage Reporting and Notification to 911 Special Facilities.* Under Part 4 of the Commission's rules, cable, satellite, wireless, wireline, interconnected VoIP and other communications providers are required to file reports with the Commission when they experience outages to their communications services that meet certain magnitude and duration thresholds.<sup>43</sup> Providers must notify the Commission's Network Outage Reporting System (NORS) within 120 minutes of discovery of the outage, which must include: the name of the reporting entity; the date and time of onset of the outage; a brief description of the problem; service effects; the geographic area affected by the outage; and a contact name and contact telephone number by which the Commission's technical staff may contact the reporting

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<sup>33</sup> See SAMHSA Report at 5.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> A covered text provider "includes all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones." 47 CFR § 52.201(c)(3).

<sup>37</sup> *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Second Report and Order, 36 FCC Rcd 16901, para. 2 (2021) (*Text to 988 Second Report and Order*); see also 47 CFR § 52.201.

<sup>38</sup> *Text to 988 Second Report and Order* at para 10.

<sup>39</sup> *Id.* at para 12 (citing SAMHSA Aug. 4 *Ex Parte* Letter at 3).

<sup>40</sup> 47 CFR § 52.201(a).

<sup>41</sup> A "covered 988 text message means a 988 text message in SMS format and any other format that the Wireline Competition Bureau has determined must be supported by covered text providers." 47 CFR § 52.201(c)(2).

<sup>42</sup> *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Order, DA-22-519 (WCB 2022).

<sup>43</sup> 47 CFR § 4.9. See also 47 CFR § 4.5(a) (defining an "outage" as "a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network").

entity.<sup>44</sup> Providers must then submit an initial report within 72 hours of discovery of the outage that contains all pertinent information then available.<sup>45</sup> Finally, providers must submit a final report within 30 days of discovery that contains all pertinent information on the outage, including any information that was not contained in, or that has changed from the information provided in, the initial report.<sup>46</sup> The Commission monitors the reliability of communications services, including 911 networks, through these mandatory outage reporting requirements that, among other things, provide the federal government with situational awareness when outages occur, enable statistical analysis of outage trends, and inform recommendations to improve network reliability. This information is also shared with other agencies of the federal government, the 50 states, the District of Columbia, Tribal Nations, and the U.S. territories that have a need to know.<sup>47</sup>

12. In November of 2022, the Commission adopted a report and order updating its 911 notification rules.<sup>48</sup> For disruptions to 911, the Commission's adopted rules require providers that deliver traffic to 911 special facilities (i.e., covered 911 service providers)<sup>49</sup> and cable, satellite, wireless, wireline, and interconnected VoIP providers that handle other aspects of 911 call processing (Originating Service Providers (OSPs))<sup>50</sup> to notify 911 special facilities when an outage potentially affects the 911

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<sup>44</sup> See 47 CFR §§ 4.9(a), (c)(1)-(2), (d), (e)(1), (f), 4.11. *But see* 47 CFR § 4.9(g) (allowing interconnected VoIP service providers 240 minutes to submit a notification when the outage potentially affects a 911 special facility, and 24 hours for other outages).

<sup>45</sup> See 47 CFR §§ 4.9(a)(4), (c)(3), (d), (e)(4), (f)(4), 4.11. Interconnected VoIP service providers are not required to submit initial reports.

<sup>46</sup> See 47 CFR §§ 4.9(a)(4), (c)(3), (d), (e)(4), (f)(4), (g)(2), 4.11.

<sup>47</sup> See 47 CFR § 4.2.

<sup>48</sup> *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, Improving 911 Reliability, New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket Nos. 15-80, 13-75, 04-35, Second Report and Order, FCC-22-88 (Nov. 18, 2022) (*PSAP Notification Order*). The rules the Commission adopted in the *PSAP Notification Order*, which require originating service providers (OSPs) to modify the means, timing, and frequency of their outage notification templates to conform with those provided by covered 911 service providers, and for covered 911 service providers and OSPs to adjust the content of their outage notifications to conform with the information template designed by ATIS, will require review of the new and modified information collection requirements by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Following the completion of that review, the Bureau will publish a notice in the *Federal Register* announcing the relevant effective date, which will be 120 days after such publication. See *PSAP Notification Order* at para. 33. The rules the Commission adopted in the *PSAP Notification Order* requiring covered 911 service providers and OSPs to gather, update, and maintain accurate contact information for officials designated to receive outage notification at each 911 special facility in areas that they serve require review by OMB pursuant to the PRA. Following the completion of that review, the Bureau will publish a notice in the *Federal Register* announcing the relevant effective date, which will be 120 days after such publication. *PSAP Notification Order* at para 32.

<sup>49</sup> 47 CFR § 9.19(a)(4) (defining a "covered 911 service provider" as "[a]ny entity that [p]rovides 911, E911, or NG911 capabilities such as call routing, automatic location information (ALI), automatic number identification (ANI), or the functional equivalent of those capabilities, directly to a . . . [PSAP], statewide default answering point, or appropriate local emergency authority . . . ; and/or [o]perates one or more central offices that directly serve a PSAP"); *Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket Nos. 13-75 and 11-60, Report and Order, 28 FCC Rcd 17476, 17488-91, paras. 36-43 (2013) (*911 Reliability Report and Order*) (discussing the definition of a covered 911 service provider); *id.* at 17529-29, para. 147 (explicitly declining to apply covered 911 service providers' obligations to other service providers).

<sup>50</sup> 47 CFR § 4.3(a), (d), (f), (g), (h). The *Third Notice* referred to cable, satellite, wireless, wireline, and interconnected VoIP providers collectively as "originating service providers." *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, Improving 911 Reliability, New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket No. 13-75, Third Notice of Proposed (continued....)

special facility.<sup>51</sup> Notifications must contain all available material information about the outage, which includes, among other information, the date and time when the incident began, the types of communications services affected, the geographic area affected by the outage, how the outage affects the 911 special facility, the expected date and time of restoration, and the best-known cause of the outage.<sup>52</sup> The adopted rules require providers to notify 911 special facilities by telephone and in writing via electronic means in the absence of another method mutually agreed upon in writing in advance by the 911 special facility and the provider.<sup>53</sup> Providers will be required to transmit initial 911 special facility notifications as soon as possible, but no later than 30 minutes after discovering that they have experienced an outage that potentially affects a 911 special facility;<sup>54</sup> and must communicate additional material information to potentially affected 911 special facilities as the information becomes available, but no later than two hours after the initial notification.<sup>55</sup> For outages lasting longer than two hours, service providers will need to continue to follow up with additional material information as soon as possible after it becomes available, which continues until the outage is completely repaired and service is fully restored.<sup>56</sup> Providers must also exercise special diligence to identify, maintain, and, on an annual basis, confirm current contact information appropriate for 911 outage notification for each 911 special facility that serves areas that the service provider serves.<sup>57</sup> In adopting this obligation, the Commission noted that timely, accurate, and actionable information is essential to ensuring that Public Safety Answering Points (PSAPs) have the means to determine how to engage with the public to best maintain access to emergency services during an outage.<sup>58</sup>

### III. DISCUSSION

#### A. Reporting 988 Special Facility Outages

13. The Commission's rules do not currently require notification when access to the 988 Lifeline is compromised or the 988 Lifeline system experiences an outage. To improve the resiliency of

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Rulemaking, 36 FCC Rcd 7860 (2021) (*Third Notice*). We continue to use that term here, but note that the communications services that they provide are not limited to call origination. *See* 47 CFR § 4.3 (identifying by type the various service providers covered by our Part 4 rules); 47 CFR § 4.9 (identifying outage reporting requirements by type of service provider). These providers are subject to our part 4 outage reporting rules including when they experience outage in a location other than their call origination networks (*e.g.*, in “middle mile” or wholesale transport network facilities).

<sup>51</sup> The Commission's rules provide that “[a]n outage that potentially affects a 911 special facility occurs whenever: (1) There is a loss of communications to PSAP(s) potentially affecting at least 900,000 user-minutes and: The failure is neither at the PSAP(s) nor on the premises of the PSAP(s); no reroute for all end users was available; and the outage lasts 30 minutes or more; or (2) There is a loss of 911 call processing capabilities in one or more E-911 tandems/selective routers for at least 30 minutes duration; or (3) One or more end-office or MSC switches or host/remote clusters is isolated from 911 service for at least 30 minutes and potentially affects at least 900,000 user-minutes; or (4) There is a loss of ANI/ALI (associated name and location information) and/or a failure of location determination equipment, including Phase II equipment, for at least 30 minutes and potentially affecting at least 900,000 user-minutes (provided that the ANI/ALI or location determination equipment was then currently deployed and in use, and the failure is neither at the PSAP(s) or on the premises of the PSAP(s)).” 47 CFR § 4.5(e); *see also* 47 CFR § 4.9(a)(4), (c)(2)(iv), (e)(1)(v), (f)(4), (g)(1)(i), (h).

<sup>52</sup> 47 CFR § 4.9(h)(2).

<sup>53</sup> 47 CFR § 4.9(h)(3).

<sup>54</sup> 47 CFR § 4.9(h)(4).

<sup>55</sup> 47 CFR § 4.9(h)(5).

<sup>56</sup> *PSAP Notification Order* at para. 23.

<sup>57</sup> 47 CFR § 4.9(h)(1).

<sup>58</sup> *PSAP Notification Order* at paras 19, 37.

the 988 Lifeline system and ensure the Commission, SAMHSA, the VA, and the 988 Lifeline administrator have timely outage information so they can provide the public with alternative ways to access the 988 Lifeline, we propose to require providers that provide the 988 Lifeline with capabilities such as the ability to receive, process, or forward calls to report outages that potentially affect the 988 Lifeline to the Commission's NORS. We seek comment on this proposal.

14. We believe, as in the 911 context, that improving situational awareness of significant network outage issues affecting 988 Lifeline services would provide the Commission (as well as other federal, state, Tribal, and territorial agencies with public safety responsibilities) with critical insight into the availability and reliability of a vital public health service. In the short term, we expect that these reporting requirements would improve public safety by allowing the Commission and other agencies to assess the magnitude of major outages and, in the long term, to identify network reliability trends and determine whether the outages likely could have been prevented or mitigated had the service providers followed certain network reliability best practices.<sup>59</sup>

15. We seek comment on how we should define the universe of providers that would be subject to this new requirement. We propose to define "covered 988 service providers" as those providers that provide the 988 Lifeline with capabilities such as the ability to receive, process, or forward calls. Are there additional entities that provide services or functionalities in the 988 call pathway that should be included in the definition of a covered 988 service provider? Would the category as drafted be limited solely to service providers that have contracted with the 988 Lifeline administrator to provide communications services and functionality in support of 988, or are there other service providers that would fall within the scope of that definition? If other providers would qualify as "covered 988 service providers" under our proposed definition, we seek comment on the nature of the services they provide and whether the public interest would be served by requiring them to report outages to the Commission.

16. We propose that 988 outage reports be filed with the Commission in NORS, consistent with current outage filing processes. In this regard, we expect that the use of the NORS database will minimize costs to providers of implementation as providers already file outage reports in NORS, and we expect that the vast majority of outages that potentially affect 988 special facilities are already being reported in this system. We also propose that covered 988 service providers be required to notify the Commission in this regard when the provider experiences a service outage that results in a loss of the ability of the 988 Suicide & Crisis Lifeline to receive, process or forward calls for at least 30 minutes. We seek comment on this proposal. Is this time frame too long or too short? Are there capabilities or call attributes related to 988, such as degradation to calls resulting from processing time outs or connection drops, that the Commission should consider?

17. In addition to our proposal that covered 988 service providers file outage notifications in NORS, we seek comment whether we should require cable, satellite, wireless, wireline, and interconnected VoIP providers to report outages that potentially affect the 988 Lifeline to the Commission's NORS. The Commission's existing rules that require the reporting of outages that potentially affect 911 include as outages triggering reporting obligations those that are associated with more general outages as well as those specific to the emergency number. We seek comment on whether we should adopt a similar requirement for 988. If we were to do so, what outage threshold should we consider, e.g., outages impacting the toll free access number lasting at least 30 minutes in duration and potentially affecting at least 900,000 user minutes? Should the absence of a reroute be a consideration? Are there any special characteristics of 988 calls that would make it more effective or efficient for the Commission to adopt alternative outage reporting thresholds that do not resemble the reporting requirements for other communications outages? If so, what are those differentiating characteristics and how should outage reporting requirements reflect those characteristics? For example, are there thresholds

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<sup>59</sup> See *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket No. 15-80, Second Report and Order, 36 FCC Rcd 6136, 6138, para.6 (2021) (Information Sharing Report and Order) (describing how the Commission analyzed NORS outage reports).

other than outages of 30 minutes in duration or potentially affecting at least 900,000 user-minutes that would be more appropriate for reporting on outages to 988 special facilities? Calls to 988 may require lengthier engagements with callers than would a typical 911 call; does this impact the appropriate threshold or counsel in favor of an alternative measure? Will using either the 30 minute outage duration and/or outages potentially affecting 900,000 user minutes result in too many outage reports for SAMHSA, the VA, or the 988 Lifeline administrator to manage and act upon? Do the differences between 911 call routing and 988 Lifeline call routing affect the policy issues around outage reporting by originating service providers?<sup>60</sup>

18. We seek comment on whether outages affecting covered 988 texts should be reported, and if they should be reported what thresholds should apply and why? We ask for specific comments addressing the costs associated with requiring reporting of outages to covered 988 text messages.<sup>61</sup>

19. Is there information that is unique to 988 outages that we should require to be included in an outage report due to its value in understanding the cause or impacts of such an outage? Should service providers be required to explicitly indicate in their outage reports if an outage potentially affects 988 special facilities? Should the required deadlines for the filing of 988 outage reports be different from the deadlines for filing other types of outage reports? Should the reporting requirements be different for originating service providers that deliver calls to the 988 Lifeline in the first instance versus the covered 988 service provider that handles the call thereafter?

#### **B. Providing Notice of Outages That Potentially Affect 988 Special Facilities**

20. We propose to require covered 988 service providers to notify 988 special facilities about outages that potentially affect a 988 special facility. We further propose that this outage notification obligation mirror our existing 911 special facility notification requirements, as discussed below. We seek comment on our proposal. Are there any differences between 911 and the 988 Lifeline that would warrant a different approach to 988 special facility notification? If so, what alternative notification requirements should be considered to ensure that 988 special facilities receive effective notifications about 988 Lifeline outages?

21. *Notification to 988 special facilities.* We propose to designate SAMHSA, the VA, and the 988 Lifeline administrator as 988 special facilities that will receive notifications of outages that potentially affect a 988 special facility. We believe this approach balances the benefit of allowing 988 Lifeline officials to take steps to maintain the public's access to crisis intervention services, while minimizing the notification burdens on service providers. We seek comment on this proposal. The Commission seeks comment on its belief that timely notice of a 988 Lifeline outage will assist SAMHSA, the VA, and the 988 Lifeline administrator to quickly inform the public of alternative ways of contacting the Lifeline while one type of communication is unavailable, such as texting or using the online chat function if calls are not getting through. The Commission does not propose to impose any obligations on SAMHSA or the VA. From what other sources might consumers seek information on a 988 outage?

22. We propose that reliance upon a third-party service provider to manage, route, or otherwise contribute to 988 call processing would not relieve covered 988 service providers of the

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<sup>60</sup> See, Letter from Christiaan Segura, Director, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 23-5, 15-80, and 13-75; ET Docket No. 04-35; and WC Docket No. 18-336, at 2 (filed Jan. 17, 2023) (CTIA *Ex Parte*).

<sup>61</sup> The Commission notes that in the month of November 2022, the 988 Lifeline routed 52,922 text messages to a center and 52,337 texts were connected to a center and then engaged by a counselor, which is 99% of all texts received. In comparison, the 988 Lifeline routed 222,285 calls to a center and 195,083 calls were connected to a center and then engaged by a counselor, which is 88% of all calls received. See SAMHSA Substance Abuse and Mental Health Services Administration, 988 Suicide & Crisis Lifeline, *988 Lifeline Performance Metrics*, <https://www.samhsa.gov/find-help/988/performance-metrics#answered> (Dec. 21, 2022).

obligation to provide notification to 988 special facilities under these proposed rules. This is consistent with our current treatment of 911 notification obligations.<sup>62</sup> We seek comment on this approach.

23. In addition to our proposal to require notification by covered 988 service providers, we seek comment on whether to require cable, satellite, wireless, wireline, and interconnected VoIP providers to make similar notifications.

24. *Notification to other entities.* We seek comment on whether there are additional entities that should receive notice of an outage that potentially affects a 988 special facility. For example, should the local crisis centers to which 988 calls are routed be considered 988 special facilities that should receive 988 outage notifications? If notifications are to be made to local crisis centers, should the notice be limited to the local crisis center(s) that are directly impacted by the specific 988 outage? If so, how would providers identify the appropriate local crisis center(s) to notify? Absent access to local crisis center contact information, how should that information be compiled and maintained? Should originating service providers experiencing an outage that potentially affects 988 special facilities be required to notify the covered 988 service provider of the outage? Are there steps these centers could take to maintain public access to their services that SAMHSA, the VA, and the 988 Lifeline administrator could not take alone? Should SAMSHA or the 988 Lifeline administrator effectuate or manage notifying the crisis centers of outages?

25. We seek comment on whether covered 988 service providers should be required to notify originating service providers about 988 outages, enabling originating service providers to voluntarily notify their customers of the outage and alternative ways to obtain crisis assistance.<sup>63</sup> Should originating service providers be required to provide notice to covered 988 service providers of 988 outages? Would these notice requirements provide another avenue for consumers to be made aware of 988 service outages? Would these notices provide for increased coordination between the carriers for remedying the outage and coordinating workarounds? Should PSAPs be notified so they can be prepared for call volume increases? If notice should be required to originating service providers and/or PSAPs, should the content of the notice be the same or different than the notice 988 special facilities receive? We encourage commenters to address the specific costs and benefits of providing notice to these entities.

26. *Content of 988 notification.* In the 911 context, the Commission determined that PSAPs should receive consistent, timely, and actionable notice of 911 service outages that potentially affect them in order to empower them to lessen the impacts of outages on the provision of emergency services by rerouting calls or communicating alternatives to the public.<sup>64</sup> We believe that it is similarly important that the information provided during a 988 outage is clear and actionable so that 988 special facilities can make swift judgments as to whether to inform the public about alternative means to contact mental health and suicide prevention services. As required for 911 outages, we propose that covered 988 service providers must provide the following material information in their 988 special facility outage notifications:

- An identifier unique to each outage;
- The name, telephone number, and email address at which the notifying service provider can be reached for follow-up;
- The name of the service provider(s) experiencing the outage;
- The date and time when the incident began (including a notation of the relevant time zone);

<sup>62</sup> *PSAP Notification Order* at para. 13.

<sup>63</sup> *But see PSAP Notification Order* at paras. 25-26 (declining to require originating service providers and covered 911 service providers to directly notify their customers about 911 outages).

<sup>64</sup> *PSAP Notification Order* at para 2.

- The type of communications service(s) affected;
- The geographic area affected by the outage;
- A statement of the notifying service provider's expectations for how the outage potentially affects the 988 special facility (e.g., dropped calls);
- The expected date and time of restoration, including a notation of the relevant time zone;
- The best-known cause of the outage; and
- A statement of whether the message is the notifying service provider's initial notification to the 988 special facility, an update to an initial notification, or a message intended to be the notifying service provider's final assessment of the outage.

We seek comment on this proposal. Are there differences between 911 and 988 that would warrant different content requirements for notifications? If we were to adopt rules for originating providers in addition to covered 988 service providers, should we require the same content requirements for notifications?

27. *Means of notification.* We propose to require covered 988 service providers to notify 988 special facilities of outages that potentially affect them by telephone and in writing by electronic means and by alternative means if mutually agreed upon in writing in advance by the 988 special facility and the service provider, which is the same manner of notification that originating service providers follow when notifying 911 special facilities of outages that potentially affect them.<sup>65</sup> We seek comment on our belief that dual notification will provide the greatest assurance that a 988 special facility, regardless of its size or capability, will receive the outage notification.

28. We seek comment on whether there are differences between notifications to 911 special facilities and 988 special facilities that warrant a different form of notification. Should providers have the same formal notification requirements as they do in the 911 setting? If their notifications should be different, why should they differ and what forms of notification should be adopted? In addition to our proposal for covered 988 service providers, should we apply similar requirements to originating cable, satellite, wireless, wireline, interconnected VoIP providers?

29. *Maintain contact information.* To better ensure that potentially affected 988 special facilities receive actionable notice about 988 outages, we propose to require that covered 988 service providers exercise special diligence to maintain accurate, up-to-date contact information for 988 special facilities, which includes the name and contact information of the person designated by each of these entities to receive notification of 988 outages. "Special diligence" is the diligence expected from a person practicing in a particular field of specialty under circumstances like those at issue.<sup>66</sup> The Commission has imposed this higher level of care in circumstances where a failure to take sufficient care can lead to particularly serious public harms.<sup>67</sup> In these circumstances, "special diligence" would require, for example, actively seeking to confirm the accuracy of contact information and not relying on the absence of a response. Once providers have a 988 special facility contact list in place, special diligence would

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<sup>65</sup> See *PSAP Notification Order* at paras. 17-18.

<sup>66</sup> See *Black's Law Dictionary* (11<sup>th</sup> ed., 2019).

<sup>67</sup> See, e.g., *Revocation of License of CS WIGO, Inc.*, Decision, 85 FCC 2d 196, 202, para. 16, n.26 (1981) ("[A] broadcaster must . . . exercise special diligence to ensure that the promotion or contest is not in fact conducted as a lottery."); *Application of KMAP, Inc.*, Memorandum Opinion and Order, 63 FCC 2d 470, 480, para. 34 (1977) ("special diligence" required to prevent "payola"); *Crowell-Collier Broadcasting Corp.*, 14 FCC 2d 358, 358 (1966) ("special diligence" required to prevent "conflict between . . . private interests and . . . roles as employees of the station").

require them to annually verify the accuracy of their contact list to maintain it up-to-date.<sup>68</sup> We seek comment on this proposal. In considering whether we should also designate local crisis centers to be 988 special facilities that are required to receive outage notifications, we seek comment on how providers can obtain contact information for these centers. Does SAMHSA or the 988 Lifeline administrator maintain an updated and accurate list of contacts at each of the counseling centers, and could these contacts also be designated to receive notice of 988 Lifeline outages? If so, can this list be made available to service providers? If this list was available, would it mitigate the burdens associated with providing these local crisis centers with notice of 988 outages? Parties should address the costs that are involved with keeping an up to date contact list. We seek comment on whether we should extend this requirement to originating providers, in addition to our proposal for covered 988 service providers.

30. *Timing of initial notification.* We propose that covered 988 service providers be required to provide 988 outage notifications to potentially affected 988 special facilities as soon as possible, but no later than within 30 minutes of discovering that they have experienced, on any facilities that they own, operate, lease, or otherwise utilize, an outage that potentially affects a 988 special facility. We believe this 30-minute timeframe is consistent with notifications that are made to 911 special facilities, which we have found strikes a balance between the need for timely and actionable 911 outage information and the accuracy of that information.<sup>69</sup> We seek comment on whether this timeframe is appropriate for 988 outage notification and whether the reporting timeframe should be shortened or extended and if so, why.

31. *Follow-up notification.* We propose that covered 988 service providers communicate additional material information, which includes, among other information, the date and time when the incident began, the types of communications services affected, the geographic area affected by the outage, how the outage affects the 988 special facility, the expected date and time of restoration, and the best-known cause of the outage, to potentially affected 988 special facilities in notifications subsequent to the initial notification as soon as possible after that information becomes available, but no later than two hours after the initial contact. We propose that for outages lasting longer than two hours, covered 988 service providers would be required to continue to follow up with additional material information to 988 special facilities, SAMHSA, the VA, and 988 Lifeline administrator as soon as possible after discovery of the new material information, and continue providing additional material information until the outage is completely repaired and service is fully restored. Similar to the follow-up notification requirement for 911 special facilities, we believe this proposal will produce predictability in notification frequency that will significantly assist 988 special facilities in analysis and mitigation of network outages.<sup>70</sup> We seek comment on this proposal. We also seek comment on whether we should extend this requirement to originating providers.

32. *988 Lifeline Resiliency and Reliability.* The Commission's Part 4 rules require covered 911 service providers to annually file 911 reliability certifications,<sup>71</sup> which the Commission has found are necessary to ensure the 911 network remains resilient and robust as the use of the 911 network continues to expand.<sup>72</sup> The Commission seeks comment on whether covered 988 service providers should similarly be required to file 988 reliability certifications to ensure the network supporting the 988 Lifeline remains resilient and robust. What should those certifications entail, or to what resiliency actions should those

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<sup>68</sup> See *PSAP Notification Order* at para 32.

<sup>69</sup> *Id.* at para 22.

<sup>70</sup> See *id.* at para. 23.

<sup>71</sup> See 47 CFR § 9.19(c) (requiring certification as to certain annual actions to ensure resiliency related to circuit diversity, backup power for certain network components, and network monitoring; or certification to alternative measures to mitigate risks associated with these elements).

<sup>72</sup> See *PSAP Notification Order* at para. 27.

certifications attest? Are there other measures or requirements the Commission could adopt that would further improve the resiliency and reliability of the 988 Lifeline?

33. *Legal Authority.* As noted above, in 2020, similar to its prior action with respect to 911, Congress further amended Section 251 of the Communications Act of 1934 to specify 988 as the universal telephone number for the National Suicide Prevention Lifeline.<sup>73</sup> Our proposed reporting and notice rules are intended to ensure the 988 Lifeline remains operational in accordance with the policies identified by Congress in that 2020 legislation and that any outages are quickly identified and reported, with notice provided to parties who would notify the public of alternative means to access crisis counselors, all of which promotes the safety of life and property. The Commission seeks comment on its legal authority to require the 988 outage reporting and 988 special facility notice requirements proposed herein, including its rulemaking authority pursuant to titles II and III of the Communications Act and Section 104 of the Twenty-First Century Communications and Video Accessibility Act (CVAA), as well as its authority under Section 4(i) of the Communications Act, as amended, to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions”<sup>74</sup> which includes “the purpose of promoting safety of life and property....”<sup>75</sup>.

### C. Assessing the Benefits and Costs

34. We seek comment on the potential benefits and costs of the proposals addressed in this Notice. The 988 Lifeline directly benefits people in crisis and saves lives. When the 988 Lifeline is interrupted, people’s lives are put into jeopardy. In November 2022, the 988 Lifeline answered 195,083 calls, which is an average of over 6,500 answered calls per day.<sup>76</sup> We believe our proposed outage reporting requirements would improve public safety by providing the Commission and other impacted entities with situational awareness of 988 outages, including the magnitude and causes of those outages, and allow for the identification of network reliability trends that can help identify best practices that could improve network reliability by helping to mitigate future outages. Our proposed notice and contact information retention requirements are intended to ensure that when 988 calling is disrupted, parties responsible for the varying aspects of the 988 call pathway notify 988 special facilities, share critical information in a timely and standardized manner, and are motivated to hasten the timely restoration of 988 Lifeline services. We describe below how even a very small increase in the speed of restoration of access to 988 Lifeline services could provide benefits that outweigh the costs of adopting the proposed requirements.

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<sup>73</sup> See National Suicide Hotline Designation Act of 2020, Pub. L. No. 116-172, 134 Stat. 832 § 3 (2020) (adding subsection (e)(4) to section 251 of the Communications Act of 1934, as amended).

<sup>74</sup> 47 U.S.C. § 154(j).

<sup>75</sup> 47 U.S.C. § 151. In the *Text to 988 Order*, 36 FCC Rcd 16901 para. 55 (2021), the Commission relied on Title III to impose text-to-988 rules for CMRS providers and the CVAA to adopt text-to-988 rules for interconnected text messaging services. In that decision, the Commission noted that although the CVAA does not define “emergency network” or “emergency services,” Congress had deemed crisis lines “essential” and recognized the need for a 3-digit phone number for such services; thus the Commission found that it was “reasonable to conclude that [988] services should be considered ‘emergency services’ and that the Lifeline and Veterans Crisis Line act as an ‘emergency network’ within the meaning of the CVAA.” The Commission further found that texting capabilities provide “easy access to emergency services for people with disabilities,” noting that such individuals “may not be able to take advantage of 988’s voice service, necessitating that an alternative means of communicating be provided,” and “therefore conclud[ing] that the CVAA provides authority for the rules” governing text-to-988.

<sup>76</sup> SAMHSA Substance Abuse and Mental Health Services Administration, 988 Suicide & Crisis Lifeline, *988 Lifeline Performance Metrics*, <https://www.samhsa.gov/find-help/988/performance-metrics#answered> (Dec. 21, 2022).

35. The benefits of reducing suicide via 988 are driven by suicides' staggering societal costs. In 2020, there were 45,979 deaths by suicide in the United States, which, as noted above, averages out to almost one death every 11 minutes.<sup>77</sup> For every suicide death, there were 4 hospitalizations for suicide attempts, 8 suicide-related emergency department visits, and 27 self-reported suicide attempts.<sup>78</sup> In addition to lives saved, time saving network outage protocols will also alleviate the devastating emotional toll wrought by suicide on victims' families, friends, and communities.

36. Notifying SAMHSA, the VA, and the 988 Lifeline administrator of the disruption of access to 988 Lifeline services should allow these parties to manage the impact of outages on their operations, quickly notify the public of the 988 service outage, and promote alternative ways for people to access 988 Lifeline services while 988 Lifeline service is out, which may include notifying the public of alternative call numbers, or encouraging people to text to 988 or use the <https://988lifeline.org/> link to chat with a crisis management counselor. This, in turn, should enhance the 988 Lifeline's ability to direct scarce resources toward mitigating outages rather than seeking out information to whether an outage is occurring, the scope of such an outage or its impact. The Commission can turn its attention to administering the 988 rules and the providers to fulfilling their service obligations. One of the benefits of implementing short dialing for calls to the Lifeline was to reduce the burdens on 911 and other emergency services arising from calls related to mental health and suicide. We believe that our proposed rules will further reduce the burden on 911 and other emergency services by promoting 988 reliability so that 988 calls go through when callers need 988 service the most.<sup>79</sup> We seek comment on the benefits associated with our proposed rules and whether these requirements will help to preserve the public's continuity of access to the 988 special facilities that support them. Are there any other benefits to public health and safety that arise from our proposed rules that we have not described?

37. We also seek comment on the burdens associated with the proposed rules. To the extent that there are 988 outages that are not currently reported to the Commission, we expect that those would be outages experienced by covered 988 service providers that are responsible for receiving, processing, or forwarding 988 calls. We expect that these service providers are already submitting outage reports to the Commission related to other aspects of their operations, so initial compliance costs would be negligible. Assuming that one covered 988 service provider experiences a maximum of one reportable outage per month, we estimate an annual compliance cost for that one covered 988 service provider of \$1,000.<sup>80</sup> As

<sup>77</sup> Centers for Disease Control and Prevention, *Preventing Suicide Fact Sheet*, [https://www.cdc.gov/suicide/pdf/NCIPC-Suicide-FactSheet-508\\_FINAL.pdf](https://www.cdc.gov/suicide/pdf/NCIPC-Suicide-FactSheet-508_FINAL.pdf) (last visited Dec. 15, 2022).

<sup>78</sup> *Id.*

<sup>79</sup> In the Commission's proceeding designating 988 as the 3-digit dialing code for the Lifeline, the North American Numbering Council (NANC) issued a report considering each existing N11 code, and while the Commission determined designating a unique 3-digit code was superior to using an existing code, NANC determined that "[a]llowing 211 operators to act as a first line of defense in suicide prevention calls might alleviate the pressure on 911 call takers and allow the caller to obtain assistance for other non-suicide related services in addition to mental health referrals." *Report and Recommendation on the Feasibility of Establishing a 3-Digit Dialing Code for a National Suicide Prevention and Mental Health Crisis Hotline* from Travis Kavulla, Chair, North American Numbering Council, to Kris Anne Monteith, Chief, FCC Wireline Competition Bureau, WC Docket No. 18-336, CC Docket No. 92-105, at 7 (May 10, 2019) (NANC Report).

<sup>80</sup> We estimate a maximum of two hours total time would be necessary to submit all of the required reports to the Commission. We estimate that each notification would take 15 minutes to complete, each initial report would take a maximum of 45 minutes to complete, and each final report would take a maximum of one hour to complete. We assume a labor cost of \$43 per hour for a miscellaneous media and communication worker who would likely be the type of employee responsible for preparing and submitting outage reports. Our total cost estimate = \$43/hr x 2 hrs x one reportable outage per month x 12 months = \$1,032, rounded to \$1,000.

We use the job category of "Miscellaneous Media and Communication Worker" in this estimate. See Economic News Release, Bureau of Labor Statistics, National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2021 (May 2021) <https://www.bls.gov/news.release/ocwage.t01.htm>. We

(continued....)

a consequence, we expect the actual cost for implementation and compliance of the proposed outage reporting rules will be extremely low. We seek comment on our analysis.

38. With regard to the proposed requirements to maintain updated contact information for 988 special facilities and to notify those facilities about outages that affect them, we expect that the costs of compliance will also be relatively low when compared to the benefits to the public. We estimate a one-time industry-wide cost of \$56,000 to create an e-mail survey to biannually solicit 988 special facility contact information.<sup>81</sup> We do not expect any costs arising from the creation or updating of outage notification templates, as the 988 outage notification requirements that we propose today share the same content and timing as the 911 outage notification requirements with which service providers already comply. We estimate maximum annually recurring costs of \$1,354,000, which consist of \$1,326,000 for notifying 988 special facilities of outages that potentially affect them pursuant to the standards that we propose today<sup>82</sup> and \$28,000 for soliciting appropriate contact information for outage notification from

(Continued from previous page)

begin with the average hourly wage [\$28.68] and multiply by 1.5 to account for benefits [\$43.02] then round down to \$43. According to Bureau of Labor Statistics, benefits (including paid leave, supplementary pay, insurance, retirement and savings, and legally required benefits) add approximately 50% to compensation in the information industry as a whole. See Bureau of Labor Statistics, Economic News Release, Table 4. Private industry workers by occupational and industry group, Information Industry (September 2022).

<sup>81</sup> To create an e-mail survey, we estimate that for each of 3,124 providers, one worker earning \$36/hour would spend ½ hour for a total of \$56,000 [ $\$36/\text{hour} \times \frac{1}{2} \text{ hour} \times 3,124 = 56,232$ , rounded down to \$56,000]. See, e.g., Anthony Smith, *How to Create a Survey in Outlook*, <https://www.techwalla.com/articles/how-to-create-a-survey-in-outlook> (last visited Mar. 12, 2020) (requiring five steps to create an e-mail survey).

We use the job category of “Communications Equipment Operators, All Other” in this and other estimates, to avoid under-estimating labor costs for tasks that are likely performed by lower-paid workers. See Economic News Release, Bureau of Labor Statistics, National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2021 (May 2021) <https://www.bls.gov/news.release/ocwage.t01.htm>. We begin with the average hourly wage [\$23.79] and multiply by 1.5 to account for benefits [\$35.69] then round up to \$36. According to Bureau of Labor Statistics, benefits (including paid leave, supplementary pay, insurance, retirement and savings, and legally required benefits) add approximately 50% to compensation in the information industry as a whole. See Bureau of Labor Statistics, Economic News Release, Private industry workers by occupational and industry group (2021).

We estimate that there are 3,124 cable, satellite, wireless, wireline, and interconnected VoIP providers in the United States. This consists of four satellite providers, 947 wireline providers, 423 wireless providers, and 1,750 interconnected VoIP-related entities. Our satellite figure consists only of those service providers that offer service that could potentially affect 911. See generally, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102 (including five satellite providers’ 911 Post-Implementation Status Report filings in the Commission’s Electronic Comment Filing System regarding the deployment of 911 call center service and the forwarding of 911 calls to PSAPs). Our wireless figure is calculated based on staff analysis of 2022 Form 499-A data, consisting of holding companies and affiliated entities who report end-user mobile telecommunication revenue. Our wireline and interconnected VoIP-related figures are sourced from the June 2021 Voice Telephone Services Report. See also FCC, *Voice Telephone Services Report*, <https://www.fcc.gov/voice-telephone-services-report> (last visited Dec. 22, 2022). Because cable providers generally rely on either (wireline) switched access or interconnected VoIP to provide 988-related services, these providers are already subsumed by our other estimates.

<sup>82</sup> To notify 988 special facilities, we propose that a communications equipment operator, earning \$34/hour, would spend a total of 1 hour per outage to send out two notifications for each of an estimated 39,000 outages, for a total of \$1,326,000 [ $\$34/\text{hour} \times 1 \text{ hour} \times 39,000$ ]. Our estimate of 39,000 outages is based on the incidence of outages that potentially affected 911 in NORS reports during 2021. We assume that the maximum number of 988 outages that would require notifications annually will not exceed the number of 911 outages. We expect that our estimate of the cost will reduce significantly over time as the Commission collects better data on the actual number of 988 outages experienced annually.

988 special facilities.<sup>83</sup> We expect that no costs will be incurred related to identifying the 988 special facilities that could potentially be affected by an outage, as we have proposed that the same three special facilities (SAMHSA, the VA, and the 988 Lifeline administrator) be notified regardless of the geographic area affected by the outage.

39. We seek comment on this analysis. How many outages that potentially affect 988 special facilities are estimated to be occurring annually that would be subject to the notification requirements that we propose today, and what is the basis for that estimate? In the event that we were to designate local crisis centers as 988 special facilities, we seek comment on the costs related to the notification of those facilities. Are there steps that can be taken to minimize those costs, such as SAMHSA or the 988 Lifeline administrator agreeing to regularly share updated lists of designated contacts directly with service providers so the local crisis centers do not need to be contacted individually? To what extent have service providers already implemented a notification framework for 911 or other services that would reduce any costs associated with our proposal? We seek comment on the extent to which service providers have set up automated triggers for other forms of notifications, whether they may be able to leverage automatic triggers they may already have in place for PSAP notifications, and what costs would be involved.

40. We seek comment on additional benefits and costs as well as alternative quantifications of benefits and costs from our proposed rules. We recognize that it is difficult to quantify the value of continuity of access to 988 service, which includes its capacity to save lives and mitigate and prevent injuries. However, we believe the considerable public safety value of the proposals adopted today as described above will exceed the limited costs of implementation. We seek comment on our assessment. We encourage commenters to quantify both specific costs and benefits that would result from adoption of the proposed notice and reporting requirements.

#### **D. Promoting Digital Equity**

41. The Commission, as part of its continuing effort to advance digital equity for all,<sup>84</sup> including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations<sup>85</sup> and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

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<sup>83</sup> To transmit an e-mail survey, we estimate that for each of the 3,124 affected carriers, one worker, earning \$36/hour, would spend at most 15 minutes each year to e-mail the survey of contact information to the three 988 special facilities, and to follow up with those special facilities if needed, for a total of \$25,000 [ $\$36/\text{hour} \times 0.25 \text{ hours} \times 3,124 = \$28,116$ , rounded down to \$28,000].

<sup>84</sup> Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

<sup>85</sup> The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

### E. Timelines for Compliance

42. We propose to set a compliance date for these proposed rules at the later of (1) 30 days after the Commission issues a Public Notice announcing that OMB has completed review of any new information collection requirements associated with the adopted Report and Order; or (2) 90 days after the publication of final rules in the Federal Register. We believe that the revisions proposed today constitute only minor changes to existing procedures and it will take a modest amount of time for covered 988 service providers to adjust their processes to meet the proposed rules because, as noted above, the proposed requirements are closely aligned with the notice and reporting requirements for 911 network outages. We seek comment on this assessment. We also seek comment on whether allowing additional time for small- and medium-sized businesses to comply with the requirements we propose today would serve the public interest.

## IV. PROCEDURAL MATTERS

43. *Paperwork Reduction Act.* This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

44. *Ex Parte Rules - Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>86</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

45. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>87</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>88</sup> Accordingly, the Commission has prepared an Initial Regulatory

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<sup>86</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>87</sup> See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>88</sup> *Id.*

Flexibility Analysis (IRFA) concerning the possible impact of the rule and policy changes contained in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix B.

46. *Filing Requirements—Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.<sup>89</sup>
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

47. *People with Disabilities*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice).

48. *Additional Information*. For further information regarding Notice of Proposed Rulemaking please contact Tara B. Shostek, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-8130, or by email to [Tara.Shostek@fcc.gov](mailto:Tara.Shostek@fcc.gov).

## V. ORDERING CLAUSES

49. ACCORDINGLY IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 4(n), 201(b), 214, 218, 251(e)(3), 251(e)(4), 301, 303(b), 303(g), 303(r), 307, 309(a), 332, and 403, of the Communications Act of 1934, as amended, and sections 3(b) and 6 of the Wireless Communications and Public Safety Act of 1999, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 154(n), 201(b), 214, 218, 251(e)(3), 251(e)(4), 301, 303(b), 303(g), 303(r), 307, 309(a), 332, 403, 615, 615a-1, the National Suicide Hotline Improvement Act of 2018, Pub. L. No. 115-233, 132 Stat. 2424 (2018), and the National Suicide Hotline Designation Act of 2020, Pub. L. No. 116-172 (2020), this *Notice of Proposed Rulemaking* IS hereby ADOPTED.

50. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed*

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<sup>89</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Red 2788 (2020).

*Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Proposed Rules

The Federal Communications Commission proposes to amend chapter I of title 47 of the Code of Federal Regulations as follows:

**PART 4 – DISRUPTIONS TO COMMUNICATIONS**

The authority citation for part 4 continues to read as follows: [TO BE INSERTED PRIOR TO FEDERAL REGISTER SUMMARY PUBLICATION]

**Section 4.3 is amended by adding paragraph (j) to read as follows:**

**§ 4.3 – Communications providers covered by the requirements of this part.**

\* \* \* \* \*

(j) **Covered 988 Service Providers** are providers that provide the 988 Suicide & Crisis Lifeline with capabilities such as the ability to receive, process, or forward calls.

**Section 4.5 is amended by adding paragraph (f) to read as follows:**

**§ 4.5 – Definitions of outage, special offices and facilities, 911 special facilities and 988 special facilities.**

\* \* \* \* \*

(f) An outage that potentially affects a 988 special facility occurs whenever There is a loss of the ability of the 988 Suicide & Crisis Lifeline to receive, process, or forward calls for at least 30 minutes duration.

**Section 4.9 is amended by revising paragraphs (a)(4), (c)(2)(iv), (e)(1)(v), (f)(4), (g)(1)(i), and (h) to read as follows:**

**§ 4.9 – Outage reporting requirements - threshold criteria.**

(a) *Cable.*

\* \* \*

(4) Potentially affects a 911 special facility (as defined in § 4.5(e)) or potentially affects a 988 special facility (as defined in § 4.5(f)), in which case they also shall notify the affected facility in the manner described in paragraph (h) of this section. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than 30 days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

\* \* \* \* \*

(c) *Satellite.*

\* \* \*

(2)

\* \* \*

(iv) Potentially affecting a 911 special facility (as defined in § 4.5(e)) or potentially affecting a 988 special facility (as defined in § 4.5(f)), in which case the affected facility shall be notified in the manner described in paragraph (h) of this section.

\* \* \* \* \*

(e) *Wireless.*

\* \* \*

(1) \* \* \*

(v) That potentially affects a 911 special facility (as defined in § 4.5(e)) or potentially affects a 988 special facility (as defined in § 4.5(f)), in which case they also shall notify the affected facility in the manner described in paragraph (h) of this section.

\* \* \* \* \*

(f) *Wireline.*

\* \* \*

(4) Potentially affects a 911 special facility (as defined in § 4.5(e)) or potentially affects a 988 special facility (as defined in § 4.5(f)), in which case they also shall notify the affected facility in the manner described in paragraph (h) of this section. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than 30 days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

(g) *Interconnected VoIP Service Providers.* (1) All interconnected VoIP service providers shall submit electronically a Notification to the Commission:

(i) Within 240 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that potentially affects a 911 special facility (as defined in § 4.5(e)) or potentially affects a 988 special facility (as defined in § 4.5(f)), in which case they also shall notify the affected facility in the manner described in paragraph (h) of this section; or

\* \* \*

(i) *988 Special Facility Outage Notification.* All covered 988 service providers shall notify any official at a 988 special facility who has been designated by the affected special facility as the provider's contact person(s) for communications outages at the facility of any outage that potentially affects that 988 special facility (as defined in § 4.5(f)) in the following manner:

(1) *Appropriate Contact Information.* To ensure prompt delivery of outage notifications to 988 special facilities, covered 988 service providers shall exercise special diligence to identify, maintain, and, on an annual basis, confirm current contact information appropriate for outage notification for each 988 special facility that serves areas that the service provider serves.

(2) *Content of Notification.* Covered 988 service providers' outage notifications must convey all available material information about the outage. For the purpose of this paragraph (h), "material information" includes the following, where available:

(A) An identifier unique to each outage;

(B) The name, telephone number, and email address at which the notifying 988 service provider can be reached for follow up;

(C) The name of the covered 988 service provider experiencing the outage;

(D) The date and time when the incident began (including a notation of the relevant time zone);

(E) The types of communications service(s) affected;

(F) The geographic area affected by the outage;

(G) A statement of the notifying covered 988 service provider's expectations for how the outage potentially affects the special facility (e.g., dropped calls or missing metadata);

- 
- (H) Expected date and time of restoration, including a notation of the relevant time zone;
- (I) The best-known cause of the outage; and
- (J) A statement of whether the message is the notifying covered 988 service provider's initial notification to the special facility, an update to an initial notification, or a message intended to be the service provider's final assessment of the outage.
- (3) *Means of Notification.* Covered 988 service providers' outage notifications must be transmitted by telephone and in writing via electronic means in the absence of another method mutually agreed upon in writing in advance by the special facility and the service provider.
- (4) *Timing of Initial Notification.* Covered 988 service providers shall provide an outage notification to a potentially affected 988 special facility as soon as possible, but no later than within 30 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage that potentially affects a 988 special facility (as defined in § 4.5(f)).
- (5) *Follow-up Notification.* Covered 988 service providers shall communicate additional material information to potentially affected 988 special facilities in notifications subsequent to the initial notification as soon as possible after that information becomes available, but providers shall send the first follow-up notification to potentially affected 988 special facilities no later than two hours after the initial contact. After that, covered 988 service providers are required to continue to provide material information to the special facilities as soon as possible after discovery of the new material information until the outage is completely repaired and service is fully restored.

## APPENDIX B

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *Notice* and IRFA (or summaries thereof) will be published in the *Federal Register*.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. In this proceeding, the Commission takes steps to improve the reliability and resiliency of telecommunications networks nationwide and 988 Lifeline network specifically, so that the American public can continue to reach the 988 Suicide & Crisis Lifeline (988 Lifeline) without undue delay or disruption. The *Notice* seeks comment on 988 Lifeline outage reporting and notification requirements that are similar to the Commission's rules for reporting 911 outages that would be applicable to originating service providers<sup>4</sup> and proposes outage reporting and notification requirements for a new category of "covered 988 service providers." The new "covered 988 service providers" category would be defined as those providers that provide the 988 Lifeline with capabilities such as the ability to receive, process, or forward calls. Both the originating service providers and the covered 988 service providers would be required to file 988 outage reports with the Commission, in the Commission's Network Outage Reporting System (NORS).

3. The *Notice* seeks comment on whether cable, satellite, wireless, wireline, and interconnected VoIP providers should be required to notify 988 special facilities about outages that affect these facilities pursuant to notification obligations that mirror the Commission's existing 911 special facility notification requirements. The *Notice* seeks comment on the appropriate threshold to trigger reporting, including whether it should include outages potentially affecting at least 900,000 user-minutes and/or the outage lasts 30 minutes or more, or whether the absence of a call reroute should be a factor. For covered 988 service providers, the *Notice* proposes to require these providers notify the Commission of outages resulting in a loss of the ability of the 988 Suicide & Crisis Lifeline to receive, process, or forward calls for at least 30 minutes in duration.<sup>5</sup> The *Notice* also proposes to designate the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Veterans Affairs (VA), and the 988 Lifeline administrator as the 988 special facilities that must be notified of an outage that potentially affects a 988 facility.

4. Additionally, for covered 988 service providers the *Notice* proposes that the 988 outage notification to 988 special facilities include specific content requirements, the means by which notification must be made, the timing to file the initial and follow-up notice, and the filing of an annual verification that a provider's information for 988 special facilities is up to date. Further, in the *Notice* we set a proposed compliance deadline of the later of 30 days after the Commission issues a Public Notice

<sup>1</sup> See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> The reporting requirements would be applicable to cable, satellite, wireless, wireline, and interconnected VoIP providers (jointly referred to as "originating service providers").

<sup>5</sup> A service provider would remain directly responsible to provide the 988 special facilities notification even where it relies on a third-party service provider to manage, route, or otherwise contribute to 988 call processing.

announcing that OMB has completed review of any new information collection requirements associated with the final rules adopted in a Report and Order; or (2) 90 days after the publication of final rules in the Federal Register. We seek comment on all of the proposals we make in the *Notice*, and on the benefits and costs analyses we discuss for the proposals. We also seek comment on applying similar provisions to originating service providers as to notice parameters and implementation timeframes.

5. The Commission believes the significant public safety benefits which include the capacity to save lives, mitigate, and prevent injuries furthers the public interest and outweighs the implementation costs for service providers if the proposed rules are adopted. Since the 988 outage notification requirements proposed in the *Notice* are closely aligned with the existing notice and reporting requirements for 911 network outages, we also believe implementation by cable, satellite, wireless, wireline, interconnected VoIP, and covered 988 service providers will only require minor changes to existing processes and procedures.

#### **B. Legal Basis**

6. The proposed action is authorized pursuant Sections 1, 4(i), 4(j), 4(n), 201(b), 214, 218, 251(e)(3), 251(e)(4), 301, 303(b), 303(g), 303(r), 307, 309(a), 332, and 403, of the Communications Act of 1934, as amended, and sections 3(b) and 6 of the Wireless Communications and Public Safety Act of 1999, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 154(n), 201(b), 214, 218, 251(e)(3), 251(e)(4), 301, 303(b), 303(g), 303(r), 307, 309(a), 332, 403, 615, 615a-1, the National Suicide Hotline Improvement Act of 2018, Pub. L. No. 115-233, 132 Stat. 2424 (2018), and the National Suicide Hotline Designation Act of 2020, Pub. L. No. 116-271 (2020).

#### **C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

7. 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 proposed rules, if adopted.<sup>6</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>8</sup> 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.<sup>9</sup>

8. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>10</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.<sup>11</sup>

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<sup>6</sup> 5 U.S.C. § 603(b)(3).

<sup>7</sup> 5 U.S.C. § 601(6).

<sup>8</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>9</sup> 15 U.S.C. § 632.

<sup>10</sup> See 5 U.S.C. § 601(3)-(6).

<sup>11</sup> *Id.*

9. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>12</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>13</sup> Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>14</sup>

10. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>15</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>16</sup> indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>17</sup> Of this number, there were 36,931 general purpose governments (county,<sup>18</sup> municipal, and town or township<sup>19</sup>) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts<sup>20</sup> with enrollment

<sup>12</sup> See 5 U.S.C. § 601(4).

<sup>13</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>14</sup> See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>15</sup> See 5 U.S.C. § 601(5).

<sup>16</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>17</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes\_Local Governments by Type and State\_2017.

<sup>18</sup> See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>19</sup> See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>20</sup> See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes\_Special Purpose Local Governments by State\_Census Years 1942 to 2017.

populations of less than 50,000.<sup>21</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>22</sup>

11. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.<sup>23</sup> The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.<sup>24</sup> The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.<sup>25</sup> The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.<sup>26</sup> Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.<sup>27</sup> Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more.<sup>28</sup> Based on this data, the Commission estimates that a majority of firms in this industry are small.

12. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.<sup>29</sup> Based on industry data, there are about 420 cable companies in the U.S.<sup>30</sup> Of these, only seven have more than 400,000 subscribers.<sup>31</sup> In addition, under the Commission’s rules, a “small system” is a cable system serving

<sup>21</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>22</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbs.5, 6 & 10.

<sup>23</sup> See U.S. Census Bureau, *2017 NAICS Definition, “515210 Cable and Other Subscription Programming,”* <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See 13 CFR § 121.201, NAICS Code 515210.

<sup>27</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

<sup>28</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>29</sup> 47 CFR § 76.901(d).

<sup>30</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

<sup>31</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

15,000 or fewer subscribers.<sup>32</sup> Based on industry data, there are about 4,139 cable systems (headends) in the U.S.<sup>33</sup> Of these, about 639 have more than 15,000 subscribers.<sup>34</sup> Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

13. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a “small cable operator,” which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>35</sup> For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice.<sup>36</sup> Based on industry data, only six cable system operators have more than 677,000 subscribers.<sup>37</sup> Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>38</sup> Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

14. *Incumbent Local Exchange Carriers*. Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers<sup>39</sup> is the closest industry with an SBA small business size standard.<sup>40</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>41</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms in this

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<sup>32</sup> 47 CFR § 76.901(c).

<sup>33</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

<sup>34</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

<sup>35</sup> 47 U.S.C. § 543(m)(2).

<sup>36</sup> *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (CSB 2001) (*2001 Subscriber Count PN*). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to traditional and telco cable operators to be approximately 58.1 million. See *Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3049, para. 156 (2020) (*2020 Communications Marketplace Report*). However, because the Commission has not issued a public notice subsequent to the *2001 Subscriber Count PN*, the Commission still relies on the subscriber count threshold established by the *2001 Subscriber Count PN* for purposes of this rule. See 47 CFR § 76.901(e)(1).

<sup>37</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

<sup>38</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission’s rules. See 47 CFR § 76.910(b).

<sup>39</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>40</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>41</sup> *Id.*

industry that operated for the entire year.<sup>42</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>43</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.<sup>44</sup> Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.<sup>45</sup> Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

15. *Local Exchange Carriers. (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers<sup>46</sup> is the closest industry with an SBA small business size standard.<sup>47</sup> Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>48</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>49</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>50</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>51</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers.<sup>52</sup> Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.<sup>53</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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<sup>42</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>43</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>44</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>45</sup> *Id.*

<sup>46</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>47</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>48</sup> Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

<sup>49</sup> *Id.*

<sup>50</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>51</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>52</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>53</sup> *Id.*

16. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.<sup>54</sup> 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.<sup>55</sup> Providers of Internet services (e.g. dial-up ISPs) or voice over Internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.<sup>56</sup> The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.<sup>57</sup> U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.<sup>58</sup> Of those firms, 1,039 had revenue of less than \$25 million.<sup>59</sup> Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

17. *Satellite Telecommunications.* This industry 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.”<sup>60</sup> Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$38.5 million or less in annual receipts as small.<sup>61</sup> U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.<sup>62</sup> Of this number, 242 firms had revenue of less than \$25 million.<sup>63</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services.<sup>64</sup> Of these providers, the Commission estimates that approximately

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<sup>54</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>58</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>59</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>60</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517410 Satellite Telecommunications,” <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

<sup>61</sup> See 13 CFR § 121.201, NAICS Code 517410.

<sup>62</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>63</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>64</sup> Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26*, Table 1.12 (2021), <https://docs.fcc.gov/pub/Id.lic/attachments/DOC-379181A1.pdf>.

48 providers have 1,500 or fewer employees.<sup>65</sup> Consequently, using the SBA's small business size standard, a little more than of these providers can be considered small entities.

18. *Telecommunications 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.<sup>66</sup> Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.<sup>67</sup> Mobile virtual network operators (MVNOs) are included in this industry.<sup>68</sup> The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>69</sup> U.S. Census Bureau data for 2017 show that 1,386 firms operated in this industry for the entire year.<sup>70</sup> Of that number, 1,375 firms operated with fewer than 250 employees.<sup>71</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 811 providers that reported they were engaged in the provision of local or toll resale services.<sup>72</sup> Of these providers, the Commission estimates that 784 providers have 1,500 or fewer employees.<sup>73</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *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 telecommunications networks."<sup>74</sup> 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.<sup>75</sup> By exception, establishments providing satellite television distribution services using facilities

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<sup>65</sup> *Id.*

<sup>66</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>70</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>71</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>72</sup> Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26, Table 1.12 (2021)*, <https://docs.fcc.gov/pub/ld/attachments/DOC-379181A1.pdf>.

<sup>73</sup> *Id.*

<sup>74</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>75</sup> *Id.*

and infrastructure that they operate are included in this industry.<sup>76</sup> Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>77</sup>

20. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>78</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>79</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>80</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.<sup>81</sup> Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.<sup>82</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *Wireless Communications Services.* Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules.<sup>83</sup> Wireless Telecommunications Carriers (*except* Satellite)<sup>84</sup> is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>85</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.<sup>86</sup> Of this number, 2,837 firms employed fewer than 250 employees.<sup>87</sup> Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small. The Commission's small business size standards with respect to

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<sup>76</sup> *Id.*

<sup>77</sup> Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

<sup>78</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>79</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>80</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>81</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/ld/lic/attachments/DOC-379181A1.pdf>.

<sup>82</sup> *Id.*

<sup>83</sup> See 47 CFR §§ 27.1 – 27.1607.

<sup>84</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (*except* Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>85</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>86</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>87</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based on average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.<sup>88</sup>

22. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

23. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.<sup>89</sup> 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.<sup>90</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>91</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>92</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>93</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.<sup>94</sup> Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.<sup>95</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

24. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).<sup>96</sup> The size

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<sup>88</sup> See 47 CFR §§ 27.201 – 27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

<sup>89</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>90</sup> *Id.*

<sup>91</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>92</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.:* 2017, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

<sup>93</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>94</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/ld/lic/attachments/DOC-379181A1.pdf>.

<sup>95</sup> *Id.*

<sup>96</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.<sup>97</sup> For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.<sup>98</sup> Of this number, 2,837 firms employed fewer than 250 employees.<sup>99</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 407 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.<sup>100</sup> Of these providers, the Commission estimates that 333 providers have 1,500 or fewer employees.<sup>101</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

25. *Wireless Carriers and Service Providers.* Wireless Telecommunications Carriers (*except Satellite*) is the closest industry with a SBA small business size standard applicable to these service providers.<sup>102</sup> The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>103</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.<sup>104</sup> Of this number, 2,837 firms employed fewer than 250 employees.<sup>105</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.<sup>106</sup> Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.<sup>107</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

26. The *Notice* proposes revisions to outage notification requirements that will impose new or additional reporting, recordkeeping, notice and other compliance requirements on small entities required to report outages affecting 988 Lifeline services. If the rules proposed in the *Notice* are adopted, covered 988 service providers would be required to report to the Commission and provide notice to 988

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<sup>97</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>98</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>99</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>100</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf>.

<sup>101</sup> *Id.*

<sup>102</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>103</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>104</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>105</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>106</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf>.

<sup>107</sup> *Id.*

special facilities about outages that potentially affect 988 special facilities. These service providers would be required to: (1) report outages that potentially affect 988 special facilities using NORS, and following processes and procedures similar to the Commission's existing reporting for outages that potentially affect 911; (2) submit notifications, initial reports, and final reports to the Commission consistent with the timing and content requirements proposed in the *Notice*, when they experience an outage that potentially affects a 988 special facility; (3) provide notice of 988 outages that potentially affect a 988 special facility to the designated 988 special facilities, including SAMHSA, the VA, and the 988 Lifeline administrator; and (4) make an annual filing verifying that they are maintaining up-to-date contact information for 988 special facilities. The Notice seeks comment on similar obligations for cable, satellite, wireless, wireline, and interconnected VoIP providers.

27. The Commission is not currently in a position to determine whether, if adopted, the proposed rules in the *Notice* will require small entities to hire attorneys, engineers, consultants, or other professionals to comply. We note, however, that some originating service providers and covered 988 service providers are already subject to compliance with outage reporting obligations that would facilitate their ability to comply, and may reduce any compliance burdens associated with the proposed 988 outage reporting and notification requirements, if adopted. For example, some originating service providers and covered 988 service providers already must comply with the Commission's rules on network outage reporting and 911 outage reporting. In addition, many service providers are likely to already have documented procedures for notifying affected facilities of outages that potentially affect them, and for those that do not, Alliance for Telecommunications Industry Solutions (ATIS) Network Reliability Steering Committee (NRSC) Task Force documents can serve as a useful guide.

28. As discussed in the *Notice*, we anticipate that originating service providers are already required to report the vast majority of outages (if not virtually all outages) that prevent 988 calls from successfully completing to the Commission under our existing outage reporting requirements. Therefore we expected small entities who are subject to these requirements will only incur incremental costs to implement the proposed 988 outage reporting requirements. To the extent that there are 988 outages that are not currently reported to the Commission, we expect that those would be outages experienced by covered 988 service providers that are responsible for receiving, processing, or forwarding 988 calls. We expect that these service providers are already submitting outage reports to the Commission related to other aspects of their operations, and anticipate that these providers will likewise only incur incremental costs to comply with the proposed 988 requirements.

29. In the assessment of the potential costs for service providers to report 988 outages to the Commission discussed in the *Notice*, we assume that one covered 988 service provider experiences a maximum of one reportable outage per month. We estimate an annual compliance cost of \$1,920 for a provider that experiences a reportable outage based on the estimate that a maximum of two hours total time would be necessary for an employee to prepare and submit all of the required reports to the Commission - 15 minutes to complete each notification, a maximum of 45 minutes for each initial report, 60 minutes for each final report, and a labor cost of \$80 per hour for one employee. Based on this assessment. We do not expect the actual cost for implementation and compliance with the proposed outage reporting rules for small entities to be significant, however we have requested comments on our estimates and assessment. With regard to the proposed requirements for providers to maintain updated contact information for 988 special facilities and to notify those facilities about 988 outages that potentially affect them, we expect the costs of compliance for providers will also be very low and should not be significant for small entities. More specifically, we estimate a one-time total cost of \$50,000 for all providers to create an e-mail survey to biannually solicit 988 special facility contact information. We further estimate maximum annually recurring costs of \$1,283,000, for all providers, consisting of \$1,258,000 for notifying 988 special facilities of outages pursuant to the standards that we propose

today<sup>108</sup> and \$25,000 to maintain up to date 988 special facility contact information for outage notifications.<sup>109</sup> No costs should be incurred related to identifying the 988 special facilities that could potentially be affected by an outage since we have proposed that the three designated special facilities (SAMHSA, the VA, and the 988 Lifeline administrator) be notified regardless of the geographic area affected by the outage.

30. Based on the above discussion, we do not believe that the costs associated with any of the proposal rule changes in the *Notice* will unduly burden small entities. However, we have sought comments from the parties in the proceeding and requested cost and benefit information which may help the Commission identify and evaluate relevant costs and other matters for small entities. We anticipate the proposed rule changes will enable 988 special facilities to accelerate the public's ability to reach the 988 Lifeline during an outage, thereby reducing the probability of lives being lost during such an outage. Moreover, the value of this result and the other public safety benefits generated by our 988 outage notification and reporting requirement proposals outweigh the estimated costs to providers, and therefore is in the public.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered**

31. 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 such 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 such small entities.”<sup>110</sup>

32. In the *Notice*, the Commission continues to facilitate the reliability of the 988 Lifeline network and meet its public safety obligations for oversight of the integrity of the 988 communications infrastructure by proposing measures to ensure that 988 special facilities can expect consistent and timely outage notifications whenever there is an outage that potentially affects 988 Lifeline service. While doing so, the Commission is mindful that small entities and other covered 988 service providers may incur costs should the proposals we make, and the alternatives upon which we seek comment in the *Notice*, be adopted.

33. The Commission has taken several steps that could reduce the economic impact for small entities. First, the elements for 988 outage reporting that we propose largely track the same standards applicable to 911 outage reporting. For example, the *Notice* proposes to use NORS for 988 outage reporting, which is already used for 911 outage reporting. The *Notice* also seeks comment on using the 911 outage duration and user minute thresholds to trigger the 988 outage reporting requirements.

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<sup>108</sup> To notify 988 special facilities, we propose that a communications equipment operator, earning \$34/hour, would spend a total of 1 hour per outage to send out two notifications for each of an estimated 39,000 outages, for a total of \$1,326,000 [ $\$34/\text{hour} \times 1 \text{ hour} \times 39,000$ ]. Our estimate of 39,000 outages is based on the incidence of outages that potentially affected 911 in NORS reports during 2021. We assume that the maximum number of 988 outages that would require notifications annually will not exceed the number of 911 outages. We expect that our estimate of the cost will reduce significantly over time as the Commission collects better data on the actual number of 988 outages experienced annually.

<sup>109</sup> To transmit an e-mail survey, we estimate that for each of the 2,890 affected carriers, one worker, earning \$34/hour, at most 15 minutes each year to e-mail the survey of contact information to the three 988 special facilities, and to follow up with those special facilities if needed, for a total of \$25,000 [ $\$34/\text{hour} \times 0.25 \text{ hours} \times 2,890 = \$24,565$ , rounded up to \$25,000].

<sup>110</sup> 5 U.S.C. § 603(c)(1)-(4).

Therefore, to the extent small entities have or will implement the 911 outage reporting requirements already adopted by the Commission, compliance with 988 reporting requirements should not impose significant additional costs.

34. We considered whether there are any special characteristics of 988 calls that would make it more effective or efficient for the Commission to adopt alternative outage reporting requirements that do not resemble the reporting requirements for 911 or other communications outages; whether our proposed outage duration and user minute thresholds are appropriate, and whether there may be information that is unique to 988 outages that we should require to be included in an outage report due to its value in understanding the cause or impacts of such an outage, and determined that seeking comment from providers on these issues could provide more comprehensive insight on these issues. In comments, small entities can include any steps that we have not already proposed to prevent the costs of our proposals from being unduly burdensome for them. Small entities can also identify which proposed requirements are particularly difficult or costly for them, and how different, simplified, or consolidated requirements would address those difficulties, and propose any modifications or exemptions from the proposed requirements discussing the effect of any such modifications on public safety, and the reliability of 988 Lifeline operations. For the alternatives we discuss in the *Notice*, or that are subsequently filed in comments, we have requested that commenters address the costs and benefits. We have also sought comment on the costs and benefits of implementing and maintaining the 911 procedures for 988 outage notification and reporting.

35. To increase public awareness of 988 availability and to help protect the public's safety when 988 services are disrupted, we have proposed SAMHSA, the VA, and the 988 Lifeline administrator as the designated 988 special facilities to receive notification of outages. In the *Notice* however, we also seek comment on whether there are additional entities that should receive notice, whether covered 988 service providers should give notice to originating service providers when an outage occurs to notify their customers of 988 outages, and whether PSAPs should be notified so they can be prepared for call volume increases. We propose that notifications be made by telephone and in writing by electronic means, and also give providers the flexibility to provide notice by alternative means if mutually agreed upon in writing in advance by the 988 special facility and the provider, as we currently allow covered 911 service providers to do. We believe that this means of communication will not be a very resource intensive or costly method for small entities and other service providers to provide notice. We seek comment on this approach in the *Notice* and on requiring other methods of notification, which may identify additional opportunities to reduce costs for small entities and other providers.

36. Next, our actions specifically seeking comment on whether the public interest would be served by allowing additional time for small and medium-sized businesses to comply, could reduce the economic impact for small entities. In doing so, we have provided small entities the opportunity to address whether and how they would benefit from different reporting requirements or timetables that take into account their limited resources; simplification or consolidation of reporting requirements for small entities; or an exemption from any reporting requirements.

37. The Commission expects to consider more fully the economic impact on small entities following its review of any comments filed in response to the *Notice*, including any costs and benefits information we receive. The Commission's evaluation of the comments filed in this proceeding will shape the final alternatives we consider, the final conclusions we reach, and any final actions we ultimately take in this proceeding to minimize any significant economic impact that may occur on small entities.

F. **Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

38. None.

**STATEMENT OF  
CHAIRWOMAN JESSICA ROSEWORCEL**

Re: *Ensuring the Reliability and Resiliency of the 988 Suicide & Crisis Lifeline*, PS Docket No. 23-5; *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket No. 15-80; *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Notice of Proposed Rulemaking (January 26, 2023).

If you cross the William Howard Taft Bridge in Washington, you will notice that it connects two neighborhoods in the city high above Rock Creek Park. You might also notice that at the entry to the bridge is a sign reminding those who cross in distress that help is available. Just dial 988.

That sign is new. Because it was just six months ago that this agency formally designated 988 as the three-digit number for the national Suicide and Mental Health Crisis Lifeline. It's simple and easy to remember. And during the last half year it has proven to be a lifesaver.

In fact, there are now more than two million people who have reached out to 988. That is two million people in crisis; two million people who found a place to turn, someone to listen, and a way to receive support. Those who attempt suicide are disproportionately young, and some populations—veterans, indigenous people, and LGBTQ youth, are especially vulnerable. They deserve our attention, compassion, and help.

I am proud that the people on this dais helped ensure that 988 is available for both calling and texting. The later, of course, is the dominant way to connect for many people in this country, including some of the populations who are most at risk. It is essential that help is available this way.

It is just as essential that 988 is reliable. So when in December of last year the hotline had a nationwide calling outage, we kicked into high gear. While the Department of Health and Human Services went to work to make sure the public was aware of other ways to access this service, at the Federal Communications Commission we started an investigation. We also immediately started to develop the rulemaking we have here today. To be clear, we are seeking to develop reporting and notification requirements for 988 outages based on the same system we use for 911. Like with 911, it is vital that any 988 problems are shared fast with the right people - so that we understand what went wrong and can make it right. Here we propose that outage notifications are shared with the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, the Department of Veterans Affairs, and the 988 administrator. But what we are really trying to do with this effort is make sure problems like the one we saw in December do not happen again.

Thank you to those responsible for this rulemaking, including Rochelle Cohen, Shabbir Hamid, Nikki McGinnis, Erika Olsen, Austin Randazzo, Tara Shostek, and Rachel Wehr from the Public Safety and Homeland Security Bureau; Heather Hendrickson, Michelle Sclater, and Christi Shewman from the Wireline Competition Bureau; Stacy Jordan, Emily Talaga, and Aleks Yankelevich from the Office of Economics and Analytics; Deborah Broderson, Doug Klein, and Bill Richardson from the Office of General Counsel; and Chana Wilkerson from the Office of Communications Business Opportunities.

**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS**

Re: *Ensuring the Reliability and Resiliency of the 988 Suicide & Crisis Lifeline*, PS Docket No. 23-5; *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket No. 15-80; *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Notice of Proposed Rulemaking (January 26, 2023).

Our important work designating 988 as the three-digit dialing code for the Suicide & Crisis Lifeline has, critically, tracked the trajectory of the global COVID-19 pandemic. This wasn't the intent, of course – the FCC first issued its report to Congress recommending that a three-digit code be used for the Lifeline in 2019. But I note that we adopted our report and order officially designating 988 as that code – requiring all covered providers to make all changes necessary to make it a reality – in July 2020. That was only months into an unprecedented health crisis that, in addition to claiming lives, was compounding the mental health issues that so many Americans manage every day.

Mental health issues are a great leveler. They cut across race, class, age, gender – that much is clear. But at the same time, CDC data shows that suicidal thoughts and attempts are particularly high among vulnerable and underserved members of our society, including LGBTQ+ youth, veterans, Native Americans, and Black Americans.<sup>1</sup> The same week that we issued our 988 order, just a few weeks after George Floyd's death, I convened a panel discussion on the role of the media and communications technology in addressing Black mental health.<sup>2</sup> Congresswoman Bonnie Watson Coleman, chair of the Congressional Black Caucus' Emergency Taskforce on Black Youth Suicide and Mental Health, spoke passionately about the significant disparities in access to mental health care. We heard from academics, advocates, and media leaders who are working to address this issue – from ensuring that the media elevates an accurate narrative of Black mental health, to promoting new ways to access telehealth services.

As a citizen, a Commissioner, and a Black parent, I continue to care deeply about the role the FCC has to play in this conversation. And I'm proud to approve the FCC's actions to support access to the 988 Lifeline. The proposal we approve today – extending the reliability and resiliency requirements that apply to 911 to 988 – makes eminent sense. People who call 988 are experiencing an emergency, just like people who call 911. 988 delivers a life-saving service, again like 911 does. And when 988 is down, we need to be able to act quickly to maintain the public's access to its services, just like we do with 911. These proposed rules would do just that.

Thank you to the staff of the Public Safety and Homeland Security Bureau for their work on this important item. It has my strong support.

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<sup>1</sup> Centers for Disease Control and Prevention, "Disparities in Suicide," <https://www.cdc.gov/suicide/facts/disparities-in-suicide.html#print> (last visited Jan. 23, 2023).

<sup>2</sup> Federal Communications Commission, "Commissioner Starks Hosts 'Thriving While Black: The Role of the Media and Communications Technology in Addressing Black Mental Health,'" July 13, 2020, <https://www.fcc.gov/news-events/events/2020/07/commissioner-starks-hosts-thriving-while-black-role-media-and>.