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September 11 – October 2, 2023

FCC Record

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

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FCC Record Volume 38, No. 10, Pages 8265 to 9234, September 11 – October 2, 2023

FEDERAL COMMUNICATIONS COMMISSION

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

In re Application of	)	
	)	
Hunterdon Central High School Board of Education	)	FRN: 0014558217
	)	NAL/Acct. No. MB-202341410015
	)	Facility ID No. 28129
For Renewal of License for Station WCVH(FM) Flemington, New Jersey	)	Application File No. 0000191266

ORDER

Adopted: September 27, 2023 **Released: September 27, 2023**

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Hunterdon Central High School Board of Education (Licensee), licensee of Station WCVH(FM), Flemington, New Jersey (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 section 73.3539 of the Commission's Rules (Rules),[1] which sets forth the filing deadline for license renewal applications.

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.[2] The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated section 73.3539 of the Rules and provides that Licensee carry out a compliance plan and make a civil penalty payment to the United States Treasury in the amount of $500.

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 or material question of fact as to whether Licensee possesses the basic qualifications to remain a Commission licensee.

[1] *See* 47 CFR § 73.3539.

[2] *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 appropriate consideration to the station's finances with respect to reducing the base forfeiture amount significantly.").

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to sections 4(i) and 503(b) of the Communications Act of 1934, as amended,[3] and by the authority delegated by sections 0.61 and 0.283 of the Rules,[4] 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 copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Hunterdon Central High School Board of Education, c/o Nancy Tucker, PO Box 08822, Flemington, NJ 08822.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[3] 47 U.S.C. § 4(i), 503(b).

[4] 47 CFR §§ 0.61, 0.283.

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

In re Application of	)	
	)	
Hunterdon Central High School Board of Education	)	FRN: 0014558217
	)	NAL/Acct. No. MB- 202341410015
	)	Facility ID No. 28129
For Renewal of License for Station WCVH(FM) Flemington, New Jersey	)	Application File No. 0000191266

CONSENT DECREE

Adopted: September 27, 2023 **Released: September 27, 2023**

1. The Media Bureau of the Federal Communications Commission and Hunterdon Central High School Board of Education (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 section 73.3539 of the Commission's rules[1] relating to the timely filing of renewal applications. To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with section 73.3539.

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 Hunterdon Central High School Board of Education for renewal of the radio broadcast license for station WCVH(FM), Application File No. 0000191266.

(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) "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 Date Rule.

(g) "Effective Date" means the date by which both the Bureau and the Licensee have signed the Consent Decree.

(h) "Filing Date Rule" means 47 CFR § 73.3539.

[1] 47 CFR § 73.3539.

(i) "Investigation" means the Bureau's decision to hold and not process the Licensee's Application due to the noncompliance with timely filing of its renewal application.

(j) "Licensee" means Hunterdon Central High School Board of Education and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

(k) "Parties" means the Licensee and the Bureau, each of which is a "Party."

(l) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

(m) "Station" means Station WVCH(FM), Flemington, New Jersey.

(n) "Violation" means the Licensee's noncompliance with 47 CFR § 73.3539(a) and of the Rules.

II. BACKGROUND

3. Section 73.3539 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."[2] An application for renewal of the Station's license should have been filed by February 1, 2022, the first full business day following the first day of the fourth full calendar month prior to the Station's license expiration date of June 1, 2022.[3] Licensee did not file the Application until May 23, 2023, in violation of the Filing Date Rule.

4. 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 maintain a Compliance Plan designed to ensure its future compliance with the Filing Deadline Rule noted above for three (3) years after the Effective Date, and to pay a civil penalty of Five Hundred Dollars ($500) to the U.S. Treasury.

III. TERMS OF AGREEMENT

5. **Adopting Order**. The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

6. **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.

7. **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.

8. **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.

9. 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

[2] 47 CFR § 73.3539(a).

[3] *See* 47 CFR §§ 73.1020, 73.3539(a).

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.[4]

10. **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 of the Rules.

11. 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.[5] 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.

12. **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.[6]

13. **Payment.** 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),[7] or by wire transfer. Licensee will also send electronic notification of payment to Alexander Sanjenis at Alexander.Sanjenis@fcc.gov on the date said payment is made. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:[8]

- 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 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).[9] 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

[4] *See* 47 CFR § 1.93(b).

[5] *See* 47 U.S.C. § 503(b)(2)(E).

[6] Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

[7] Payments made using CORES do not require the submission of an FCC Form 159.

[8] 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.

[9] Instructions for completing the form may be obtained at https://www.fcc.gov/Forms/Form159/159.pdf.

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.

14. **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 President (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 of the Filing Date Rule prior to assuming his/her duties. The Bureau acknowledges that the Compliance Officer, President, and/or Board Member may be the same individual.

15. **Compliance Plan**. Licensee represents that, in addition to its existing policies and procedures, it has adopted, is currently in the process of implementing, and agrees to abide by the Compliance Plan outlined in paragraph 16 for the purpose of ensuring compliance with the Filing Date Rule. Licensee agrees, to the extent that it has not already done so, to implement this Compliance Plan at the Station no later than thirty (30) days after the Effective Date and to keep such Compliance Plan in effect for three (3) years after the Effective Date.

16. Licensee or its successor-in-interest, as licensee of the Station, as appropriate, will institute the following procedures to ensure compliance with the Commission's application filing Rules. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

- Licensee will conduct training for all Station employees on compliance with Commission Rules applicable to station operations. To augment this training, outside counsel, or other comparable professionals, will conduct an on-site workshop for all of the Station's employees. This workshop will be recorded and used as refresher training for staff and management at least once every twelve (12) months, and to train any new employee within five (5) days of commencement of his or her duties at the Station.

- Licensee will engage communications counsel on an ongoing basis to provide guidance on Commission compliance issues, to provide regular updates and notices on applicable developments in communications law, and to review its applications and reports prior to filing with the Commission. In regard to the last matter, the Station's licensee recognizes and acknowledges that any and all information provided to the Commission must completely and candidly set forth all relevant facts and circumstances, regardless of whether such a submission may disclose a violation of the Act or the Rules.

- Licensee will use a commercially-available calendaring system, such as Microsoft Outlook or Google Calendar, to track filing deadlines. An authorized representative of Licensee will provide an annual declaration to the Bureau certifying that, since the commencement of this Compliance Plan or the filing of its last report, if any, Licensee has maintained and is maintaining such a calendar system each year of the three-year term of this Compliance Plan. In the event the Station's licensee is unable to so certify, it will disclose the reasons there for and indicate what steps it has taken to come into compliance with this Compliance Plan.

17. **Qualifications; Agreement to Grant**. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether Licensee possesses the basic qualifications, including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Application, after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 12, has been fully and timely satisfied; and 2) there are no issues other than the Violation that would preclude grant of the Application.

18. **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 novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act[10] relating to the matters addressed in this Consent Decree.

19. **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.

20. **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.

21. **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.

22. **Successors and Assigns**. The Licensee agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

23. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

24. **Modifications**. This Consent Decree cannot be modified without the advance written consent of both Parties.

25. **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.

[10] *See* 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

26. **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.

27. **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

September 27, 2023
Date

Heather A. Spitzer
Hunterdon Central High School Board of Education

Date

25. **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.

26. **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.

27. **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

Date

Heather A. Spitzer

Heather A. Spitzer
Hunterdon Central High School Board of Education

9/24/2023
Date

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

In re Application of	)	
	)	NAL/Acct. No. MB-202341410007
Gendreau Broadcast LLC	)	FRN: 0027365139
	)	
For Renewal of License for	)	Facility ID No. 33055
KCLN(AM), Clinton, Iowa	)	File No. 123955

ORDER

Adopted: September 21, 2023 **Released: September 21, 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 Gendreau Broadcast LLC (Licensee), the licensee of KCLN(AM), Clinton, Iowa (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 into Licensee's compliance with (1) the online public inspection file rule set forth in section 73.3526 of the Commission's rules (Rules),[1] (2) the provisions of section 1.17(a)(2) of the Rules with respect to a certification made in the Application regarding the Station's online public inspection file,[2] and (3) section 301 of the Communications Act of 1934, as amended (Act), and sections 73.1350, 73.1560(a)(1) and (d), and 73.1745(a) of the Rules with respect to the Station's operations.[3]

2. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated section 301 of the Act, and sections 1.17(a)(2), 73.1350, 73.1560(a)(1) and (d), 73.1745(a), and 73.3526 of the Rules. Pursuant to the Consent Decree, Licensee agrees to implement a comprehensive compliance plan to ensure future compliance with its online public inspection file obligations, and with the provisions of the Act and the Rules governing operation of AM stations, and, one year after entering into the Consent Decree, submit a compliance report to the Audio Division. Licensee also agrees to pay a civil penalty in the amount of Six Thousand Dollars ($6,000).

3. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval, and by resolving the Notice of Apparent Liability for Forfeiture issued by the Bureau on May 31, 2023.[4]

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 possess the basic qualifications to be a Commission licensee.

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,[5] and by the authority delegated by Sections 0.61 and

[1] 47 CFR § 73.3526.

[2] 47 CFR § 1.17(a)(2).

[3] 47 U.S.C. § 301; 47 CFR §§ 73.1350, 73.1560(a)(1), (d), 73.1745(a).

[4] *See Gendreau Broadcast LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-465 (MB May 31, 2023).

[5] 47 U.S.C. § 154(i)6 154(j), and 503(b).

0.283 of the Commission's rules,[6] 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**, and the Notice of Apparent Liability for Forfeiture issued to Gendreau Broadcast LLC on May 31, 2023, **IS RESOLVED** in accordance with the terms of the attached Consent Decree.

7. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Gendreau Broadcast LLC, Attn: Brad Gendreau, 5759 Riverview Rd, Thomson, IL 61285.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[6] 47 CFR §§ 0.61, 0.283.

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

In re Application of	)	
	)	NAL/Acct. No. MB-202341410007
Gendreau Broadcast LLC	)	FRN: 0027365139
	)	
For Renewal of License for	)	Facility ID No. 33055
KCLN(AM), Clinton, Iowa	)	File No. 123955

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Gendreau Broadcast LLC (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 Licensee's operation of AM station KCLN(AM), Clinton, Iowa, Licensee's compliance with FCC requirements related to that station's online public inspection file, and a certification Licensee made to the Commission regarding the KCLN(AM) online public inspection file. To resolve this matter, Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with the online public inspection file requirements, and with the provisions of the Act and the Rules governing operation of AM stations, and to pay a civil penalty in the amount of Six Thousand Dollars ($6,000).

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) "Bureau" means the Media Bureau of the Commission.

(d) "Civil Penalty" means the payment Licensee has agreed to pay to the United States Treasury.

(e) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices.

(f) "Covered Employees" means all employees and agents of Licensee who are responsible for operating the Station, and all employees and agents of the Licensee who are responsible for performing, supervising, overseeing, or managing activities related to the maintenance of online public inspection files, as required by the Online Public Inspection File Rule.

(g) "Effective Date" means the date by which both the Bureau and Licensee have signed the Consent Decree.

(h) "Investigation" means the Bureau's investigation into Licensee's compliance with section 301 of the Act, and sections 1.17(a)(2), 73.1350, 73.1560(a) and (d), 73.1745(a), and 73.3526 of the Rules.

(i) "Licensee" means Gendreau Broadcast LLC, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

(j) "NAL" means the Notice of Apparent Liability for Forfeiture issued on May 31, 2023, for apparent violations of section 301 of the Act, and sections 1.17(a)(2), 73.1350, 73.1560(a) and (d), 73.1745(a), and 73.3526 of the Rules at the Station.

(k) "Online Public Inspection File Rule" means 47 CFR § 73.3526.

(l) "Parties" means Licensee and the Bureau, each of which is a "Party."

(m) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

(n) "Station" means AM station KCLN(AM), Clinton, Iowa, Facility ID No. 33055.

II. BACKGROUND

3. Section 301 of the Act prohibits the operation of a broadcast station except under, and in accordance with, a Commission-granted authorization. Section 73.1350 of the Rules specifies that "[e]ach licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization." Section 73.1745 of the Rules states that "[n]o broadcast station shall operate . . . with modes or power, other than those specified and made a part of the license …." Section 73.1560(a) generally prohibits operation of an AM station with an antenna input power of less than 90 percent or greater than 105 percent of the station's authorized power. Section 73.1560(d) requires a licensee to notify the Commission if a broadcast station operates at reduced power for a period of more than 10 consecutive days, and requires a licensee to obtain authority to operate a broadcast station at reduced power for a period of more than 30 consecutive days.

4. Section 73.3526 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. It also requires licensees to include a link to a station's online public inspection file on the station's website. It is crucial that stations maintain online public inspection files that are complete and up to date (and also link to their online public inspection files on their websites) because the information in a station's online public inspection file directly affects, among other things, the public's ability to be informed about that station's compliance with its obligations.

5. Section 1.17(a)(2) prohibits applicants from providing material information to the FCC that is incorrect without a reasonable basis for believing such information is not incorrect or misleading.

6. Licensee filed an application to renew the Station's license on October 5, 2020. We received an informal objection to the application, which alleged that Licensee had (1) failed to upload material to the Station's online public inspection file, (2) failed to include a link to the Station's online public inspection file on the Station's website, (3) falsely certified that the Station's online public inspection file contained the documentation required by the Online Public Inspection File Rule, and (4) had failed to reduce the Station's power at night.[1] Licensee did not respond to the informal objection. Accordingly, the Bureau sent a letter of inquiry requesting that Licensee do so.[2] Gendreau responded on December 15, 2022.[3] After reviewing Licensee's response, the Bureau issued the NAL, which found Licensee had apparently willfully and repeatedly violated section 73.3526 of the Rules, willfully made an incorrect certification to the Commission in violation of section 1.17(a)(2) of the Rules, and willfully and repeatedly engaged in unauthorized operation of the Station in violation of Section 301 of the Act, and sections 73.1350, 73.1560(a) and (d), and 73.1745 of the Rules. Licensee submitted a timely response to

[1] Pleading File No. 131267.

[2] Letter from Albert Shuldiner, Chief, Audio Division, to Gendreau Broadcast LLC (Dec. 15, 2022).

[3] Letter from Chris Streets, General Manager, Gendreau Broadcasting LLC (rec'd June 20, 2023).

the NAL on June 20, 2023. The Parties subsequently entered into settlement discussions and agreed to the terms and conditions of this Consent Decree.

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.** 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 consideration for such, 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 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 Licensee's basic qualifications to be a Commission licensee or to hold Commission licenses or authorizations.[4]

12. **Admission of Liability.** Licensee admits for the purpose of this Consent Decree that it (1) failed to timely place records in the Station's online public inspection file, in violation of section 73.3526 of the Rules, (2) failed to place a link to the Station's online public inspection file on the Station's website in violation of section 73.3526 of the Rules, (3) made an inaccurate certification in its application to renew the Station's license without a reasonable basis for believing the certification was correct in violation of section 1.17(a)(2) of the Rules, and (4) operated the Station at a variance from its licensed daytime and nighttime parameters for more than 30 consecutive days in violation of section 301 of the Act, and sections 73.1350, 73.1560(a) and (d), and 73.1745 of the Rules.

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 a licensee.[5] 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 online public inspection file and record keeping or otherwise.

14. **Civil Penalty.** Licensee agrees to pay a Civil Penalty to the United States Treasury in the amount of Six Thousand Dollars ($6,000), 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

[4] *See* 47 CFR § 1.93(b).

[5] *See* 47 U.S.C. § 503(b)(2)(E).

1996. Licensee will also send electronic notification of payment to Heather Dixon at Heather.Dixon@fcc.gov on the date said payment is made.

15. **Payment.** 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), or by wire transfer. Payments by check or money order to pay a civil penalty are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:

(a) 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 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). For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

(b) 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.

(c) 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, Licensee shall designate a senior manager to serve as a Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall report directly to Licensee's Chief Executive Officer (or equivalent senior officer/owner) on a regular basis, and shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Licensee complies with the terms and conditions of the Compliance Plan and this Consent Decree. The Compliance Officer shall have specific knowledge of the Online Public Inspection File Rule, and the provisions of the Act and the Rules governing operation

of AM stations prior to assuming his/her duties. The Bureau acknowledges that the Compliance Officer, Chief Executive Officer, and/or owner may be the same individual.

17. **Compliance Plan.** For purposes of settling the matters set forth herein, 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 Online Public Inspection File Rule, the provisions of the Act and the Rules governing operation of AM stations, 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. 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, and the provisions of the Act and the Rules governing operation of AM stations;

ii. contain Operating Procedures that Covered Employees must follow to help ensure Licensee's compliance with the Online Public Inspection File Rule, and the provisions of the Act and the Rules governing operation of AM stations. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that Licensee's stations upload all required information to their 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 the provisions of the Act and the Rules governing operation of AM stations; and

iii. be periodically reviewed and revised as necessary to ensure that the information set forth therein remains current, complete, accurate, and effective.

(b) **Training Program.** If 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, and the provisions of the Act and the Rules governing operation of AM stations. As part of the compliance training program, Covered Employees shall be advised of Licensee's obligation to report any noncompliance with the Online Public Inspection File Rule, or the provisions of the Act and the Rules governing operation of AM stations, 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. 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, Licensee shall submit a compliance report to the Bureau. The compliance report shall contain a certification of Licensee's compliance with the Online Public Inspection File Rule, and the provisions of the Act and the Rules governing operation of AM stations with respect to the Station during the previous year. The compliance report shall be submitted to the Bureau no later than 30 days after the one-year anniversary of the Effective Date. The Bureau may, within its sole discretion, require Licensee to submit more frequent or additional compliance reports in accordance with the terms of paragraph 19 below.

i. The compliance report shall include a certification by the Compliance Officer stating that the Compliance Officer has personal knowledge that 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,[6] 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: Heather Dixon (heather.dixon@fcc.gov).

18. **Reporting Noncompliance.** Licensee shall report any instance of noncompliance with the Online Public Inspection File Rule, or the provisions of the Act and the Rules governing operation of AM stations, 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 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 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: Heather Dixon (heather.dixon@fcc.gov).

19. **Termination Date.** The obligations to which 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 Licensee has demonstrated substantial compliance with its obligations. If the Bureau is not satisfied that Licensee has demonstrated substantial compliance with its obligations, the Bureau may, within its the sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

20. **Further Violation(s).** Licensee acknowledges that the Bureau retains the discretion and authority to propose sanctions against Licensee, including the issuance of notices of apparent liability for forfeitures, for any apparent willful and/or repeated violation by Licensee of the Online Public Inspection File Rule and/or any apparent willful and/or repeated violation by Licensee or the provisions of the Act and the Rules governing operation of AM stations that occurs during the term of this Consent Decree.

[6] *See* 47 CFR § 1.16.

21. **Waivers.** As of the Effective Date, 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. 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 Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Licensee shall waive any statutory right to a trial *de novo*. Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act[7] 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.** 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.

[7] *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

9/21/2023
Date

Brad Gendreau
Managing Member, Gendreau Broadcast LLC

Date

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

Date

Brad Gendreau
Managing Member, Gendreau Broadcast LLC

9/12/23
Date

Appendix A

Station Call Sign	Community of License	Application for License Renewal File No.
KCLN(AM)	Clinton, Iowa	123955

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

In re Application of	)	
	)	NAL/Acct. No. MB-202341410008
Gendreau Broadcast LLC	)	FRN: 0027365139
	)	
For Renewal of License for	)	Facility ID No. 33054
KMCN(FM), Clinton, Iowa	)	File No. 123953

ORDER

Adopted: September 21, 2023 **Released: September 21, 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 Gendreau Broadcast LLC (Licensee), the licensee of KMCN(FM), Clinton, Iowa (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 into Licensee's compliance with (1) the online public inspection file rule set forth in section 73.3526 of the Commission's rules (Rules),[1] and (2) the provisions of section 1.17(a)(2) of the Rules with respect to a certification made in the Application regarding the Station's online public inspection file.[2]

2. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated sections 1.17(a)(2), and 73.3526 of the Rules. Pursuant to the Consent Decree, Licensee agrees to implement a comprehensive compliance plan to ensure future compliance with its online public inspection file obligations and, one year after entering into the Consent Decree, submit a compliance report to the Audio Division. Licensee also agrees to pay a civil penalty in the amount of Three Thousand Dollars ($3,000).

3. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval, and by resolving the Notice of Apparent Liability for Forfeiture issued by the Bureau on May 31, 2023.[3]

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 possess the basic qualifications to be a Commission licensee.

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,[4] and by the authority delegated by Sections 0.61 and 0.283 of the Commission's rules,[5] the Consent Decree attached hereto **IS ADOPTED** without change, addition or modification.

[1] 47 CFR § 73.3526.

[2] 47 CFR § 1.17(a)(2).

[3] *See Gendreau Broadcast LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-466 (MB May 31, 2023).

[4] 47 U.S.C. § 154(i)6 154(j), and 503(b).

[5] 47 CFR §§ 0.61, 0.283.

6. **IT IS FURTHER ORDERED** that the investigation by the Media Bureau of the matters noted above **IS TERMINATED**, and the Notice of Apparent Liability for Forfeiture issued to Gendreau Broadcast LLC on May 31, 2023, **IS RESOLVED** in accordance with the terms of the attached Consent Decree.

7. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Gendreau Broadcast LLC, Attn: Brad Gendreau, 5759 Riverview Rd, Thomson, IL 61285.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

In re Application of	)	
	)	NAL/Acct. No. MB-202341410008
Gendreau Broadcast LLC	)	FRN: 0027365139
	)	
For Renewal of License for	)	Facility ID No. 33054
KMCN(FM), Clinton, Iowa	)	File No. 123953

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Gendreau Broadcast LLC (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 Licensee's compliance with FCC requirements related to the online public inspection file for FM station KMCN(FM), Clinton, Iowa, and a certification Licensee made to the Commission regarding the KMCN(FM) online public inspection file. To resolve this matter, Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with the online public inspection file requirements, and to pay a civil penalty in the amount of Three Thousand Dollars ($3,000).

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) "Bureau" means the Media Bureau of the Commission.

(d) "Civil Penalty" means the payment Licensee has agreed to pay to the United States Treasury.

(e) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices.

(f) "Covered Employees" means all employees and agents of Licensee who are responsible for performing, supervising, overseeing, or managing activities related to the maintenance of online public inspection files, as required by the Online Public Inspection File Rule.

(g) "Effective Date" means the date by which both the Bureau and Licensee have signed the Consent Decree.

(h) "Investigation" means the Bureau's investigation into Licensee's compliance with sections 1.17(a)(2), and 73.3526 of the Rules.

(i) "Licensee" means Gendreau Broadcast LLC, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

(j) "NAL" means the Notice of Apparent Liability for Forfeiture issued on May 31, 2023, for apparent violations of sections 1.17(a)(2), and 73.3526 of the Rules at the Station.

(k) "Online Public Inspection File Rule" means 47 CFR § 73.3526.

(l) "Parties" means Licensee and the Bureau, each of which is a "Party."

(m) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

(n) "Station" means FM station KMCN(FM), Clinton, Iowa, Facility ID No. 33055.

II. BACKGROUND

3. Section 73.3526 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. It also requires radio station licensees to include a link to a station's online public inspection file on that station's website. It is crucial that stations maintain online public inspection files that are complete and up to date (and also link to their online public inspection files on their websites) because the information in a station's online public inspection file directly affects, among other things, the public's ability to be informed about that station's compliance with its obligations.

4. Section 1.17(a)(2) prohibits applicants from providing material information to the FCC that is incorrect without a reasonable basis for believing such information is not incorrect or misleading.

5. Licensee filed an application to renew the Station's license on October 5, 2020. We received an informal objection to the application, which alleged that Licensee had (1) failed to upload material to the Station's online public inspection file, (2) failed to include a link to the Station's online public inspection file on the Station's website, and (3) falsely certified that the Station's online public inspection file contained the documentation required by the Online Public Inspection File Rule,[1] Licensee did not respond to the informal objection. Accordingly, the Bureau sent a letter of inquiry requesting that Licensee do so.[2] Gendreau responded on December 15, 2022.[3] After reviewing Licensee's response, the Bureau issued the NAL, which found Licensee had apparently willfully and repeatedly violated section 73.3526 of the Rules, and willfully made an incorrect certification to the Commission in violation of section 1.17(a)(2) of the Rules. The Parties subsequently entered into settlement discussions and agreed to the terms and conditions of this Consent Decree.

III. TERMS OF AGREEMENT

6. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

7. **Jurisdiction.** 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.

8. **Effective Date.** The Parties agree that this Consent Decree shall become effective on the Effective Date. As of the Effective Date, the Parties that this Consent Decree shall have the same force and effect as any other order of the Commission.

9. **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 consideration for such, Licensee agrees to the terms, conditions, and procedures contained herein.

10. 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 Licensee

[1] Pleading File No. 131262. agree

[2] Letter from Albert Shuldiner, Chief, Audio Division, to Gendreau Broadcast LLC (Dec. 15, 2022).

[3] Letter from Chris Streets, General Manager, Gendreau Broadcasting LLC (rec'd June 20, 2023).

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 Licensee's basic qualifications to be a Commission licensee or to hold Commission licenses or authorizations.[4]

11. **Admission of Liability.** Licensee admits for the purpose of this Consent Decree that it (1) failed to timely place records in the Station's online public inspection file, in violation of section 73.3526 of the Rules, (2) failed to place a link to the Station's online public inspection file on the Station's website in violation of section 73.3526 of the Rules, and (3) made an inaccurate certification in its application to renew the Station's license without a reasonable basis for believing the certification was correct in violation of section 1.17(a)(2) of the Rules.

12. 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 a licensee.[5] 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 online public inspection file and record keeping or otherwise.

13. **Civil Penalty.** Licensee agrees to pay a Civil Penalty to the United States Treasury in the amount of Three Thousand Dollars ($3,000), 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. Licensee will also send electronic notification of payment to Heather Dixon at Heather.Dixon@fcc.gov on the date said payment is made.

14. **Payment.** 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), or by wire transfer. Payments by check or money order to pay a civil penalty are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:

(a) 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 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). For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

(b) 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

[4] *See* 47 CFR § 1.93(b).

[5] *See* 47 U.S.C. § 503(b)(2)(E).

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.

(c) 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.

15. **Compliance Officer.** Within 30 calendar days after the Effective Date, Licensee shall designate a senior manager to serve as a Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall report directly to Licensee's Chief Executive Officer (or equivalent senior officer/owner) on a regular basis, and shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Licensee complies with the terms and conditions of the Compliance Plan and this Consent Decree. The Compliance Officer shall have specific knowledge of the Online Public Inspection File Rule prior to assuming his/her duties. The Bureau acknowledges that the Compliance Officer, Chief Executive Officer, and/or owner may be the same individual.

16. **Compliance Plan.** For purposes of settling the matters set forth herein, 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 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. 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 Licensee's compliance with the Online Public Inspection File Rule. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that Licensee's stations upload all required information to their 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) **Training Program.** If 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 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. 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, Licensee shall submit a compliance report to the Bureau. The compliance report shall contain a certification of Licensee's compliance with the Online Public Inspection File Rule with respect to the Station during the previous year. The compliance report shall be submitted to the Bureau no later than 30 days after the one-year anniversary of the Effective Date. The Bureau may, within its sole discretion, require Licensee to submit more frequent or additional compliance reports in accordance with the terms of paragraph 19 below.

i. The compliance report shall include a certification by the Compliance Officer stating that the Compliance Officer has personal knowledge that 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,[6] 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: Heather Dixon (heather.dixon@fcc.gov).

17. **Reporting Noncompliance.** Licensee shall report any instance of noncompliance with the Online Public Inspection File Rule with respect to the Station, 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 Licensee has taken or will take to remedy such noncompliance,

[6] 47 CFR § 1.16.

including the schedule on which such actions will be taken; and (iii) the steps that 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: Heather Dixon (heather.dixon@fcc.gov).

18. **Termination Date.** The obligations to which 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 Licensee has demonstrated substantial compliance with its obligations. If the Bureau is not satisfied that Licensee has demonstrated substantial compliance with its obligations, the Bureau may, within its the sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

19. **Further Violation(s).** Licensee acknowledges that the Bureau retains the discretion and authority to propose sanctions against Licensee, including the issuance of notices of apparent liability for forfeitures, for any apparent willful and/or repeated violation by Licensee of the Online Public Inspection File Rule that occurs during the term of this Consent Decree.

20. **Waivers.** As of the Effective Date, 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. 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 Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Licensee shall waive any statutory right to a trial *de novo*. Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act[7] relating to the matters addressed in this Consent Decree.

21. **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.

22. **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.

23. **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.

24. **Successors and Assigns.** Licensee agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

25. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

26. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

27. **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.

[7] *See* 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

28. **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.

29. **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

9/21/2023
Date

Brad Gendreau
Managing Member, Gendreau Broadcast LLC

Date

28. **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.

29. **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

Date

Brad Gendreau
Managing Member, Gendreau Broadcast LLC

9/16/23
Date

Appendix A

Station Call Sign	Community of License	Application for License Renewal File No.
KMCN(FM)	Clinton, Iowa	123953

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 23-819
Released: September 12, 2023

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PROPOSED ELIGIBLE SERVICES LIST FOR THE E-RATE PROGRAM

WC Docket No. 13-184

Comment Date: October 12, 2023
Reply Comment Date: October 26, 2023

The Wireline Competition Bureau (Bureau) pursuant to section 54.502(e) of the Commission's rules seeks comment on the proposed eligible services list (ESL) for the schools and libraries universal service support mechanism (more commonly known as the E-Rate program) for funding year (FY) 2024.[1]

This year, the Bureau proposes several minor revisions to the draft FY 2024 eligible services list.[2] First, the Bureau clarifies that the software necessary to operate or maintain Category One network equipment is eligible.[3] Second, the Bureau also clarifies that consulting fees not related to the installation and configuration of eligible components are ineligible.[4] We have included the proposed FY 2024 eligible services list as an Attachment to this Public Notice with the proposed minor revisions. We invite stakeholders to comment on these proposed revisions, as well as on the proposed eligible services list for funding year 2024.[5]

[1] *See* 47 CFR § 54.502(e) (detailing the procedures for seeking comment on a draft E-Rate program eligible services list); Attachment, Draft Schools and Libraries Eligible Services List for Funding Year 2024.

[2] As part of the "Learn Without Limits" Initiative, Chairwoman Rosenworcel circulated a Declaratory Ruling that, if adopted, would allow support for the provision of Wi-Fi on school buses, finding that it serves an educational purpose and that the provision of such service is eligible for E-Rate support. *See* Press Release, FCC, Rosenworcel Announces "Learn Without Limits" Initiative (June 26, 2023), https://docs.fcc.gov/public/attachments/DOC-394625A1.pdf. If adopted, the Bureau will separately seek comment on the specific services and equipment needed to provide Wi-Fi on school buses. We have also added a minor edit to clarify that off-campus use even if used for educational purposes is generally ineligible, and must be cost-allocated from the funding request. *See* Attachment at 9.

[3] *See* Attachment at 5.

[4] *See* Attachment at 5. These consulting services are not currently eligible for E-Rate support. *See, e.g., Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Red 11304, 11362, para. 224 (2013) (*2013 E-Rate NPRM*) (explaining that consulting services not related to the installation and configuration of eligible components are not eligible for E-Rate support).

[5] The Commission recently proposed several changes to the E-Rate program that could affect the services and equipment that are eligible for E-Rate support. *See generally Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 02-6, 96-45, 97-21, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-56, 2023 WL 4730084 (FCC July 21, 2023). If those changes are adopted, the Bureau may solicit feedback and make additional corresponding modifications to the FY 2024 ESL as appropriate.

Pursuant to section 1.419 of the Commission's rules,[6] interested parties may file comments on or before October 12, 2023 and reply comments on or before October 26, 2023. All comments are to reference WC Docket No. 13-184 and may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing 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. 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 St., 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.[7]

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

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.[8]

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.[9] 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 *ex parte* 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.[10] In proceedings governed by section 1.49(f) of the Commission's rules,[11] or for which the Commission has made available a method of

[6] 47 CFR § 1.419.

[7] *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-andchanges-hand-delivery-policy.

[8] Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

[9] 47 CFR §§ 1.1200 *et seq*.

[10] 47 CFR § 1.1206(b).

electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through ECFS in the docket 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.

For further information, please contact Saswat Misra, Telecommunications Access Policy Division, Wireline Competition Bureau, by email at Saswat.Misra@fcc.gov or by phone at (202) 418-0944.

- FCC -

(Continued from previous page)
[11] 47 CFR § 1.49(f).

ATTACHMENT

ELIGIBLE SERVICES LIST FOR FUNDING YEAR 2024 SCHOOLS AND LIBRARIES UNIVERSAL SERVICE SUPPORT MECHANISM

WC Docket No. 13-184

The Federal Communications Commission's (FCC) rules provide that all services that are eligible to receive discounts under the Schools and Libraries Universal Service Support Mechanism (otherwise known as the E-Rate program or E-Rate) are listed in this Eligible Services List (ESL). 47 CFR § 54.502(a). The E-Rate program is administered by the Universal Service Administrative Company (USAC). 47 CFR § 54.5. Eligible schools and libraries may seek E-Rate support for eligible Category One telecommunications services, telecommunications, and Internet access, and Category Two internal connections, basic maintenance, and managed internal broadband services as identified herein. 47 CFR §§ 54.500 *et seq*.

Additional guidance from USAC about the E-Rate application process and about eligible services, including a glossary of terms, is available at USAC's website at https://www.usac.org/erate/applicantprocess/before-you-begin/eligible-services-list/. The documents on USAC's website are not incorporated by reference into the ESL and do not bind the Commission. Thus, they will not be used to determine whether a service or product is eligible. Applicants and service providers may refer to those documents, but they should do so only for informal guidance. This ESL applies to funding requests for Funding Year (FY) 2024.

Category One

The first category of supported services, Category One, includes the services needed to support broadband connectivity to schools and libraries. Eligible Category One services are listed in the entries for data transmission and/or Internet access. This category consists of the services that provide broadband to eligible locations including data links that connect multiple points, services used to connect eligible locations to the Internet, and services that provide basic conduit access to the Internet. With the exception of leased dark fiber and self-provisioned broadband networks, maintenance and technical support appropriate to maintain reliable operation are only eligible for support when provided as a component of these services.

Data Transmission and/or Internet Access

Data transmission and/or Internet access services are eligible in Category One. These services include:

- Asynchronous Transfer Mode (ATM)
- Broadband over Power Lines
- Cable Modem
- Digital Subscriber Line (DSL)
- DS-1 (T-1), DS-3 (T-3), and Fractional T-1 or T-3
- Ethernet
- Integrated Services Digital Network (ISDN)
  Note: Dedicated voice channels on an ISDN circuit are no longer eligible.
- Leased Lit Fiber
- Leased Dark Fiber (including dark fiber indefeasible rights of use (IRUs) for a set term)
- Self-Provisioned Broadband Networks (applicant owned and operated networks)
- Frame Relay
- Multi-Protocol Label Switching (MPLS)
- OC-1, OC-3, OC-12, OC-n

- Satellite
- Switched Multimegabit Data Service
- Telephone dial-up
- Wireless (e.g., fixed wireless, microwave)

Notes:

(1) Eligible costs include monthly charges, special construction, installation and activation charges, software, modulating electronics and other equipment necessary to make a Category One wired or wireless broadband service functional ("Network Equipment"), and maintenance and operation charges, including costs for software needed for the operation of or maintenance of Network Equipment. Network Equipment and maintenance and operation costs for existing networks are eligible. All equipment and services, including maintenance and operation, must be competitively bid.

(2) Applicants that seek bids for leased dark fiber must also seek bids for leased lit fiber service and fully consider all responsive bids. Similarly, applicants that seek bids for self-provisioned broadband networks must also seek bids for the needed connectivity via services provided over third-party networks, and fully consider all responsive bids.

(3) Applicants may seek special construction funding for the upfront, non-recurring costs for the deployment of new or upgraded facilities. The eligible components of special construction are construction of network facilities, design and engineering, and project management.

(4) Staff salaries and labor costs for personnel of the applicant or underlying beneficiary are not E-Rate eligible.

(5) Consulting services that are not related to the installation and configuration of the eligible components are not eligible. These include services related to application assistance, program advice, and other activities not tied directly to actual installation and initial configuration of components.

Category Two

The second category of equipment and services eligible for E-Rate support, Category Two, includes the internal connections needed for broadband connectivity within schools and libraries. Support is limited to the internal connections necessary to bring broadband into, and provide it throughout, schools and libraries. These are broadband connections used for educational purposes within, between, or among instructional buildings that comprise a school campus (as defined below in the section titled "Eligibility Explanations for Certain Category One and Category Two Services") or library branch, and basic maintenance of these connections, as well as services that manage and operate owned or leased broadband internal connections (e.g., managed internal broadband services or managed Wi-Fi). Category Two support is subject to district- or library system-wide budgets as set forth in 47 CFR § 54.502. The eligible components and services in Category Two are:

Eligible Broadband Internal Connections

- Antennas, connectors, and related components used for internal broadband connections
- Cabling
- Caching
- Firewall services and firewall components separate from basic firewall protection provided as a standard component of a vendor's Internet access service
- Racks
- Routers
- Switches
- Uninterruptible power supply (UPS)/battery backup
- Access points used in a local area network (LAN) or wireless local area network (WLAN) environment (such as wireless access points)
- Wireless controller systems
- Software supporting the components on this list used to distribute high-speed broadband throughout school buildings and libraries (applicants should request software in the same category as the associated service being obtained or installed)

Notes:

(1) Functionalities listed above that can be virtualized in the cloud, and equipment that combines eligible functionalities, like routing and switching, are also eligible.

(2) A manufacturer's multi-year warranty for a period up to three years that is provided as an integral part of an eligible component, without a separately identifiable cost, may be included in the cost of the component.

(3) Caching is defined as a method that stores recently accessed information. Caching stores information locally so that the information is accessible more quickly than if transmitted across a network from a distance. A caching service or equipment that provides caching, including servers necessary for the provision of caching, is eligible for funding.

(4) Applicants may request both equipment and the software necessary to use the equipment on the FCC Form 470, or request just the equipment on the FCC Form 470, and still receive support for both the equipment and the software necessary to use the equipment (e.g., right-to use software or client access licenses) by requesting the equipment and software either together or separately on the FCC Form 471. However, software upgrades and patches, including bug fixes and security patches, are considered basic maintenance of internal connections, and as such, applicants should seek bids for basic maintenance of internal connections if they intend to request funding for these services.

Eligible Managed Internal Broadband Services

- Services provided by a third party for the operation, management, and monitoring of eligible broadband internal connections are eligible managed internal broadband services (e.g., managed Wi-Fi).
- E-Rate support is limited to eligible expenses or portions of expenses that directly support and are necessary for the broadband connectivity within schools and libraries. Eligible expenses include the management and operation of the LAN/WLAN, including installation, activation, and initial configuration of eligible components and on-site training on the use of eligible equipment.
- In some eligible managed internal broadband services models, the third-party manager owns and installs the equipment and school and library applicants lease the equipment as part of the managed services contract. In other cases, the school or library may own the equipment, but have a third party manage the equipment for it.

Basic Maintenance of Eligible Broadband Internal Connections

E-Rate support is available for basic maintenance and technical support appropriate to maintain reliable operation when provided for eligible broadband internal connections.

The following basic maintenance services are eligible:

- Repair and upkeep of eligible hardware.
- Wire and cable maintenance.
- Configuration changes.
- Basic technical support including online and telephone-based technical support.
- Software upgrades and patches including bug fixes and security patches.

Eligibility Limitations for Category Two Services

Eligibility limitations for managed internal broadband services – The equipment eligible for support as part of a managed internal broadband service may include only equipment listed above as broadband internal connections. Upfront charges that are part of a managed service contract are eligible for E-Rate support except to the extent that the upfront charges are for any ineligible internal connections (e.g., servers other than those that are necessary to provide caching), which, if included in the contract, must be cost allocated out of any funding request.

Eligibility limitations for basic maintenance – Basic maintenance is eligible for support only if it is a component of a maintenance agreement or contract for eligible broadband internal connections. The agreement or contract must specifically identify the eligible internal connections covered, including product name, model number, and location. Support for basic maintenance will be paid for the actual work performed under the agreement or contract. Support for bug fixes, security patches, and technical support is not subject to this limitation.

Basic maintenance does not include:

- Services that maintain ineligible equipment
- Upfront estimates that cover the full cost of every piece of eligible equipment
- Services that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information
- Network management services, including 24-hour network monitoring
- On-site technical support (i.e., contractor duty station at the applicant site), unless applicants present sufficient evidence of cost-effectiveness
- Unbundled warranties

Eligibility Explanations for Certain Category One and Category Two Services

National Security Supply Chain Restrictions – Equipment or services produced or provided by a company that the FCC has designated as a national security threat to the integrity of communications networks or the communications supply chain are not eligible for E-Rate support. 47 CFR § 54.9(a). In addition, participants are prohibited from using E-Rate support to purchase, rent, lease, or otherwise obtain any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained. 47 CFR § 54.10. A list of covered communications equipment and services can be found on the FCC's website at https://www.fcc.gov/supplychain/coveredlist and will be updated to reflect any future determinations.

Internet access/ISP service – Eligible Internet access services may include features such as basic firewall protection, domain name service, and dynamic host configuration when these features are provided as a standard component of a vendor's Internet access service. Firewall protection that is provided by a vendor other than the Internet access service provider or priced out separately will be considered a Category Two internal connections component. Examples of items that are ineligible components of Internet access services include applications, content, e-mail, and end-user devices and equipment such as computers, laptops, and tablets.

Wireless services and wireless Internet access – As clarified in the *2014 Second E-Rate Order* (FCC 14-189), data plans and air cards for mobile devices are eligible only in instances when the school or library seeking support demonstrates that the individual data plans are the most cost-effective option for providing internal broadband access for mobile devices at schools and libraries. Applicants should compare the cost of data plans or air cards for mobile devices to the total cost of all components necessary to deliver connectivity to the end user device, including the cost of data transmission and/or Internet access to the school or library. Seeking support for data plans or air cards for mobile devices for use in a school or library with an existing broadband connection and WLAN implicates the E-Rate program's prohibition on requests for duplicative services.

Off-campus use even if used for an educational purpose is generally ineligible for support, and must be cost allocated out of any funding request.

Managed internal broadband services, such as managed Wi-Fi, are eligible only for Category Two support.

Connections between buildings of a single school – The classification of connections between multiple buildings of a single school is determined by whether the buildings are located on the same campus. A "campus" is defined as the geographically contiguous grounds where the instructional buildings of a single eligible school are located. A single school may have multiple campuses if it has instructional buildings located on grounds that are not geographically contiguous. Different schools located on the same grounds do not comprise a single campus. The portion of the grounds occupied by the instructional buildings for each school is a campus for that school.

- Connections between buildings on different campuses of a single school are considered to be Category One data transmission services.
- Connections between different schools with campuses located on the same property (e.g., an elementary school and middle school located on the same property) are considered to be Category One data transmission services, unless they share the same building.

Connections between buildings of a single school on the same campus are considered to be Category Two internal connections.

Network equipment with mixed eligibility – On-premises equipment that connects to a Category Two eligible LAN is eligible for Category One support if it is necessary to make a Category One broadband service functional. If the price for components that enable the LAN can be isolated from the price of the components that enable the Category One service, those costs should be cost-allocated out of the Category One funding request.

Miscellaneous

As described below, various miscellaneous services associated with Category One or Category Two are eligible for support. Applicants should request eligible miscellaneous services in the same category as the associated service being obtained or installed.

Fees

Fees and charges that are a necessary component of an eligible product or service are eligible, including:

- Change fees
- Contingency fees are eligible if they are reasonable and a regular business practice of the service provider. Contingency fees will be reimbursed only if the work is performed.
- Freight assurance fees
- Lease or rental fees on eligible equipment
- Per diem and/or travel time costs are eligible only if a contract with a vendor for the eligible product or services specifically provides for these costs
- Shipping charges
- Taxes, surcharges, and other similar, reasonable charges incurred in obtaining an eligible product or service are eligible. These types of charges include customer charges for universal service fees, but do not include additional charges for universal service administration.

Installation, Activation, and Initial Configuration

Installation, activation, and initial configuration of eligible components are eligible. These services may include:

- Design and engineering costs if these services are provided as an integral component of the installation of the relevant services
- Project management costs if these services are provided as an integral component of the installation of the relevant services
- On-site training is eligible as a part of installation services but only if it is basic instruction on the use of eligible equipment, directly associated with equipment installation, and is part of the contract or agreement for the equipment. Training must occur coincidently or within a reasonable time after installation.

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

In re Applications of	)	
	)	
Liberty Communications, Inc.	)	Acct. No. 202341420036
	)	FRN: 0021232889
For Renewal of License of	)	Facility ID No. 37238
Station W36EX-D	)	LMS File Nos. 0000158106 and 0000216835
Alton, Illinois	)	
	)	
For Assignment of License of	)	
Station W36EX-D	)	
Alton, Illinois	)	

ORDER

Adopted: September 12, 2023 **Released: September 12, 2023**

By the Chief, Video Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Liberty Communications, Inc. (Licensee), licensee of Station W36EX-D, Alton, Illinois (Station). The Consent Decree resolves an investigation arising from the Bureau's review of the captioned license renewal application[1] (Renewal Application) and application for assignment of license (Assignment Application).[2] In particular, the Consent Decree resolves the Bureau's investigation of Licensee's compliance with: (i) Section 73.3539(a) of the Commission's rules (Rules), which sets forth the deadline for filing a license renewal application;[3] (ii) Section 73.3526 of the Rules, which requires stations to maintain an online public inspection file and placing specific documents into that file at required intervals;[4] (iii) Section 73.3514(a) of the Rules, which requires Licensees to provide complete responses in applications;[5] and (iv) Section 1.65(a) of the Rules, which requires applicants maintain the accuracy of their applications during their pendency, and promptly provide updated or corrected information as necessary.[6]

2. Adoption of the attached Consent Decree permits action, subject to certain terms and conditions, on both the Station's Renewal Application and Assignment Application.

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[1] Application of Liberty Communications, Inc. for Renewal of License, LMS File No. 0000158106 (filed Aug. 30, 2021).

[2] As a result of the investigation, the Bureau's Video Division suspended processing of the Renewal Application and has been unable to act upon Licensee's pending application for assignment of authorization. *See, Stockholders of CBS Inc., (Transferor) and Westinghouse Electric Corporation (Transferee)*, Memorandum Opinion and Order, 11 FCC Rcd 3733, 3748, para. 31 (1995) ("Generally, where there are pending both a transfer/assignment application and a renewal application involving the same broadcast station, the Commission refrains from acting on the transfer/assignment application commencing on the date the station's renewal application must be filed.").

[3] 47 CFR § 73.3539(a).

[4] 47 CFR § 73.3526.

[5] 47 CFR § 73.3514(a).

[6] 47 CFR § 1.65(a).

3. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated sections 73.3539(a), 73.3526, 73.3514(a), and 1.65(a) of the Rules. Pursuant to the Consent Decree, Licensee agrees to, among other things, make a civil penalty payment to the United States Treasury in the amount of Ninety Seven Thousand Dollars ($97,000) within 15 days of closing of the transaction contemplated in the Assignment Application.

4. 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. Based on the record before us, we also conclude that grant of the Assignment Application is in the public interest pursuant to section 310(d) of the Act[7] and grant of the Renewal Application is consistent with section 309(k)(2) of the Act.[8] In accordance with the Consent Decree, we grant the Assignment Application and Renewal Application conditioned upon satisfaction of the Civil Penalty and all other terms set forth in the Consent Decree. A copy of the Consent Decree is attached hereto and incorporated by reference.

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended,[9] and by the authority delegated by sections 0.61 and 0.283 of the Rules,[10] 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, pursuant to section 309(k)(2) of the Communications Act of 1934, as amended,[11] the application of Liberty Communications, Inc. for renewal of license for Station W36EX-D, Alton, Illinois (LMS File No. 0000158106) **IS GRANTED**, as conditioned herein.

8. **IT IS FURTHER ORDERED** that, pursuant to section 310(d) of the Communications Act of 1934, as amended,[12] the application for assignment of authorization (LMS File No. 0000216835) IS **GRANTED**, as conditioned herein.

9. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Licensee at Fred Church, Liberty Communications, Inc., PO Box 1044, Alton, Il 62002 and by electronic mail to fredchurch37@gmail.com and assignee at Bridge News LLC, 38955 Hills Tech Dr., Farmington Hills, MI 48331 and by electronic mail to vince.bodiford@newsmakersmedia.com. Copies shall also be sent to Licensee's counsel, Joseph Chautin,

[7] 47 U.S.C. § 310(d).

[8] 47 U.S.C. §309(k)(2) (permitting the Commission to grant a renewal application that does not comply with the requirements of 47 U.S.C. § 309(k)(1) "on terms and conditions that are appropriate….").

[9] 47 U.S.C. §§ 154(i), 154(j), 503(b).

[10] 47 CFR §§ 0.61, 0.283.

[11] 47 USC § 309(k)(2).

[12] 47 U.S.C. § 310(d).

Esq. by electronic mail to jchautin@hardycarey.com and assignee's counsel Dan J. Alpert, Esq. by electronic mail to dja@commlaw.tv.

FEDERAL COMMUNICATIONS COMMISSION

Barbara Kreisman
Chief, Video Division
Media Bureau

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

In re Application of	)	
	)	
Liberty Communications, Inc.	)	FRN: 0021232889
	)	Acct. No. 202341420036
For Renewal of License for	)	Facility ID No. 37238
Station W36EX-D	)	LMS File Nos. 0000158106 and 0000216835
Alton, Illinois	)	
	)	
For Assignment of License of	)	
Station W36EX-D	)	
Alton, Illinois	)	

CONSENT DECREE

Adopted: September 12, 2023 **Released: September 12, 2023**

I. Introduction

1. The Media Bureau of the Federal Communications Commission and Liberty Communications, Inc. by their authorized representatives, hereby enter into this Consent Decree for the purposes of (i) terminating the Media Bureau's investigation into the Licensee's compliance with sections 73.3539(a), 73.3526, 73.3514(a), and 1.65(a) of the Commission's rules[1] and (ii) acting on Licensee's above captioned pending applications for renewal of license and assignment subject to the terms and conditions set forth below, including payment of the civil penalty in the amount of Ninety Seven Thousand dollars ($97,000).

II. 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) "Assignment Application" means application of Liberty Communications, Inc., for assignment of authorization for station W36EX-D, Application File No. 0000216835.

(d) "Bureau" means the Media Bureau of the Commission.

(e) "Closing Date" means the date the transaction contemplated in the application of Liberty communications, Inc. for assignment of authorization for station W36EX-D, LMS File No. 0000216835, is consummated. See 47 CFR § 1.948 (Assignment of authorization or transfer of control, notification of consummation).

(f) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices.

(g) "Communications Laws" means collectively, the Act, the Rules, and the published

[1] 47 CFR §§ 73.3527, 73.3539(a), 73.3514(a), 1.65(a).

and promulgated orders and decisions of the Commission to which the Licensee is subject by virtue of it being Commission licensee.

(h) "Disclosure Rule" means 47 CFR § 1.65(a).

(i) "Effective Date" means the date on which the Bureau releases the Adopting Order.

(j) "Filing Deadline Rule" means 47 CFR § 73.3539(a).

(k) "Information Rule" means 47 CFR § 73.3514(a).

(l) "Investigation" means the inquiry into whether Licensee violated one or more of the Communications Laws, specifically 47 CFR §§ 73.3539(a), 73.3526, 73.3514(a), and 1.65(a) of the Rules.

(m) "Licensee" means Liberty Communications, Inc., and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

(n) "Online Public Inspection File Rule" means 47 CFR § 73.3526.

(o) "Parties" means the Licensee and the Bureau, each of which is a "Party."

(p) "Renewal Application" means application of Liberty Communications, Inc., for renewal of the Class A television broadcast license for station W36EX-D, Application File No. 0000158106.

(q) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

(r) "Station" means station W36EX-D, Alton, Illinois, facility ID 37238.

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."[2] 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 August 30, 2021, nearly a month late.

4. Section 73.3514(a) of the Rules provides that "[e]ach application shall include all information called for by the particular form on which the application is required to be filed ...."[3] In its Renewal Application, the Licensee certified "Yes" to the question asking whether "there have been no violations by the licensee of the Communications Act of 1934, as amended, or the rules or regulations of the Commission during the preceding license term." Licensee also certified "yes" to the statement that "the documentation, required by 47 C.F.R. Section 73.3526...has been uploaded to the station's public inspection file when required." Furthermore, Section 1.65(a) of the Rules requires every applicant to maintain the accuracy and completeness of a pending application and absent good cause, amend such applications within 30-days.[4] The Licensee failed to not only fully disclose that it did not properly place all of its required documents into the Station's online public inspection file in a timely manner, but it also failed to maintain the accuracy of its application by asserting that it would maintain a complete online

[2] 47 CFR § 73.3539(a).

[3] 47 CFR § 73.3514(a).

[4] 47 CFR § 1.65(a).

public inspection file moving forward, but then failed to amend its Renewal Application to report violations that subsequently occurred.[5]

5. Section 73.3526 requires Class A television 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.[6] This includes among other requirements, the requirement that quarterly issues and programs lists, records concerning commercial limits, children's television programming reports, and material relating to FCC investigations 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.

6. During the course of the Investigation we have determined that the Licensee failed to timely place in its online public inspection file copies of 28 issues and programs lists,[7] all its records concerning commercial limits,[8] 23 children's television programming reports,[9] and copies of documents related to prior rule violations.[10] Based on the Licensee's failure to comply with the Filing Deadline Rule, the Online Public Inspection File Rule, Disclosure Rule, and Information Rule the Bureau commenced the Investigation and suspended processing the Renewal Application.

7. On June 16, 2023, Licensee filed an Assignment Application seeking authority to assign the stations license to an unrelated third party, Bridge News LLC. The Assignment Application was placed on public notice on June 22, 2023. No petition in opposition to the Assignment Application have been received by the Commission. As a result of the Investigation and pending Renewal Application the Assignment Application remains pending.[11]

8. The Bureau and Licensee have negotiated the terms of the Consent Decree, subject to specific terms and conditions, that terminates the Investigation into the matters discussed above, grants the Renewal Application, and grants the Assignment Application. Notably, as part of the Consent Decree the Licensee has agreed to pay a civil penalty in the amount of Ninety Seven Thousand dollars ($97,000)

[5] After initial conversations with Station's counsel explaining the OPIF deficiencies, Station amended its renewal application on February 28, 2022. Application of Liberty Communications, Inc. for Renewal of License Amendment, LMS File No. 0000158106 (filed Feb. 28, 2022). In the included exhibit, the Station stated: "From today forward, a system has been established, including a compliance calendar, to assure in the future that all required reporting is submitted as and when required." *Id.* at Revised Submission on Reporting Compliance. Despite this commitment, in August 2022 further review by Bureau staff revealed continued OPIF violations.

[6] 47 CFR § 73.3526.

[7] 47 CFR § 73.3526(e)(11)(i).

[8] 47 CFR § 73.3526(e)(11)(ii). Effective January 21, 2020, this rule was amended to require annual reporting of certifications of compliance with the Commission's commercial limits for children's programming, rather than quarterly compliance reporting. *See Media Bureau Announces KidVid Rules Effective Date & Related Guidance*, Public Notice, MB Docket No. 18-202, 34 FCC Rcd 12517 (2019) (*KidVid Public Notice*).

[9] 47 CFR § 73.3526(e)(11)(iii). Effective January 21, 2020, this rule was amended to require annual reporting of children's television programming, rather than quarterly reporting. *See KidVid Public Notice*.

[10] 47 CFR § 73.3526(e)(10). The Station failed to place into its public file or disclose the Forfeiture Order issued on April 25, 2014, which was following grant of its most recent license renewal. *Liberty Communications, Inc.*, Forfeiture Order, 29 FCC Rcd 4077 (2014).

[11] With limited exception, it is Commission policy to not grant an assignment application while a Station's license renewal application is pending. *See, Stockholders of CBS Inc., (Transferor) and Westinghouse Electric Corporation (Transferee)*, Memorandum Opinion and Order, 11 FCC Rcd 3733, 3748, para. 31 (1995) ("Generally, where there are pending both a transfer/assignment application and a renewal application involving the same broadcast station, the Commission refrains from acting on the transfer/assignment application commencing on the date the station's renewal application must be filed.").

to the U.S. Treasury within 15 days of the Closing Date of the transaction proposed in the Assignment Application.

III. TERMS OF AGREEMENT

9. **Adopting Order**. The Parties agree that the provisions of this Consent Decree shall be incorporated by reference in an Adopting Order without change, addition, deletion, or modification.

10. **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.

11. **Effective Date**. The Parties agree that this Consent Decree shall become effective on the Effective Date, as defined herein. 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.

12. **Violations**. The Parties agree that any violation of the Adopting Order or the terms of this Consent Decree, in whole or in part, shall constitute a separate violation of a Commission order, entitling the Commission, or its delegated authority to exercise any rights and remedies attendant to the enforcement of a Commission order.

13. **Admission of Liability**. The Licensee admits, for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of Paragraph 14 herein, that its actions described in Paragraphs 3 to 7 above were violations of the Rules. By entering into this Consent Decree, the Licensee makes no other admission of liability of any Communications Law, and the Bureau makes no finding of any other liability or violation.

14. **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 and to take the actions specified herein, including the actions specified in Paragraphs 20 and 21. In consideration for the termination of the Investigation, Licensee agrees to the terms, conditions, and procedures contained herein, including the actions specified in paragraph 18.

15. The Bureau further 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.[12]

16. **Subsequent Investigations**. This Consent Decree shall not prevent the Commission or its delegated authority from investigating new evidence of noncompliance by Licensee with the Rules or Act or from adjudicating complaints or other adjudicatory pleadings filed by third parties against the Licensee for alleged violations of the Communications Laws or for any alleged misconduct, regardless of when such misconduct took place. Further, except as expressly provided herein, Licensee acknowledges that the Commission and its delegated authority (including 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 Rules or Act. The Commission's adjudication of any complaints or potential will be based solely on the record developed in subsequent proceedings.

17. **Admission of Liability**. The Licensee admits that it violated sections 73.3539(a), 73.3526, 73.3514(a), and 1.65(a) of the Rules, as described in paragraphs 3 to 7 of this Consent Decree.

[12] *See* 47 CFR § 1.93(b).

By entering into this Consent Decree, the Licensee makes no other admission of liability of the Act or Rules, and the Bureau makes no finding of any other liability or violation.

18. **Civil Penalty.** Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of Ninety Seven Thousand dollars ($97,000). **Licensee agrees that the civil penalty will be paid within fifteen (15) business days of the Closing Date.** It also 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.[13] Licensee will send electronic notification of payment to Andrew Manley at Andrew.Manley@fcc.gov on the date said payment is made. 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),[14] or by wire transfer. Payments by check or money order are no longer accepted. Below are instructions that Licensee should follow based on the form of payment selected:[15]

- 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 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).[16] 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

[13] Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

[14] Payments made using CORES do not require the submission of an FCC Form 159.

[15] 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.

[16] Instructions for completing the form may be obtained at https://www.fcc.gov/Forms/Form159/159.pdf.

financial institution that the designated account has authorization to accept ACH transactions.

19. **Event of Default**. The Parties agree that an Event of Default shall occur upon the failure by Licensee to pay the full amount of the Civil Penalty on or before the due date specified in Paragraph 18. After an Event of Default has occurred under this Consent Decree, the unpaid amount of the Civil Penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Licensee.

20. **Grant of Assignment Applications**. In the Adopting Order, the Bureau has determined that grant of the Assignment Application is in the public interest, convenience, and necessity, and consistent with section 310(d) of the Rules. The Bureau agrees to grant the Assignment Application concurrent with adoption of this Consent Decree and grant of the Renewal Application. The Licensee agrees to consummate the Assignment Application within 45 days of the Effective Date. Upon consummation of the transaction proposed in the Assignment Application, Licensee agrees to notify the Commission that consummation has occurred by filing a "Notice of Consummation" in the Commission's Licensing Management System (LMS) within two (2) business days. The assignment authorization will be conditioned on compliance with all the terms and conditions of this Consent Decree.

21. **Grant of Renewal Application**. In the Adopting Order, the Bureau has determined that grant of the Renewal Application is in the public interest, convenience, and necessity, and consistent with section 309(k)(2) of the Act. The Bureau agrees to grant the Renewal Application concurrent with adoption of this Consent Decree and grant of the Assignment Application. The license renewal authorization will be conditioned on compliance with all the terms and conditions of this Consent Decree.

22. **Waivers**. As of the Effective Date, 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. 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 Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act[17] relating to the matters addressed in this Consent Decree.

23. **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.

24. **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.

25. **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. A conflict will be considered to have arisen in the event that Licensee is unable to comply with both the terms and conditions of the Consent

[17] *See* 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

Decree and the Communications Laws, and compliance with the Consent Decree would result in a violation of the Communications Laws.

26. **Successors and Assigns**. The Licensee agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

27. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

28. **Modifications**. This Consent Decree cannot be modified without the advance written consent of both Parties.

29. **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.

30. **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.

31. **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.

_____
Barbara Kreisman
Chief, Video Division
Media Bureau

_____
Date

_____
Fred Church
Liberty Communications, Inc.

_____
Date

September 6, 2023

Virgin Islands Next Generation Network, Inc. (VINGN)
9015 Havensight Mall Ste 7
St Thomas, VI 00802

Mr. Stephan Adams, sadams@vingn.com

Re: Petition for Reconsideration of Affordable Connectivity Outreach Grant Program Final Eligibility Determination and Request for Waiver (Award Number: ACOGP2340006-00)

Dear Mr. Adams:

We have before us a letter dated August 18, 2023, from Virgin Islands Next Generation Network, Inc. (VINGN)[1] seeking reconsideration of the Affordable Connectivity Outreach Grant Program final eligibility determination that was issued by the Consumer and Governmental Affairs Bureau on August 15, 2023.[2] VINGN's submission additionally requests a waiver of the Commission's rule rendering "contractors of broadband providers" ineligible for the grant program.[3] For the reasons discussed below we deny the Petition for Reconsideration and grant the waiver request.

I. BACKGROUND

VINGN submitted a grant application under the Federal Communications Commission's (FCC) Affordable Connectivity Outreach Grant Program-National Competitive Outreach Program (NCOP). Based on that application, VINGN was selected to receive a federal grant in the amount of $250,000 and a Notice of Award was issued on April 13, 2023. On June 21, 2023, the Bureau sent a letter requesting additional information from VINGN to confirm eligibility status.[4] Pursuant to that request, on July 29, 2023, VINGN submitted additional information to the Bureau.[5] Based on the information received, on August 15, 2023, the Bureau issued an eligibility determination concluding that VINGN is considered a "contractor of broadband

[1] Letter from Stephan Adams, President and CEO, VINGN, Inc. to Miriam Montgomery, Grants Management Policy Advisor, FCC Consumer and Governmental Affairs Bureau (Aug. 18, 2023) (VINGN Aug. 18 Letter).
[2] Letter from Miriam Montgomery, Grants Management Policy Advisor, FCC Consumer Governmental Affairs Bureau to Stephan Adams, President and CEO, VINGN, Inc. (Aug. 15, 2023) (FCC Aug. 15 Letter).
[3] VINGN Aug. 18 Letter; *see also* 47 CFR § 54.1903 (providing that broadband providers and their contractors, among other entities, "may not receive awards, either as Grantees, Pass-through Entities, or Subrecipients under the Outreach Grant Program").
[4] Letter from Miriam Montgomery, Grants Management Policy Advisor, FCC Consumer Governmental Affairs Bureau to Stephan Adams, President and CEO, VINGN, Inc. (June 21, 2023).
[5] Letter from Stephan Adams, President and CEO, VINGN, Inc. to Miriam Montgomery, Grants Management Policy Advisor, FCC Consumer and Governmental Affairs Bureau (July 29, 2023) (VINGN June 29 Letter).

providers" and therefore ineligible to participate in the ACP Outreach Grant Program pursuant to the requirements of section 54.1903 of the Commission's rules.[6]

On August 18, 2023, VINGN submitted a "Petition for Reconsideration," stating that it disagreed "with the final eligibility determination as it would disadvantage the USVI and be contrary to the spirit and intent of the ACP's mission."[7] In addition, VINGN requested "a waiver of program rules regarding 'contractors' based on unique circumstances applicable to the U.S. Virgin Islands."[8] In support of its waiver request, VINGN explained the following:

1. VINGN states that its "main objective, with approval from the Governor of the USVI, is to ensure that the citizens of the U.S. Virgin Islands can continue to be made aware of and to benefit from the ACP." According to VINGN, "[a]lthough VINGN appears to meet the definition of a contractor as outlined in the FCC rules, as an instrumentality of the Government of the USVI, VINGN is an anomaly and is NOT technically a contractor." VINGN explains that it is "an extension of the government providing services bound by legislation to provide" and that its "legislative mandate as an open access carrier is to provide middle mile wholesale broadband services to ALL Internet Service Providers (ISPs) in an open and neutral manner." VINGN further states that for "administrative purposes," it manages its services through contracts, but emphasizes that VINGN "provides the same service to all ISPs" and is "not an agent of ISPs" nor is it affiliated with any ISP.[9]

2. VINGN further points to the *Second Report and Order* and NOFO's focus on "geographic considerations," the limited applicant pool in the U.S. Virgin Islands, and the fact that there are "serious doubts" that there is another U.S. Virgin Islands entity, including its partners the Department of Human Services and the Virgin Islands Housing Authority, that could "assume the leading role of a grantee and execute the expected and approved activities, with minimal scope and budget amendments."[10]

3. VINGN maintains that "[c]onsistent with the FCC mandate to ensure each State and U.S. Territory funding minimums are met to remain compliant with the ACP Grant Program Second Report and Order, if the grant award does not have a viable Administrator, then the

[6] 47 CFR § 54.1903(a) (making ineligible broadband providers and their contractors, among others, to receive awards under the Affordable Connectivity Outreach Grant Program); *see also* FCC Aug. 15 Letter. The FCC Aug. 15 Letter explained that the ineligibility criteria not only covers "broadband providers" but also their "contractors," among other entities, and that while the term "contractor" is not defined in the FCC's ACP rules or order, the NOFO defines "contractor" very broadly to cover "any entity that has a mutually binding agreement with a broadband provider to provide goods or services to or on behalf of a broadband provider." *Id.* (*citing* FCC, *Affordable Connectivity Outreach Grant Program,* Funding Opportunity No. FCC-ACOGP-23-001, Notice of Funding Opportunity at 11 & note 7 (Nov. 10. 2022) ("NOFO")). Because the submitted materials showed that VINGN provides wholesale broadband middle mile service to Internet Service Providers in the U.S. Virgin Islands through agreements with broadband providers, the Bureau found that the "ineligible entities" rule contained in section 54.1903(a) applied. *See* FCC Aug. 15 Letter.
[7] VINGN Aug. 18 Letter.
[8] *Id.*
[9] *Id*.
[10] *Id*. VINGN claims that "recent public testimonies, before the local Legislature," by the Department of Human Services and the Virgin Islands Housing Authority indicate that these partners "are challenged and stretched for resources [ ] to meet their statutory programs current goals and objectives." *Id.*

USVI will not meet the established funding minimum to ensure ACP outreach and application enrollment assistance funding is as geographically distributed as possible." VINGN further claims that "there is an urgent need for financial resources, complete with the backing of the FCC, to adequately promote the ACP in the territory to benefit its residents," and without another entity able or willing to assume responsibility for the ACP, the residents of the USVI will be unfairly penalized." VINGN also explained that it "administers NTIA's Digital Equity (DE) grant in the territory," which has provided "valuable information beneficial to the successful implementation of the ACP as DE dovetails with the ACP, and they target similar covered populations."[11]

II. DISCUSSION

We deny the Petition for Reconsideration. VINGN has failed to identify any error in the Bureau's August 15, 2023 eligibility determination. As we explained in that decision, evidence shows that VINGN meets the definition of a "contractor" of a broadband provider and, therefore, is ineligible to participate in the ACP Outreach Grant Program under Commission rules.[12] VINGN does not dispute that fact and, indeed, concedes that it "appears to meet the definition of a contractor as outlined in the FCC rules."[13] Thus, VINGN has provided no basis to grant its Petition for Reconsideration.

We will, however, grant VINGN's request for waiver of section 54.1903 of the Commission's rules. The Commission's rules may be waived only for good cause shown.[14] An applicant seeking a rule waiver has the burden to plead with particularity the facts and circumstances that warrant such action.[15] The Commission must give waiver requests "a hard look," but a petitioner for waiver "faces a high hurdle even at the starting gate."[16] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[17] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[18] However,

[11] *Id.*
[12] FCC Aug. 15 Letter; 47 CFR § 54.1903(a). Based on information contained in the VINGN June 29 Letter, we find that VINGN's provision of middle mile wholesale broadband services to ISPs does not render it a "broadband provider" within the meaning of the grant program's definition. For purposes of the ACP grant program, the *Second Report and Order* defines "broadband provider" by reference to the definition found in 47 CFR § 54.1800(d), which defines "broadband provider" as "a provider of broadband internet access service." *See Affordable Connectivity Program,* Second Report and Order, WC Docket No. 21-450, FCC 22-64 at note 150 (2022) ("*Second Report and Order*"); 47 CFR § 54.1800(d) (defining "broadband provider"). The term "broadband internet access service" is defined in section 54.1800(c), which, in turn, refers to 47 CFR § 8.1(b), and which defines that term as a "mass-market retail service" that "provides the capability to transmit data to and receive data from all or substantially all internet endpoints . . . ." 47 CFR §§ 8.1(b), 54.1800(c). Accordingly, in providing middle mile wholesale broadband services to ISPs, VINGN is not engaged in a "mass-market retail service" and, therefore, is not considered a "broadband provider" for purposes of the grant program's "ineligible entities" rule.
[13] VINGN Aug. 18 Letter.
[14] 47 CFR § 1.3.
[15] *See Columbia Communications Corp. v. FCC,* 832 F.2d 189, 192 (D.C. Cir. 1987) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC,* 406 F.2d 644, 666 (D.C. Cir. 1968)).
[16] *See WAIT Radio v. FCC,* 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd,* 459 459 F.2d 1203 (1972), *cert. denied,* 93 S.Ct. 461 (1972) (*WAIT Radio*).
[17] *Northeast Cellular Telephone Co. v. FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).
[18] *WAIT Radio,* 418 F.2d at 1159.

waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.[19]

We find that VINGN's request presents good cause for waiver of section 54.1903 by demonstrating unique "special" circumstances and that a waiver will serve the public interest. First, the evidence provided by VINGN shows that waiving the rule under these special circumstances will not undermine the purpose of the "ineligible entities" rule, i.e., to promote the integrity of the grant program.[20] VINGN explained that although it may meet the definition of "contractor" under FCC rules, it is an "instrumentality of the Government of the USVI, a public corporation, and a wholly owned subsidiary of the Virgin Islands Public Finance Authority formed to provide middle mile service in the U.S. Virgin Islands" and is bound to provide such services pursuant to legislation.[21] VINGN stated that although it manages its services "through contracts," it does so only for "administrative purposes" and that it "provides the same service to all ISPs" "in an open and neutral manner," which it is required to do by legislative mandate.[22] Accordingly, as an instrumentality of the government of the U.S. Virgin Islands, VINGN does not present the same conflict of interest concerns that a private contractor, for instance, would by possibly favoring a broadband provider with which it has contracted. Thus, although as a contractor, VINGN would not be eligible for the grant, because of its special circumstances, granting a waiver here does not undermine the concerns that prompted the Commission to adopt the "ineligible entities" rule.

Second, granting a waiver under these circumstances will serve the public interest. As the Commission explained, the "Affordable Connectivity Program plays an integral role in helping to bridge the digital divide, which is an ongoing top priority for Congress and the Commission."[23] The Commission has further "recognized that to achieve the program's full potential and reach as many eligible households as possible, households must be clearly informed of the program's existence, benefits, and eligibility qualifications, and how to apply."[24] Thus, through the Outreach Grant Program, the Commission seeks to enlist partners around the country to help inform ACP-eligible households about the program in their local communities, and to provide those partners with the funding and resources needed to increase participation among those citizens most in need of affordable connectivity.[25] Granting a waiver here will promote these goals and objectives of the grant program. Specifically, VINGN explained that its "main objective, with approval from the Governor of the USVI, is to ensure that the citizens of the U.S. Virgin Islands can continue to be made aware of and to benefit from the ACP," and that it has prior experience that will help reach the targeted households.[26] Moreover, there is a limited applicant pool in the U.S. Virgin Islands and waiver here would help to fulfill the Commission's goal of ensuring that ACP outreach and application enrollment assistance funding is as geographically distributed as possible,[27] including to ensure adequate funding to help

[19] *Northeast Cellular,* 897 F.2d at 1166.
[20] *See Second Report and Order* at para. 40.
[21] VINGN Aug. 18 Letter at 1; *see also id.* Attach. Articles of Incorporation of VINGN, Inc. (Oct. 8, 2010), at 1.
[22] *Id.*
[23] *See Second Report and Order* at para. 2.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *See* NOFO at 28-29; *Second Report and Order* at paras. 46, 56.

promote the ACP in the U.S. Virgin Islands. Thus, granting the waiver to allow VINGN to receive an FCC grant to conduct ACP outreach in the U.S. Virgin Islands is in the public interest.

In granting this waiver request, we remind VINGN that as a grantee, it must remain neutral with respect to participating providers and it is prohibited from favoring any particular service provider in performing outreach activities funded by this Outreach Grant Program[28] or from using Outreach Grant Program dollars in a manner intended to specifically increase a particular provider's program enrollment.[29] Specifically, as required under Commission rules, VINGN is prohibited from directing, steering, incentivizing or otherwise encouraging eligible households to enroll with a particular ACP provider when conducting grant-funded outreach activities, and must make clear that eligible households may enroll with the ACP provider of their choice.[30] In addition, when conducting grant-funded outreach activities, VINGN is prohibited from using service provider-branded items such as outreach materials, gifts, or incentives;[31] from offering or providing consumers gifts or incentives provided by service providers;[32] and from otherwise accepting funding in any form, including in-kind contributions, from a participating provider for the purpose of conducting grant-funded outreach activities.[33]

Accordingly, under these restrictions and pursuant to the requirements set forth in the Commission's rules, the Bureau grants VINGN's request for waiver and allows VINGN to continue participating in the ACP Outreach Grant Program as a grant recipient under Award Number ACOGP2340006-00. The Bureau will remove funding holds that were in place while VINGN's eligibility was being considered.

III. ORDERING CLAUSES

IT IS ORDERED that the Petition for Reconsideration filed by Virgin Islands Next Generation Network, Inc. on August 18, 2023, **IS DENIED.**

IT IS FURTHER ORDERED that the Request for Waiver filed by Virgin Islands Next Generation Network, Inc. on August 18, 2023, **IS GRANTED** to the extent discussed herein and is otherwise denied**.**

Sincerely,

Miriam Montgomery

Miriam Montgomery
Grants Management Policy Advisor
Consumer and Governmental Affairs Bureau

[28] 47 CFR §§ 54.1901 (Neutrality requirement); 54.1902(a) (Prohibition against steering consumers to particular participating providers).
[29] *Second Report and Order* at para. 28.
[30] 47 CFR § 54.1902(a).
[31] 47 CFR § 54.1902(b); *see also Second Report and Order* at para. 29.
[32] 47 CFR § 54.1902(c)(1).
[33] 47 CFR § 54.1902(c)(2).

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

In re Application of	)	NAL/Acct. No. MB-202341410020
	)	
Fiorini Broadcasting, LLC	)	FRN: 0024634990
	)	
for Consent to Transfer of Control of Stations WENG(AM), Englewood, Florida, W251CU, Port Charlotte, Florida, W283DB, Arcadia, Florida, WCXS(AM), Arcadia, Florida, and W298AV, Nokomis, Florida	)	Facility ID Nos. 47073, 200625, 200624, 72688, and 140474
	)	
	)	Application File No. 0000203650 et al.
from	)	
	)	
Susan Whipple (Transferor)	)	
Melissa C. Selleke, Trustee of the The Mary Jean Fiorini Trust (Transferor)	)	
	)	
to	)	
	)	
Joseph E. Fiorini (Transferee)	)	
Dennis G. Fiorini (Transferee)	)	
Susan M. Sherman (Transferee)	)	
Diane M. Paonessa (Transferee)	)	
Melissa C. Selleke (Transferee)	)	

ORDER

Adopted: September 15, 2023 **Released: September 15, 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 Fiorini Broadcasting, LLC (Licensee), licensee of stations WENG(AM), Englewood, Florida; W251CU, Port Charlotte, Florida; W283DB, Arcadia, Florida; WCXS(AM), Arcadia, Florida; and W298AV, Nokomis, Florida (Stations). The Consent Decree resolves issues arising from the Bureau's review of the captioned application (Voluntary Transfer Application).[1]

2. In the course of processing the Voluntary Transfer Application, the Bureau staff found the application revealed that Joseph E. Fiorini acquired a controlling interest in the Licensee without prior Commission authorization. The Consent Decree resolves the Bureau's investigation of the unauthorized transfer of control.

3. Pursuant to the terms of the Consent Decree, Licensee stipulates that it violated section 310(d) of the Communications Act of 1934, as amended (the Act),[2] and section 73.3540 of the

[1] Application File No. 0000203650 et al. *See Broadcast Applications*, Public Notice, Report No. PN-1-221118-01, at 1, 3-4 (MB Nov. 18, 2022).

[2] 47 U.S.C. § 310(d).

Commission's rules (Rules).[3] The Consent Decree requires, among other things, that Licensee make an eight thousand dollar ($8,000) civil penalty payment to the United States Treasury. A copy of the Consent Decree is attached hereto and incorporated by reference.

4. 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 investigation of potential violations of the Rules and the Act in connection with the Voluntary Transfer Application.

5. Based on the record before us, we conclude that nothing in the record creates a substantial and material question of fact as to whether the Licensee possesses the basic qualifications to be a Commission licensee.

6. ACCORDINGLY, IT IS ORDERED that, pursuant to section 4(i) of the Act,[4] and by the authority delegated by sections 0.61 and 0.283 of the Rules,[5] the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

7. IT IS FURTHER ORDERED that the investigation by the Bureau of the matters noted above IS TERMINATED.

8. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Fiorini Broadcasting, LLC, and to its counsel, Reid Avett, Esq., 2001 K Street, NW, Suite 400, Washington, D.C. 20006.

9. IT IS FURTHER ORDERED that pursuant to section 73.3526(e)(10) of the Rules,[6] a copy of this Order and Consent Decree and as otherwise required all related investigatory materials SHALL BE RETAINED in the above-captioned Stations' online public inspection file until grant of the next license renewal application.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[3] 47 CFR § 73.3540.

[4] 47 U.S.C. § 4(i).

[5] 47 CFR §§ 0.61, 0.283.

[6] *Id.* § 73.3526(e)(10).

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

In re Application of	)	NAL/Acct. No. MB-202341410020
	)	
Fiorini Broadcasting, LLC	)	FRN: 0024634990
	)	
for Consent to Transfer of Control of	)	Facility ID Nos. 47073, 200625, 200624,
WENG(AM), Englewood, Florida	)	72688, and 140474
W251CU, Port Charlotte, Florida	)	
W283DB, Arcadia, Florida	)	Application File No. 0000203650 et al.
WCXS(AM), Arcadia, Florida	)	
W298AV, Nokomis, Florida	)	
	)	
from	)	
	)	
Susan Whipple (Transferor)	)	
Melissa C. Selleke, Trustee of the The Mary Jean	)	
Fiorini Trust (Transferor)	)	
	)	
to	)	
	)	
Joseph E. Fiorini (Transferee)	)	
Dennis G. Fiorini (Transferee)	)	
Susan M. Sherman (Transferee)	)	
Diane M. Paonessa (Transferee)	)	
Melissa C. Selleke (Transferee)	)	

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between the Media Bureau (Bureau) of the Federal Communications Commission and Fiorini Broadcasting, LLC, licensee of the above-captioned stations, for the purpose of terminating the Bureau's investigation concerning compliance with section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), and section 73.3540 of the Commission's rules, 47 CFR § 73.3540.

II. DEFINITIONS

2. For 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 the order of the Bureau adopting this Consent Decree;

(c) "Bureau" means the Media Bureau of the Federal Communications Commission;

(d) "Civil Penalty" means the payment Licensee has agreed to pay to the United States Treasury;

(e) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices;

(f) "Effective Date" means the date on which the Bureau releases the Adopting Order;

(g) "Investigation" means the Bureau's investigation of information contained in the Voluntary Transfer Application, as detailed herein;

(h) "Licensee" means Fiorini Broadcasting, LLC, licensee of stations WENG(AM), Englewood, Florida; W251CU, Port Charlotte, Florida; W283DB, Arcadia, Florida; WCXS(AM), Arcadia, Florida; and W298AV, Nokomis, Florida, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest;

(i) "Mr. Fiorini" means Joseph E. Fiorini;

(j) "Ms. Selleke" means Melissa C. Selleke;

(k) "Ms. Whipple" means Susan Whipple (formerly Susan Fiorini);

(l) "Parties" means the Licensee and the Bureau;

(m) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations;

(n) "Violations" mean the violations of the Voluntary Transfer of Control Rule and section 310(d) of the Act;

(o) "Voluntary Transfer Application" means the FCC Form 2100, Schedule 315 application for consent to the voluntary transfer of control, Application File No. 0000203650 et al.; and

(p) "Voluntary Transfer of Control Rule" means 47 CFR § 73.3540.

III. BACKGROUND

3. *Unauthorized Transfer of Control*. Section 310(d) of the Act, provides in pertinent part:

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.[7]

The Voluntary Transfer of Control Rule implements section 310(d) of the Act.[8] It is well-settled that "control" as used in the Act and the Voluntary Transfer of Control Rule encompasses all forms of control, actual or legal, direct or indirect, negative or affirmative, and that passage of *de facto* as well as *de jure* control requires the prior consent of the Commission.[9]

4. Mr. Fiorini and Ms. Whipple were each members of, and held a 40.5% voting and equity interest in, the Licensee.[10] On December 10, 2020, Mr. Fiorini acquired the 40.5% interest that Ms. Whipple held in the Licensee, and thus *de jure* control, without prior Commission consent.[11] On

[7] 47 U.S.C. § 310(d).

[8] 47 CFR § 73.3540. In particular, the Voluntary Transfer of Control Rule states, in pertinent part, that "[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control." *Id*. § 73.3540(a).

[9] *See, e.g., Stereo Broadcasters, Inc.*, 55 FCC 2d 819, 821 (1975) (citing *WWIZ, Inc.*, 36 FCC 561 (1964)), *modified*, 59 FCC 2d 1002 (1976).

[10] The remaining 19% voting and equity interest was held by Ms. Selleke as trustee of the Mary Jean Fiorini Trust.

[11] Voluntary Transfer Application Attach., Final Judgment.

November 16, 2022, the Licensee filed the Voluntary Transfer Application.[12] In the course of processing the Voluntary Transfer Application, the Bureau staff identified the unauthorized transfer of control discussed above.

5. Based on the foregoing, the Bureau commenced the Investigation and suspended processing of the Voluntary Transfer Application. The Parties acknowledge that any proceedings that might result from the Violations would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, resolve the matters, and promote compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

IV. TERMS OF AGREEMENT

6. **Adopting Order**. The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

7. **Jurisdiction**. Licensee agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations**. The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Licensee agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. Any violation of the Adopting Order or the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to enforcement of a Commission order.

9. **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 consideration for the termination of the Investigation, Licensee agrees to the terms, conditions, and procedures contained herein.

10. The Bureau further agrees that, in the absence of new material evidence, it will not use the Violations or the existence of this Consent Decree in any action against Licensee concerning the matters that were the subject of the Investigation, provided that the Licensee satisfies all of its obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

11. **Admission of Liability**. Licensee stipulates that its actions described in Paragraph 4 violated section 310(d) of the Act and the Voluntary Transfer of Control Rule.

12. **Civil Penalty**. Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of eight thousand dollars ($8,000), 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.[13]

13. **Payment**. Licensee will also send electronic notification of payment to Joseph Cohen at Joseph.Cohen@fcc.gov and Christopher Clark at Christopher.Clark@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House)

[12] *See Broadcast Applications*, Public Notice, Report No. PN-1-221118-01, at 1, 3-4 (MB Nov. 18, 2022).

[13] Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

debit from a bank account using CORES (the Commission's online payment system),[14] 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:[15]

- 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 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).[16] 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.

14. **Qualifications; Agreement to Grant**. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether the Licensee possesses the basic qualifications, including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Voluntary Transfer Application after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 12 of this Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Voluntary Transfer Application.

15. **Waivers**. Licensee agrees to waive any and all rights it may have to seek administrative

[14] Payments made using CORES do not require the submission of an FCC Form 159.

[15] 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.

[16] Instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition or modification. If any 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, no Party will contest the validity of the Consent Decree or Adopting Order, and Licensee will waive any statutory right to a *trial de novo*. Licensee further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[17] relating to the Consent Decree or Adopting Order.

16. **Severability**. The Parties agree that if a court of competent jurisdiction renders any of the provisions of this Consent Decree unenforceable, such unenforceability shall not render unenforceable the 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.

17. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

18. **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 Licensee does not expressly consent), such provision will be superseded by such Rule or order.

19. **Successors and Assigns**. Licensee agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

20. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

21. **Modifications**. This Consent Decree cannot be modified or amended without the advance written consent of all Parties.

22. **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.

23. **Authorized Representative**. Each Party represents and warrants to the other Party 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.

24. **Counterparts**. This Consent Decree may be signed in counterparts and/or electronically and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed electronically or by original signatures.

[17] 5 U.S.C. § 504; 47 CFR §§ 1.1501-.1530.

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner, Chief, Audio Division

Date: 9/14/2023

Fiorini Broadcasting, LLC

By: _____
Joseph E. Fiorini, President

Date: _____

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner, Chief, Audio Division

Date: _____

Fiorini Broadcasting, LLC

By: Joseph Fiorini
Joseph E. Fiorini, President

Date: Digitally signed by Joseph Fiorini Date: 2023.09.12 14:15:59 -04'00'

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 6414758
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: September 11, 2023 **Released: September 12, 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.[1] 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.[2] The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.[3] 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.[4] 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.[5]

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.[6] Under the rules, upon a finding of material misrepresentation during

[1] *See* Informal Complaint No. 6414758 (filed Aug. 22, 2023); *see also* 47 CFR §§ 64.1100 – 64.1190.

[2] 47 U.S.C. § 258(a).

[3] *See* 47 CFR § 64.1120.

[4] *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.

[5] 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.

[6] *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.[7] 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.[8]

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without her authorization.[9] In the complaint, Complainant states that a company called her parents "claiming to be with Verizon and wanted to save them money. They stated twice they were with Verizon, recorded my mom saying 'yes' and switched over their phone service to Clear Rate Communications Inc."[10] Complainant also explained that her parents received a bill from Clear Rate shortly after and discovered they were no longer with Verizon. Complainant states they were notified by Verizon that their phone service had been switched back.[11]

5. Pursuant to our rules, we notified Clear Rate of the complaint.[12] Clear Rate responded, stating that Complainant agreed to and authorized the carrier switch, and that the terms and conditions of service were described in detail for Complainant on the TPV call.[13] Clear Rate also provided two audio recordings—the TPV recording and a recording Clear Rate characterized as a "quality assurance call."[14] Clear Rate did not provide a recording of the sales call or any other evidence related to the sales call.

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 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."[15] We therefore find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service

[7] *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).

[8] *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*.

[9] *See* Informal Complaint No. 6414758.

[10] *Id.*

[11] *Id.*

[12] 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.

[13] *See* Clear Rate Response to Informal Complaint No. 6414758 (filed Aug. 25, 2023); *see also* 47 CFR § 64.1160.

[14] We note that on the "quality assurance call," the Clear Rate representative states that "you will not have any interruptions in your service. This is through a contract agreement between Verizon and Clear Rate. And Clear Rate will just provide the billing at a wholesale rate and manage your customer service needs in a more timely manner."

[15] *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.[16]

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.[17] 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.[18] 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.[19]

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

[16] 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.

[17] *See id.* § 64.1160(b).

[18] *See id.* § 64.1160(d).

[19] *See id.* § 64.1140, 64.1160.

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

In the Matter of	)	
	)	
CHOICE PHONE LLC	)	FCC File Nos. 0003383916,
	)	0005826211, 0007776954,
	)	0007809870, and 0009279479
Request for Waiver of Sections 1.946(d) and 27.14(e) and (g) of the Commission's Rules	)	

ORDER

Adopted: September 12, 2023 **Released: September 12, 2023**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. Choice Phone LLC d/b/a iConnect (Choice) and iConnect Acquisition Sub 1 LLC, a wholly-owned subsidiary of PTI Pacifica Inc. (PTI), request waiver of sections 1.946(d) and 27.14(g) of the Commission's rules and the license renewal substantial service requirements previously enumerated in section 27.14(e), in order to facilitate improved wireless coverage and service to the Commonwealth of the Northern Mariana Islands (CNMI).[1] The request concerns call sign WQIZ529 (license), in the 700 MHz Lower Band, Block B, Northern Mariana Islands, which was granted to Choice in 2008.[2] The license terminated automatically by rule in February 2019 due to Choice's failure to fulfill the Commission's construction requirements.[3] Based on the totality of the circumstances, the Wireless Telecommunications Bureau, Mobility Division (Division) concludes that it is in the public interest to grant certain relief in order to facilitate expanded near-term 4G service and eventual 5G service to the people of the CNMI. For the reasons stated below, we grant the waiver request in part, subject to the conditions detailed herein.

II. BACKGROUND

2. *The CNMI.* The CNMI is an unincorporated territory and commonwealth of the United States consisting of 14 islands in the northwestern Pacific Ocean.[4] According to the 2020 Census, the total population of the islands is approximately 47,329.[5] The islands are approximately 3,200 miles west

[1] Choice Phone, LLC d/b/a iConnect and iConnect Acquisition Sub 1 LLC, *FCC Application for Assignments of Authorization or Transfer of Control, Exhibit 2: Amendment*, ULS File No. 0009279479 (filed June 22, 2023) (Assignment Amendment).

[2] *See* Universal Licensing System (ULS), Call Sign WQ1Z529.

[3] *See id.*

[4] U.S. Central Intelligence Agency, *The World Factbook, Northern Mariana Islands*, https://www.cia.gov/the-world-factbook/countries/northern-mariana-islands/ (last visited May 3, 2023).

[5] Press Release, U.S. Census Bureau, *Census Bureau Releases 2020 Census Population and Housing Unit Counts for the Commonwealth of the Northern Mariana Islands*, Oct. 28, 2021, https://www.census.gov/newsroom/press-releases/2021/2020-census-cnmi.html.

of Hawaii, making them among the most remote territories of the United States.[6] The islands are vulnerable to extreme weather patterns such as tropical cyclones and typhoons.[7] When a typhoon hits the islands directly, transportation and logistical challenges complicate the recovery process for years.[8] In fact, the economy still suffers from the lingering effects of Super Typhoon Yutu, which in 2018 caused extensive damage to homes, businesses, and infrastructure, including the Saipan International Airport.[9]

3. In recent years, the CNMI has experienced economic decline—at one time, its economy relied on textile and apparel exports, but that industry is no longer viable.[10] Tourism, now the predominant industry, has been heavily impacted by the COVID-19 pandemic.[11]

4. While the state of digital connectivity has improved significantly in the CNMI in recent years, the percentage of households with a broadband internet subscription, at 84%, is below the national average of 90%.[12] Mobile coverage lags, particularly for 5G technology—while another wireless provider has established some 5G coverage to CNMI,[13] this coverage is limited to a small section of the largest island, Saipan.[14]

5. *Procedural History*. On June 26, 2008, the Commission granted Choice a license for call sign WQIZ529 for the 700 MHz Lower Band, Block B, CMA-734 Northern Mariana Islands. The relevant part 27 rule requires licensees to meet an interim construction requirement of 35% coverage and service to the geographic area by June 13, 2013[15] (later changed to June 13, 2016)[16] and 70% coverage and service by the end of the license term.[17] If a licensee does not satisfy the interim construction benchmark, its license term is reduced by two years, requiring it to meet the final construction benchmark two years sooner.[18]

6. On June 19, 2013, Choice filed an interim construction notification with the Commission.[19] On July 30, 2016, the Division notified Choice that the interim notification was insufficient to demonstrate compliance with the construction requirements, and asked it to amend the

[6] National Oceanic and Atmospheric Administration, Coral Reef Information System, *Commonwealth of the Northern Mariana Islands (CNMI)*, https://www.coris.noaa.gov/portals/cnmi.html (last visited June 27, 2023).

[7] Assignment Amendment at 6-7.

[8] *Id*. at 7.

[9] *Id*.

[10] *Id*. at 6-7.

[11] *Id*. at 7 (citing U.S. Government Accountability Office, Commonwealth of the Northern Mariana Islands: Recent Economic and Workforce Trends (Feb. 13, 2020) at 15, https://www.gao.gov/assets/gao-20-305.pdf).

[12] Daniela Mejía, Kevin McElrath and Michael Martin, *Majority of Households in the Island Areas Own a Computer and Have Broadband Internet*, Oct. 20, 2022, https://www.census.gov/library/stories/2022/10/2020-island-areas-computer-internet-use.html.

[13] Ethan Perez, *Docomo launches Mobile 5G in Guam, Saipan*, Pacific Island Times, Aug. 6, 2020, https://www.pacificislandtimes.com/post/2020/08/07/docomo-launches-mobile-5g-in-guam-saipan.

[14] Docomo Pacific, *5G has landed in the Marianas!*, https://www.docomopacific.com/5g (last visited May 4, 2023).

[15] S*ee* 47 CFR § 27.14(g).

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

[17] S*ee* 47 CFR § 27.14(g).

[18] S*ee* 47 CFR § 27.14(g)(1).

[19] *See* ULS File No. 0005826211.

filing.[20] Choice failed to respond to this letter within 60 days, and the Division dismissed the construction notification on October 18, 2016.[21] On January 13, 2017, the Division informed Choice that because it failed to file adequate interim construction notifications for the license, the final buildout deadline was accelerated by rule to June 13, 2017.[22] Choice timely filed a petition for reconsideration.[23] Choice also timely filed a renewal application.[24]

7. On January 2, 2018, the Division denied Choice's petition for reconsideration and found that the petition and construction notification failed to demonstrate compliance with the interim construction benchmark. Accordingly, the Division confirmed "that Choice's license term accelerated by rule to June 13, 2017, and Choice must demonstrate compliance with the final construction deadline as of that date."[25] Choice was given leave to file its final construction notification with a new deadline of 15 days from the date of the order. Choice timely filed its final construction notification, claiming it met the 70% coverage and service requirement.[26]

8. On August 1, 2018, the Division returned Choice's renewal application for failure to satisfy the provisions of section 27.14(e) in place at that time, which mandated a showing of "substantial service."[27] Choice amended its renewal filing on September 28, 2018, stating that due to bandwidth limitations, Choice's service was extremely limited and was not available to commercial users. Instead, Choice for a time had provided "LTE communications to handsets of internal Choice Phone staff" and such service was no longer in operation as of the date of the amendment.[28] On November 3, 2018, the Division sent two separate notices of dismissal without prejudice—one for Choice's final construction notification[29] and one for its renewal application.[30]

9. On December 7, 2018, Choice submitted an application for review (AFR) to the Commission requesting review of the November 3, 2018, Notices of Dismissal for its renewal application and construction notification, as well as the dismissal of the June 19, 2013, Notification of Construction.[31] In the AFR, Choice, among other things, argued that the Commission had provided the incorrect shapefiles for the license area, which it claimed affected coverage determinations, and also argued that it was not required to provide commercial service under the terms of its license.[32]

10. On October 16, 2020, Choice and PTI (the parties), filed an application for assignment of authorization seeking to assign WQIZ529 from Choice to PTI.[33] This assignment application was part of a larger transaction between the parties, and also included unrelated license KNLB242.

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[20] *See* ULS File No. 0005826211.

[21] *See* ULS, Call Sign WQ1Z529.

[22] *See* ULS, Call Sign WQ1Z529, Letter, Failure to File Interim Construction Notification (WTB, Jan. 13, 2017).

[23] *See* ULS File No. 0005826211 and ULS File No. 0007776954 (supplemental materials).

[24] *See* ULS File No. 0007809870.

[25] *See* ULS File No. 0007776954, Letter Denying Petition for Reconsideration.

[26] *See* ULS File No. 0008065320.

[27] *See* ULS, Reference Number 6390676.

[28] *See* ULS File No. 0007809870.

[29] *See* ULS File No. 0008065320.

[30] *See* ULS File No. 0007809870.

[31] *See* ULS, Call Sign WQ1Z529.

[32] *See id*.

[33] *See* ULS, Reference Number 0009279479.

11. On June 22, 2023, the parties submitted an amendment to their assignment application. Therein, PTI provided a timeline within which it could provide 4G and 5G service in the CNMI if WQIZ529 were reinstated.[34] Specifically, PTI pledged to "commence commercial 4G LTE service on the lower 700 MHz B block in CNMI covering at least 70%" of the license area within 60 days of the reinstatement and license transfer.[35] It further committed to establish commercial 5G service to at least 10% of the CNMI population within 14 months, and establish commercial 5G service to at least 30% of the CMNI population within 20 months.[36] PTI also committed to filing construction notifications 15 days after the deadlines for the 70% 4G LTE license area coverage and the 5G service to 30% of the CNMI population.[37] The parties further request waiver of sections 1.946(d) and 27.14(g) of the Commission's rules, as well as the license renewal substantial service requirements found in section 27.14(e) at the time that the license was originally due for renewal.[38]

III. DISCUSSION

12. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;[39] or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.[40] We find that in light of the unique factual circumstances of this case, application of sections 27.14(e) (2017) and 27.14(g) of the Commission's rules would be contrary to the public interest, and therefore waiver of those rules is warranted.

A. Waiver of Section 27.14(g) Construction Deadline

13. We find that waiver of the final construction deadline until November 13, 2023 is warranted here given the unique factual circumstances presented by construction of the license in the CNMI. The geography, extreme remoteness, and corresponding lack of infrastructure in the CNMI create unique difficulties for the construction of the communications network. This group of islands is extremely remote—roughly 3,200 miles from Hawaii, which itself is 2,397 miles from the contiguous United States.[41] This remoteness makes all aspects of infrastructure development more difficult. All RF equipment must be imported into the CNMI.[42] Even before the pandemic, these equipment deliveries took roughly four weeks.[43] Now, equipment deliveries can take 4-6 months.[44] The declining economic environment in the CNMI also presents challenges for infrastructure investment. The CNMI has

[34] *See* Assignment Amendment at 2.

[35] *See id.*

[36] *See id*.

[37] *See id*.

[38] *See id.* at 4.

[39] 47 CFR § 1.925(b)(3)(i).

[40] *Id.* at § 1.925(b)(3)(ii).

[41] J. Patricia Morgan Swenson, John Heckathorn, and Lee S. Motteler, *Hawaii*, Encyclopedia Britannica, https://www.britannica.com/place/Hawaii-state (last visited May 4, 2023).

[42] *See* Assignment Amendment at 3, footnote 9.

[43] *See id*.

[44] *See id*.

experienced year-to-year GDP declines,[45] population declines,[46] and its median household income is less than half of the U.S. average.[47] In addition, the lack of skilled workers in the CNMI to implement base station upgrades and new site construction further complicates network construction.[48] Taken together, these unique factors support grant of a waiver here.

14. We note that despite the challenges of building a 4G commercial wireless network in the CNMI's remote location, Choice put many of the network elements in place by the construction deadline.[49] Ultimately, however, Choice's efforts fell short of providing service as required under the Commission's rules.

15. Moreover, strict application of the construction rule in this case would be contrary to the public interest. Currently, the license lies fallow. At the same time, residents of the CNMI have far fewer telecommunications options than most U.S. residents and the percentage of households with a broadband internet subscription in the CNMI is below the national average.[50] In addition, there is minimal wireless 5G service on the island, which is limited to a small section of the largest island, Saipan.[51] By extending the construction deadline, reinstating the license, and imposing conditions regarding 4G and 5G service guarantees, we further the public interest by increasing the availability and data speeds of broadband wireless services in the CNMI.[52] Accordingly, we waive the section 27.14(g) construction deadline for the license and extend the deadline for construction until 60 days after release of this order, subject to the conditions enumerated below.

B. Waiver of Section 27.14(e) Demonstration of Substantial Service Requirement

16. Next, we address the renewal requirements in section 27.14(e). Under the renewal rules in effect at the time of license renewal, Choice was required to "make a showing of substantial service, independent of its performance requirements, as a condition for renewal at the end of each license term."[53] To meet this standard, "licensees must demonstrate in their applications that they have provided

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[45] News Release, U.S. Bureau of Economic Analysis, *Gross Domestic Product for the Commonwealth of the Northern Mariana Islands, 2020*, Jan. 31, 2023, https://www.bea.gov/news/2023/gross-domestic-product-commonwealth-northern-mariana-islands-2020.

[46] Press Release, U.S. Census Bureau, *2020 Island Areas Censuses Data on Demographic, Social, Economic and Housing Characteristics Now Available for the Commonwealth of the Northern Mariana Islands*, Oct. 20, 2022, https://www.census.gov/newsroom/press-releases/2022/2020-island-areas-northern-mariana.html.

[47] *See id*.; *see also* Emily A. Shrider, Melissa Kollar, Frances Chen, and Jessica Semega, *Income and Poverty in the United States: 2020,* Sept. 14, 2021, https://www.census.gov/library/publications/2021/demo/p60-273.html.

[48] *See* Assignment Amendment at 3, n.9.

[49] *See* ULS File No. 0007809870.

[50] Daniela Mejía, Kevin McElrath and Michael Martin, *Majority of Households in the Island Areas Own a Computer and Have Broadband Internet*, Oct. 20, 2022, https://www.census.gov/library/stories/2022/10/2020-island-areas-computer-internet-use.html.

[51] *See* Docomo Pacific, *5G has landed in the Marianas!*, https://www.docomopacific.com/5g (last visited May 4, 2023).

[52] *See* Assignment Amendment at 5-6. The parties estimate that PTI's 4G LTE download speeds in the CNMI average 116 Mbps, and will increase roughly 12% to 130 Mbps, on average, with the addition of the lower 700 MHz B- spectrum, with peak data speeds anticipated to be significantly higher. The parties further maintain that the initial 5G service deployment are expected to provide average download speeds of approximately 225 Mbps, representing a 94% speed increase in comparison with the current average. PTI notes that it holds licenses in Guam for the same two spectrum blocks (lower 700 MHz A- and B-block), which allows it to achieve efficiencies by deploying similar radio frequency approaches for CNMI and Guam. *Id.*

[53] *See* 47 C.F.R. § 27.14(e)(2017).

substantial service during their past license term, which is defined as service that is sound, favorable, and substantially above a level of mediocre service that just might minimally warrant renewal."[54] We find that the factors and analysis discussed in our waiver of section 27.14(g) apply equally to a waiver of section 27.14(e), and we thus waive the demonstration of substantial service requirement in the latter rule. Moreover, although Choice did not provide substantial service during its license term, we find that waiver of the substantial service requirement at renewal, coupled with the conditions enumerated below, will provide the opportunity for near-term construction of the license and will provide 4G and eventual 5G service for a significant portion of the CNMI. Accordingly, renewal of the license shall be subject to the conditions of this order.

C. Request for Waiver of 47 CFR § 1.946(d) Construction Notification Timing

17. The parties also request waiver of section 1.946(d), noting that this rule requires licensees "to file construction notifications within 15 days of the expiration of their applicable construction or coverage periods."[55] Because the Division is establishing new applicable construction periods in this order, and the order requires the relevant construction notifications to be filed within 15 days, waiver of section 1.946(d) is not required and we do not address this request.

D. Conditions

18. For the reasons stated above, we take the following actions: (1) waive the 47 C.F.R. § 27.14(g) deadline to construct until November 13, 2023; (2) reinstate the license for call sign WQIZ529; (3) revert the renewal application to pending; and (4) waive the relevant "demonstration of substantial service" requirement for license renewal in section 27.14(e) (as in effect in 2017), all subject to the conditions described below. The relief granted in this order is subject to these conditions and in the event licensee fails to meet any of these conditions, the waivers and license terminate automatically by rule. Specially, we require that:

1. No later than November 13, 2023, Choice must withdraw the pending AFR related to this license,[56] and the petition for reconsideration regarding unrelated license KNLB242.[57]
2. No later than November 13, 2023, the licensee must commence commercial operations on this call sign and provide 4G service to consumers including coverage to at least 70% of the license area using the 700 MHz B block spectrum. In this context, service must be offered to the public to include two-way 4G services from base stations to consumer handsets, and consumer handsets must be available and ready to provision.
3. No later than November 28, 2023, the licensee must submit a construction notification to the Commission pursuant to 47 CFR § 1.946 demonstrating that Condition No. 2 was timely met.
4. No later than November 13, 2024, the licensee must offer devices capable of functioning on licensee's 5G network.
5. No later than November 13, 2024, the licensee must provide 5G service to at least 10% of the CNMI's population (as measured by 2020 U.S. census).[58]
6. No later than May 13, 2025, the licensee must provide 5G service to at least 30% of the

[54] *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et. al*, Further Report and Order and Notice of Proposed Rulemaking, 22 FCC Rcd 8064, 8066 para. 75 (2007).

[55] *See* Assignment Amendment at 4.

[56] *See* ULS, Call Sign WQIZ529.

[57] *See* ULS, Call Sign KNLB242.

CNMI's population (as measured by 2020 U.S. census).

7. No later than May 28, 2025, the licensee must submit a construction notification to the Commission pursuant to 47 CFR § 1.946 demonstrating the coverage described in Condition No. 6.

IV. ORDERING CLAUSE

19. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, that waivers of sections 27.14(g) and 27.14(e) of the Commission's rules, 47 CFR §§ 27.14(g), (e), are GRANTED to the extent described, and subject to the conditions specified, herein. The Division hereby reinstates the license for call sign WQIZ529, and reverts the renewal application to pending. Further, the Division SHALL process the renewal application subject to the conditions of this order.

20. This action is taken under delegated authority pursuant to sections 0.131(a) and 0.331 of the Commission's Rules, 47 CFR §§ 0.131(a), 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief, Mobility Division

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DA 23-835
Released: September 21, 2023

WIRELINE COMPETITION BUREAU ANNOUNCES CORRECTED ENHANCED ALTERNATIVE CONNECT AMERICA COST MODEL SUPPORT OFFERS FOR 82 COMPANIES

WC Docket No. 10-90

The Wireline Competition Bureau (Bureau) announces corrected Enhanced Alternative Connect America Model (Enhanced A-CAM) offers for 82 companies. These offers correct two errors, discussed below, that have been identified with the original Enhanced A-CAM offers extended by the Bureau on August 31, 2023.[1] In addition, this Public Notice provides preliminary guidance regarding the assignment to carriers, in the Enhanced A-CAM offers, of locations outside their study area boundaries or in areas with overlapping study area boundaries.

The Commission adopted the Enhanced A-CAM program on July 24, 2023, as a voluntary path for supporting the widespread deployment of 100/20 Mbps or better broadband service throughout the rural areas served by carriers currently receiving A-CAM support and in areas served by legacy rate-of-return support recipients.[2] On August 30, 2023, the Bureau released a Public Notice announcing Enhanced A-CAM offers for eligible carriers, as well as the Enhanced A-CAM Implementation Order, which addressed matters that had been delegated to the Bureau by the Commission.[3] Pursuant to the *Enhanced A-CAM Offer Public Notice*, eligible carriers may elect the Enhanced A-CAM offers until September 29, 2023.[4]

Subsequent to the release of the Enhanced A-CAM offers, two errors affecting the offers were identified. First, some locations to which competitors provide 100/20 Mbps or faster service were not identified as "competitor-served" because the competitors were not identified as providing qualifying voice service in the state, despite having reported doing so. This error was caused by some carriers making recent changes to their BDC Provider IDs which resulted in a mismatch between the voice and broadband deployment data. As a result, some locations served by a competitor with 100/20 Mbps or

[1] *Wireline Competition Bureau Announces Enhanced Alternative Connect America Cost Model Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 23-779 (WCB Aug. 30, 2023) (*Enhanced A-CAM Offer PN*).

[2] *See Connect America Fund; ETC Annual Reports and Certifications; Telecommunications Carriers Eligible to Receive Universal Service Support; Connect America Fund – Alaska Plan; Expanding Broadband Service Through the ACAM Program*, WC Docket Nos. 10-90, 14-58, 09-197, and 16-271; RM-1168, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60, at 42, para. 98 (July 24, 2023) (*Enhanced A-CAM Order*).

[3] *See Enhanced A-CAM Offer PN*; *Connect America Fund; ETC Annual Reports and Certifications; Telecommunications Carriers Eligible to Receive Universal Service Support; Connect America Fund – Alaska Plan; Expanding Broadband Service Through the ACAM Program*, WC Docket Nos. 10-90, 14-58, 09-197, and 16-271; RM-1168, Order, DA 23-778 (WCB Aug. 30, 2023) (*Enhanced A-CAM Implementation Order*).

[4] *Enhanced A-CAM Offer PN* at 1.

faster broadband were not counted as competitively served in the initial offers. Correcting this error reduces the number of required locations—to which the electing Enhanced A-CAM carrier must deploy 100/20 Mbps or faster service—by 27,841 locations. The vast majority of these locations are below the funding threshold, however, and do not affect the amount of the Enhanced A-CAM offer. In addition, some locations that were treated as ILEC-only served in the original offer are now identified as ILEC and competitor-served in the corrected offer and will therefore receive 33% of the existing support amount, rather than 60%.

Second, due to a coding error in the support calculations, 10,354 locations to which an ILEC provides 100/20 Mbps or faster that were also subject to an enforceable commitment to serve by a competitor were identified as "competitor-only served," rather than "ILEC and competitor served." As a result, those locations received no support in the initial Enhanced A-CAM calculations, when they should have been assigned 33% of their existing support. This correction has no effect on the number of required locations.

The corrected offers released today include five reports.[5] Reports 2.1 through 2.4 are revised versions of the reports associated with the original offer, updated to reflect the corrections.[6] These reports show data associated with all of the offers, including those not subject to correction today. Report 2.5 provides a list of carriers receiving corrected offers today, along with a brief analysis of the changes to the offers, including changes in annual support amounts, the total number of supported locations, and required locations.

Finally, the Bureau acknowledges an issue that has been raised regarding the assignment of locations to a carrier outside its certified study area boundaries. This issue is caused by an algorithm in the Connect America Model which assumes locations are served from the nearest point along a road and, if that point is in an adjacent study area, assigns the location to the adjacent study area. We are aware that some locations may have been assigned to incorrect study areas in the original offer, resulting in some locations assigned to the provider that actually provides service to a location, even though the location is outside the provider's certified study area. The Bureau further notes a related issue in which a location may lie within multiple overlapping study areas and such locations were assigned to a single study area in the modeling.

The Bureau expects to take further action to resolve issues related to the assignment of locations outside electing carriers' certified study areas or in overlapping study areas as part of the post-election adjustment process. Carriers considering Enhanced A-CAM offers should recognize that, by electing Enhanced A-CAM, they would be committing to serve all locations in their study areas that are currently without 100/20 Mbps and may therefore be required to serve locations that the Enhanced A-CAM offers assigned to adjacent study areas. Conversely, carriers considering Enhanced A-CAM offers should recognize that they will not be required to serve, and may not ultimately receive support for, locations outside their study areas.[7] In order to permit carriers to analyze the effect of these issues on their election decisions, the Potentially Eligible Location File on the A-CAM website has been updated to reflect all

[5] Available at https://docs.fcc.gov/public/attachments/DOC-397100A1.xlsx. In addition, this report corrects an error in the calculation of the number of Supported Locations shown in Enhanced A-CAM Offer Report 1, which affected some A-CAM I carriers that serve Tribal locations. This correction does not change the calculated Enhanced A-CAM support amounts or the number of required locations for any carrier.

[6] *See Enhanced A-CAM Offer PN* at 2-3.

[7] In a case where an Enhanced A-CAM carrier actually provides service to a location and may appropriately be considered the incumbent carrier, the Bureau may adjust the study area boundary for the purpose of Enhanced A-CAM obligations.

study area code(s) in which the geocoded location falls as well as the study area code to which it is currently assigned.[8]

The Bureau will continue to consider any questions or concerns raised by parties, and provide additional guidance or updates as warranted.

For additional information on this proceeding, please contact Stephen Wang (Stephen.Wang@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

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[8] *See* cacm.usac.org.

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Released: September 12, 2023

FCC ANNOUNCES A TRIBAL WORKSHOP HOSTED BY THE PENOBSCOT NATION, OCTOBER 12-13, 2023

By this Public Notice, the Federal Communications Commission (FCC) announces an upcoming in-person workshop for Tribal governments, Tribal employees, and Tribal members. This event is designed to provide information that will help Tribal Nations identify and evaluate opportunities to develop more robust broadband infrastructure and services in Tribal communities. It is also designed to provide information about FCC policies and programs to address the lack of adequate communications services on Tribal lands nationwide.

FCC staff will provide presentations on a broad range of important FCC initiatives that support the deployment of communications infrastructure and services in Tribal communities (e.g., Broadband Data Collection, Affordable Connectivity Program, Universal Service Fund Schools and Libraries Program). Such infrastructure supports Tribal economic development, Tribal schools and libraries, and low-income families, as well as public safety departments, and Tribal government administration. Participants will also receive updates on the current FCC proceedings that provide opportunities for Tribal Nations to inform the FCC to help ensure that Native views and interests are heard in the decision-making process.

Tribal government leaders, Tribal service provider and IT managers, government and community planners and managers, Tribal enterprise specialists, and representatives of Tribal social service agencies, schools, and libraries are all persons who should consider attending this event. The workshop, to be hosted by the Penobscot Nation, will be held October 12-13, 2023 at the Nic Sapiel Building, 27 Wabanaki Way, Indian Island, ME 04468.

Registration is free. To register for the workshop, please send your name, title, Tribal affiliation, and contact information, with the subject line "October Workshop" to **Tribal.Events@fcc.gov.** Questions about the workshop may be directed to the Office of Native Affairs and Policy: Lloyd Collier, Lloyd.Collier@fcc.gov or Derik Goatson, Derik.Goatson@fcc.gov. Walk-ins can also be accommodated.

Reasonable accommodations for people with disabilities are available upon request by sending an e-mail to: FCC504@fcc.gov or calling the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice). Include a description of the accommodation you will need and tell us how to contact you if we need more information. Please make your request as early as possible as we may be unable to fulfill last minute requests.

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Released: September 12, 2023

MEDIA BUREAU REMINDS UNITED STATES-BASED FOREIGN MEDIA OUTLETS OF NEXT SEMI-ANNUAL DISCLOSURE DEADLINE

Reports Due by October 12, 2023

Section 1085 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA) amended the Communications Act of 1934 (the Communications Act) to add section 722, which requires all "United States-based foreign media outlets" to submit to the Commission a report containing: 1) the name of such outlet; and 2) a description of the relationship of such outlet to the foreign principal of such outlet, including a description of the legal structure of such relationship and any funding that such outlet receives from such principal.[1] The report is to be submitted no later than 60 days after the date of the enactment of the NDAA and no less frequently than every 6 months thereafter.[2] As the previous report was due on April 12, 2023, the deadline for outlets to submit the next NDAA report to the Commission is **October 12, 2023**.

The Commission has established an e-mail inbox, at ndaareport@fcc.gov, that outlets should use to submit the reports. Respondents should format the reports as Adobe® Acrobat® (PDF) or Microsoft® Word documents and attach them to the e-mail. The e-mail submitting the report should include a subject or caption referring to the NDAA disclosure requirement and the name of the outlet. Respondents are reminded that the contents of the reports are subject to the provisions of the United States Code governing statements or representations made before the Commission.[3]

For purposes of this disclosure requirement, the NDAA provides that the term "United States-based foreign media outlet" means an entity that (A) produces or distributes video programming (as defined in section 602 of the Communications Act) that is transmitted, or intended for transmission, by a multichannel video programming distributor (as defined in such section) to consumers in the United States; and (B) would be an agent of a foreign principal for purposes of the Foreign Agents Registration Act of 1938 (FARA) (22 U.S.C. § 611 et seq.) but for section 1(d) of FARA (22 U.S.C. § 611(d)).[4] The Communications Act defines the term "video programming" as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station."[5] The term "multichannel video programming distributor" means "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television

[1] John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, §1085(a) (2018) (NDAA).

[2] 47 U.S.C. § 624(a).

[3] 18 U.S.C. § 1001.

[4] 47 U.S.C. § 624(d)(2).

[5] 47 U.S.C. § 522(20).

receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming."[6]

The NDAA provides that the term "foreign principal" has the meaning given such term in Section 1(b)(1) of FARA (22 U.S.C. § 611(b)(1)).[7] Section 1(b)(1) of FARA provides that "a government of a foreign country and a foreign political party" are included in the definition of a "foreign principal."[8] Section 1(c) of FARA provides that, except "as provided in subsection (d) of this section, the term 'agent of a foreign principal' means (1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person--(i) engages within the United States in political activities for or in the interests of such foreign principal; (ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal; (iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or (iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and (2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection."[9]

Section 1(d) of FARA states that the "term 'agent of a foreign principal' does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 3611 of Title 39, published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by, and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in subsection (b) of section 611, or by any agent of a foreign principal required to register under this subchapter."[10]

Consistent with the requirements of the NDAA, the Commission will transmit to Congress a report that summarizes the contents of the reports submitted by United States-based foreign media outlets within 90 days from the date of enactment, and not less frequently than every 6 months thereafter.[11] As the Commission transmitted the previous report on May 9, 2023, the Commission will transmit the next report on or before November 9, 2023. In addition, the Commission will make publicly available on its website each report submitted by a United States-based foreign media outlet no later than the earlier of (1) 30 days after the outlet submits its report to the Commission or (2) the date on which the Commission

[6] 47 U.S.C. § 522(13).

[7] 47 U.S.C. § 624(d)(1).

[8] 47 U.S.C. § 624(d)(1); 22 U.S.C. § 611(b)(1). We note that the Department of Justice has adopted regulations implementing the Foreign Agents Registration Act of 1938, including definitions of statutory terms. *See* 5 CFR §§ 5.1, *et seq.; id.* § 5.100.

[9] 22 U.S.C. § 611(c).

[10] 22 U.S.C. § 611(d).

[11] NDAA, §1085(b) (codified at 47 U.S.C. § 624(b)).

transmits its report to Congress.[12] These reports and the Commission's report to Congress can be found on the website of the Media Bureau: https://www.fcc.gov/united-states-based-foreign-media-outlets.

For additional information, contact Chad Guo, Chad.Guo@fcc.gov, of the Media Bureau, Industry Analysis Division, at (202) 418-0652. Press inquiries should be directed to Janice Wise, Janice.Wise@fcc.gov, at (202) 418-8165.

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[12] NDAA, §1085(c) (codified at 47 U.S.C. § 624(c)).

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON EVERGY KANSAS CENTRAL, INC., EVERGY METRO, INC., AND EVERGY MISSOURI, INC., REQUEST FOR WAIVER

WT Docket 23-307

Comments Due: October 2, 2023
Reply Comments Due: October 13, 2023

By this Public Notice, we seek comment on Evergy Kansas Central, Inc., Evergy Metro, Inc., and Evergy Missouri West, Inc.'s (collectively 'Evergy') request for waiver of the 900 MHz licensing freeze to allow Evergy to obtain new licenses for certain frequencies in the 896-901/935-940 MHz band.[1]

In September 2018, the Wireless Telecommunications Bureau (Bureau) suspended the acceptance of applications for new or expanded 900 MHz operations to maintain a stable spectral landscape while the Commission determined how to proceed with respect to that spectrum.[2] The *900 MHz Freeze Public Notice* noted that licensees have recourse through the Commission's waiver provisions to request an exception to the freeze.[3]

In March 2019, the Commission released a Notice of Proposed Rulemaking proposing to realign the 900 MHz band to create a 3/3 megahertz broadband segment, while reserving the remaining 2/2 megahertz for narrowband operations.[4] In May 2020, the Commission adopted a Report and Order that established a 3/3 megahertz broadband segment, two narrowband segments of 1.5/1.5 megahertz and .5/.5 megahertz, and a transition mechanism based primarily on negotiations between prospective broadband licensees and existing narrowband incumbent licensees.[5] At the time it adopted the Report and Order, the

[1] *See* File Nos. 0009055095, 0009055096, 0009055097, 0009055100, 000905177, 0009055218, 0009055219, 0009055220, 0009055221, 0009055865, 0009059019 and 0009059070 (filed Apr. 4, 2020), amended Apr. 5, 2021, Mar. 16, 2022, and Aug. 8, 2023, Request by Evergy Kansas Central, Inc., Evergy Metro, Inc., and Evergy Missouri West, Inc. Revised Request for Waiver (filed Mar. 16, 2022) (Request).

[2] *See Wireless Telecommunications Bureau Announces Temporary Filing Freeze on the Acceptance of Certain Part 90 Applications for 896-901/935-940 MHz (900 MHz Band) Spectrum*, WT Docket No. 17-200, Public Notice, 33 FCC Rcd 8735 (WTB 2018) (*900 MHz Freeze Public Notice*).

[3] *900 MHz Freeze Public Notice*, 33 FCC Rcd at 8736, n. 4.

[4] *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, WT Docket No. 17-200, Notice of Proposed Rulemaking, 34 FCC Rcd 1550, 1555, para. 15 (2019) (*900 MHz NPRM*). Following the *900 MHz NPRM* later in 2019, the Bureau modified the freeze to provide greater flexibility for incumbents to relocate out of the proposed 3/3 megahertz broadband segment portion of the 900 MHz band. *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, WT Docket No. 17-200, Order, 34 FCC Rcd 9369 (WTB 2019).

[5] *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, paras. 27-95 (2020) (*900 MHz R&O*).

Commission partially lifted the 900 MHz freeze for relocation of incumbents as part of a transition plan and clarified that the current freeze, which prohibits contour extensions, remains in place.[6]

Evergy requests a waiver of the 900 MHz freeze to obtain new licenses for certain frequencies in the 896-901/935-940 MHz band. Evergy claims that grant of the requested waiver will not undermine the purpose of the 900 MHz freeze.[7]

We seek comment on Evergy's Request.

Procedural Matters

To develop a complete record on the issues presented by the Request, the proceeding will be treated, for ex parte purposes, as a "permit-but-disclose" proceeding in accordance with Section 1.1200(a) of the Commission's rules, subject to the requirements under Section 1.1206(b). Evergy filed its Request electronically in the Commission's Universal Licensing System. We have opened a new docket**, WT Docket 23-307**, to facilitate consideration of the Request and have moved Evergy's Request into this docket. Parties should file all comments and reply comments in **WT Docket 23-307**.

***

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).

- 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.
    - 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.[8]

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 or call the Consumer & Government Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Additional Information. For further information regarding this Public Notice, please contact Morgan Mendenhall at morgan.mendenhall@fcc.gov or (202) 418-0154.

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[6] *Id*. at 69, paras. 175-76.

[7] *See* Request.

[8] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (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

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

DA 23-839
Released: September 13, 2023

WIRELINE COMPETITION BUREAU ANNOUNCES THE DUE DATE FOR RESPONSES TO THE COMMISSION'S 2023 INCARCERATED PEOPLE'S COMMUNICATIONS SERVICES MANDATORY DATA COLLECTION

WC Docket Nos. 23-62, 12-375

Reponses due: October 31, 2023

By this Public Notice, the Wireline Competition Bureau (WCB) announces that the Office of Management and Budget (OMB) has approved the Commission's 2023 Mandatory Data Collection in the Incarcerated People's Communications Services (IPCS) proceeding, and announces that IPCS providers' responses to the data collection are due October 31, 2023.

In the *2023 IPCS Order*, the Commission directed WCB and the Office of Economics and Analytics (OEA) (collectively, WCB/OEA) to "update and restructure" the Third Mandatory Data Collection "as appropriate in light of the requirements of the [Martha Wright Reed Just and Reasonable Communications Act of 2022]."[1] After seeking public comment,[2] WCB/OEA issued an order adopting instructions, a reporting template, and a certification form for the data collection.[3] The Commission sought OMB review of the collection under the Paperwork Reduction Act (PRA), and OMB approved the collection on September 11, 2023.[4]

In the *2023 IPCS Mandatory Data Collection Order*, WCB/OEA specified that IPCS providers' responses to the data collection would be due on October 31, 2023, 97 days after the release of the *2023 IPCS Mandatory Data Collection Order*, "unless PRA authority for this collection is not granted prior to

[1] *Incarcerated People's Communications Services*; *Implementation of the Martha Wright-Reed Act*; *Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Notice of Proposed Rulemaking and Order, FCC 23-19, at 2, 33, paras. 2, 84 (2023) (*2023 IPCS Notice* or *2023 IPCS Order*) (delegating authority to WCB and OEA to revise the Commission's existing data collection); *see also* Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156; 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d).

[2] *WCB and OEA Seek Comment on Proposed 2023 Mandatory Data Collection for Incarcerated People's Communication Services*, WC Docket Nos. 23-62, 12-375, Public Notice, DA 23-355 (WCB/OEA Apr. 28, 2023) (*2023 IPCS Mandatory Data Collection Public Notice* or *Public Notice*).

[3] *Incarcerated People's Communications Services*; *Implementation of the Martha Wright-Reed Act*; *Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Order, DA 23-638 (WCB/OEA July 26, 2023) (*2023 IPCS Mandatory Data Collection Order*). The reporting template consists of a Word document and Excel spreadsheets.

[4] *See* Notice of Office of Management and Budget Action for New Collection OMB Control No. 3060-1314 (approved Sept. 11, 2023).

then."[5] Because OMB approved the collection on September 11, 2023, IPCS providers' data collection responses are due by October 31, 2023.

We remind IPCS providers that an officer must certify, under penalty of perjury, that "all statements and information contained in [the provider's] Mandatory Data Collection response are true, accurate, and complete."[6] All required data must be submitted using the reporting template provided by the Commission, and in a machine-readable and manipulable format. The instructions, reporting template, and certification form for the data collection are available at the following hyperlink: https://www.fcc.gov/2023-ipcs-mandatory-data-collection.

For additional information regarding this matter, please contact Simon Solemani, Wireline Competition Bureau, Pricing Policy Division, at (202) 418-2270 or Simon.Solemani@fcc.gov. Please copy mandatorydatacollection@fcc.gov on any related email correspondence.

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[5] *2023 IPCS Mandatory Data Collection Order* at 23, para. 56.

[6] FCC, *Incarcerated People's Communications Services*; *Implementation of the Martha Wright-Reed Act*; *Rates for Interstate Inmate Calling Services, 2023 IPCS Mandatory Data Collection*, Appendix A, https://www.fcc.gov/document/2023-ipcs-mdc-instructions.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-840
Released: September 13, 2023

NOTICE CONCERNING *EX PARTE* STATUS OF INFORMATION SUBMITTED TO THE NORTH AMERICAN NUMBERING COUNCIL

WC Docket No. 23-1

The North American Numbering Council (NANC) is a federal advisory committee created to advise the Federal Communications Commission (FCC or Commission) on topics related to telephone numbering and make recommendations that foster efficient and impartial number administration.[1] It is organized under, and operates in accordance with, the provisions of the Federal Advisory Committee Act (FACA).[2]

Under the FACA, the Commission is responsible for oversight of the NANC, including its working groups and any subcommittees.[3] 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, we hereby announce that, 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.[4] 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 find that this modification of the *ex parte* rules is in the public interest because it will allow the NANC to develop and shape its advice and recommendations to the Commission more efficiently and effectively. Furthermore, this treatment is consistent with that

[1] *See FCC Announces Plans to Recharter the North American Numbering Council and Solicits Nominations for Membership*, WC Docket No. 23-1, Public Notice, DA 23-187 (Mar. 7, 2023); *FCC Announces Membership of the Rechartered North American Numbering Council and the Date of its First Meeting*, WC Docket No. 23-1, Public Notice, DA 23-697 (Aug. 14, 2023).

[2] *See* 5 U.S.C. 10.

[3] *See id.*

[4] 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").

afforded to prior advisory committees. The treatment of *ex parte* presentations specified in this notice shall apply to this and future terms of the NANC unless modified by a subsequent public notice.[5]

We recognize that some issues may be addressed by the NANC that are the subject of pending FCC proceedings.[6] The Commission will not rely in these proceedings on any information submitted to 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, either by the Commission or the party submitting the information.

Additional information regarding the NANC can be found at https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council. You may also contact Christi Shewman, Designated Federal Officer for the NANC at Christi.Shewman@fcc.gov; or Rhonda Lien, Deputy Designated Federal Officer for the NANC at rhonda.lien@fcc.gov.

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[5] This notice updates a notice released during a prior term of the NANC, addressing the *ex parte* status of information submitted to or by the NANC. *See Notice Concerning Ex Parte Status of Information Submitted to the North American Numbering Council,* CC Docket No. 92-237, Public Notice, 36 FCC Rcd 15262 (2021).

[6] *See, e.g.*, *Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, FCC 23-18, para. 85 (Mar. 17, 2023).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 23-841
Released: September 13, 2023

CONNECT2HEALTH[FCC] TASK FORCE ANNOUNCES WEBINAR ON MAPPING BROADBAND AND MATERNAL HEALTH DATA

GN Docket No. 23-309

On Wednesday, September 27, the Federal Communications Commission's Connect2Health[FCC] Task Force will host a virtual webinar to demonstrate the newly updated *Mapping Broadband Health in America* platform incorporating maternal health data. The platform is designed to help drive innovative broadband-enabled solutions such as telehealth in areas impacted by poor maternal health outcomes, including higher maternal mortality or severe maternal morbidity. Increasingly, broadband connectivity is recognized as an essential component to improving health, access to health care, and health equity, yet organizations and policymakers often need shared information on where gaps and opportunities exist to help them effectively leverage broadband to improve maternal health.

This virtual webinar will explore how the platform can be used to generate actionable insights and provide an opportunity for users to inform further development of this important tool. Participants will learn how to generate customized maps and visualize the intersection of broadband connectivity and maternal health data. Specifically, the public can use this platform to:

- Intersect broadband data and maternal mortality or severe maternal morbidity rates at the state level;
- Determine how connectivity and access to obstetric care coincide at the county level, revealing "double burden" counties (i.e., those with higher health need and lower connectivity resources);
- View connectivity metrics (e.g., Internet adoption, download speed) and maternal health data filtered by rurality, race/ethnicity, and maternal age to visualize patterns, possible disparities, and areas where broadband-enabled interventions could create the greatest impact; and
- Visualize the intersection of broadband and mental health provider shortages, given the association between mental health and poor maternal health outcomes.

WHAT:	Mapping Broadband and Maternal Health Webinar
WHEN:	Wednesday, September 27, 2023 at 2:00-3:15 PM EDT
WHO SHOULD ATTEND:	Policymakers, public health experts, clinicians, researchers, community organizations, innovators, and other people interested in the intersection of broadband and maternal health.
REGISTRATION:	This virtual public event is free and will be accessible to the public via Zoom.gov. Please click here to register.

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 or by calling the Consumer and 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 FCC staff to contact the requester if more information is needed to fill the request. Last minute requests will be accepted but it may not be possible to accommodate the request.

To access the *Mapping Broadband Health in America* platform, visit: fcc.gov/health/maps. Click on the "2023 Mapping Platform" button and then choose the "Maternal Health" icon to enter the maternal health module of the platform.

For additional information about the webinar, contact the Connect2Health^{FCC} Task Force by e-mail at engageC2H@fcc.gov, and insert "Sept. 27 Webinar" in the subject line. For press inquiries, please contact Katie Gorscak, FCC Office of Media Relations, by e-mail at Katie.Gorscak@fcc.gov.

-FCC-

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

In the Matter of	)	
	)	
Call Authentication Trust Anchor	)	WC Docket No. 17-97
	)	

ORDER

Adopted: September 13, 2023 **Released: September 13, 2023**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) addresses the waiver petitions of facilities-based small voice service providers, Allband Communications Cooperative and Allband Multimedia (Allband), Hamilton County Telephone Co-op (Hamilton), Palmetto Rural Telephone Cooperative, Incorporated, and Palmetto Telephone Communications, LLC (Palmetto), S&T Telephone Cooperative Association, Inc. and ST&T Communications, LLC (S&T), and Vexus Fiber, LLC (Vexus), as well as the petition of gateway provider, Identidad Advertising Development LLC, d/b/a Identidad Telecom, Identidad Technologies, and Infomovil Television and Systems Corp. (Identidad) (collectively, the Petitioners).[1] The small voice service provider petitioners sought waivers from the Commission's requirement that facilities-based small voice service providers fully implement the STIR/SHAKEN call authentication framework in the Internet Protocol (IP) portions of their voice networks by June 30, 2023.[2] Allband, Hamilton, Palmetto, and Vexus sought 30 or 45-day waivers,[3] while S&T sought an 83-day

[1] *See* Petition of Allband Communications Cooperative and Allband Multimedia (Allband) for Limited Waiver, WC Docket No. 17-97 (filed June 30, 2023) (Allband Petition); Petition of Hamilton County Telephone Co-op (Hamilton) for Limited Waiver, WC Docket No. 17-97 (filed June 30, 2023) (Hamilton Petition); Petition of Palmetto Rural Telephone Cooperative, Incorporated and Palmetto Telephone Communications, LLC (Palmetto) for Limited Waiver, WC Docket No. 17-97, (filed June 30, 2023) (Palmetto Petition); Petition of S&T Telephone Cooperative Association, Inc. and S&T Communications LLC (S&T), for Limited Waiver WC Docket No. 17-97 (filed Aug. 15, 2023) (S&T Petition); Petition of Vexus Fiber, LLC (Vexus) for Limited Waiver, WC Docket No. 17-97 (filed June 30, 2023) (Vexus Petition).

[2] 47 CFR § 64.6304(a)(1) (providing a STIR/SHAKEN implementation extension for facilities-based small voice service providers until June 30, 2023).

[3] While Hamilton and Palmetto both originally sought 30-day extensions, and Vexus and Allband originally sought 45-day extensions, these petitioners subsequently filed ex parte letters explaining that they had come into compliance sooner. *See* Allband Petition at 1; Hamilton Petition at 1; Palmetto Petition at 1; Vexus Petition at 1; Letter of Coral Olsen, General Manager, Allband, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-97, at 1 (filed Aug. 10, 2023) (stating that Allband had come into compliance as of August 2, 33 days after June 30, 2023); Letter of Robin Davidson, Vexus, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-97 at 1 (filed Aug. 8, 2023) (stating that, as of the date of the letter, Vexus had come into compliance, 39 days after June 30, 2023); Letter of Kevin Pyle, GM/EVP, Hamilton, to Marlene H. Dortch, Secretary, FCC, WC Docket No 17-97 at 1 (filed July 7, 2023) (stating that Hamilton had come into compliance as of July 6, six days after June 30, 2023); Letter of Valerie Ancrum, Regional Affairs Manager, Palmetto, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-97 at 2 (filed July 17, 2023) (stating that Palmetto had come into compliance as of July 13, 13 days after June 30, 2023). Therefore, for the purpose of considering their requests for relief, we treat Allband's, Hamilton's, Palmetto's, and Vexus' ex parte letters as amending their petitions to shorten their requests for waiver to the 33, six, 13, and 39-day periods, respectively, during which they state they were out of compliance.

waiver.[4] Identidad sought a 60-day waiver of the June 30, 2023 deadline that gateway providers fully implement STIR/SHAKEN in the IP portions of their networks.[5] The Petitioners claim that they cannot comply with the deadlines due to technical or operational difficulties arising in the course of implementation. For the reasons stated below, we deny the Petitioners' waiver requests.

II. BACKGROUND

2. In March 2020, the Commission adopted the *Caller ID Authentication First Report and Order*, which required voice service providers to implement the STIR/SHAKEN caller ID authentication framework in the IP portions of their voice networks by June 30, 2021.[6] In the Commission's October 2020 *Caller ID Authentication Second Report and Order*, small voice service providers received an extension until June 30, 2023 to meet that obligation.[7] In providing the extension, the Commission found that small voice service providers face high implementation costs relative to the small percentage of total voice subscribers they serve and confront unique equipment availability issues, and concluded that these factors warranted a blanket extension of two years.[8] In December 2021, the Commission adopted the *Small Provider Order*, shortening the STIR/SHAKEN implementation extension provided to non-facilities-based small voice service providers to June 30, 2022, while maintaining the June 30, 2023 deadline for facilities-based small voice service providers.[9]

3. In May 2022, the Commission adopted the *Gateway Order,* requiring gateway providers to apply STIR/SHAKEN caller ID authentication to all unauthenticated foreign-originated Session Initiation Protocol (SIP) calls with U.S. North American Numbering Plan (NANP) numbers.[10] The Commission concluded that gateway providers would have more than 13 months, until June 30, 2023, to implement STIR/SHAKEN, which was a longer period than proposed in the *Gateway Provider Notice*.[11]

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[4] *See* S&T Petition at 1.

[5] *See* 47 CFR § 64.6302(c) (June 30, 2023 gateway provider implementation deadline); Petition of Identidad Advertising Development d/b/a Identidad Telecom, Identidad Technologies, and Infomovil Television and Systems Corp. (Identidad), WC Docket No. 17-97, GC Docket No. 17-59 at 3 (filed June 30, 2023) (Identidad Petition).

[6] *Call Authentication Trust Anchor, Implementation of TRACED Act Section 6(a)—Knowledge of Customers by Entities with Access to Numbering Resources*, WC Docket Nos. 17-97 and 20-67, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3241, 3252, para. 24 (2020) (*Caller ID Authentication First Report and Order*).

[7] *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1876-77, paras. 39-40 (2020) (*Caller ID Authentication Second Report and Order*). In the TRACED Act, Congress required the Commission to assess burdens and barriers to the implementation of STIR/SHAKEN and gave the Commission discretion to extend compliance with the implementation mandate upon a public finding of undue hardship. TRACED Act § 4(b)(5)(A).

[8] *Caller ID Authentication Second Report and Order* at 1877-81, paras. 40-45.

[9] *See Call Authentication Trust Anchor*, Fourth Report and Order, 36 FCC Rcd 17840, 17844, para. 9 (2021) (*Small Provider Order*).

[10] *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Sixth Report and Order, Fifth Report and Order, Order on Reconsideration, Order, Seventh Further Notice of Proposed Rulemaking, Fifth Further Notice of Proposed Rulemaking, FCC 22-37, at 43, para. 103 (2022) (*Gateway Order*).

[11] *Gateway Order* at 26-34, paras. 51-60; *id*. at 28, para. 59 (citing *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Fifth Further Notice of Proposed Rulemaking in CG Docket No. 17-59 & Fourth Further Notice of Proposed Rulemaking in WC Docket No. 17-97, 36 FCC Rcd 14971, 14790, para. 48 (2021) (*Gateway Provider Notice*)).

III. DISCUSSION

4. We deny the Petitioners' requests for a waiver of the June 30, 2023 STIR/SHAKEN implementation deadlines.[12] Petitioners state that they faced unforeseen technical obstacles beyond their control and need additional time to address difficulties with upgrading both software and hardware necessary to implement STIR/SHAKEN, which they claim are due to third-party partner delays or personnel issues.[13] They argue that granting the requested waivers would be in the public interest because they will "continue to combat the origination of illegal robocalls during the course of the extension by the implementation of [their] robust robocall mitigation program[s]" timely put in place and filed in the Robocall Mitigation Database, and because they are not providers likely to originate illegal robocalls.[14]

5. We disagree with the Petitioners that their stated basis for an extension of the June 30, 2023 deadlines constitutes good cause for granting their waiver requests. When the Commission provided a two-year extension for small voice service providers, it accounted for issues related to costs and resources needed to implement STIR/SHAKEN by the June 30, 2023 deadline.[15] Similarly, in setting the June 30, 2023 deadline for gateway providers, the Commission explained that the 13-month implementation period should be a sufficient amount of time given that "the industry has had much more experience with implementation than when we originally required voice service providers to implement STIR/SHAKEN" and evidence that STIR/SHAKEN implementation costs had dropped since the time the

[12] The Commission's rules may be waived for "good cause shown." 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166. The Bureau, under delegated authority, may act on requests for waiver of rules. 47 CFR § 0.291(b).

[13] Allband Petition at 1, 3-4 (stating that it faced "unforeseen technical obstacles" due to staff changes and health issues that delayed implementation [which appear to be] related to the cause of hardware issues inhibiting necessary software upgrades); Hamilton Petition at 3 (stating that "it encountered unexpected delays in the form of newly discovered software issues" that prevented it "from full STIR/SHAKEN testing" by the deadline and is working with its vendor to fix them); Identidad Petition at 1-2, 5 (stating that following STIR/SHAKEN implementation on June 19, 2023, it "discovered a technical issue" with its switching platform related to an "identity header software issue"); Palmetto Petition at 3 (stating that "[d]uring STIR/SHAKEN testing, [Palmetto's] vendor . . . found technical issues" with the software configuration "that is inhibiting SIP traffic from being delivered accurately."); S&T Petition at 1 (stating that it seeks a waiver "[d]ue to delays in delivery of the hardware necessary . . . to implement STIR/SHAKEN"); Vexus Petition at 3 (stating that it "encountered unexpected delays by newly discovered hardware issues" that "will require additional equipment costs combined with potential shipping delays due to supply chain constraints" and is "working with its vendor . . . to resolve the hardware issue and complete the software upgrade).

[14] Allband Petition at 4, Hamilton Petition at 4; Palmetto Petition at 4-5; Vexus Petition at 4-5. *See also* Identidad Petition at 3-4 (arguing that good cause exists to grant its request because its requested 60-day extension is less time than the 18 months voice service providers had to implement STIR/SHAKEN" and it has "diligently complied with all of the Commission's robocall mitigation requirements to date"); S&T Petition at 4 (arguing that "[t]he public interest will not be harmed by a grant of the limited extension sought by Petitioners, particularly given the success of their robocall mitigation efforts to date.").

[15] *Caller ID Authentication Second Report and Order*, 36 FCC Rcd at 1877-78, paras. 41-43; *see also Call Authentication Trust Anchor*, WC Docket No. 17-97, Order, DA 22-741, at 3, para. 6 (WCB 2022) (*2022 Waiver Denial Order*) (denying requests for waivers, based on asserted technical difficulties, from the Commission's requirement that non-facilities-based small voice service providers fully implement STIR/SHAKEN authentication frameworks in the IP portions of their voice networks by June 30, 2022).

Commission set the June 30, 2021 implementation deadline for voice service providers.[16] Nothing in the Petitioners' filings persuades us that these were insufficient periods of time to complete the necessary tasks or that the reasons they cite for failing to timely comply were unique or unforeseeable.[17] Critically, several petitioners note that they did not engage vendors and begin work to implement STIR/SHAKEN until well after the orders setting the compliance deadlines, supporting a conclusion that their failures to meet the deadlines were not due to factors outside of their control.[18] The Commission has found that failing to promptly take action to meet a Commission deadline can indicate a lack of diligence that does not warrant a waiver.[19] This includes instances where a failure to comply with the Commission's rules was due to reliance on third-party advice.[20]

[16] *Gateway Order* at 11, 28, paras. 24, 59 (providing a shorter compliance window because "the industry has had much more experience with implementation than when we originally required voice service providers to implement STIR/SHAKEN" and evidence that STIR/SHAKEN implementation costs had dropped since the time the Commission set the voice service provider compliance deadlines).

[17] *See 2022 Waiver Denial Order* at 3, para. 6 ("Petitioners have had two years to complete the work necessary to implement STIR/SHAKEN in their networks, and nothing in their petitions persuades us that was an insufficient amount of time for them to complete the tasks they state are still outstanding."); *Wireline Competition Bureau Performs Required Evaluation Pursuant to Section 64.6304(f) of the Commission's Rules*, WC Docket No. 17-97, Public Notice, DA 22-1342 at 3 (WCB, Dec. 16, 2022) (*2022 Evaluation Public Notice*) ("There is no evidence in the record indicating that facilities-based small voice service providers face burdens that would prevent their implementation of STIR/SHAKEN within the next six months, in furtherance of the Commission's objective to achieve ubiquitous STIR/SHAKEN implementation."). The Petitioners do not adequately explain why their circumstances are different than the hundreds of gateway and voice service providers that certified by the deadlines in the Robocall Mitigation Database that they have fully implemented STIR/SHAKEN.

[18] *See* Hamilton Petition at 2 (noting that Hamilton only began working to implement STIR/SHAKEN in September 2022, nearly a year after the release of the *Caller ID Authentication Second Report and Order* setting the compliance deadline for small voice service providers); Identidad Petition at 2 (despite knowing as of September 2022 that its switch vendor could implement STIR/SHAKEN, Identidad only requested implementation in March of 2023); Palmetto Petition at 2 (noting that it has been working to implement STIR/SHAKEN only since January 2023); S&T Petition at 2 (attempting to come into compliance beginning in April 2023).

[19] *Commnet Supply LLC et al.*, ULS File Nos. 003818184, 0003805569, Memorandum Opinion and Order, 34 FCC Rcd 11673, para. 2 (2019) (denying a waiver request for failure to meet the Commission's service requirement deadline "not caused by unique circumstances or factors beyond the licensee's control, but rather by its own lack of diligence" in attempting to meet the deadline); *Connect America Fund et al*., WC Docket No. 10-90, CC Docket No. 01-92, Order, 31 FCC Rcd 12021, 12028, para. 19 (2016) (denying a waiver request "[d]ue to the lack of diligence" in discovering an error close to a deadline that should have been discovered earlier in the normal course of business); *Applications of Montgomery County Media et al.*, MM Docket No. 85-331, Memorandum Opinion and Order, 8 FCC Rcd 2763, 2765, para. 12 (1993) (holding that "an applicant must show that it acted promptly after it discovered, or should have discovered, the potentially disqualifying deficiency" and that "an applicant that sites idly by, either doing nothing or pursuing a course of action that is not likely to resolve the problem expeditiously, lacks diligence"); *Petitions for Waiver of Universal Service High-Cost Filing Deadlines*; Memorandum Opinion and Order, 31 FCC Rcd 7386, 7388, para. 8 (2016) (in denying waiver request, the Commission concluded that "special circumstances" do not include "unique difficulties brought on by redirection of staff"); *Review of the Emergency Alert System et al.,* Order, EB Docket No. 04-296, 28 FCC Rcd 10181, 10183, para. 5 (PSHSB 2013) ("Vendor delay alone does not ordinarily constitute the 'special circumstances' that would justify a waiver . . . the delay must have arisen from some event or events that occurred despite Petitioner's diligent business operations, and not as a result of Petitioner's actions."); *id*. at 10183-84, paras. 6-7 (denying waiver request because petitioners "chose to wait until very close to the deadline to order equipment, and thus any delay in receiving equipment was entirely attributable to each company's business decisions").

[20] S&T argues that its failure to begin implementation until April 2023 was due to reliance on incorrect legal advice from an engineering firm about the applicability of the Commission's rules. S&T Petition at 2 ("Petitioners retained an engineering consulting firm to provide advice on compliance with the STIR/SHAKEN requirements, and that firm advised Petitioners that, . . . because they had a TDM connection in their network, they fell within the scope of

(continued….)

6. We are not persuaded by the Petitioners that implementation of a timely robocall mitigation program justifies a waiver of the STIR/SHAKEN implementation deadlines. The Bureau previously concluded that voice service providers' compliance with robocall mitigation obligations does not obviate the need for those providers to timely implement STIR/SHAKEN or demonstrate that granting a waiver of an implementation deadline would be in the public interest.[21] The Commission requires a multi-faceted effort to effectively combat illegal robocalls, under which all voice service providers must engage in robocall mitigation, file a certification and a description of their mitigation efforts in the Robocall Mitigation Database *as well as* implement STIR/SHAKEN.[22] Furthermore, any gaps or delays in STIR/SHAKEN implementation undermine its effectiveness.[23] For the foregoing reasons, we deny the Petitioners' requests for a waiver.

(Continued from previous page)
the non-IP exemption."). However, a petitioner's confusion or ignorance of the Commission's rules does not constitute "special circumstances" to grant a waiver. *Review of the Decision of the Universal Service Administrator by School Board of Alachua County, Gainsville, Florida*, File No. SLD-266209, Order, 19 FCC Rcd 1004, 1004-05, para. 2 (WCB 2004); *see also Request for Review by St. Mary's Public Library, 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, 16 FCC Rcd 12936, 12938, para. 5 (CCB 2001) (denying a waiver request to the extent it relies on a misunderstanding of the program rules). This is so even where the petitioner has relied on the advice of a third party. *See Hispanic Christian Community Network et al*., MB Docket No. 23-267, Order to Show Cause et al., 2023 WL 5197159, at *33, para. 94 (MB 2023) ("[L]icensees have a duty to know and comply with the Commission's rules and the Act. Moreover, efforts to shift blame to agents . . . do not excuse a licensee's failure to observe the Rules or statutory obligations."); *Universal Service Contribution Methodology Petition for Waiver of Universal Service Fund Rules by Outfitter Satellite, Inc.*, WC Docket 06-122, 28 FCC Rcd 13358, 13361-62, para. 12 (WCB 2013) ("The Commission has held that businesses are responsible for the conduct of their employees and third party contractors and the consequences that flow from such conduct; mistakes or negligence by employees or third party contractors are not grounds for waiver of Commission rules."); *LMDS Ventures, Attn: Reynard L. Bockart*, File Nos. 0004207852, 000407845, Letter, 27 FCC Rcd 2827, 2829 at 2 (WTB 2012) (in denying a waiver request, concluding that "[t]he Commission has held that a licensee cannot rely on a third party's failure to perform as justification for a failure to meet regulatory requirements."); *RKO Gen., Inc*. v. FCC, 670 F.2d 215, 231 (D.C. Cir. 1981) ("[A]dvice of counsel cannot excuse a clear breach of duty by a licensee.").

[21] *2022 Waiver Denial Order* at 3, para. 6.

[22] *Call Authentication Trust Anchor,* WC Docket No. 17-97, Sixth Report and Order, FCC 23-18, at 16-7, paras. 29-30 (2023) (concluding that mitigation and STIR/SHAKEN implementation are complimentary, and both are necessary for all providers to protect against illegal robocalls); *see also Gateway Order* at 44, paras. 104-105 (same conclusion with respect to gateway providers specifically).

[23] *Gateway Provider Order* at 27, para. 58 ("Expanding the scope of providers subject to the STIR/SHAKEN regime will increase the overall benefits of the standard and its future reach. . . . STIR/SHAKEN has beneficial network effects, and the more steps we take to increase its use, the greater the overall benefit for those providers that have already implemented the standard and those providers' customers."); *2022 Evaluation Public Notice* at 5 (in deciding not to further lengthen the implementation extension for facilities-based small voice service providers, concluding that the end of the extension "will be a significant step towards achieving full participation in STIR/SHAKEN"). Although Palmetto states that "less than one percent of [its] *traffic* is IP, while the remaining is TDM," Palmetto Petition at 5 (emphasis added), it does not make clear what portion of its *network* is IP capable and therefore able to implement STIR/SHAKEN. As a result, we cannot evaluate the relevance of the relative proportion of Palmetto's IP traffic in determining whether the requested waiver is in the public interest.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT pursuant to the authority contained in sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, the Petitions for Limited Waiver filed by Allband, Hamilton, Palmetto, S&T and Vexus, and the Petition for Waiver filed by Identidad are DENIED. This Order shall be effective upon release.

FEDERAL COMMUNCIATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

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
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DA 23-843
Released: September 13, 2023

Proposed Fourth Quarter 2023 Universal Service Contribution Factor

CC Docket No. 96-45

In this Public Notice, the Office of Managing Director (OMD) announces that the proposed universal service contribution factor for the fourth quarter of 2023 will be 0.345 or 34.5 percent.[1]

Rules for Calculating the Contribution Factor

Contributions to the federal universal service support mechanisms are determined using a quarterly contribution factor calculated by the Federal Communications Commission (Commission).[2] The Commission calculates the quarterly contribution factor based on the ratio of total projected quarterly costs of the universal service support mechanisms to contributors' total projected collected end-user interstate and international telecommunications revenues, net of projected contributions.[3]

USAC Projections of Demand and Administrative Expenses

Pursuant to section 54.709(a)(3) of the Commission's rules,4 the Universal Service Administrative Company (USAC) submitted projections of demand and administrative expenses for the fourth quarter of 2023.[5] Pursuant to the Commission's direction and the Commission's rules,[6] the Wireline Competition Bureau (WCB), in consultation with OMD, previously directed USAC to carry forward up to $211.50 million in unused funds from prior funding years to the extent necessary to satisfy funding year 2023 Rural Health Care program demand.[7] Further, for the fourth quarter 2023, OMD

[1] *See* 47 C.F.R. § 54.709(a).

[2] *See id.*

[3] *See* 47 C.F.R. § 54.709(a)(2).

[4] *See* 47 C.F.R. § 54.709(a)(3).

[5] *See* Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2023, available at <https://www.usac.org/fcc-filings> (filed August 2, 2023) (*USAC Filing for Fourth Quarter 2023 Projections*; *See also* Federal Universal Service Support Mechanisms Quarterly Contribution Base for Fourth Quarter 2023, available at <https://www.usac.org/fcc-filings> (filed September 1, 2023) (*USAC Filing for Fourth Quarter 2023 Contribution Base*).

[6] *See* 47 C.F.R. § 54.619(a)(5).

instructed USAC to apply $73.76 million of the $211.50 million in unused funds to offset the $163.81 million projected Rural Health Care program demand. This offset reduces the fourth quarter 2023 contribution factor to a level below what the contribution factor would be based on USAC's filings.[8]

Accordingly, the projected demand and expenses, after application of the Rural Health Care offset, are as follows:

($ millions)

Program Demand	Projected Program Support	Admin. Expenses	Application of True-Ups & Adjustments	Total Program Collection (Revenue Requirement)
Schools and Libraries	631.45	19.42	1.17	652.04
Rural Health Care	90.05	6.78	0.39	97.22
High-Cost	1,067.60	18.14	(18.86)	1,066.88
Lifeline	302.20	24.08	(63.57)	262.71
Connected Care	0.04	0.08	(0.14)	(0.02)
TOTAL	2,091.34	68.50	(81.01)	2,078.83

USAC Projections of Industry Revenues

USAC submitted projected collected end-user telecommunications revenues for October 2023 through December 2023 based on information contained in the Fourth Quarter 2023 Telecommunications Reporting Worksheet (FCC Form 499-Q).[9] The amount is as follows:

> Total Projected Collected Interstate and International End-User Telecommunications Revenues for Fourth Quarter 2023: $8.172483 billion.

Adjusted Contribution Base

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[7] *See Public Notice* (DA 23-440) released May 24, 2023, Wireline Competition Bureau Announces the Availability of Unused Funds to Fully Satisfy Demand for Rural Health Care Program Funding for Funding Year 2023.

[8] *See* Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2023, available at <http://www.usac.org/fcc-filings> (filed August 2, 2023) (*USAC Filing for the Fourth Quarter 2023 Projections)*.

[9] *USAC Filing for Fourth Quarter 2023 Contribution Base* at 4.

To determine the quarterly contribution base, we decrease the fourth quarter 2023 estimate of projected collected interstate and international end-user telecommunications revenues by the projected revenue requirement to account for circularity and decrease the result by one percent to account for uncollectible contributions. Accordingly, the quarterly contribution base for the fourth quarter of 2023 is as follows:

Adjusted Quarterly Contribution Base for Universal Service Support Mechanism

(Fourth Quarter 2023 Revenues - Projected Revenue Requirement) * (100% - 1%)

= ($8.172483 billion – $2.078830 billion) * 0.99

=$6.032716 billion.

Unadjusted Contribution Factor

Using the above-described adjusted contribution base and the total program collection (revenue requirement) from the table above, the proposed unadjusted contribution factor for the fourth quarter of 2023 is as follows:

Contribution Factor for Universal Service Support Mechanisms

Total Program Collection / Adjusted Quarterly Contribution Base

=$2.078830 billion / $6.032716 billion

=0.344593

Unadjusted Circularity Factor

USAC will reduce each provider's contribution obligation by a circularity discount approximating the provider's contributions in the upcoming quarter. Accordingly, the proposed unadjusted circularity factor for the fourth quarter of 2023 is as follows:

Unadjusted Circularity Factor for Universal Service Support Mechanisms

= Total Program Collection / Projected Fourth Quarter 2023 Revenues
= $2.078830 billion / $8.172483 billion
= 0.254369

Proposed Contribution Factor

The Commission has directed OMD to announce the contribution factor as a percentage rounded up to the nearest tenth of one percent.[10] Accordingly, the proposed contribution factor for the fourth quarter of 2023 is as follows:

34.5%

Proposed Circularity Discount Factor

The Commission also has directed OMD to account for contribution factor rounding when calculating the circularity discount factor.[11] Accordingly, the proposed circularity factor for the fourth quarter of 2023 is as follows:

0.255250[12]

Conclusion

If the Commission takes no action regarding the projections of demand and administrative expenses and the proposed contribution factor within the 14-day period following release of this Public Notice, they shall be deemed approved by the Commission.[13] USAC shall use the contribution factor to calculate universal service contributions for the fourth quarter of 2023. USAC will reduce each provider's contribution obligation by a circularity discount approximating the provider's contributions in the upcoming quarter.[14] USAC includes contribution obligations less the circularity discount in invoices sent to contributors. Contribution payments are due on the dates shown on the invoice. Contributors will pay interest for each day for which the payments are late. Contributors failing to pay contributions in a timely fashion may be subject to the enforcement provisions of the Communications Act of 1934, as

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[10] *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Order and Second Order on Reconsideration, 18 FCC Rcd 4818, 4826, para. 22 (2003) (*Second Order on Reconsideration)*.

[11] *Id*.

[12] The proposed circularity discount factor = 1 + [(unadjusted circularity discount factor – 1) * (unadjusted contribution factor / proposed contribution factor)]. The proposed circularity discount factor is calculated in a spreadsheet program, which means that internal calculations are made with more than 15 decimal places.

[13] *See* 47 C.F.R. § 54.709(a)(3).

[14] USAC will calculate each individual contributor's contribution in the following manner: (1-Circulatory Factor) * (Contribution Factor*Revenue)

amended, and any other applicable law. In addition, contributors may be billed by USAC for reasonable costs of collecting overdue contributions.[15]

We also emphasize that carriers may not markup federal universal service line-item amounts above the contribution factor.[16] Thus, carriers may not, during the fourth quarter of 2023, recover through a federal universal service line item an amount that exceeds 34.5 percent of the interstate telecommunications charges on a customer's bill.

In addition, under the limited international revenues exception (LIRE) in section 54.706(c) of the Commission's rules, a contributor to the universal service fund whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall contribute based only on projected collected interstate end-user telecommunications revenues, net of projected contributions.[17] The rule is intended to exclude from the contribution base the international end-user telecommunications revenues of any entity whose annual contribution, based on the provider's interstate and international end-user telecommunications revenues, would exceed the amount of its interstate end-user revenues.[18] The proposed contribution factor exceeds 12 percent, which we recognize could result in a contributor being required to contribute to the universal service fund an amount that exceeds its interstate end-user telecommunications revenue. Should a contributor face this situation, the contributor may petition the Commission for waiver of the LIRE threshold.[19]

For further information, contact Thomas Buckley at (202) 418-0725 or Kim Yee at (202) 418-0805, TTY (888) 835-5322, in the Office of Managing Director.

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[15] *See* 47 C.F.R. § 54.713.

[16] *See* 47 C.F.R. § 54.712.

[17] *See* 47 C.F.R. § 54.706.

[18] *See Federal-State Joint Board on Universal Service*, Sixteenth Order on Reconsideration, CC Docket No. 96-45, Eighth Report and Order, CC Docket No. 96-45, Sixth Report and Order, Docket No. 96-262, 15 FCC Rcd 1679, 1687-1692, paras. 17-29 (1999) (*Fifth Circuit Remand Order*).

[19] Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may consider considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166; 47 C.F.R. § 54.802(a).

PUBLIC NOTICE

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

News Media Information 202 / 418-0500
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DA 23-844
Released: September 13, 2023

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF HYPERCUBE NETWORKS, LLC FROM AP VIII OLYMPUS VOTECO, LLC TO 46 LABS LLC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-306

Comments Due: September 27, 2023
Reply Comment Due: October 4, 2023

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by AP VIII Olympus VoteCo, LLC (Olympus) and 46 Labs LLC (46 Labs) (together, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to transfer control of Olympus' indirect subsidiary, Hypercube Networks, LLC (Hypercube Networks), to 46 Labs.[2]

Hypercube Networks, a Delaware limited liability company, provides wholesale local and national tandem switching and transport services, termination services, toll-free origination services, and Direct Inbound Dial services to telecommunications and information service providers, cable telephony providers, and Voice over Internet Protocol providers in 48 states and the District of Columbia.[3] Hypercube Networks is a wholly-owned direct subsidiary of Hypercube Networks Holdings, LLC (f/k/a Intrado Communications Holdings, LLC) (Hypercube Holdings), which, in turn, is managed by Olympus, both Delaware entities.

46 Labs, an Oklahoma limited liability company, along with its affiliate, Versatel, LLC (Versatel), a Delaware limited liability company, provide voice, data, and messaging services to organizations in the healthcare, finance, retail, transportation, manufacturing, government, and education sectors.[4] Applicants state that 46 Labs is owned by the following U.S. citizens: Trevor

[1] *See* 47 U.S.C. § 214(a); 47 CFR §§ 63.03-04.

[2] Application for Consent to Transfer Control of Hypercube Networks, LLC, from AP VIII Olympus VoteCo, LLC to 46 Labs LLC, WC Docket No. 23-306 (filed Sept. 6, 2023) (Application). Applicants also filed an application 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.

[3] Hypercube Networks provides service to its customers using its nationwide optical backbone network that is both IP and TDM-based. Applicants state that while Hypercube Networks owns and operates its own network equipment, it leases transmission lines (including access circuits) from other carriers.

Francis, Chief Executive Officer and founder of 46 Labs (approximately 63.4%), and Daniel Howard, Chief Legal Officer (approximately 31.2%).

Pursuant to the terms of the proposed transaction, 46 Labs will acquire all of the issued and outstanding membership interests of Hypercube Holdings, including its subsidiary, Hypercube Networks.

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, convenience, and necessity. We accept the application for streamlined filing under section 63.03(b)(2)(i) of the Commission's rules.[5]

Domestic Section 214 Application Filed for the Transfer of Control of
Hypercube Networks, LLC from AP VII Olympus VoteCo, LLC to 46 Labs LLC
WC Docket No. 23-306 (filed Sept. 6, 2023).

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 September 27 2023**, and reply comments **on or before October 4, 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) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
2) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, Gregory.kwan@fcc.gov; and
3) Jim Bird, Office of General Counsel, 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 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

[4] Applicants state that 46 Labs does not provide domestic telecommunications services; however, its affiliate, Versatel, provides domestic long-distance service in California, Connecticut, Florida, Hawaii, Illinois, Kansas, Kentucky, Maryland, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Virginia, and Wisconsin.

[5] 47 CFR § 63.03(b)(2)(i).

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.

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.[6] 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.

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[6] *See* 47 CFR § 1.45(c).

PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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

DA 23-845
Released: September 14, 2023

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF MASHELL TELECOM, INC. D/B/A RAINIER CONNECT TO ALPHABOOST PURCHASER, LLC

WC Docket No. 23-30

By this Public Notice, the Wireline Competition Bureau grants, as conditioned, the application filed by Mashell, Inc. (Mashell), Mashell Telecom, Inc. d/b/a Rainier Connect (Mashell Telecom) and Alphaboost Purchaser, LLC (Alphaboost) (together, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to transfer control of Mashell Telecom to Alphaboost.[2]

On February 24, 2023, the Bureau released a public notice seeking comment on the Application.[3] The Bureau did not receive comments or petitions in opposition to the Application.

Mashell, a Washington corporation, acts as a holding company for Mashell Telecom and its affiliates,[4] which collectively provide telecommunications services and other services to approximately 25,000 residential customers and approximately 2,200 commercial customers in the state of Washington. Mashell Telecom, a Washington corporation, is an eligible telecommunications carrier (ETC) and an incumbent local exchange carrier (LEC) providing telecommunications services in Washington.[5]

[1] *See* 47 U.S.C. § 214(a); 47 CFR §§ 63.03-04.

[2] *See* Application of Mashell, Inc., Mashell Telecom, Inc. d/b/a Rainier Connect and Alphaboost Purchaser, LLC for Authority to Transfer Control, WC Docket No. 23-30 (filed Jan. 20, 2023) (Application). Applicants filed a supplement to their Application on February 22, 2023, September 6, 2023, and September 13, 2023. Letter from Richard A. Finnigan, Counsel for Mashell Telecom and Mashsell, and Danielle Burt, et al., Counsel for Alphaboost, to Marlene H. Dortch, Secretary, FCC (filed Feb. 22, 2023) (Feb. 22 Supplement Letter); Letter from Richard A. Finnigan, Counsel for Mashell Telecom and Mashsell, and Danielle Burt, et al., Counsel for Alphaboost, to Marlene H. Dortch, Secretary, FCC (filed Sept. 6, 2023) (Sept. 6 Supplement Letter); Letter from Richard A. Finnigan, Counsel for Mashell Telecom and Mashsell, and Danielle Burt, et al., Counsel for Alphaboost, to Marlene H. Dortch, Secretary, FCC (filed Sept. 13, 2023) (Sept. 13. Supplement Letter). Applicants also filed applications for the transfer of international and wireless authorizations. *See* IBFS File Nos. ITC-T/C-20230120-00004. Any action on this domestic section 214 Application is without prejudice to Commission action on other related, pending applications.

[3] *Domestic Section 214 Application Filed for the Transfer of Control of Mashell Telecom, Inc. d/b/a Rainer Connect to Alphaboost Purchaser, LLC*, WC Docket No. 23-30, Public Notice, DA 23-151 (WCB 2020) (*Public Notice*).

[4] Licensee's affiliates include the following Washington limited liability companies: Rainier Connect North LLC, New Opportunities LLC, and Carrera GT LLC.

[5] Application at 2-3. Applicants state that subsequent to filing the Application, Mashell Telecom completed its registration to participate in the Affordable Connectivity Program and will continue to meet its obligations post-consummation. Sept. 13 Supplement Letter at 1.

Alphaboost, a newly-formed Delaware limited liability company, was created for the purpose of completing this proposed transaction and is not a telecommunications provider.[6] Alphaboost is indirectly owned by Palisade Diversified Infrastructure Fund No. 3, an Australian infrastructure fund.[7] The Applicants state that, at closing, Mashell Telecom is expected to be owned directly or indirectly by funds managed by Palisade Americas Management, LLC (PAM) and Palisade Investment Partners Limited (PIPL), an Australia specialist infrastructure investment manager.[8] Diversified Infrastructure Fund No. 3 is held by multiple Australian individuals and entities.[9]

Pursuant to the terms of the proposed transaction by and among Alphaboost Merger Sub, LLC (Merger Sub),[10] Mashell, and Brian Haynes (as Shareholder Representative), Merger Sub will merge with and into Mashell, with Mashell continuing as the surviving entity.[11] Applicants state that, as a result of this proposed transaction, Mashell Telecom will be an indirect, wholly-owned subsidiary of Alphaboost.[12]

On September 8, 2023, the National Telecommunications and Information Administration (NTIA) submitted a Petition to Adopt Conditions to Authorizations and Licenses (Petition) on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunication Services Sector (Committee).[13] In the Petition, NTIA advises the Commission that it has no objection to the Commission granting the Applications "provided that the Commission conditions its approval on the assurance of Mashell Telecom, Inc. d/b/a Rainer Connect ("Mashell Telecom") to abide by the commitments and undertakings set forth in the August 24, 2023, Letter of Assurance (LOA)."[14]

In accordance with the request of NTIA, and in the absence of any objection from the Applicants, we grant the Petition, and, accordingly, we condition grant of the transfer of domestic section 214 authority on compliance by the Applicants with the commitments and undertakings set out in the LOA that apply to the Application.[15] A failure to comply with and/or remain in compliance with any of the provisions of the LOA shall constitute a failure to meet a condition of this grant and the underlying authorizations and thus grounds for declaring the underlying domestic 214 authorizations terminated

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[6] *Id.* at 2.

[7] *Id.*

[8] *Id.* Applicants provided an updated ownership chart. Sept. 13, 2023 Supplement Letter at Updated Exhibit A (Current and Post-Transaction Corporate Ownership Structure).

[9] Sept. 13, 2023 Supplement Letter at Updated Exhibit A (Current and Post-Transaction Corporate Ownership Structure).

[10] Merger Sub is a Washington limited liability company and wholly-owned subsidiary of Alphaboost created solely for purposes of this proposed transaction. Application at 3.

[11] *Id.*

[12] *Id.* at 3-4.

[13] Petition to Adopt Conditions to Authorizations and Licenses, WC Docket No. 23-30 (filed Sept. 8, 2023) (LOA); IBFS File Nos. ITC-T/C-20230120-00004 (filed Sept. 8, 2023).

[14] Petition at 2.

[15] *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.,* WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10732-33, para. 349 (2019)*; Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order and Order on Reconsideration*, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997), recon. denied, 15 FCC Rcd 18158 (2000) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of applications for international section 214 authority, submarine cable landing licenses, and declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act)).

without further action on the part of the Commission. Failure to meet a condition of this grant and the authorizations may also result in monetary sanctions or other enforcement action by the Commission.

We find, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity.[16] This grant of the Application and Petition is conditioned as set out in this Public Notice.

Pursuant to section 214(a) of the Act, 47 U.S.C. § 214(a) 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, we grant the Application and the Petition with the condition described above. 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 Dennis Johnson, Wireline Competition Bureau, (202) 418-0809.

- FCC -

[16] *See* 47 U.S.C. § 214(a); 47 CFR § 63.03.

PUBLIC NOTICE

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

News media information 202-418-0500
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DA No. 23-846

Report No. TEL-02302 **Thursday September 14, 2023**

International Authorizations Granted

Section 214 Applications (47 CFR §§ 63.18, 63.24); Section 310(b) Petitions (47 CFR § 1.5000)

By the Chief, Telecommunications and Analysis Division, Office of International Affairs:

The following applications have been granted pursuant to the Commission's processing procedures set forth in sections 63.12 and 63.20 of the Commission's rules. 47 CFR §§ 63.12, 63.20.

Unless otherwise noted, these grants authorize the applicants to: (1) become a facilities-based international common carrier subject to 47 CFR §§ 63.21, 63.22 and/or a resale-based international common carrier subject to 47 CFR §§ 63.21, 63.23; (2) assign or transfer control of international section 214 authority in accordance with 47 CFR § 63.24; or (3) 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 30 (thirty) days of this public notice. See 47 CFR § 1.4(b)(2).

ITC-214-20230810-00100 E Votacall, Inc

International Telecommunications Certificate

Service(s): Global or Limited Global Resale Service

Grant of Authority Date of Action: 09/08/2023

Votacall, Inc. (Votacall) filed an application for authority to provide resale services in accordance with section 63.18(e)(2) of the Commission's rules, 47 CFR §§ 63.18(e) (2).

Votacall, a Massachusetts corporation, is owned as follows: Edward Lennon (70%) and Andrew DeAngelis (10%), both U.S. citizens. No other shareholder owns 10% or greater equity or voting interests in Votacall.

ITC-ASG-20230801-00094 E Lingo Telecom, LLC

Assignment

Consummated Date of Action: 09/13/2023

Current Licensee: BullsEye Telecom, Inc.

FROM: BullsEye Telecom, Inc.

TO: Lingo Telecom, LLC

On August 2, 2023, Lingo Telecom, LLC (Lingo) filed a notification of the pro forma assignment of the international section 214 authorization held by BullsEye Telecom, Inc. (ITC-214-20010306-00118) to Lingo, effective July 1, 2023. Bullseye is a direct subsidiary of Lingo. In a corporate reorganization, Bullseye assigned all of its customers and its international section 214 authorization (ITC-214-20010306-00118) to Lingo.

ITC-T/C-20230120-00004 E Mashell Telecom, Inc. d/b/a Rainier Connect

Transfer of Control

Grant of Authority Date of Action: 09/12/2023

Current Licensee: Mashell Telecom, Inc. d/b/a Rainier Connect

FROM: Mashell, Inc.

TO: Alphaboost Purchaser, LLC

Mashell Telecom, Inc. d/b/a Ranier Connect (Mashell Telecom), a Washington entity that holds an international section 214 authorization (ITC-214-19970821-00502), has filed an application for the transfer of control of Mashell Telecom from Mashell, Inc. (Mashell) to Alphaboost Purchaser, LLC (Alphaboost Purchaser). Mashell Telecom is a wholly owned subsidiary of Mashell Telecom, a Washington entity. Applicants filed a supplement on September 6, 2023.

Pursuant to a December 6, 2022 agreement and plan of merger, Alphaboost Merger Sub, LLC, a wholly owned subsidiary of Alphaboost Purchaser, will merge into Mashell with Mashell being the surviving entity. Upon consummation, Mashell will be a direct wholly owned subsidiary of Alphaboost Purchaser, and Mashell Telecom will be an indirect wholly owned subsidiary of Alphaboost Purchaser.

Alphaboost Purchaser is wholly owned by Alphaboost Holdings, LLC which, in turn, is wholly owned by Alphaboost Parent, LLC (Alphaboost Parent), all Delaware entities. Alphaboost Parent is wholly owned by Palisade Americas Investment, LLC, a Delaware entity, which, in turn, is wholly owned by Palisade Diversified Infrastructure Fund No. 3 (PDIF3), an Australian entity.

Pinnacle RE Services Limited (Pinnacle RE), an Australian entity, is the trustee of PDIF3. Pinnacle RE is wholly owned by Pinnacle Investment Management Limited (PIML) which, in turn is wholly owned by Pinnacle Investment Management Group Limited (PIMGL), both Australian entities. PIMGL is a public traded company in which two Australian entities and two citizens of Australia hold a 10% or greater interest: HSBC Custody Nominees (Australia) Limited (20.76%); JP Morgan Nominees Australia Pty Limited (10.72%); Ian Macoun (14.1%); and Steven Wilson (11.28%).

Palisade Investment Partners Limited (PIPL) is the manager of PDIF3. The direct owners of PIPL are: PIML (35.9%), Palisade Officers Shareholding Trust (POST) (21.8%), House of Lloyds Trust (18.47%), Riggs Family Trust (13.83%), Superannuation Fund (5%), all Australian entities, and Ian Macoun (5%), an Australian citizen. POSH Nominees Pty Ltd, an Australian entity, is the trustee for POST. Angela Mary Lloyd, an Australian citizen, is the trustee for the House of Lloyds Trust and a co-trustee of the Superannuation Fund. Roger Lloyd, an Australian citizen, is the other co-trustee of the Superannuation Fund. Vicki Rigg, an Australian citizen, is the trustee for the Riggs Family Trust.

Three Australian entities will hold a 10% or greater equity interests in PDIF3: Palisade Unlisted Infrastructure Trust (PUIT) (up to 19.62%); UniSuper (up to 15.18%); and ANZ Australia Staff Super Scheme (ANZ Australia) (up to 13.94%). Pinnacle Fund Services Limited, an Australian entity, which is wholly owned by PIML, is the trustee for PUIT. UniSuper Limited, an Australian entity, is the trustee for UniSuper. ANZ Staff Super Scheme (Australia) Pty Limited, an Australian entity, is the trustee for ANZ Australia.

It is expected that Palisade Americas Management, LLC (PAM), will enter a management agreement with one or more of the Alphaboost entities. PAM is expected to be owned by Palisade Investment Management Americas, LLC (70-100%), both Delaware entities, and a yet to be formed entity which is expected to be organized in Delaware and may be owned by two Australian citizens, that will have up to 30% interest in PAM. PAI is wholly owned by PIPL.

According to the Applicants, no other individual or entity will hold a 10% or greater direct equity or voting interest in Alphaboost Purchaser or Mashell Telecom.

We grant the Petition to Adopt Conditions to Authorizations and Licenses filed in this proceeding on September 8, 2023, 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. Accordingly, we condition grant of the application on Mashell Telecom, Inc, dba Rainier Connect abiding by the commitments and undertakings set forth in the Letter of Agreement from Brian Haynes, President/CEO, Mashell Telecom, Inc, dba Rainier Connect, to the Chief, Foreign Investment Review Section, and Deputy Chief, Compliance and Enforcement, Foreign Investment Review Section, on behalf of the Assistant Attorney General for National Security, United States Department of Justice, National Security Division, dated August 24, 2023 (LOA). The Petition and the LOA may be viewed on the FCC's website through the International Communications Filing System by searching for ITC-T/C-20230120-00004 and accessing the "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 authorization and thus grounds for declaring the authorization terminated without further action on the part of the Commission. Failure to meet a condition of the authorization 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.

ITC-T/C-20230725-00078 E Farmers & Merchants Mutual Telephone Company

Transfer of Control

Grant of Authority Date of Action: 09/08/2023

Current Licensee: Farmers & Merchants Mutual Telephone Company

FROM: Farmers & Merchants Mutual Telephone Company

TO: Communications Network Inc

The Farmers & Merchants Mutual Telephone Company of Wayland, IA (Farmers & Merchants), an Iowa company that holds and international section 214 authorization (ITC-214-20080707-00309), filed an application for consent to the transfer of control of Farmers & Merchants to Communications Network Inc. (CNI). Under the proposed transaction, Southeast Iowa Broadband, Inc. (Merger Sub), a direct wholly owned subsidiary of CNI, will be merged with and into the Farmers & Merchants, with the Farmers & Merchants being the surviving entity. As result, Farmers & Merchants will become a direct wholly owned subsidiary of CNI.

CNI, an Iowa corporation, is a wholly-owned subsidiary of Kalona Cooperative Telephone Company (KCTC), an Iowa cooperative association. KCTC is owned by its subscribers, none of whom have a 10% or greater ownership interest in KCTC.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

INFORMATIVE

ITC-214-19980303-00158 HKT (International) Limited

By letter filed September 11, 2023, HKT (International) Limited notified the Commission that the following wholly-owned subsidiaries, Gateway Global Communications Inc. and PCCW Global (UK) Limited, may provide international telecommunications service under the international section 214 authorization held by the applicant, pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

ITC-214-19980930-00689 HKT (International) Limited

Cable & Wireless HKT (Pacific) Inc., a wholly owned subsidiary of PCCW Enterprises, providing service through these authorizations: ITC-98-196; ITC-214-19981218-00880; ITC-214-19990601-00305; ITC-214-19990601-00306; ITC-214-19990601-00307; ITC-214-19990601-00308; ITC-214-19991122-00725; ITC-214-19991122-00726; ITC-214-19991122-00727; ITC-214-19991122-00728 and ITC-T/C-20000714-00419 has changed its name to PCCW Pacific (US) Inc., by letter dated March 7, 2001.

By letter filed September 11, 2023, HKT (International) Limited notified the Commission that the following wholly-owned subsidiaries, Gateway Global Communications Inc. and PCCW Global (UK) Limited, may provide international telecommunications service under the international section 214 authorization held by the applicant, pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

ITC-214-19981218-00880 HKT (International) Limited

By letter filed September 11, 2023, HKT (International) Limited notified the Commission that the following wholly-owned subsidiaries, Gateway Global Communications Inc. and PCCW Global (UK) Limited, may provide international telecommunications service under the international section 214 authorization held by the applicant, pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

ITC-214-19990601-00305 HKT (International) Limited

By letter filed September 11, 2023, HKT (International) Limited notified the Commission that the following wholly-owned subsidiaries, Gateway Global Communications Inc. and PCCW Global (UK) Limited, may provide international telecommunications service under the international section 214 authorization held by the applicant, pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

ITC-214-19990601-00306 HKT (International) Limited

By letter filed September 11, 2023, HKT (International) Limited notified the Commission that the following wholly-owned subsidiaries, Gateway Global Communications Inc. and PCCW Global (UK) Limited, may provide international telecommunications service under the international section 214 authorization held by the applicant, pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

ITC-214-19990601-00307 HKT (International) Limited

By letter filed September 11, 2023, HKT (International) Limited notified the Commission that the following wholly-owned subsidiaries, Gateway Global Communications Inc. and PCCW Global (UK) Limited, may provide international telecommunications service under the international section 214 authorization held by the applicant, pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

ITC-214-19990601-00308 HKT (International) Limited

By letter filed September 11, 2023, HKT (International) Limited notified the Commission that the following wholly-owned subsidiaries, Gateway Global Communications Inc. and PCCW Global (UK) Limited, may provide international telecommunications service under the international section 214 authorization held by the applicant, pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

ITC-214-19991122-00725 HKT (International) Limited

By letter filed September 11, 2023, HKT (International) Limited notified the Commission that the following wholly-owned subsidiaries, Gateway Global Communications Inc. and PCCW Global (UK) Limited, may provide international telecommunications service under the international section 214 authorization held by the applicant, pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

ITC-214-19991122-00726 HKT (International) Limited

By letter filed September 11, 2023, HKT (International) Limited notified the Commission that the following wholly-owned subsidiaries, Gateway Global Communications Inc. and PCCW Global (UK) Limited, may provide international telecommunications service under the international section 214 authorization held by the applicant, pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

INFORMATIVE

ITC-214-19991122-00727 HKT (International) Limited

By letter filed September 11, 2023, HKT (International) Limited notified the Commission that the following wholly-owned subsidiaries, Gateway Global Communications Inc. and PCCW Global (UK) Limited, may provide international telecommunications service under the international section 214 authorization held by the applicant, pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

ITC-214-20021024-00567 HKT (International) Limited

By letter filed September 11, 2023, HKT (International) Limited notified the Commission that the following wholly-owned subsidiaries, Gateway Global Communications Inc. and PCCW Global (UK) Limited, may provide international telecommunications service under the international section 214 authorization held by the applicant, pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

ITC-214-20050203-00058 Hypercube Networks, LLC

By letter dated September 6, 2023, the Commission was notified that Intrado Communications, LLC has changed its name to Hypercube Networks, LLC.

ITC-MOD-20020829-00511 HKT (International) Limited

By letter filed September 11, 2023, HKT (International) Limited notified the Commission that the following wholly-owned subsidiaries, Gateway Global Communications Inc. and PCCW Global (UK) Limited, may provide international telecommunications service under the international section 214 authorization held by the applicant, pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

SURRENDER

ITC-214-19970820-00500 Zayo Group, LLC

By letter dated September 12, 2023, Zayo Group, LLC notified the Commission that it surrendered its international section 214 authorization effective September 12, 2023. Zayo Group, LLC will continue to provide services under international section 214 authorization ITC-214-20091106-00475.

ITC-214-20081107-00493 RingCentral, Inc.

By letter dated September 11, 2023, RingCentral, Inc. notified the Commission that it surrendered its international section 214 authorization effective September 11, 2023.

ITC-214-20140228-00060 RCLEC, Inc.

By letter dated September 11, 2023, RCLEC, Inc. notified the Commission that it surrendered its international section 214 authorization effective September 11, 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-MSC-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.

(15) Each carrier shall notify the Commission of any change in its contact information. Such notification shall be filed in the file number(s) for the international section 214 authorization(s) through the International Communications Filing System (ICFS).

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 Office of International Affairs, Telecommunications and Analysis Division at (202) 418-1480.

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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DA No. 23-847

Report No. SCL-00431 **Thursday September 14, 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 CFR § 1.767(a))

By the Chief, Telecommunications and Analysis Division, Office of International Affairs:

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 may be filed within thirty (30) days of the date of this public notice. 47 CFR §§ 1.106, 1.115.

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 and consistent with procedures established with the Department of State. 47 CFR § 1.767(b); 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. 47 CFR §§ 1.767, 1.768. 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.

SCL-AMD-20230725-00020 E Camelot Landing, LLC

Amendment

Grant of Authority Date of Action: 09/12/2023

Global Crossing Telecommunications, Inc. (GCTI) has filed an amendment to its pending application for a new cable landing license to allow the continued operation of the Atlantic Crossing 1 (AC-1) submarine cable system for an additional 25-year term following the expiration of the current license on May 1, 2023. See Non-Streamlined Submarine Cable Landing License Applications Accepted for Filing, File No. SCL-LIC-20230222-00005, Public Notice, Report No. SCL-00416NS (OIA May 19, 2023). The amendment changes the applicant from GCTI to Camelot Landing, LLC (Camelot).

GCTI recently undertook a pro forma assignment of its interests in the cable landing license for the AC-1 cable system to Camelot. See SCL-ASG-20230713-00018. GTCI, a Michigan corporation, is an indirect wholly owned subsidiary of Level 3 Communications, LLC (Level 3), and Camelot is a newly formed wholly owned subsidiary of Level 3, both Delaware limited liability companies. GCTI, Camelot, and Level 3 are all indirect wholly owned subsidiaries of Lumen Technologies, Inc. (Lumen), a Delaware corporation.

The pro forma assignment was undertaken as part of an internal reorganization to facilitate the transfer of control of Lumen's indirect interests in the AC-1 cable system to Colt Technology Services Group Limited (Colt). An application seeking consent for that transaction is currently pending with the Commission. See Non-Streamlined Submarine Cable Landing License Applications Accepted for Filing, File No. SCL-T/C-20221123-00034, Public Notice, Report No. SCL-00403NS (IB Jan. 27, 2023).

SCL-ASG-20230713-00017 E Camelot Landing, LLC

Assignment

Consummated Date of Action: 09/13/2023

Current Licensee: Level 3 Communications, LLC

FROM: Level 3 Communications, LLC

TO: Camelot Landing, LLC

On July 13, 2023, Level 3 Communications, LLC (Level 3) filed a notification of the pro forma assignment of the interests held by Level 3 in the cable landing license for the Yellow submarine cable system (SCL-LIC-19990913-00019, SCL-MOD-20020415-00026) to Camelot Landing, LLC (Camelot), effective July 1, 2023. Camelot is a newly formed wholly owned subsidiary of Level 3. Camelot and Level 3 are both indirect wholly owned subsidiaries of Lumen Technologies, Inc. (Lumen), all Delaware entities.

The pro forma assignment was undertaken as part of an internal reorganization to facilitate the transfer of control of Lumen's indirect interests in the Yellow cable system to Colt Technology Services Group Limited (Colt). An application seeking consent for that transaction is currently pending with the Commission. See Non-Streamlined Submarine Cable Landing License Applications Accepted for Filing, File No. SCL-T/C-20221123-00034, Public Notice, Report No. SCL-00403NS (IB Jan. 27, 2023).

Prior to the pro forma assignment of its cable landing license to Camelot, Level 3 owned 50% of the U.S. portion of the Yellow cable system and owned and operated the cable system's U.S. landing station in Bellport, New York. Global Crossing Telecommunications, Inc. (GCTI), another wholly owned subsidiary of Level 3, owned the other 50% of the U.S. portion of the Yellow cable system. A notification regarding the pro forma assignment of the interests held by GCTI in the cable landing license for the Yellow cable system, as well as the Atlantic Crossing 1 (AC-1) submarine cable system, was also filed on July 13, 2023. See SCL-ASG-20230713-00018. The Yellow cable system is a non-common carrier submarine cable system connecting the United States and the United Kingdom.

On November 2, 2022, Lumen and Colt entered into an exclusive arrangement for the proposed sale of Lumen's Europe, Middle East, and Africa (EMEA) telecommunications business to Colt for $1.8 billion (the "Agreement"). Under the Agreement, Colt will purchase the equity and, where applicable, assets of Lumen's EMEA telecommunications companies. Colt will also acquire Lumen's U.S. undersea and landing station assets that comprise the Yellow cable system. To facilitate the sale of Lumen's EMEA business to Colt, on July 1, 2023, Level 3 assigned on a pro forma basis all of Yellow's U.S. assets-including the submarine cable landing license-to Camelot, which Lumen formed for this purpose. Upon securing required regulatory approvals, Lumen will transfer control of Camelot to Colt such that Camelot will become an indirect, wholly owned subsidiary of Colt.

Camelot certifies it will accept and abide by the routine conditions specified at section 1.767(g) of the Commission's rules.

SCL-ASG-20230713-00018 E Camelot Landing, LLC

Assignment

Consummated Date of Action: 09/13/2023

Current Licensee: GLOBAL CROSSING TELECOMMUNICATIONS, INC.

FROM: GLOBAL CROSSING TELECOMMUNICATIONS, INC.

TO: Camelot Landing, LLC

On July 13, 2023, Global Crossing Telecommunications, Inc. (GCTI) filed a notification of the pro forma assignment of the interests held by GCTI in the cable landing licenses for the Atlantic Crossing 1 (AC-1) submarine cable system (SCL-LIC-19970506-00003, SCL-MOD-20020415-00033) and Yellow submarine cable system (SCL-LIC-19990913-00019, SCL-MOD-20020415-00026) to Camelot Landing, LLC (Camelot), effective July 1, 2023. GTCI, a Michigan corporation, is an indirect wholly owned subsidiary of Level 3 Communications, LLC (Level 3), and Camelot is a newly formed wholly owned subsidiary of Level 3, both Delaware limited liability companies. GCTI, Camelot, and Level 3 are all indirect wholly owned subsidiaries of Lumen Technologies, Inc. (Lumen), a Delaware corporation.

The pro forma assignment was undertaken as part of an internal reorganization to facilitate the transfer of control of Lumen's indirect interests in the AC-1 and Yellow cable systems to Colt Technology Services Group Limited (Colt). An application seeking consent for that transaction is currently pending with the Commission. See Non-Streamlined Submarine Cable Landing License Applications Accepted for Filing, File No. SCL-T/C-20221123-00034, Public Notice, Report No. SCL-00403NS (IB Jan. 27, 2023).

Prior to the pro forma assignment of its cable landing licenses to Camelot, GCTI owned the U.S. territory portions of the AC-1 cable system and owned and operated the cable system's U.S. landing station, referred to alternatively as the Shirley, NY or Brookhaven, NY landing station. The AC-1 cable system is a non-common carrier submarine cable system connecting the United States, Germany, the Netherlands, and the United Kingdom. GCTI owned 50% of the U.S. portion of the Yellow cable system. Level 3 owned the other 50% of the U.S. portion of the Yellow cable system. A notification regarding the pro forma assignment of the interests held by Level 3 in the cable landing license for the Yellow cable system, to Camelot, was filed on July 13, 2023. See SCL-ASG-20230713-00017. The Yellow cable system is a non-common carrier submarine cable system connecting the United States and the United Kingdom.

On November 2, 2022, Lumen and Colt entered into an exclusive arrangement for the proposed sale of Lumen's Europe, Middle East, and Africa (EMEA) telecommunications business to Colt for $1.8 billion (the "Agreement"). Under the Agreement, Colt will purchase the equity and, where applicable, assets of Lumen's EMEA telecommunications companies. Colt will also acquire Lumen's U.S. undersea and landing station assets that comprise the AC-1 And Yellow cable systems. To facilitate the sale of Lumen's EMEA business to Colt, on July 1, 2023, Level 3 assigned on a pro forma basis all of AC-1's and Yellow's U.S. assets-including the submarine cable landing licenses-to Camelot, which Lumen formed for this purpose. Upon securing required regulatory approvals, Lumen will transfer control of Camelot to Colt such that Camelot will become an indirect, wholly owned subsidiary of Colt.

Camelot certifies it will accept and abide by the routine conditions specified at section 1.767(g) of the Commission's rules.

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 23-848
Released: September 14, 2023

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO DISCONTINUE DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS AND/OR INTERCONNECTED VOIP SERVICES

WC Docket No(s). 23-304

Comments Due: September 29, 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.[1] The application(s) request authority, under section 214 of the Communications Act of 1934, as amended,[2] and section 63.71 of the Commission's rules,[3] 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 **October 15, 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.[4] 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

[1] 47 CFR § 63.71.

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

[4] *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.").

Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission 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 **September 29, 2023**. 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.[5] 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.[6] 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.[7] 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 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,

[5] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

[6] 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.

[7] 47 CFR § 1.1200 *et seq*.

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 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): Cogent Communications Holdings, Inc. (Cogent)**
WC Docket No. 23-304, Comp. Pol. File No. 1862
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-304%22))
Affected Service(s) – Session Initiation Protocol Trunking services
Service Area(s) – in every state and the District of Columbia
Authorized Date(s) – on or after October 15, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On September 13, 2023, Cogent filed a letter to indicate that supplemental notices were mailed to affected customers on September 13, 2023. The supplemental notice, which includes Cogent's name and address, clarifies the geographic scope and expected timing of the company's planned discontinuance.

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. 23-849

Report No. SAT-01759 **Friday September 15, 2023**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

The Commission, by its Space 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-MOD-20230407-00077 E S3144 Momentus Space LLC
Modification
Granted in Part/ Deferred in Part Effective Date: 09/08/2023

Nature of Service: Other

On September 8, 2023, the Satellite Programs and Policy Division granted in part, with conditions, the request of Momentus Space LLC for modification of the license for its Vigoride-5 (VR-5) space station. Specifically, the Division modified the license term to permit operations for an additional 30 days. VR-5 is authorized to conduct space operations at an initial sun-synchronous orbit at altitudes between 500 and 550 km, and then in a sun-synchronous orbits at altitudes of 538 km and 541 km, followed by operations in an elliptical orbit with a perigee of 350 km and apogee of 541 km. VR-5 is authorized to operate using downlinks with center frequencies at 8200 MHz and 9984 MHz for telemetry and tracking, and using an uplink centered at 2075 MHz for command.

SAT-STA-20230712-00168 E S2750 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/13/2023

On September 13, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional 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.

SAT-STA-20230714-00171 E S2253 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/13/2023

On September 13, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for a period of 180 days, to conduct telemetry, tracking and command operations necessary to drift Galaxy 11 from the 93.1° W.L. orbital location to the 166.3° E.L. orbital location and to provide fixed-satellite service at the 166.3° E.L. orbital location.

SAT-STA-20230728-00188 E Orbital Sidekick, Inc.
Special Temporary Authority
Effective Date:

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20230814-00202 E S2253 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/13/2023

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20230817-00206 E BlackSky Global LLC
Special Temporary Authority
Effective Date:

On September 14, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of BlackSky Global LLC for special temporary authority for an additional period of up to 30 days to operate with the Global 7 and Global 8 satellites while the satellites are at lower altitudes than specified in the license. Specifically, the Division granted special temporary authority to BlackSky to operate in the earth exploration-satellite service and to conduct telemetry, tracking, and command with the Global 7 and Global 8 satellites at altitudes between 340 km and 385 km.

SAT-STA-20230913-00225 E Intelsat License LLC
Special Temporary Authority
Withdrawn Effective Date: 09/14/2023

For more information concerning this Notice, contact the Satellite Licensing Division and Satellite Programs and Policy Division at (202) 418-0719.

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

In re Application of	)	
	)	
The Global Service Center for Quitting Chinese Communist Party	)	Facility ID No. 197021
	)	Acct. No. MB-202341410021
For Renewal of License for	)	FRN: 0023127632
Station WQEQ-LP	)	Application File No.: 0000183181
Flushing, New York	)	

ORDER

Adopted: September 28, 2023 **Released:** September 28, 2023

By the Chief, Audio Division, Media Bureau

I. INTRODUCTION

1. By this Order, we (1) adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and The Global Service Center for Quitting Chinese Communist Party (Licensee), licensee of low power FM (LPFM) station WQEQ-LP, Flushing, New York (Station); and (2) deny a complaint filed against the Station (Complaint) by Queens Public Communications Network (QPCN) on February 28, 2021,[1] raising issues regarding allegations of Licensee's compliance with section 312(g) of the Communications Act of 1934, as amended (Section 312(g)), and alleging that the Station was silent for over 12 consecutive months and failed to maintain a minimum operating schedule. Also before us is the above-captioned application for renewal of license (Application) filed by Licensee for the Station on January 31, 2022.[2] The Bureau will act upon the Application after payment of the civil penalty required by the Consent Decree, if there are no issues other than those resolved by the Consent Decree that would preclude grant of the Application for a full term or short term.[3]

2. As set forth in the Consent Decree, Licensee will pay a $1,500 (one thousand five hundred dollar) civil penalty before October 30, 2023. The Consent Decree resolves the Bureau's investigation into Licensee's compliance with section 301 of the Act and section 73.1745 of the Rules, regarding the Station's operation with unauthorized facilities.[4]

[1] The Complaint was filed with the Commission's Enforcement Bureau, and was thus not assigned a pleading file number.

[2] Application File No. 0000183181 (filed January 31, 2022).

[3] Consent Decree at paras. 8, 20.

[4] 47 U.S.C. § 301; 47 CFR § 73.1745.

II. BACKGROUND

3. In the Complaint, QPCN states that it manages four public cable channels in Queens, New York. QPCN further states that it contacted Licensee to discuss various options to either acquire, lease, or share the Station, as an adjunct to its cable programming.[5] QPCN additionally suggested that if Licensee were not open to such discussions, QPCN would report Licensee for failing to transmit broadcast signals for 12 consecutive months, or to maintain a required minimum operating schedule.[6] QPCN alleges that it had attempted to tune into the Station periodically but was unable to receive the Station's signal.[7]

4. On August 4, 2021, the Bureau issued a Letter of Inquiry (LOI) to Licensee, to which Licensee filed a Response to Operational Inquiry Letter (LOI Response) on September 17, 2021.[8] In the LOI Response, Licensee attaches a declaration and evidence to demonstrate that Station was not, at any time, off the air for more than 12 consecutive months.[9] Although some of the equipment that would log times that the station was off the air was disabled after a power outage, and therefore did not record the dates and times of all station operations, that equipment was reset before a 12-month period of non-operation could occur, and the logs provided preclude a finding that there were over 12 consecutive months of non-operation.[10] Additionally, Licensee's vice-president and operations manager, Cindy Zhang Sun (Sun) states that she regularly monitored Station's off-air signal and that at no point was the Station off the air for over 12 consecutive months.[11] Ms. Sun also states that, due to Station's restricted transmitter power, interference from licensed stations,[12] and possible interference from unauthorized "pirate" stations, Station cannot be heard throughout much of its service area, including QPCN's offices, which are located outside of Station's predicted 60 dBμ service contour.[13]

5. Licensee does state, however, that for a period from June 15, 2020, until September 7, 2021, Station did operate with an FM broadcast booster station generating 8 watts effective radiated power at a height above ground level of approximately 18 feet.[14] It attributes the construction and operation of this unauthorized additional transmitter to a language translation and misunderstanding of then-new rules

[5] Complaint at 1.

[6] Exhibit 4 to Complaint.

[7] Affidavit of Daniel Leone, attached to Complaint, para. 4.

[8] *See* Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau, to The Global Service Center for Quitting Chinese Communist Party (Aug. 4, 2021); Response to Operational Status Inquiry Letter (Sept. 17, 2021).

[9] *See* Declaration of Cindy Zhang Sun, Vice President and Operations Manager of Station, attached to LOI Response (Sun Declaration), paras. 4, 13.

[10] *Id*. paras. 14, 16; Attachment F to LOI Response.

[11] Sun Declaration, para. 13.

[12] According to the Engineering Statement of Kevin T. Fisher, attached to the LOI Response, much of Station's service area, and much of the area outside of its service area, is subject to interference from co-channel station WDHA-FM, Dover, New Jersey; co-channel WDBY(FM), Patterson, New York; and co-channel translator W288DL, Stamford, Connecticut. Engineering Statement of Kevin T. Fisher, Exhibit A to LOI Response (Fisher Statement), at 1-2; Exhibit C to LOI Response.

[13] Sun Declaration, paras. 19-22; Fisher Statement at 1.

[14] Sun Declaration, para. 17. *See also* Statement Regarding Compliance with Commission Rules, attached to Application.

regarding FM broadcast booster operation by LPFM stations.[15] Licensee further states that it received no complaints of interference regarding the unauthorized booster.[16]

III. DISCUSSION

6. *Complaint*. In evaluating an application for license renewal, the Commission's decision is governed by section 309(k)(1) of the Communications Act of 1934, as amended (Act). Under section 309(k) of the Act, the Commission shall grant the renewal application 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 Commission's rules (Rules); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.[17] 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."[18]

7. Although the Complaint was not specifically filed against Licensee's Application, because the Application was pending with the Audio Division, the Enforcement Bureau referred the Complaint to the Media Bureau. We therefore consider the Complaint as an informal objection to the Application. Informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with section 309(k) of the Act.[19] For the reasons set forth below, we find that QPCN has not met this burden.

8. *Standing.* As a threshold matter, we find that Licensee's suggestion that QPCN lacks standing to challenge the Application is incorrect.[20] Section 73.3587 of the Rules permits "any person" to file informal objections to the grant of any application for an instrument of authorization and contains no requirement that an objector reside in the Station's service area.[21] Accordingly, standing is not required to file an informal objection.[22] In any event, QPCN is located close to Licensee's facilities and within the

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[15] Sun Declaration, para. 17.

[16] *Id*.

[17] 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996*, Order, 11 FCC Rcd 6363 (1996).

[18] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[19] 47 U.S.C § 309(d)-(e). *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), *reh'g denied* (Sept. 10, 1993) (*WWOR-TV*); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 R.R.2d 862, 864, para. 6 (1986) (*Area Christian)* (stating informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested); *WFBM, Inc.*, Memorandum Opinion and Order, 47 F.C.C.2d 1267, 1268, para. 3 (1974) (*WFBM, Inc*.).

[20] LOI Response at 1-3.

[21] 47 CFR § 73.3587. The Bureau's practice is to treat petitions to deny that fail to demonstrate standing as an informal objection. *See, e.g., Alpha Media Licensee LLC, Debtor-in-Possession (Assignor) and Alpha Media Licensee LLC (assignee) et. al.*, Memorandum Opinion and Order, DA 21-825 at 11-12, paras. 32-33 (MB 2021).

[22] *Id*.; 47 CFR § 1.41.

same borough of the City of New York. Therefore, we will consider QPCN's objection to the Application.

9. *Silent Operation*. We find that QPCN has failed to demonstrate that Station was silent for over 12 consecutive months, and in fact has not demonstrated when Station may or may not have been operating. We note, first, that Station was operating pursuant to a voluntary time share agreement with the Roman Catholic Diocese of Brooklyn, and its station WDMB-LP, Flushing, New York.[23] As evidence of Station's failure to operate for over 12 consecutive months, the Complaint merely states that, "[o]ver the course of the past year, [QPCN President/CEO Daniel Leone had] asked an agent of [QPCN] to periodically tune into [Station] to listen to its programming. Each and every time the agent discovered there was no programming at all on the station, only audio static."[24] This is impermissibly vague and, given that affiant Leone apparently did not attempt to tune into the Station himself, constitutes hearsay. Additionally, there is no indication of how many times the unidentified "agent" attempted to tune to the Station; what equipment was used to do so; and most importantly where the agent was located when trying to tune into the Station. Licensee has presented evidence that QPCN's offices are located outside of Station's 60 dBμ service contour, and further that Station's signal is subject to interference from co-channel FM stations and a translator.[25] Thus, assuming that the referenced periodic monitoring of Station's signal by QPCN's agent occurred at or near QPCN's offices, this would not conclusively establish that Station was not transmitting broadcast signals.[26] Lastly, the Station shares time with WDMB-LP, and QPCN has not indicated that its agent was listening to the Station during the hours it is authorized to operate. Overall, QPCN does not present properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with section 309(k) of the Act.[27] We therefore reject the allegations that Station failed to operate for over 12 consecutive months, or failed to maintain a minimum operating schedule.

10. *Unauthorized Operation*. We find that Licensee operated an FM broadcast booster station for over 14 months without Commission authorization.[28] Our finding is based on Licensee's admission, both in its LOI Response and in an attachment to the Application,[29] that it operated the booster station due to

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[23] Sun Declaration, para. 9. *See also* Appendix B to LOI Response.

[24] Affidavit of Daniel Leone, attached to Complaint, para. 4.

[25] *See supra* note 12.

[26] We note that, in its LOI Response, while Licensee states that "there have been periods of . . . failure to broadcast for hours and days," there is no evidence of exactly how many such periods there have been, nor of their duration. The documents provided, consisting of partial program and EAS logs, do not disclose any periods of silence lasting more than 10 days. Given, as noted in the text, that there is insufficient evidence to conclude that there has been any failure of Station to transmit broadcast signals, we find there is likewise insufficient evidence from which to conclude whether there has been a violation of 47 CFR § 73.850(d), which requires notice to the Commission no later than the 10th day of limited or discontinued operation.

[27] We further note that Mr. Leone's unsworn "affidavit" is more properly styled as a declaration, except that it is not subscribed in the proper form set forth in 47 CFR § 1.16. Section 1.16 requires that the declaration be subscribed by the declarant as true under penalty of perjury. Leone's affidavit merely certifies that the statements therein are true and correct to the best of his knowledge, but does not do so under penalty of perjury.

[28] *See* 47 CFR §§ 74.1201(f) (definition of an FM broadcast booster station); 74.1201(l) (definition of an LPFM booster).

[29] LOI Response at 10; Statement Regarding Compliance with Commission Rules, attached to Application.

an inadvertent misinterpretation of the Commission's rules, rather than an intent to violate those rules.[30] Because Licensee disclosed the unauthorized booster station in its Application, there is no issue of incorrect certification regarding compliance with the Act and Commission rules, and thus no violation of section 312(a)(1) of the Act.[31] Further, because the record does not reflect an intentional violation of the Commission's rules, we will not deny the Application on this basis.[32]

11. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee admits that it violated section 301 of the Act and section 73.1745 of the Rules. The Consent Decree provides that Licensee shall carry out a compliance plan and make a civil penalty payment to the United States Treasury in the amount of One Thousand Five Hundred Dollars ($1,500). A copy of the Consent Decree is attached and is incorporated by reference.

12. Finally, we have reviewed Licensee's Application in accordance with section 309(k) of the Act,[33] and we find that the Station has served the public interest, convenience, and necessity during the subject license term. We find that nothing else in the record creates a substantial or material question of fact as to whether Licensee possesses the basic qualifications to be a Commission licensee, or calling for further inquiry regarding the Application. [34] After reviewing the terms of the Consent Decree, we find that the public interest would be served by its approval and by terminating the Bureau's investigation into Licensee's violations of the Act and the Rules, subject to the terms of the Consent Decree.

IV. CONCLUSION

13. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 4(i), 4 (j) and 309(k) of the Communications Act of 1934, as amended, [35] and by the authority delegated by Sections 0.61 and 0.283 of the FCC's Rules, [36] the Consent Decree attached hereto **IS ADOPTED** without change, addition, or modification.

14. **IT IS FURTHER ORDERED** that the investigation by the Media Bureau of the matters noted above **IS TERMINATED**.

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[30] LOI Response at 10; Sun Declaration, para. 17.

[31] 47 U.S.C. § 312(a)(1) ("The Commission may revoke any station license or construction permit for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308 of this title.").

[32] *Id*.

[33] 47 U.S.C. § 309(k)(1).

[34] We do not find here that the Licensee's Station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, para. 11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc*., Hearing Designation Order, 7 FCC Rcd 4037 (1992). Additionally, Licensee's adoption of the Compliance Plan set forth in the Consent Decree shall ensure that the Station shall in the future be operated in accordance with the Rules.

[35] 47 U.S.C. §§ 154(i), 154(j), 309(k).

[36] 47 CFR §§ 0.61, 0.283.

15. **IT IS FURTHER ORDERED** that copies of this Order and Consent Decree **SHALL BE SENT**, by First Class and Certified Mail, Return Receipt Requested, to: The Global Service Center for Quitting Chinese Communist Party, 40-46 Main Street, Suite 201, Flushing, NY 11354, and to its counsel, James L. Winston, Esq, Rubin, Winston, Diercks, Harris & Cooke, LLP, 1250 Connecticut Ave., NW, Suite 700, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

In re Application of	)	
	)	
The Global Service Center for Quitting Chinese Communist Party	)	
	)	Facility ID No. 197021
	)	Acct. No. MB-202341410021
For Renewal of License for Station WQEQ-LP Flushing, New York	)	FRN: 0023127632
	)	Application File No.: 0000183181
	)	

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission (Commission) and The Global Service Center for Quitting Chinese Communist Party (Licensee, as defined below), licensee of low power FM (LPFM) station WQEQ-LP, Flushing, New York, 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 section 301 of the Communications Act of 1934, as amended (Act) and section 73.1745 of the Commission's rules, regarding the Station's operation with unauthorized facilities.[1] To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with these rule sections and to pay a civil penalty to the United States Treasury as described herein.

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) "Application" means the pending application for renewal of license for low power FM station WQEQ-LP (Application File No. 0000183181).

(c) "Adopting Order" means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.

(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 section 301 of the Act and section 73.1745 of the Rules.

[1] 47 CFR § 73.1745.

(g) "Covered Employees" means all employees and agents of the Licensee who are responsible for performing, supervising, overseeing, or managing activities related to compliance with section 301 of the Act and section 73.1745 of the Rules.

(h) "Effective Date" means the date on which the Bureau releases the Adopting Order.

(i) "Investigation" means the Bureau's decision to hold and not process the Licensee's license renewal application identified in Appendix A due to the Licensee's failure to comply with section 301 of the Act and section 73.1745 of the Rules.

(j) "Licensee" means The Global Service Center for Quitting Chinese Communist Party and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

(k) "Parties" means the Licensee and the Bureau, each of which is a "Party."

(l) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

(m) "Station" means low power FM station WQEQ-LP, Flushing, New York.

(n) "Violation" means the Licensee's noncompliance with section 301 of the Act and section 73.1745 of the Rules.

II. BACKGROUND

3. Section 301 of the Act and 73.1745 of the Rules, respectively, require all radio stations to have a license issued by the Commission,[2] and state that "[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part."[3] Upon review of the record,[4] the Bureau confirmed, based on Licensee's admission, that Licensee for a period from June 15, 2020, until September 7, 2021, operated an FM broadcast booster station[5] for which it did not have an authorization.[6] Licensee attributes this unauthorized additional transmitter to a language translation and misunderstanding of the rules regarding FM broadcast booster operation by LPFM stations.[7] The Bureau determined that Licensee's operation of an unauthorized FM broadcast booster station constituted a violation of section 301 of the Act and 73.1745 of the Rules, which requires all radio stations to have a license issued by the Commission,[8] and which states that "[n]o

[2] 47 U.S.C. § 301.

[3] 47 CFR § 73.1745.

[4] On August 4, 2021, the Bureau issued a Letter of Inquiry (LOI) to Licensee, to which Licensee filed a response to the LOI on September 17, 2021. *See* Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau, to The Global Service Center for Quitting Chinese Communist Party (Aug. 4, 2021); Response to Operational Status Inquiry Letter (Sept. 17, 2021).

[5] *See* 47 CFR §§ 74.1201(f) (definition of an FM broadcast booster station); 74.1201(l) (definition of an LPFM booster).

[6] Declaration of Cindy Zhang Sun, Declaration of Cindy Zhang Sun, Vice President and Operations Manager of Station, attached to Response (Sun Declaration), para. 17. *See also* Statement Regarding Compliance with Commission Rules, attached to Application.

[7] Sun Declaration, para. 17.

[8] 47 U.S.C. § 301.

broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part."[9]

4. 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 One Thousand Five Hundred Dollars ($1,500) 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.

III. TERMS OF AGREEMENT

5. **Adopting Order**. The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

6. **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.

7. **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.

8. **Termination of Investigation/Action on Renewal Application**. 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 Licensee's pending radio license renewal application identified in Appendix A in the ordinary course. Termination of the Investigation and processing of the Application are premised on the payment of the civil penalty. In consideration for such, the Licensee agrees to the terms, conditions, and procedures contained herein.

9. 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.[10]

10. **Admission of Liability**. The Licensee admits for the purpose of this Consent Decree that it violated section 301 of the Act and section 73.1745 of the Rules, by operating an FM broadcast booster station without authorization from June 15, 2020, until September 7, 2021. 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.[11] 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

[9] 47 CFR § 73.1745.

[10] *See* 47 CFR § 1.93(b).

[11] *See* 47 U.S.C. § 503(b)(2)(E).

apparently committed a violation of the Act, the Rules, or of any orders of the Commission after the Effective Date.

11. **Civil Penalty.** Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of One Thousand Five Hundred Dollars ($1,500), 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.[12]

12. **Payment.** Licensee shall send electronic notification of payment to Alexander.Sanjenis@fcc.gov on the date said payment of the Civil Penalty and each Installment Payment is made. Payment shall be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),[13] or by wire transfer. The Commission no longer accepts civil penalty or forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[14]

- 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 emailed to 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 referenced above (Payor FRN).[15] 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 Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by credit card, log-in using the FRN referenced above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option.
- Payment by ACH must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by ACH, log in using the FRN referenced above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and 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.

[12] Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

[13] Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

[14] 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.

[15] Instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

13. **Event of Default**. Licensee agrees that an Event of Default shall occur upon the failure by Licensee to pay the full amount of the Civil Penalty or any Installment Payment on or before the due date specified in this Consent Decree.

14. **Interest, Charges for Collection, and Acceleration of Maturity Date**. After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty or any Installment Payment shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty or any Installment Payment, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Licensee.

15. **Compliance Officer**. Within 30 calendar days after the Effective Date, the Licensee shall designate a senior manager to serve as a Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall report directly to the Licensee's Chief Executive Officer (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 of Licensee's obligations related to Licensee's compliance with section 301 of the Act and section 73.1745 of the Rules. The Bureau acknowledges that the Compliance Officer, Chief Executive Officer, Operations Officer, and/or owner may be the same individual.

16. **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 section 301 of the Act and section 73.1745 of the Rules, and with the terms and conditions of this Consent Decree. The Compliance Plan, with the exception of the Compliance Report described below in paragraph 16(c), shall apply to all radio stations owned by the Licensee. 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 section 301 of the Act and section 73.1745 of the Rules;

   ii. contain Operating Procedures that Covered Employees must follow to help ensure the Licensee's compliance with section 301 of the Act and section 73.1745 of the Rules. The Operating Procedures shall also include a compliance checklist that describes the steps that a Covered Employee must follow to ensure compliance with section 301 of the Act and section 73.1745 of the Rules; 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 section 301 of the Act and section 73.1745 of the Rules. As part of the compliance training program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with section 301 of the Act and section 73.1745 of the Rules, 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 each station listed in Appendix A. The compliance report shall contain a certification of the Licensee's compliance with section 301 of the Act and section 73.1745 of the Rules 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 18 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,[16] 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.

17. **Reporting Noncompliance**. The Licensee shall, for each station it owns, report any instance of noncompliance with section 301 of the Act and section 73.1745 of the Rules, 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

[16] *See* 47 CFR § 1.16.

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.

18. **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 16(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 the sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

19. **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 section 301 of the Act and section 73.1745 of the Rules that occur during the term of this Consent Decree.

20. **Qualifications; Processing Application**. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether Licensee possesses the basic qualifications, including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to process the Application, after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 11, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Application.

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 novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act[17] 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

[17] *See* 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

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.

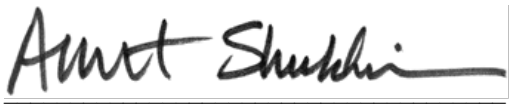
26. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

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.

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

9/28/2023
Date

_____

Rong Yi, President
The Global Service Center for Quitting Chinese Communist Party

_____

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

_____

Date

Rong Yi, President
The Global Service Center for Quitting Chinese Communist Party

09/25/2023

Date 9/25/2023

Appendix A

Station Call Sign	Community of License	Application for License Renewal File No.
WQEQ-LP	Flushing, New York	0000183181

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

In re Applications of	)	Facility ID Nos. 2485, 28974
Apple City Broadcasting Company, Inc.	)	NAL/Account No. MB-202341410023
	)	
for Consent to Transfer of Control	)	
	)	FRN: 0009367756
from Mary Alice Teague Brown (Deceased)	)	Application File No. 0000213659
(Transferor) to Roger Lee Brown (Transferee)	)	
	)	
and	)	
	)	
from Sara McClain Keever (Deceased)	)	FRN: 0009367756
(Transferor) to the Estate of Sara McClain Keever	)	Application File No. 0000213661
(Transferee)	)	

ORDER

Adopted: September 25, 2023 **Released: September 25, 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 Apple City Broadcasting Company, Inc. (Apple City or Licensee), licensee of stations WACB(AM), Taylorsville, North Carolina, and WTLK(AM), Taylorsville, North Carolina (collectively, the Stations). The Consent Decree resolves issues arising from the Bureau's review of the captioned applications for Commission consent to transfer control of Apple City.[1]

2. The Consent Decree concludes the Bureau's investigation of Apple City's compliance with section 310 of the Communications Act of 1934, as amended (the Act), and sections 73.3540 and 73.3541 of the Commission's rules (Rules).[2] The Bureau staff finds that Apple City failed to file applications for involuntary transfer of control within 30 days of the deaths of three of its shareholders: William Norris Keever, Mary Alice Teague Brown, and Sara McClain Keever.[3] The staff also finds that, following the death of Sara McClain Keever, Linda B. McClain assumed control of Apple City without obtaining prior Commission approval for the non pro forma transfer of control.[4] Pursuant to the terms of the Consent Decree, Apple City stipulates that it violated section 310(d) of the Act and sections 73.3540 and 73.3541 of the Rules. Apple City submits financial documentation to the Bureau, including federal tax returns for the years 2019-2022 and recent bank statements, to support a reduction of the Consent

[1] *See* Application File No. 0000213659 (filed Apr. 10, 2023) (Brown Transfer Application); Application File No. 0000213661 (filed Apr. 10, 2023) (Keever Transfer Application) (collectively, Transfer Applications). *See also Broadcast Applications*, Public Notice, Report No. PN-1-230413-01 (MB Apr. 13, 2023); *Broadcast Applications*, Public Notice, Report No. PN-1-230412-01 (MB Apr. 12, 2023).

[2] *See* 47 U.S.C. § 310(d); 47 CFR §§ 73.3540, 73.3541.

[3] 47 CFR § 73.3541. William N. Keever died on December 25, 2020; Mary Alice Teague Brown died on February 18, 2021; and Sara McClain Keever died on February 27, 2022. Apple City filed the Transfer Applications more than two years after William N. Keever and Mary Alice Brown passed away and more than one year after Sara McClain Keever passed away. *See* Transfer Applications, Attach., Revised Global Exhibit.

[4] 47 CFR § 73.3540.

Decree's civil penalty based upon Apple City's inability to pay. The $1,000 civil penalty set forth in the Consent Decree reflects consideration of Apple City's documented inability to pay.

3. The Consent Decree requires, among other things, that Apple City make a one thousand dollar ($1,000) civil penalty payment to the United States Treasury. A copy of the Consent Decree is attached hereto and incorporated by reference.

4. 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 investigation of potential violations of the Rules and the Act in connection with the Transfer Applications.

5. Based on the record before us, we conclude that nothing in the record creates a substantial and material question of fact as to whether Apple City possesses the basic qualifications to continue to be a Commission licensee.

6. ACCORDINGLY, IT IS ORDERED that, pursuant to section 4(i) of the Act,[5] and by the authority delegated by sections 0.61 and 0.283 of the Rules,[6] the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

7. IT IS FURTHER ORDERED that the investigation by the Bureau of the matters noted above IS TERMINATED.

8. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Tim Nelson, Esq., Brooks Pierce, et al., 150 Fayetteville Street, Suite 1700, Raleigh, North Carolina 27601, counsel for Apple City Broadcasting Company, Inc.

9. IT IS FURTHER ORDERED that pursuant to section 73.3526(e)(10) of the Rules, a copy of this Order and Consent Decree and as otherwise required all related investigatory materials SHALL BE RETAINED in the above-captioned Station's online public inspection file until grant of the next license renewal application.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[5] 47 U.S.C. § 4(i).

[6] 47 CFR §§ 0.61, 0.283.

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

In re Applications of	)	Facility ID Nos. 2485, 28974
Apple City Broadcasting Company, Inc.	)	NAL/Account No. MB-202341410023
	)	
for Consent to Transfer of Control	)	
	)	FRN: 0009367756
from Mary Alice Teague Brown (Deceased)	)	Application File No. 0000213659
(Transferor) to Roger Lee Brown (Transferee)	)	
	)	
and	)	
	)	
from Sara McClain Keever (Deceased)	)	FRN: 0009367756
(Transferor) to the Estate of Sara McClain Keever	)	Application File No. 0000213661
(Transferee)	)	

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between the Media Bureau (Bureau) of the Federal Communications Commission and Apple City Broadcasting Company, Inc. (Apple City or Licensee), licensee of stations WACB(AM), Taylorsville, North Carolina, and WTLK(AM), Taylorsville, North Carolina (collectively, the Stations). The Consent Decree terminates the Bureau's investigations concerning Apple City's compliance with section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), and sections 73.3540 and 73.3541 of the FCC's rules, 47 CFR §§ 73.3540, 73.3541.

II. DEFINITIONS

2. For 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 the order of the Bureau adopting this Consent Decree;

(c) "Apple City" means Apple City Broadcasting Company, Inc.;

(d) "Brown Transfer Application" means the FCC Form 2100, Schedule 316 application filed on April 10, 2023, for consent to transfer of control, Application File No. 0000213659;

(e) "Bureau" means the Media Bureau of the Federal Communications Commission;

(f) "Civil Penalty" means the payment Apple City has agreed to pay to the United States Treasury;

(g) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices;

(h) "Covered Employees" means all employees, agents, contractors, volunteers, and interns of the Licensee, who are responsible for performing, supervising, overseeing, or managing activities related to activities that trigger or may trigger

the requirements set forth in section 310(d) of the Act and the Transfer of Control Rules;

(i) "Effective Date" means the date on which the Bureau releases the Adopting Order;

(j) "Investigation" means the Bureau's investigation of information contained in the Transfer Applications, as detailed herein;

(k) "Involuntary Transfer of Control Rule" means 47 CFR § 73.3541;

(l) "Keever Transfer Application" means the FCC Form 2100, Schedule 316 application filed on April 10, 2023, for consent to transfer of control, Application File No. 0000213661;

(m) "Licensee" means Apple City Broadcasting Company, Inc.;

(n) "Licenses" refers to the license authorizations for stations WACB(AM), Taylorsville, North Carolina (Facility ID No. 2485) and WTLK(AM), Taylorsville, North Carolina (Facility ID No. 28974);

(o) "Parties" means Apple City and the Bureau;

(p) "Rules" means the FCC's rules, found in Title 47 of the Code of Federal Regulations;

(q) "Stations" means WACB(AM), Taylorsville, North Carolina (Facility ID No. 2485) and WTLK(AM), Taylorsville, North Carolina (Facility ID No. 28974);

(r) "Transfer Applications" means the Brown Transfer Application and the Keever Transfer Application;

(s) "Transfer of Control Rules" means sections 73.3540 and 73.3541 of the FCC's rules, 47 CFR §§ 73.3540, 73.3541;

(t) "Violations" means the violations of section 310(d) of the Act, 47 U.S.C. § 310(d), and sections 73.3540 and 73.3541 of the FCC's rules, 47 CFR §§ 73.3540, 73.3541; and

(u) "Voluntary Transfer of Control Rule" means 47 CFR § 73.3540.

III. BACKGROUND

3. Section 310(d) of the Act, provides in pertinent part:

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.[1]

4. The Involuntary Transfer of Control Rule stipulates that:

> The FCC shall be notified in writing promptly of the death or legal disability of an individual permittee or licensee, a member of a partnership, or a person directly or indirectly in control of a corporation which is a permittee or licensee.

[1] 47 U.S.C. § 310(d).

> Within 30 days after the occurrence of such death or legal disability, an application on [FCC Form 2100, Schedule 316] shall be filed requesting consent to involuntary assignment of such permit or license or for involuntary transfer of control of such corporation to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved.[2]

5. In addition, the Voluntary Transfer of Control Rule states that "[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control."[3] The rule requires that an "[a]pplication for consent to the transfer of control of a corporation holding a construction permit or license must be filed on [FCC Form 2100, Schedule 315]" where the transaction involves the transfer of a controlling interest from one individual to another.[4]

6. At the time of Apple City's formation in June 1993, there were four shareholders: Roger Lee Brown (45.0% voting), Mary Alice Teague Brown (Mary Alice Brown) (5.0% voting), William Norris Keever (45.0% voting), and Sara McClain Keever (5.0% voting).[5] Roger L. Brown and Mary Alice Brown were married, as were William N. Keever and Sara M. Keever.[6] The Browns and Keevers operated Apple City for decades and their voting interests remained unchanged until December 25, 2020, when William N. Keever passed away.[7] Following William N. Keever's death, Sara M. Keever acquired the voting stock he held in Apple City at the time of his death, increasing her total voting interest from 5% to 50% and giving her negative control of Apple City.[8] On February 18, 2021, Mary Alice Brown passed away, and following her death, Roger L. Brown acquired the voting stock she held in Apple City at the time of her death, increasing his total voting interest from 45% to 50% and giving him negative control of Apple City.[9] Roughly one year later, on February 27, 2022, Sara M. Keever passed away, and upon her death, her controlling (50.0% voting) interest passed to her estate and then to her niece, Lisa B. McClain.[10] Apple City should have filed involuntary transfer of control applications within 30 days of

[2] 47 CFR § 73.3541.

[3] 47 CFR § 73.3540(a).

[4] 47 CFR § 73.3540(d). The test for whether the interest to be transferred is "controlling" or "substantial" has generally been (a) whether 50 percent or more of the voting stock is being transferred, and (b) whether as a result of the transaction 50 percent or more of the outstanding voting stock will be held by persons whose qualifications to be Commission licensees have not previously been approved of or "passed upon." *Barnes Enterprises*, *Inc*., 55 FCC 2d 721 (1975); *Clay Broadcasters*, *Inc*., 21 RR 2d 442 (1971). Generally, any transfer which involves the movement of 50 percent or more of a licensee's voting stock, whether to persons passed upon or not, has required the filing of a long form application. As an exception to this general requirement, the Commission has allowed a short form to be used when the transaction involves a stock transfer whereby an existing stockholder with negative (50 percent) control assumes positive control by acquiring all of the remaining voting stock. *Barnes Enterprises*, *Inc*., 55 FCC 2d at 725, n.4.

[5] *See* Application File No. 0000078466 (July 2019 Biennial Ownership Report indicating that Apple City was owned by four shareholders: Roger L. Brown, Mary Alice Teague. Brown, William N. Keever, and Sara McClain Keever).

[6] *See* Application File No. 0000213659, Attach., Revised Global Exhibit (filed Apr. 10, 2023) (Brown Transfer Application); Application File No. 0000213661, Attach. Revised Global Exhibit (filed Apr. 10, 2023) (Keever Transfer Application) (collectively, Transfer Applications).

[7] Transfer Applications, Attach., Revised Global Exhibit.

[8] *Id*.

[9] *Id*.

[10] *Id*. We note that Lisa B. McClain is the authorized representative of the Sara McClain Keever Estate. *See* Keever Transfer Application, Attach., Letters Testamentary, Estate of Sara McClain Keever.

William N. Keever, Mary Alice Brown and Sara M. Keever's deaths, but did not do so.[11] In addition, following the death of Sara M. Keever, Linda B. McClain assumed control of Apple City without obtaining prior Commission approval for the non pro forma transfer of control.[12]

7. The Parties acknowledge that any proceedings that might result from the Violations involving the Transfer Applications would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, resolve the matters, and promote compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

IV. TERMS OF AGREEMENT

8. **Adopting Order**. The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

9. **Jurisdiction**. Apple City agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

10. **Effective Date; Violations**. The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Apple City agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. Any violation of the Adopting Order or the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to enforcement of a Commission order.

11. **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 consideration for the termination of the Investigation, Apple City agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the Violations or the existence of this Consent Decree in any action against Apple City, provided that it satisfies all of its obligations under this Consent Decree. In the event that Apple City fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

12. **Admission of Liability**. Apple City stipulates that the actions described in Paragraph 6 violated section 310(d) of the Act and sections 73.3540 and 73.3541 of the Rules.

13. **Civil Penalty**. Apple City agrees to make the Civil Penalty payment to the United States Treasury in the amount of one thousand dollars ($1,000), within thirty (30) calendar days of the Effective Date. Apple City 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.[13]

14. **Payment**. Apple City shall send electronic notification of payment to Christopher Clark at Christopher.Clark@fcc.gov on the date payment is made. Payment of the civil penalty must be made

[11] 47 CFR § 73.3541.

[12] 47 CFR § 73.3540. It is well-settled that "control" as used in the Act and the Voluntary Transfer of Control Rule encompasses all forms of control, actual or legal, direct or indirect, negative or affirmative, and that passage of *de facto* as well as *de jure* control requires the prior consent of the Commission. *See*, *e.g.*, *Stereo Broadcasters*, *Inc.*, 55 FCC 2d 819, 821 (1975) (citing *WWIZ*, *Inc.*, 36 FCC 561 (1964)), modified, 59 FCC 2d 1002 (1976).

[13] Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[14] or by wire transfer. Payments by check or money order to pay a civil penalty are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:[15]

- 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 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).[16] 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.

15. **Qualifications; Agreement to Grant**. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether Apple City possesses the basic qualifications, including those relating to character, to continue to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Transfer Applications, after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 13 of this Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Transfer Applications.

16. **Waivers**. Apple City agrees to waive any and all rights it may have to seek

[14] Payments made using CORES do not require the submission of an FCC Form 159.

[15] 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.

[16] Instructions for completing the form may be obtained at https://www.fcc.gov/Forms/Form159/159.pdf.

administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition or modification. If any 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, no Party will contest the validity of the Consent Decree or Adopting Order, and Apple City will waive any statutory right to a *trial de novo*. Apple City further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. section 504 and section 1.1501 *et. seq.* of the Rules relating to the Consent Decree or Adopting Order.

17. **Severability**. The Parties agree that if a court of competent jurisdiction renders any of the provisions of this Consent Decree unenforceable, such unenforceability shall not render unenforceable the 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.

18. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

19. **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 Apple City does not expressly consent), such provision will be superseded by such Rule or Order.

20. **Successors and Assigns**. Apple City agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

21. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

22. **Modifications**. This Consent Decree cannot be modified or amended without the advance written consent of all Parties.

23. **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.

24. **Authorized Representative**. Each Party represents and warrants to the other Party 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.

25. **Counterparts**. This Consent Decree may be signed in counterparts and/or electronically and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed electronically or by original signatures.

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By:
Albert Shuldiner
Chief, Audio Division

Date: 9/25/2023

APPLE CITY BROADCASTING COMPANY, INC.

By: _____
Roger L. Brown
Executor, Estate of Mary Alice Brown

Date: _____

25. **Counterparts**. This Consent Decree may be signed in counterparts and/or electronically and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed electronically or by original signatures.

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner
Chief, Audio Division

Date: _____

APPLE CITY BROADCASTING COMPANY, INC.

By: _____
Roger L. Brown
Executor, Estate of Mary Alice Brown

Date: 09/14/2023

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

In the Matter of	)	
	)	
Cybersecurity Labeling for Internet of Things	)	PS Docket No. 23-239

ORDER GRANTING EXTENSION OF TIME

Adopted: September 15, 2023 **Released: September 15, 2023**

Comment Date: October 6, 2023
Reply Comment Date: November 10, 2023

By the Chief, Public Safety and Homeland Security Bureau:

1. By this Order, the Public Safety and Homeland Security Bureau (PSHSB) grants, in part, two Motions for Extension of Time (Motions) filed by (1) a "Joint Trade Association" and (2) a coalition of organizations including the Alliance for Automotive Innovation; Information Technology Industry Council (ITI); National Electrical Manufacturers Association (NEMA); Security Industry Association (SIA); and U.S. Chamber of Commerce (Coalition), which request an extension of time for filing comments and reply comments in the above-captioned proceeding. The Joint Trade Association Motion is filed on behalf of CTIA – The Wireless Association (CTIA); Consumer Technology Association (CTA); NCTA – The Internet & Television Association (NCTA); NTCA – The Rural Broadband Association (NTCA); Security Industry Association (SIA); Telecommunications Industry Association (TIA); and USTelecom – The Broadband Association (USTelecom). Both Motions seek an extension of 30 days for filing comments and an extension until 45 days after the comment deadline for filing reply comments.[1] No opposition to the Motions have been filed. For the reasons stated below, PSHSB finds that moderate extensions of both the comment and reply comment deadlines are warranted and thus extends the comment and reply comment dates to October 6, 2023, and November 10, 2023, respectively.

2. On August 6, 2023, the Federal Communications Commission (Commission) adopted a Notice of Proposed Rulemaking (NPRM) seeking comment on a proposed voluntary cybersecurity labeling program to provide consumers with clear information about the security of their Internet of Things (IoT) devices.[2] The NPRM seeks comment on who should oversee and manage the program, how to develop the security standards that could apply to different types of devices or products, how to demonstrate compliance with those security standards, and how to safeguard the cybersecurity label

[1] Joint Trade Assn Request for Extension of Comment Deadline, PS Docket No. 23-239 (filed Aug. 31, 2023), https://www.fcc.gov/ecfs/document/1083129729263/1 (Joint Trade Association Motion); and Letter to Marlene H. Dortch, Secretary FCC, PS Docket No. 23-239 (filed Sept. 6, 2023), https://www.fcc.gov/ecfs/document/10906649602666/1 (Coalition Motion).

[2] *Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, Notice of Proposed Rulemaking, FCC 23-65 (2023).

against unauthorized use, amongst other considerations.[3] On August 25, 2023, the Office of the Federal Register published the NPRM, indicating in the summary that comments must be filed on or before September 25, 2023, and reply comments must be filed on or before October 10, 2023.[4]

3. On August 31, 2023, the Joint Trade Association filed a Motion requesting a 30-day extension of the comment filing deadline, i.e., October 24, 2023, and an extension of the reply comment deadline until 45 days after the comment filing deadline, i.e., December 8, 2023.[5] The Joint Trade Association argues that there is good cause to grant these extensions, due to "1) the highly technical and complex nature of the NPRM, and (2) the breadth of affected stakeholders."[6] In support of their request, the Joint Trade Association asserts that the NPRM "asks more than 120 questions,"[7] and that answers to these questions require "industry input on the nature of the IoT marketplace—from *what* products will be covered and what the standards will be, to *who* will make the standards, and *how* the standards will be administered and enforced."[8] Further, they argue that the industry of IoT devices exists "in an ecosystem consisting of device manufacturers and importers, software developers, service providers, individual consumers, enterprise users, and many other entities,"[9] and that stakeholders in this ecosystem "will need to coordinate with one another."[10] In view of these considerations, the Joint Trade Association "expects a detailed record to develop here, necessitating, at a minimum, an extension of the reply comment period."[11]

4. On September 6, 2023, the Coalition filed a Motion similarly requesting the comment and reply comment deadlines be extended to October 24, 2023, and December 8, 2023, respectively.[12] The Coalition Motion asserts that the extensions are needed "to give the private sector sufficient time to assess the potential effects of the rulemaking and develop thoughtful comments for the Commission's consideration."[13] In support of these requests, the Coalition argues that the NPRM comments are "likely to be substantial," and that "stakeholders will need more time than what is being allotted to evaluate them and respond to the Commission."[14]

5. While we find some relief is warranted to accommodate the concerns raised, we find that the full relief requested would unnecessarily delay the timely consideration of these issues by the Commission. Rather, we believe that a moderate extension to both the comment and reply comment deadlines will provide the needed time within which parties can organize and coordinate their input to the Commission. In view of the above, we grant a 11-day extension of time to file comments and extension of time to file reply comments in this proceeding until 35 days after the comment date. We are of the

[3] *Id.*

[4] Federal Communications Commission, Cybersecurity Labeling for Internet of Things, Proposed Rule, 88 Fed. Reg. 58211 (Aug. 25, 2023).

[5] Joint Trade Association Motion at 2.

[6] *Id.* at 2.

[7] *Id*.

[8] *Id.* at 3.

[9] *Id.* at 5-6.

[10] *Id.* at 6.

[11] *Id.* at 5.

[12] Coalition Motion at 1.

[13] *Id.*

[14] *Id.*

opinion that extending the comment deadline beyond 11 days is unnecessary in view of the dozens of comments already received in the record, thereby indicating that a robust record will develop without needing a 30-day extension. In providing a lengthier reply comment period, we also take note of the Joint Trade Association's argument that the comments received are likely to result in a "detailed" record, and provide more parity with respect to both the length of the comment period and the reply comment period.[15] As set forth in section 1.46 of the Commission's rules,[16] the Commission does not routinely grant extensions of time for filing comments. In this case, however, the extension requests are unopposed and will allow commenters sufficient time to file meaningful comment and reply comments and still provide a robust record on which the Commission can make a decision. We therefore partially grant the unopposed Motions and extend the comment and reply comment deadlines to October 6, 2023, and November 10, 2023, respectively.

6. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i)-(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i)-(j), and sections 0.204, 0.392, and 1.46 of the Commission's rules, 47 CFR §§ 0.204, 0.392, 1.46, the Motions for Extension of Time are **GRANTED IN PART AND OTHERWISE DENIED**.

7. **IT IS FURTHER ORDERED** that the date to file comments and reply comments in response to the NPRM **ARE EXTENDED** to October 6, 2023, and November 10, 2023, respectively.

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security Bureau

[15] Joint Trade Association Motion at 5.

[16] 47 CFR § 1.46.

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

In re Applications of	)	NAL/Acct. No. MB-202341410022
KGHL Radio, LLC	)	FRN: 0020791943
for Consent to Transfer of Control of KGHL(AM), Billings, Montana and K234CP, Billings, Montana	)	Facility ID Nos. 50354 and 146157
from	)	
Taylor Brown and Shannon C. Brown (Transferors)	)	
to	)	
the Courtney E. Brown Kibblewhite 2021 GST Trust and the Colter W. Brown 2021 GST Trust (Transferees)	)	Application File Nos. 0000189158 and 0000189159

ORDER

Adopted: September 27, 2023 **Released: September 27, 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 KGHL Radio, LLC, (KGHL or Licensee), licensee of stations KGHL(AM), Billings, Montana, and K243CP, Billings, Montana (Stations). The Consent Decree resolves issues arising from the Bureau's review of the captioned applications (Voluntary Transfer Applications)[1] for Commission consent to the voluntary transfer of control of the Licensee from Taylor Brown and Shannon C. Brown (the Browns) to trusts controlled by their children, the Courtney E. Brown Kibblewhite 2021 GST Trust and the Colter W. Brown 2021 GST Trust (Trusts), with each child designated as the trustee of their individual trust.[2]

2. In the course of processing the Voluntary Transfer Applications, the Bureau staff found that the Browns had transferred their KGHL interests to the Trusts on October 4, 2021, without prior Commission authorization. The Consent Decree resolves the Bureau's investigation of the unauthorized transfer of control.

3. Pursuant to the terms of the Consent Decree, Licensee stipulates that it violated section

[1] Application File Nos. 0000189158 and 0000189159. *See Broadcast Applications*, Public Notice, Report No. PN-1-220415-01, at 2 (MB Apr. 15, 2022).

[2] Specifically, the Browns transferred 50% of their ownership interests in KGHL to the Courtney E. Brown Kibblewhite 2021 GST Trust and the remaining 50% of their ownership interests in KGHL to the Colter W. Brown 2021 GST Trust. *See* Voluntary Transfer Applications, Assignment of Interests in KGHL Radio, LLC of Shannon Brown and Assignment of Interests in KGHL Radio, LLC of Taylor Brown.

310(d) of the Communications Act of 1934, as amended (the Act),[3] and section 73.3540 of the Commission's rules (Rules).[4] The Consent Decree requires, among other things, that Licensee make an eight thousand dollar ($8,000) civil penalty payment to the United States Treasury. A copy of the Consent Decree is attached hereto and incorporated by reference.

4. 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 investigation of potential violations of the Rules and the Act in connection with the Voluntary Transfer Applications.

5. Based on the record before us, we conclude that nothing in that record creates a substantial and material question of fact as to whether KGHL possesses the basic qualifications to be a Commission licensee.

6. ACCORDINGLY, IT IS ORDERED that, pursuant to section 4(i) of the Act,[5] and by the authority delegated by sections 0.61 and 0.283 of the Rules,[6] the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

7. IT IS FURTHER ORDERED that the investigation by the Bureau of the matters noted above IS TERMINATED.

8. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to KGHL Radio, LLC, P.O. Box 59103, Billings, Montana 59103.

9. IT IS FURTHER ORDERED that pursuant to section 73.3526(e)(10) of the Rules,[7] a copy of this Order and Consent Decree and as otherwise required all related investigatory materials SHALL BE RETAINED in the above-captioned Station's online public inspection file until grant of the next license renewal application.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[3] 47 U.S.C. § 310(d).

[4] 47 CFR § 73.3540.

[5] 47 U.S.C. § 4(i).

[6] 47 CFR §§ 0.61, 0.283.

[7] *Id.* § 73.3526(e)(10).

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

In re Application of	)	NAL/Acct. No. MB-20234140022
KGHL Radio, LLC	)	FRN: 0020791943
for Consent to Transfer of Control of KGHL(AM), Billings, Montana and K234CP, Billings, Montana	)	Facility ID Nos. 50354 and 146157
from	)	
Taylor Brown and Shannon C. Brown (Transferors)	)	
to	)	
the Courtney E. Brown Kibblewhite 2021 GST Trust and the Colter W. Brown 2021 GST Trust (Transferees)	)	Application File Nos. 0000189158 and 0000189159

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between the Media Bureau (Bureau) of the Federal Communications Commission and KGHL Radio, LLC, licensee of stations KGHL(AM), Billings, Montana, and K243CP, Billings, Montana, for the purpose of terminating the Bureau's investigation concerning compliance with section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), and section 73.3540 of the Commission's rules, 47 CFR § 73.3540.

II. DEFINITIONS

1. For 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 the order of the Bureau adopting this Consent Decree;
(c) "Bureau" means the Media Bureau of the Federal Communications Commission;
(d) "Civil Penalty" means the payment Licensee has agreed to pay to the United States Treasury;
(e) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices;
(f) "Effective Date" means the date on which the Bureau releases the Adopting Order;
(g) "Investigation" means the Bureau's investigation of information contained in the Voluntary Transfer Applications, as detailed herein;
(h) "KGHL" means KGHL Radio, LLC, licensee of stations KGHL(AM), Billings, Montana, and K243CP, Billings, Montana;
(i) "Licenses" refers to the license authorizations for stations KGHL(AM), Billings, Montana (Fac. ID No. 50354) and K243CP, Billings, Montana (Fac. ID No. 146157);
(j) "Licensee" means KGHL Radio, LLC, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest;
(k) "Parties" means KGHL, the Browns, the Trusts, and the Bureau;

(l) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations;
(m) The "Browns" means Taylor Brown and Shannon C. Brown;
(n) The "Trusts" means the Courtney E. Brown Kibblewhite 2021 GST Trust and the Colter W. Brown 2021 GST Trust;
(o) "Violations" mean the violations of the Voluntary Transfer of Control Rule and section 310(d) of the Act, discussed in paragraphs 3-4 below;
(p) "Voluntary Transfer Applications" means the FCC Form 2100, Schedule 315 applications for consent to the voluntary transfer of control of KGHL from the Browns to the Trusts, Application File Nos. 0000189158 and 0000189159, as amended; and
(q) "Voluntary Transfer of Control Rule" means 47 CFR § 73.3540.

III. BACKGROUND

2. *Unauthorized Transfer of Control*. Section 310(d) of the Act provides in pertinent part:

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.[8]

The Voluntary Transfer of Control Rule implements section 310(d) of the Act.[9] It is well-settled that "control" as used in the Act and the Voluntary Transfer of Control Rule encompasses all forms of control, actual or legal, direct or indirect, negative or affirmative, and that passage of *de facto* as well as *de jure* control requires the prior consent of the Commission.[10]

3. Prior to October 4, 2021, the Browns owned and controlled KGHL. On October 4, 2021, the Browns transferred their ownership interests in KGHL to the Trusts with their children, Courtney E. Brown Kibblewhite and Colter W. Brown, each named as the trustee of one of the Trusts.[11] Specifically, the Browns transferred 50% of their ownership interests in KGHL to the Courtney E. Brown Kibblewhite 2021 GST Trust and the remaining 50% of their ownership interests in KGHL to the Colter W. Brown 2021 GST Trust; each child was designated as the trustee of their individual trust.[12] The Browns' transfers of their KGHL interests was effective as of October 4, 2021, and was done without prior Commission consent as required by section 310(d) of the Act and the Voluntary Transfer of Control Rule.[13]

[8] 47 U.S.C. § 310(d).

[9] 47 CFR § 73.3540. In particular, the Voluntary Transfer of Control Rule states, in pertinent part, that "[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control." *Id*. § 73.3540(a). The rule further states that an "[a]pplication for consent to the transfer of control of a corporation holding a construction permit or license must be filed on [FCC Form 2100, Schedule 315]" where the transaction involves the transfer of a controlling interest from one individual to another. *Id*. § 73.3540(d).

[10] *See, e.g.*, *Stereo Broadcasters, Inc.*, 55 FCC 2d 819, 821 (1975) (citing *WWIZ, Inc.*, 36 FCC 561 (1964)), *modified*, 59 FCC 2d 1002 (1976).

[11] *See* Voluntary Transfer Applications, Assignment of Interests in KGHL Radio, LLC of Shannon Brown and Assignment of Interests in KGHL Radio, LLC of Taylor Brown.

[12] *Id*.

[13] *Id*.

4. On April 7, 2022, Licensee filed the instant Voluntary Transfer Applications.[14] In the course of processing the Voluntary Transfer Applications, the Bureau staff found that the unauthorized transfer of control discussed above had occurred.

5. Based on the foregoing, the Bureau commenced the Investigation and suspended processing of the Voluntary Transfer Applications. The Parties acknowledge that any proceedings that might result from the Violations would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, resolve the matters, and promote compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

IV. TERMS OF AGREEMENT

6. **Adopting Order**. The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

7. **Jurisdiction**. Licensee agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations**. The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Licensee agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. Any violation of the Adopting Order or the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to enforcement of a Commission order.

9. **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 consideration for the termination of the Investigation, Licensee agrees to the terms, conditions, and procedures contained herein.

10. The Bureau further agrees that, in the absence of new material evidence, it will not use the Violations or the existence of this Consent Decree in any action against Licensee concerning the matters that were the subject of the Investigation, provided that the Licensee satisfies all of its obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

11. **Admission of Liability**. Licensee stipulates that its actions described in Paragraphs 3-4 violated section 310(d) of the Act and the Voluntary Transfer of Control Rule.

12. **Civil Penalty**. Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of eight thousand dollars ($8,000), 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.[15]

13. **Payment**. Licensee will also send electronic notification of payment to Kim Varner at Kim.Varner@fcc.gov and Christopher Clark at Christopher.Clark@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House)

[14] *See Broadcast Applications*, Public Notice, Report No. PN-1-220415-01, at 2 (MB Apr. 15, 2022).

[15] Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

debit from a bank account using CORES (the Commission's online payment system),[16] 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:[17]

- 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 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).[18] 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.

14. **Compliance Officer.** Within 30 calendar days after the Effective Date, Licensee shall designate Taylor Brown as the Compliance Officer who will administer the Compliance Plan, supervise Licensee's compliance with the Act and the Rules, and serve as the point of contact on behalf Licensee for all FCC-related compliance matters.

15. **Compliance Plan**. Licensee further agrees that so long as Taylor Brown remains as the designated Compliance Officer Licensee will submit Compliance Reports, as set forth below, and that should Taylor Brown no longer serve as the Compliance Officer, then the Licensee will also issue a Compliance Manual and conduct a Compliance Training Program as detailed below:

[16] Payments made using CORES do not require the submission of an FCC Form 159.

[17] 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.

[18] Instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

a. **Compliance Manual.** Within 30 days of the date that Taylor Brown ceases to serve as the Compliance Officer, Licensee will issue a Compliance Manual that is distributed to employees and others who perform duties for the Licensees that trigger or may trigger compliance-related responsibilities. The Compliance Manual shall include: (1) an overview of the Commission's requirements with respect to applications for assignment or transfer of control of FCC licenses, including the need for prior approval for license assignments and transfers of control as set forth in the Rules; and (2) a description of the regulatory requirements applicable to the accurate reporting of information in assignment and transfer of control applications as set forth in the Rules. Licensee shall update the Compliance Manual from time to time to reflect changes to relevant sections of the Act, Rules, and Commission orders, and as otherwise needed.

b. **Compliance Training Program.** Licensee shall administer a Compliance Training Program for employees and others who perform duties for the Licensee related to assignment and transfer of control applications. This Compliance Training Program shall be completed for all such employees within sixty (60) days of the date that Taylor Brown ceases to serve as the Compliance Officer. This Compliance Training Program shall also be presented to new employees who are engaged in such activities, within the first sixty (60) calendar days of employment. This Compliance Training Program shall track the Compliance Manual, focusing on proper implementation of the Compliance Manual.

c. **Compliance Reports.** Licensee shall submit a Compliance Report to the Commission 90 days after the Effective Date and annually thereafter on the anniversary of the Effective Date for a period of three (3) years. Each Compliance Report will include a certification by the Compliance Officer, as an agent of and on behalf of Licensee, attesting to personal knowledge that: (1) Licensee has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with section 310(d) of the Act and the Voluntary Transfer of Control Rule, together with an accompanying statement explaining the basis for the certification; (2) Licensee has been utilizing those procedures since the previous Compliance Report was submitted; and (3) Licensee is not aware of any instances of non-compliance with the Consent Decree or those specified sections of the Act and Rules. The certification must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, then the Compliance Officer shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Act or Rules, and (ii) the steps that Licensee has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. A copy will be served on Christopher Clark, Assistant Chief, Audio Division, FCC Media Bureau, at Christopher.Clark@fcc.gov.

16. **Qualifications; Agreement to Grant**. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether the Licensee possesses the basic qualifications, including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Voluntary Transfer Applications after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 13 of this Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Voluntary Transfer Applications.

17. **Waivers**. Licensee agrees to waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition or modification. If any 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, no Party will contest the validity of the Consent Decree or Adopting Order, and Licensee will waive any statutory right to a *trial de novo*. Licensee further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[19] relating to the Consent Decree or Adopting Order.

18. **Severability**. The Parties agree that if a court of competent jurisdiction renders any of the provisions of this Consent Decree unenforceable, such unenforceability shall not render unenforceable the 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.

19. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

20. **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 Licensee does not expressly consent), such provision will be superseded by such Rule or order.

21. **Successors and Assigns**. Licensee agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

22. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

23. **Termination Date**. The obligations to which the Licensee is subject pursuant to this Consent Decree shall terminate 60 days after the filing of the final Compliance Report referenced above, *provided* the Bureau is satisfied that the Licensee has demonstrated substantial compliance with its obligations the terms of the Consent Decree. If the Bureau is not satisfied that the Licensee has demonstrated substantial compliance with the terms of the Consent Decree, the Bureau may, within its the sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

24. **Modifications**. This Consent Decree cannot be modified or amended without the advance written consent of all Parties.

25. **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.

26. **Authorized Representative**. Each Party represents and warrants to the other Party 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.

27. **Counterparts**. This Consent Decree may be signed in counterparts and/or electronically and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed electronically or by original signatures.

[19] 5 U.S.C. § 504; 47 CFR §§ 1.1501-.1530.

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By:
Albert Shuldiner, Chief, Audio Division

Date: 9/27/2023

KGHL Radio, LLC

By: _____
Taylor Brown, President

Date: _____

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner, Chief, Audio Division

Date: _____

KGHL Radio, LLC

By: Taylor Brown
Taylor Brown, President

Date: Sept 16, 2023

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 23-854
Released: September 15, 2023

INTERCONNECTED VOIP NUMBERING AUTHORIZATION APPLICATION FILED BY PAETEC ITEL, L.L.C. PURSUANT TO SECTION 52.15(g)(3) OF THE COMMISSION'S RULES

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 20-416[1]

Comments Due: October 16, 2023

PAETEC iTEL, L.L.C., (PAETEC iTEL) is an interconnected Voice over Internet Protocol (VoIP) provider with 10% or greater foreign ownership.[2] PAETEC iTEL has filed a Numbering Authorization Application (Application), pursuant to section 52.15(g)(3) of the Commission's rules, seeking authorization to obtain North American Numbering Plan telephone numbers directly from the Numbering Administrator.[3] In its Application, PAETEC iTEL indicates that it intends to initially request numbers in Florida, Georgia, Indiana, North Carolina, South Carolina, Washington, and Wisconsin.[4] We find that PAETEC iTEL's application for authorization for direct access to telephone numbers requires further analysis to determine whether granting the Application will serve the public interest, and we

[1] We assign WC Docket No. 20-416 for this application and all related filings by the Applicant and interested parties. *See Wireline Competition Bureau Announces Commencement Date and Process for Interconnected VoIP Providers to File Applications for Authorization to Obtain Telephone Numbers*, CC Docket Nos. 95-116 et al., Public Notice, 31 FCC Rcd 949, 950 (WCB 2016).

[2] *See* Application of PAETEC iTEL for Authorization to Obtain Numbering Resources, WC Docket No. 20-416 (filed Sept. 30, 2020), https://www.fcc.gov/ecfs/filing/10012513629638 (Application); *see also* Application at 4 (PAETEC iTEL is a wholly-owned subsidiary of Windstream Holdings II, LLC.); Windstream Holdings II, LLC Files a Petition for Declaratory Ruling, Public Notice, DA-22-295 at 5-8 (IB 2022), https://www.fcc.gov/document/windstream-holdings-ii-llc-files-petition-declaratory-ruling (Petition) (outlining that Windstream Holdings II, PAETEC iTEL's parent company, has substantial foreign ownership).

[3] *See* Application at 1; Supplement to PAETEC iTEL Application, WC Docket No. 20-416 (filed Mar. 9, 2021), https://www.fcc.gov/ecfs/filing/103090563523161 (Supplement 1); Restated Application of PAETEC iTEL for Authorization to Obtain Numbering Resources, WC Docket No. 20-416 (filed July 28, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/10728734929901 (Restated Application); Supplement to PAETEC iTEL Restated Application, WC Docket No. 20-416 (filed July 26, 2023), https://www.fcc.gov/ecfs/document/1072676851085/1 (Supplement 2); *see also* 47 CFR § 52.15(g)(3).

[4] *See* Restated Application at 3; *see also Numbering Policies for Modern Communications et al.*, WC Docket Nos. 13-97 et al., Report and Order, 30 FCC Rcd 6839, 6850, para. 24 & n.74 (2015) (*VoIP Direct Access to Numbers Order*).

hereby notify PAETEC iTEL that the Application is being accepted on a non-streamlined basis and will not be granted automatically.[5]

In its Application, PAETEC iTEL includes the contact information and acknowledgments required by section 52.15(g)(3)(i) of the Commission's rules.[6] PAETEC iTEL provides evidence that it will be capable of providing service within 60 days of the numbering resources activation date.[7] PAETEC iTEL also certifies that it complies with the contribution, regulatory fee, and 911 obligations set forth in section 52.15(g)(3)(i)(E).[8] In addition, PAETEC iTEL certifies that it has the financial, managerial, and technical expertise to provide reliable service.[9] PAETEC iTEL further certifies that none of its key management and technical personnel are being or have been investigated by the Federal Communications Commission, or any law enforcement or regulatory agency, for failure to comply with any law, rule, or order.[10] Finally, PAETEC iTEL certifies that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.[11]

The Commission has discretion to refer applications to the 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 the Applicant.[12] On June 2, 2023, the Office of International Affairs granted a petition for declaratory ruling filed by Windstream Holdings II, LLC, its members, and its common carrier licensee subsidiaries to permit foreign ownership of the controlling U.S. parent, Windstream,[13] to exceed the 25% benchmark specified in section 310(b)(4) of the Telecommunications Act of 1996.[14] The Commission conditioned its approval on compliance with a Letter of Agreement entered into with the Executive Branch agencies.[15] In light of the existing agreement with the Executive Branch agencies

[5] 47 CFR § 52.15(g)(3)(iii)(D).

[6] Restated Application at 1-5; *see* 47 CFR § 52.15(g)(3)(i)(A)-(C), (F).

[7] Restated Application at 3-4, Exh. A; *see* 47 CFR § 52.15(g)(3)(i)(D).

[8] Restated Application at 4-5; *see* 47 CFR § 52.15(g)(3)(i)(E); *see also id.* §§ 1.1154, 52.17, 52.32, 64.604(c)(5)(iii); *id.* pts. 9 and 54, subpt. H.

[9] Restated Application at 4-5; *see* 47 CFR § 52.15(g)(3)(i)(F).

[10] Restated Application at 5; *see* 47 CFR § 52.15(g)(3)(i)(F).

[11] Restated Application at 5; *see* 47 CFR § 52.15(g)(3)(i)(G); *see also* 21 U.S.C. § 862.

[12] 47 CFR § 1.40001; *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, 35 FCC Rcd 10927, 10935-38, paras. 24-28 (2020) (*Executive Branch Review Process Order*) (setting out which types of applications will generally be referred to the Executive Branch, but noting the Commission has the discretion to refer additional types of applications if it finds that the specific circumstances of an application require the input of the Executive Branch as part of the Commission's public interest determination); *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), *recon. denied*, 15 FCC Rcd 18158 (2000).

[13] Windstream Holdings II, LLC holds its interest in PAETEC iTel through a vertical chain of several wholly-owned subsidiary companies that are U.S. domestic entities. *See* Restated Application at 1-2; *see* Petition at 5-8; *see also* Supplement 2 at 2-3.

[14] *See Grant of Windstream Holdings II, LLC Petition for Declaratory Ruling*, IB Docket No. 22-129; Public Notice, DA 23-475 (OIA 2023), https://www.fcc.gov/document/grant-windstream-holdings-ii-llc-petition-declaratory-ruling.

[15] *See id.* at 2-3.

described by the Applicants, we are exercising our discretion and are not referring the Application to the Executive Branch.[16] Although we are not formally referring this Application, we will provide a courtesy copy of this public notice to the Executive Branch agencies.[17]

GENERAL INFORMATION

The Application identified herein has been found, upon initial review, to be acceptable for filing as a non-streamlined application. The Commission reserves the right to return any interconnected VoIP Numbering Authorization 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 52.15(g)(3)(ii) of the Commission's rules,[18] interested parties may file comments in WC Docket No. 20-416 **on or before October 16, 2023**. Commenters must serve a copy of comments on PAETEC iTEL no later than the above comment filing date.

- *Electronic Filers*: Comments may be filed electronically by accessing ECFS at https://apps.fcc.gov/ecfs.[19]
- *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. 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

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 or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

[16] *See* Supplement at 2-3.

[17] *See Executive Branch Review Process Order*, 35 FCC Rcd at 10941, para. 36, n.99; *see also id*. at 10939, para 30, n.81.

[18] 47 CFR § 52.15(g)(3)(ii).

[19] *See VoIP Direct Access to Numbers Order*, 30 FCC Rcd at 6858, para. 39; *see also* 47 CFR § 52.15(g)(3)(ii).

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

1) DAA@fcc.gov;

2) Margoux Newman, Competition Policy Division, Wireline Competition Bureau, Margoux.Newman@fcc.gov;

3) Michelle Sclater, Competition Policy Division, Wireline Competition Bureau, Michelle.Sclater@fcc.gov.

The proceeding in this Notice will 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).[20] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Please contact DAA@fcc.gov, Margoux Newman at Margoux.Newman@fcc.gov, or Michelle Sclater at Michelle.Sclater@fcc.gov for further information.

- FCC -

[20] 47 CFR § 1.1206(b).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 23-855
Released: September 15, 2023

FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES THE ACTIVATION OF THE DISASTER INFORMATION REPORTING SYSTEM FOR COMMUNICATIONS IMPACTED BY HURRICANE LEE

The Public Safety and Homeland Security Bureau (PSHSB) of the Federal Communications Commission (Commission), in coordination with the Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency has announced the activation of the Disaster Information Reporting System (DIRS) in response to communications impacted by Hurricane Lee. DIRS is a voluntary, web-based system that communications providers, including wireless, wireline, broadcast, cable and Voice over Internet Protocol providers, and satellite providers can use to report communications infrastructure status and situational awareness information during times of crisis.

The Commission requests that communications providers that provide service to any areas listed below expeditiously submit and update information through DIRS regarding the status of their communications equipment, restoration efforts, and power (*i.e.*, whether they are using commercial power or back-up power). Communications providers can accomplish this by accessing DIRS at https://www.fcc.gov/nors/disaster/. Providers that have not previously done so will be asked to first provide contact information and obtain a User ID when they access DIRS. There is a link on the login page that will allow them to obtain the User ID and password. If a user does not remember their password, they should use the forgotten password link on the login page. If any user has any problems accessing DIRS, please contact any of the numbers listed below.

In DIRS, this activation will have the following name: HURRICANE LEE. Communications providers are reminded that for providers that participate in DIRS, the separate Network Outage Reporting System (NORS) obligations are suspended for the duration of the DIRS activation with respect to outages in the municipalities where DIRS has been activated. **Reports are requested at 10:00 a.m. (EDT) on Sunday, September 17 and every day after that by 10:00 a.m. (EDT) until DIRS is deactivated.**

Communications providers that serve an area listed below and that have already provided contact information in DIRS will be sent an e-mail requesting that they provide the above-referenced status information through DIRS. For any communications providers that have not already logged onto DIRS to input their contact information, the Commission encourages them to do so as soon as possible.

COUNTIES OF INTEREST FOR THIS ACTIVATION INCLUDE THE FOLLOWING COUNTIES:

Maine: Cumberland, Hancock, Knox, Lincoln, Sagadahoc, Waldo, Washington, and York.

Massachusetts: Barnstable and Nantucket.

The FCC continues to monitor this event and may amend the DIRS activation area in the coming days.

For further information, please contact:

Michael Caiafa (202) 418-1311, (540) 834-7401 (cell), michael.caiafa@fcc.gov
David Ahn (571) 232-8487 (cell), (202) 418-0853, david.ahn@fcc.gov
John Healy (215) 847-8094 (cell), john.healy@fcc.gov
FCC 24/7 Operations Center – 202-418-1122, fccops@fcc.gov

For more information on the FCC's response to Hurricane Lee, please go to https://www.fcc.gov/Lee

- FCC -

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA-23-856
Released: September 15, 2023

FEDERAL COMMUNICATIONS COMMISSION ISSUES PROCEDURES FOR PROVIDING EMERGENCY COMMUNICATIONS IN AREAS IMPACTED BY HURRICANE LEE

The Federal Communications Commission (FCC) announces procedures to help communications service providers initiate, resume, and maintain operations in response to Hurricane Lee. Bureau-specific guidance is provided below. For additional information, applicants should contact the appropriate Bureau-specific staff identified below.

Those seeking special temporary authority (STA) are reminded of the need to conform to the requirements of section 1.2002 of our rules implementing the Anti-Drug Abuse Act of 1988.[1] Specifically, requests must include the following certification: "Neither the applicant nor any party to this application is subject to a denial of federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862." Presentations that directly relate to the emergency posed by Hurricane Lee are exempt from the restrictions of the Commission's *ex parte* rules, subject to the provisions of section 1.1204(a)(3) of those rules.[2]

- **Media Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Hurricane Lee and filed pursuant to section 73.1635 of the Commission's rules[3] may be submitted by informal letter or email or, if necessary, by telephone. Licensees of AM & FM radio stations and TV stations may file requests electronically through the Licensing Management System (LMS). All requests must provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or fax, or to receive an oral STA during regular business hours, licensees may contact the following personnel:
  - **Media Bureau Contact During Business Hours:**
    - **Part 73 (Radio Broadcast Services) Subparts A-H; J (as applicable):**
      - For Television Services, Kevin Harding, 202-418-7077, Kevin.Harding@fcc.gov
      - For FM Radio Services, Dale Bickel, 202-418-2706, Dale.Bickel@fcc.gov
      - For AM Radio Services, Jerome Manarchuck, 202-418-7226, Jerome.Manarchuck@fcc.gov
    - **Part 76 (Multichannel Video and Cable Television Service):**
      - Sean Mirzadegan, 202-418-7111, Sean.Mirzadegan@fcc.gov

[1] 47 CFR § 1.2002.

[2] 47 CFR § 1.1204(a)(3).

[3] 47 CFR § 73.1365.

- **Part 78 (Cable Television Relay Service):**
  - Jeffrey Neumann, 202-418-2046, Jeffrey.Neumann@fcc.gov

- **Media Bureau Contact During Non-Business Hours:**
  - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- Licensees are reminded that the Commission's rules address operations during periods of emergency for licensees authorized under each of the rule parts for Broadcast Television Services, Broadcast Radio Services, and Multichannel Video and Cable Services. These service-specific rules allow licensees to provide emergency communications during a period of emergency in a manner or configuration not specified in the station authorization or in the rules governing such stations.[4]

- **Office of International Affairs Guidance**
  - **Special Temporary Authority (Submarine Cables, International 214s, and International High Frequency Broadcast Station):** Emergency requests for STA related to this event may be submitted by e-mail or, if necessary, by telephone. Applicants also may file requests electronically through the ICFS at http://licensing.fcc.gov/myibfs. The Office will handle all STA requests as expeditiously as possible.
  - To ensure the Office has a complete record of the action, applicants who do not file through the ICFS should follow-up the initial request with an electronic version submitted through the ICFS as soon as possible. In this filing, operators shall note in the first description field on the electronic STA form that this is a Hurricane Lee request and the date the initial request was granted.
  - **Office of International Affairs Contact During Business Hours:**
    - **Submarine Cables and International 214s**:
      - Stacey Wise-Ashton, 202-418-2214, Stacey.Ashton@fcc.gov
      - Gabrielle Kim, 202-418-0730, Gabrielle.Kim@fcc.gov
      - Karen Johnson, 202-418-7706, Karen.Johnson@fcc.gov
    - **International High Frequency Broadcast Station**:
      - James McLuckie, 202-418-2149, James.McLuckie@fcc.gov
      - Shawna Prebble, 202-418-0740, Shawna.Prebble@fcc.gov
  - **Office of International Affairs Contact During Non-Business Hours:**
    - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- **Public Safety and Homeland Security Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Hurricane Lee and filed pursuant to section 1.931 of the Commission's rules may be submitted by email or, if necessary, by telephone. Licensees may file requests electronically through the Universal Licensing System (ULS). All requests shall provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or to receive an oral STA during regular business hours, licensees may contact the following personnel: After business hours, contact the FCC Operations Center, below.

[4] 47 CFR §§ 73.1250, 73.1680, 73.3542.

- **Public Safety and Homeland Security Bureau Contact During Business Hours:**
  - **Parts 90 (Public Safety only) and 101 (Public Safety only):**
    - Tracy Simmons, 717-338-2657 or 202-391-2363, Tracy.Simmons@fcc.gov
    - Troy Sieg, 717-338-2567, Troy.Sieg@fcc.gov
- **Public Safety and Homeland Security Bureau Contact During Non-Business Hours:**
  - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- **Space Bureau Guidance**
  - **Special Temporary Authority (Satellite Earth and Space Stations):** Emergency requests for STA related to this event may be submitted by letter, e-mail or, if necessary, by telephone. Applicants also may file requests electronically through the International Communications Filing System (ICFS) at https://licensing.fcc.gov/myibfs. All requests shall provide the technical parameters of the proposed operation and a point of contact. The Bureau will handle all STA requests on an expedited basis. Consistent with section 309(c)(2)(G) of the Communications Act, as amended, the Bureau may grant STA requests for up to 30 days.[5]
  - **Space Bureau Contact During Business Hours:**
    - **Satellite Space Stations and Earth Stations**:
      - Kathyrn Medley, 202-418-1211, Kathyrn.Medley@fcc.gov
      - Merissa Velez, 202-418-0751, Merissa.Velez@fcc.gov
      - Franco Hinojosa, 202-418-7274, Franco.Hinojosa@fcc.gov
  - **Space Bureau Contact During Non-Business Hours:**
    - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- **Wireline Competition Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for relief, including STA, prompted by the effects of Hurricane Lee may be submitted by email or, if necessary, by telephone. Providers may file requests electronically through the Electronic Comment Filing System (ECFS) but should also provide copies of any submissions simultaneously via email to the appropriate FCC staff identified below. Requests shall include supporting details concerning the relief requested, including any technical parameters and contact information.
  - **Wireline Competition Bureau Contact During Business Hours:**
    - **Emergency Requests Pertaining to Discontinuance Under Section 214 of the Communications Act, or to Network Change Notification Requirements:**
      - Rodney McDonald, 202-418-7513, Rodney.McDonald@fcc.gov
    - **Emergency Requests Pertaining to Transfer of Control Under Section 214 of the Communications Act:**
      - Michele Berlove, 202-418-1477, Michele.Berlove@fcc.gov
    - **Emergency Requests Pertaining to Numbering Resources:**
      - Michelle Sclater, 202-418-0388, Michelle.Sclater@fcc.gov
    - **All Other Wireline Provider Requests:**

[5] 47 USC § 309(c)(2)(G).

- FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- **Wireline Bureau Contact During Non-Business Hours:**
  - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- **Wireless Telecommunications Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Hurricane Lee filed pursuant to section 1.931 of the Commission's rules may be submitted by informal letter or email or, if necessary, by telephone. Licensees may file requests electronically through the Universal Licensing System (ULS). All requests shall provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or fax, or to receive an oral STA during regular business hours, licensees may contact the following personnel:
  - **Wireless Telecommunications Bureau Contact During Business Hours:**
    - **Parts 22, 24, and 27 (excluding the Broadband Radio Service and Educational Broadband Service):**
      - Keith Harper, 202-418-2759, Keith.Harper@fcc.gov
    - **Parts 27 (Broadband Radio Service and Educational Broadband Service only), 74, and 101 (excluding Public Safety):**
      - Paul Malmud, 202-418-0006, Paul.Malmud@fcc.gov
    - **Parts 80, 87, 90 (excluding Public Safety), 95, and 97:**
      - Joshua Smith, 717-338-2502 or 202-436-6222, Joshua.Smith@fcc.gov
    - **Parts 90 (Public Safety only) and 101 (Public Safety only):**
      - Tracy Simmons, 717-338-2657 or 202-391-2363, Tracy.Simmons@fcc.gov
      - Troy Sieg, 717-338-2567, Troy.Sieg@fcc.gov
  - **Wireless Telecommunications Bureau Contact During Non-Business Hours:**
    - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

Licensees are reminded that sections 22.307, 90.407, and 101.205 of the Commission's rules address operations during periods of emergency for licensees authorized under these rule parts. These rules allow licensees to provide emergency communications during a period of emergency in a manner or configuration not specified in the station authorization or in the rules governing such stations.

In addition, during evening hours, weekends, and holidays, licensees needing FCC emergency assistance or STA requests can call the FCC's Operations Center, which is open 24 hours a day, 7 days a week, at 202-418-1122 or by email at FCCOPS@fcc.gov. 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 or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

Questions and information requests may be directed to the Commission's main telephone numbers:

- Voice (toll-free): 1-888-225-5322 (1-888-CALL-FCC)
- American Sign Language Videophone (toll-free): 1-844-432-2275

-FCC-

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA-23-857
Released: September 15, 2023

FEDERAL COMMUNICATIONS COMMISSION PROVIDES 24/7 EMERGENCY CONTACT INFORMATION RELATED TO HURRICANE LEE

The Federal Communications Commission (FCC) is available to address emergency communications needs 24 hours a day, including throughout the weekend, especially relating to the effects of **Hurricane Lee**.

The FCC reminds emergency communications providers, including broadcasters, cable service providers, wireless and wireline service providers, satellite service providers, emergency response managers and first responders, and others needing assistance to initiate, resume, or maintain communications operations to contact the FCC Operations Center for assistance at 202-418-1122 or by e-mail at FCCOPS@fcc.gov.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA-23-858
Released: September 15, 2023

FEDERAL COMMUNICATIONS COMMISSION REMINDS ENROLLED USERS ABOUT THE AVAILABILITY OF PRIORITY SERVICES IN AREAS IMPACTED BY HURRICANE LEE

The Federal Communications Commission (FCC) reminds enrolled users about the availability of priority services, which help support communications and continuity of operations. Current users should understand how to activate the priority treatment so they are prepared to use the services, if necessary, during emergency response activities related to Hurricane Lee.

The Department of Homeland Security's Cybersecurity and Infrastructure Security Agency manages three programs that enable National Security and Emergency Preparedness (NSEP) personnel to effectively communicate when networks are damaged, degraded, or congested. These programs are:

- Government Emergency Telecommunications Service (GETS) for wireline voice communications;
- Wireless Priority Service (WPS) for wireless communications; and
- Telecommunications Service Priority (TSP) for prioritized restoration and provisioning of communications facilities.

The FCC reminds current users of the following information and best practices, which will increase the effectiveness of the programs:

- Make regular practice/test calls for GETS and WPS.
- Preprogram *272 for key numbers in your phone's contact list.
- Download the GETS/WPS dialer application for smartphones.
- Do *not* use GETS or WPS to dial 911.
- Test WPS after all phone changes.
- Keep your GETS card with you at all times.
- You may experience silence after entering your destination number.
- Using WPS and GETS together may help in certain circumstances.

For other helpful information, please see CISA's Helpful Tips for Users of WPS and GETS.

The FCC also encourages other entities and organizations that are not currently enrolled, but that may qualify, to consider participating in the priority services programs. These programs are available to qualified personnel from both the public and private sectors that perform NSEP functions. Entities from the following categories may qualify to participate:

- All levels of government (federal, state, local, tribal, territorial);

- Non-governmental organizations; and
- Organizations within critical infrastructure sectors, including certain private sector entities.

For more information about the priority services programs, please visit: https://www.fcc.gov/general/public-safety-homeland-security-policy-areas-priority-services and https://www.cisa.gov/priority-telecommunications-services.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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Internet: www.fcc.gov
TTY: 888-835-5322

DA-23-859
Released: September 15, 2023

FEDERAL COMMUNICATIONS COMMISSION ENCOURAGES DEBRIS REMOVAL AND UTILITY REPAIR TEAMS TO AVOID DAMAGING COMMUNICATIONS INFRASTRUCTURE IN AREAS AFFECTED BY HURRICANE LEE

The Federal Communications Commission (FCC) encourages all entities involved with debris clearing operations and utility repairs related to the effects of Hurricane Lee to take all steps necessary to avoid damaging critical communications facilities and infrastructure.

Hurricane Lee may cause widespread damage and significant impacts to communications services and infrastructure. Hurricanes and other natural disasters present numerous challenges for those working to restore essential phone and Internet services. For example, debris clearing operations to remove downed trees, replace damaged utility poles, and open roadways can result in significant, non-storm related damage to critical communications infrastructure. Such damage may disrupt communications that support the safety and life and property, including 911 calls and first responder communications.

The FCC encourages those entities working to clear debris, repair utility lines, and restore services to ensure their activities do not damage critical communications. Crews clearing downed trees and damaged utility poles should exercise caution to not cut or damage telephone or television cables that may be entangled in the debris. Similarly, entities conducting debris and restoration efforts that require digging are reminded to coordinate with appropriate authorities to ensure buried utilities can be located to avoid damage. Teams on the ground should take proactive steps to preserve and maintain critical communications and take immediate action, if necessary, to mitigate the effects of any damage that may occur to facilities or infrastructure.

For assistance, please contact the FCC Operations Center at 202-418-1122 or by e-mail at FCCOPS@fcc.gov.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 23-861
Released: September 17, 2023

THE FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES DEACTIVATION OF THE DISASTER INFORMATION REPORTING SYSTEM FOR HURRICANE LEE

The Federal Communications Commission (FCC) has deactivated its Disaster Information Reporting System (DIRS) for Hurricane Lee,[1] at the request of the States of Maine and Massachusetts, and in coordination with the Department of Homeland Security Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency. Communications providers do not need to provide any additional reporting in DIRS in connection with this event. The FCC will, however, continue to monitor the status of communications services and work with providers and government partners as needed to support remaining restoration efforts.

Effective today, no further reports to DIRS are requested in response to Hurricane Lee. Also, effective today, Network Outage Reporting System reporting obligations under Part 4 of the Commission's rules,[2] which were suspended for providers reporting in DIRS while DIRS was activated, are now again in effect for new network outages for the area covered by DIRS reporting for Hurricane Lee.

If there are major changes, whether improvements or setbacks, to the status of communications in the affected area, the FCC asks communications providers to supply that information directly to FCC personnel at the contact information below as events occur. The FCC continues to be available to address emergency communications needs related to Hurricane Lee 24 hours per day, seven days per week through our 24-hour operations center, which can be reached on 202-418-1122 or fccops@fcc.gov. This combination of measures will provide the Commission with the necessary situational awareness as service restoration continues.

The FCC appreciates the cooperation of all the communications providers that voluntarily submitted data to DIRS in the aftermath of Hurricane Lee. In disaster situations, information on the operational status of communications services provides critical situational awareness and supports effective emergency response and restoration efforts. The FCC published its final daily communications status report for Hurricane Lee today, September 17, 2023.

For further information, please contact:

Michael Caiafa (202) 418-1311, (540) 834-7401 (cell), michael.caiafa@fcc.gov
David Ahn (571) 232-8487 (cell), (202) 418-0853, david.ahn@fcc.gov
FCC 24/7 Operations Center – 202-418-1122

- FCC -

[1] DIRS is a voluntary, web-based system that communications providers, including wireless, wireline, broadcast, cable and Voice over Internet Protocol providers, can use to report communications infrastructure status and situational awareness information during times of crisis.

[2] 47 C.F.R. Part 4.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
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DA 23-862
Released: September 18, 2023

MEDIA BUREAU REMINDS BROADCASTERS OF UPCOMING WINDOW FOR FILING BIENNIAL OWNERSHIP REPORTS

Filing Window Opens on October 2, 2023

By this Public Notice, the Media Bureau reminds commercial and noncommercial broadcasters of their upcoming obligation to file 2023 biennial ownership reports on FCC Form 323 or 323-E, respectively. The broadcast ownership report filing window will open on October 2, 2023, and all reports must be submitted by December 1, 2023.[1]

Pursuant to the Commission's rules, licensees of commercial and non-commercial full power television, Class A television, low power television, AM radio, and FM radio stations must file biennial ownership reports with the Commission in odd-numbered years.[2] Information contained in this year's biennial ownership reports must be current as of October 1, 2023.[3] Reports must provide all information required by, and comply with all requirements set forth in, the current version of the relevant broadcast ownership report form (FCC Form 323 or 323-E).[4]

We remind stations that reporting ownership information has long been a fundamental obligation of broadcast licensees.[5] The accurate and timely filing of such information is critical to ensuring that the Commission and the public know who owns, operates, and controls broadcast stations. Additionally, such ownership information is crucial to an understanding of the broadcast industry as a whole, including an understanding of the diversity and multiplicity of owners. Given the importance of the biennial ownership reporting requirement, we encourage licensees to prepare accordingly and to file their reports during the designated window. Commission staff may pursue enforcement action against licensees that fail to file their biennial ownership reports in a timely or complete manner.

Further information about biennial ownership reports, including answers to frequently asked questions and links to replays of past ownership report information sessions, is available on the Commission's web page at www.fcc.gov/media/ownership-report-commercial-broadcast-station-form-323.

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[1] *See* 47 C.F.R. §§ 73.3615(a), (d); 73.6026; 74.797.

[2] *Id.* §§ 73.3615(a), (d); 73.6026; 74.797.

[3] *Id.* §§ 73.3615(a), (d); 74.797.

[4] *Id.* §§ 73.3615(a), (d); 74.797.

[5] We note further that a licensee must maintain its current ownership report in the station's Online Public Inspection File, which is intended to "encourage a continuing dialogue between broadcasters and the public to ensure stations meet their obligations and remain responsive to the needs of the local community." Media Bureau, FCC, *The Public and Broadcasting 28* (2021).

For additional information, please send an email to form323@fcc.gov.

– FCC –

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 23-863
Released: September 18, 2023

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket No. 23-256

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.[1] 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.[2] 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 The Farmers & Merchants Mutual Telephone Company of Wayland, Iowa to Communications Network, Inc., WC Docket No. 23-256, Public Notice, DA 23-716 (WCB 2023).

Effective Grant Date: September 17, 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.

-FCC-

[1] *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5529, para. 22 (2002).

[2] *Id.*; *see* 47 CFR § 1.4 (Computation of time).

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

In the Matter of	)	
	)	
Docomo Pacific, Inc.	)	Docket No. 23-227
	)	CSR-9011-Z
Emergency Request for a Temporary Waiver of Sections 76.601 and 76.614 of the Commission's Rules	)	

MEMORANDUM OPINION AND ORDER

Adopted: September 15, 2023 **Released: September 18, 2023**

By the Senior Deputy Chief, Policy Division, Media Bureau:

1. We have before us a request filed by Docomo Pacific, Inc. (Docomo) for a temporary waiver of sections 76.601 and 76.614 of the Federal Communication Commission's (Commission) rules, which would allow Docomo to find and suppress cable leaks and file its Basic Signal Leakage Performance Report (Form 320) through April 1, 2024.[1] For the reasons set forth below, we grant the waiver request.

2. Section 76.601 requires a cable operator to conduct performance testing of its cable system as specified in the Commission's rules.[2] Section 76.614 requires a cable system to conduct regulator monitoring of its system for signal leakage every three months.[3]

3. Docomo seeks this waiver to extend the time for finding and suppressing cable leaks in its system and to submit the Form 320 because Guam received a "direct hit from Super Typhoon Mawar (Typhoon Mawar)" on May 24, 2023, which resulted in "sustained catastrophic damage" to its network.[4] Docomo states that sections 76.601 and 76.614 of the Commission rules require it to perform a Cumulative Leakage Index test once per year and thereafter file its Form 320.[5] Docomo also states that because the maximum time allowed after it conducts a drive out to the system plant is 90 days, which "coincides with the time period for a quarterly monitoring drive out," it needs additional time.[6]

4. Docomo states that Guam lost "power, water, and fixed and mobile communications."[7] Docomo also states that 71 percent of its fixed network is comprised of aerial infrastructure and

[1] 47 CFR § 76.601; 47 CFR § 76.614. Docomo Request for Waiver, MB Docket No. 23-227 (filed June 22, 2023) (Docomo Waiver Request). The Media Bureau released a public notice seeking comment on the Request for Waiver. Special Relief and Show Cause Petitions, Public Notice, Report No. 0508 (MB July 10, 2023).

[2] 47 CFR § 76.60.

[3] 47 CFR § 76.614.

[4] Docomo Waiver Request at 2-3.

[5] *Id*.

[6] *Id*. at 2.

[7] *Id*. at 3.

approximately 60 percent of that aerial network was lost.[8] Docomo further states that while it is working diligently to rebuild its system as fast as possible, that work is impacted by both a limited team and limited amount of material available, and the material needed is estimated to arrive between eight and twelve weeks.[9] In addition, Docomo states that system restoration will be impacted by the fact that the system goes through "underground areas, sections protected by mountains, or topological depressions."[10]

5. Docomo seeks a waiver of sections 76.601 and 76.614 pursuant to section 1.3 of our rules.[11] Generally, the Commission's rules may be waived for good cause shown.[12] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[13] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[14]

6. We find that the significant property damage, power outages, and disruptions in services caused by Typhoon Mawar in the affected disaster area constitute extremely unusual circumstances warranting the temporary waiver of the rules and procedures described above. We agree with Docomo that granting its waiver will serve the public interest because it is time limited and will allow Docomo to use its limited resources on rebuilding its network rather than finding and repairing cable signal leaks.[15] As Docomo observes, the Commission is permitted to consider "issues involving hardship, equity, and the effective implementation of its policies."[16] According to Docomo, it has filed its Form 320 timely for many years and it was in the "middle of the second quarter CLI drive-out when the Typhoon hit."[17] Further, while it has restored 23 percent of the subscriber count, the remaining subscribers are in areas that will be "difficult to access and time intensive to restore."[18] For these reasons, we find that Docomo's request to extend its time to find and suppress cable leaks and file its Basic Signal Leakage Performance Report (Form 320) through April 1, 2024, are appropriate measures to accommodate the extraordinary circumstances caused by Typhoon Mawar.

7. Accordingly, **IT IS ORDERED** that pursuant to section 1, 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, and sections 76.601, 76.614, and 1.3 of the Commission's rules, 47 C.F.R. §§ 76.601 and 76.614, the Emergency Request for a Temporary Waiver of Sections 76.601 and 76.614 of the Commission's Rules filed by Docomo Pacific, Inc. **IS GRANTED** as set forth above.

[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*. at 1.

[12] 47 CFR § 1.3.

[13] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

[14] *Northeast Cellular*, 897 F.2d at 1166.

[15] Docomo Waiver Request at 4.

[16] *Id*.

[17] *Id*. at 5.

[18] *Id*.

8. This action is taken pursuant to authority delegated by section 0.283 of the Commission's rules.[19]

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau

[19] 47 CFR § 0.283.

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

In the Matter of	)	
	)	
Trustees Of J.B. Callaham R.T.	)	Facility ID No.: 31107
	)	NAL/Acct. No.: 202341420037
Licensee of Station K28DJ-D, Broken Bow, OK	)	FRN: 0003725124
	)	LMS File No. 0000186772

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 18, 2023 **Released: September 18, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application) of Trustees Of J.B. Callaham R.T. (Licensee), for renewal of its license for Station K28DJ-D, Broken Bow, OK (Station).[1] In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*), we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)[2] by failing to timely file a license renewal application for the Station. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of one thousand five hundred dollars ($1,500).

II. BACKGROUND

2. 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."[3] The application for renewal of the Station's license should have been filed by February 1, 2022, the first day of the fourth full calendar month prior to the Station's license expiration date of June 1, 2022.[4] However, the Licensee did not file the Application until March 17, 2022. The Licensee did not provide an explanation for the late filing.

III. DISCUSSION

3. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), 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.[5] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate

[1] Application of Trustees Of J.B. Callaham R.T. for Renewal of License, LMS File No. 0000186772 (filed March 17, 2022).

[2] 47 CFR § 73.3539(a).

[3] *Id*.

[4] *See* 47 CFR §§ 73.1020, 73.3539(a); *Media Bureau Announces Procedures for 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (MB 2020).

[5] *See* 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

commission or omission of [any] act, irrespective of any intent to violate" the law.[6] 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,[7] and the Commission has so interpreted the term in the section 503(b) context.[8] 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."[9]

4. *Apparent Violation.* We find that the Licensee is apparently liable for a forfeiture in the amount of $1,500. In this case, the Licensee failed to file the Application on or before February 1, 2022, as required by section 73.3539(a) of the Rules.[10] The Application was filed on March 17, 2022, over one month late.

5. *Proposed Forfeiture.* The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $3,000 for failure to file a required form or information.[11] 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."[12]

6. In this case, the Licensee failed to timely file a license renewal application, as required by section 73.3539(a) of the Rules.[13] The Licensee did not provide an explanation for the late filing. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,[14] we will reduce the forfeiture from the base amount to $1,500 for the failure to file a timely renewal application, because, as a low power television station, the Station is providing a secondary service.[15]

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[6] 47 U.S.C. § 312(f)(1).

[7] *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

[8] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

[9] 47 U.S.C. § 312(f)(2).

[10] 47 CFR § 73.3539(a).

[11] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

[12] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

[13] 47 CFR § 73.3539(a).

[14] *Supra* note 1.

[15] *See, e.g.*, *Juan Carlos Matos*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8932 (Vid. Div. 2021) (paid Jun. 11, 2021); *H&R Production Group*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8937 (Vid. Div. 2021) (paid Jun. 9, 2021); *Nichols Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8978 (Vid. Div. 2021) (paid Jun. 10, 2021) (each reducing proposed fine for a late-filed renewal application to $1,500 because the stations "provid[e] a secondary service."). *See also Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19333-34, paras. 2-6 (2004) ("The low power television service consists of LPTV, TV translator, and television booster stations . . . . Stations in the low power television service are authorized with 'secondary' frequency use status.").

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[16] 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 application.[17] 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 as are appropriate, including renewal for a term less than the maximum otherwise permitted."[18]

8. We find that the Licensee's apparent violation of section 73.3539(a) of the Rules[19] does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.[20] Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,[21] and sections 1.80 and 0.283(d) of the Commission's Rules,[22] that Trustees Of J.B. Callaham R.T. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand five hundred dollars ($1,500)** for its apparent willful violation of section 73.3539(a) of the Commission's Rules.[23]

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules,[24] within thirty (30) days of the release date of this *NAL*, Trustees Of J.B. Callaham R.T. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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),[25] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment,

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[16] 47 U.S.C. § 309(k).

[17] 47 U.S.C. § 309(k)(1).

[18] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[19] 47 CFR § 73.3539(a).

[20] For example, we do not find here that the Licensee's operation of the Station "was conducted in an exceedingly careless, inept, and negligent manner, and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "[t]he number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, paras. 10-11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc*., Hearing Designation Order, 7 FCC Rcd 4037 (1992).

[21] 47 U.S.C. § 503(b).

[22] 47 CFR §§ 1.80 and 0.283.

[23] 47 CFR § 73.3539(a).

[24] 47 CFR § 1.80.

[25] Payments made using CORES do not require the submission of an FCC Form 159.

Licensee must send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:[26]

- 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 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).[27] 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.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[28] 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.

13. The written response 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(g)(3) of the Rules.[29] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No.

[26] 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.

[27] Instructions for completing the form may be obtained at https://www.fcc.gov/Forms/Form159/159.pdf.

[28] *See* 47 CFR § 1.1914.

[29] 47 CFR §§ 1.16 and 1.80(g)(3).

referenced above. A copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- 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.[30]

14. 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 act support that result.[31]

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Trustees Of J.B. Callaham R.T., P.O. Box 548 Broken Bow, OK 74728. A copy shall also be sent to Station's representative, Vanessa Cartwright by electronic mail to tvcartwright@mrleng.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[30] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

[31] 47 U.S.C. § 503(b)(2)(E). *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

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

In the Matter of	)	
	)	
One Owl Telecom Inc.	)	EB-TCD-23-00035574
	)	EB Docket No. 22-174
	)	

INITIAL DETERMINATION ORDER

Adopted: September 19, 2023 **Released: September 19, 2023**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. By this Initial Determination Order, the Enforcement Bureau (Bureau) apparently finds that One Owl Telecom Inc. (One Owl or Company) has not complied with the Federal Communications Commission's (Commission or FCC) call blocking rules for gateway providers. This Initial Determination Order follows the Bureau's August 1, 2023 Notification of Suspected Illegal Traffic (Notice), which identified apparently illegal traffic One Owl was transmitting and instructed One Owl to investigate the traffic, block it if necessary, and provide a report to the Bureau within 14 days.[1] One Owl never responded, and the Bureau is not aware of any measures One Owl has taken to comply with the Notice. Pursuant to section 64.1200(n)(5)(ii) of the Commission's rules, One Owl now has 14 days to respond to this Initial Determination Order with a final response to our apparent finding and to demonstrate compliance with our rules. If One Owl fails to provide an adequate response within 14 days or continues to transmit substantially similar unlawful traffic, the Bureau will issue a Final Determination Order.[2] Any provider immediately downstream from One Owl will then be required to block and cease accepting all traffic received from One Owl beginning 30 days after release of the Final Determination Order.[3]

II. BACKGROUND

A. Legal Framework for Gateway Provider Mandatory Blocking Rules

2. Protecting consumers in the United States from the dangers and risks of unwanted and illegal robocalls is the Commission's top consumer protection priority.[4] Many of these calls originate overseas. Gateway providers are U.S.-based intermediate providers that receive calls directly from a foreign originating provider or foreign intermediate provider at their U.S.-based facilities before

[1] *See* Letter from Loyaan A. Egal, Chief, FCC Enforcement Bureau, to Aashay Khandelwal, CEO, One Owl Telecom Inc., 2023 WL 4931051 (Aug. 1, 2023), https://docs.fcc.gov/public/attachments/DOC-395607A1.pdf (Notice).

[2] *See* 47 CFR § 64.1200(n)(5)(iii).

[3] *Id.* § 64.1200(n)(6).

[4] FCC, *Stop Unwanted Robocalls and Texts*, https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts (last visited Sept. 7, 2023) ("Unwanted calls – including illegal and spoofed robocalls – are the FCC's top consumer complaint and our top consumer protection priority.").

transmitting the call downstream to another U.S.-based provider.[5] Such providers serve as critical choke points for reducing the number of illegal calls reaching consumers in the United States.[6] In recognition of this fact, the Commission adopted the *Gateway Provider Order* on May 19, 2022, increasing the obligations of gateway providers to police their own networks and imposing consequences on gateway providers that fail to do so.[7]

3. The *Gateway Provider Order* built upon the Commission's call blocking rules to require gateway providers to block illegal traffic when notified of such traffic by the Commission.[8] Once a gateway provider receives a Notice from the Bureau, the provider must comply with the Notice by investigating and reporting the results of the investigation to the Bureau.[9] If the provider's investigation determines it served as the gateway provider for the traffic, the provider must: (i) block the traffic, (ii) certify in its report to the Bureau that it is blocking the traffic and will continue to do so, and (iii) in its report to the Bureau, describe its plan to identify and block substantially similar traffic on an ongoing basis.[10] If the gateway provider does not block the traffic, it must explain to the Bureau why the identified traffic was not illegal.[11] If the provider concludes that it did not serve as the gateway for the traffic, then it must provide an explanation and identify the upstream provider(s) from which it received the identified traffic, as well as take lawful steps, if possible, to mitigate that traffic.[12]

4. The Bureau may initiate a process to direct any provider immediately downstream from the gateway provider to block the notified gateway provider's traffic if the gateway provider fails to respond to the Notice, fails to respond sufficiently, continues to transmit substantially similar traffic, or the Bureau determines the identified traffic is illegal despite the provider's assertions.[13] In such circumstances, the Bureau may issue an Initial Determination Order with its apparent findings and provide the gateway provider with an opportunity to respond.[14] If the Bureau determines that the gateway provider's response to the Initial Determination Order is inadequate (including instances where the gateway provider fails to respond), or if it continues to transmit substantially similar traffic, the Bureau may issue a Final Determination Order mandating all immediate downstream providers to block and cease accepting all traffic that they receive from the gateway provider starting 30 days from release of the Final Determination Order.[15]

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[5] 47 CFR § 64.1200(f)(19).

[6] *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Sixth Report and Order in CG Docket No. 17-59, Fifth Report and Order in WC Docket No. 17-97, Order on Reconsideration in WC Docket No. 17-97, Order, Seventh Further Notice of Proposed Rulemaking in CG Docket No. 17-59, and Fifth Further Notice of Proposed Rulemaking in WC Docket No. 17-97, FCC 22-37, 37 FCC Rcd 6865, 6875, para. 24 (*Gateway Provider Order*).

[7] *Id.* at paras. 1-4.

[8] *Id.* at para. 72; 47 CFR § 64.1200(n)(5)(i)(A).

[9] *See* 47 CFR § 64.1200(n)(5)(i)(A).

[10] *See id.*

[11] *See id.* § 64.1200(n)(5)(i)(B).

[12] *See id.*

[13] *See id.* § 64.1200(n)(5)(ii)-(iii), (n)(6).

[14] *Id.* § 64.1200(n)(5)(ii).

[15] *Id.* § 64.1200(n)(5)-(6); *see also id.* § 64.1200(n)(5)(iii) (permitting issuance of a Final Determination Order up to one year after release of the Initial Determination Order); *One Eye LLC Final Determination Order*, EB Docket No. 22-174, DA 23-389 at 4, 2023 WL 3530737, para. 8 (EB May 11, 2023) (*One Eye Final Determination Order*) (finding that One Eye's failure to respond to the Initial Determination Order was an inadequate response).

B. One Owl's Transmission of Suspected Illegal Robocalls as a Gateway Provider

5. One Owl is both an originating provider and a gateway provider.[16] On August 1, 2023, the Bureau issued a Notice to One Owl for originating and transmitting apparently illegal traffic.[17] The calls apparently transmitted prerecorded voice messages without the requisite consent of the called party under the Communications Act of 1934, as amended, and our rules.[18] Many of these calls apparently pertained to fictitious product orders.[19] Some calls purported to be from "AMC Trading LLC" and stated that "your product is ready to ship."[20] The calls asked consumers to confirm the order.[21] Other calls stated that a "pre-authorized order" had been "placed on your name."[22] The calls did not state what the order was for or where the order was placed.[23] USTelecom's Industry Traceback Group (ITG)[24] investigated purportedly prerecorded voice message calls made without consent between February 3, 2023 and May 31, 2023.[25] The ITG conducted tracebacks and determined that the calls originated overseas and that One Owl acted as the originator for some of the calls and the gateway provider for other calls.[26] The ITG previously notified One Owl of these calls and provided it access to supporting data identifying each call.[27] One Owl did not provide the ITG proof of the requisite consent for the calls.[28]

6. The Notice required One Owl to investigate and block the traffic and report the results of the investigation to the Bureau by August 15, 2023.[29] The Notice warned One Owl that a failure to

[16] *See* Notice, *supra* note 1, Attachment A; ITG Subpoena Response on file at EB-TCD-23-00035574 (Mar. 3, 2023) (March ITG Subpoena Response); ITG Subpoena Response on file at EB-TCD-23-00035574 (Apr. 17, 2023) (April ITG Subpoena Response); ITG Subpoena Response on file at EB-TCD-23-00035574 (June 22, 2023) (June ITG Subpoena Response).

[17] *See* Notice, *supra* note 1. The Notice also found that One Owl apparently originated illegal traffic, but this order only applies to One Owl's conduct as a gateway provider.

[18] *See id.*, Attachment A (identifying calls); 47 U.S.C. § 227(b) (requiring callers obtain consent before placing certain types of pre-recorded calls); 47 CFR § 64.1200(a) (same).

[19] *See* March ITG Subpoena Response; April ITG Subpoena Response; June ITG Subpoena Response.

[20] *See* March ITG Subpoena Response.

[21] *See id.*; April ITG Subpoena Response, June ITG Subpoena Response.

[22] *See* March ITG Subpoena Response, *supra* note 16; April ITG Subpoena Response, *supra* note 16; June ITG Subpoena Response, *supra* note 16.

[23] *See* March ITG Subpoena Response, *supra* note 16; April ITG Subpoena Response, *supra* note 16; June ITG Subpoena Response, *supra* note 16.

[24] The ITG is the registered industry consortium selected pursuant to the TRACED Act to conduct tracebacks. *See 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, para. 40 (EB 2022); *see also* Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, Sec. 13(d) (2019).

[25] *See* March ITG Subpoena Response, *supra* note 16; April ITG Subpoena Response, *supra* note 16; June ITG Subpoena Response, *supra* note 16.

[26] *See* March ITG Subpoena Response, *supra* note 16; April ITG Subpoena Response, *supra* note 16; June ITG Subpoena Response, *supra* note 16; Notice, *supra* note 1, Attachment A (noting One Owl's role as the originator or the gateway provider for each identified call).

[27] *See* March ITG Subpoena Response, *supra* note 16; April ITG Subpoena Response, *supra* note 16; June ITG Subpoena Response, *supra* note 16.

[28] *See* March ITG Subpoena Response, *supra* note 16; April ITG Subpoena Response, *supra* note 16; June ITG Subpoena Response, *supra* note 16. One Owl claimed to have warned its clients about transmitting illegal traffic and terminated some originators. Notice, *supra* note 1, at 2.

[29] Notice, *supra* note 1, at 5.

comply with those obligations would result in the Bureau requiring all immediate downstream providers to block its traffic pursuant to section 64.1200(n)(5) and (6).[30] One Owl has not responded to the letter or filed any report.[31]

7. The Notice also determined that One Owl was associated with two previous recipients of Bureau cease-and-desist letters: Illum Telecommunication Limited (Illum) and One Eye LLC (One Eye).[32] One Eye was also the subject of an order which directed all immediate downstream providers to block and cease accepting One Eye's traffic.[33] In response to the FCC's enforcement action against Illum in October 2021, the CEO and Director of Illum, Prince Anand (Anand), who sometimes uses the alias "Frank Murphy," created One Eye.[34] To deflect the FCC's scrutiny, Anand intended to keep his name off One Eye's corporate documents.[35] Kaushal Bhavsar, a director of Illum, became One Eye's CEO.[36] Aashay Khandelwal, the Human Resource Representative for Illum, subsequently formed One Owl and became the CEO.[37] Julya Barros, a seemingly close acquaintance of Anand,[38] became Vice President of Sales and Marketing at One Owl.[39] One Owl and One Eye used the same IP address to conduct their business.[40] One Owl and One Eye communicated under the same email domain, @oneeyetelecom.com.[41] One Owl and One Eye also shared customers that the FCC has explicitly identified as the source of illegal traffic,[42] and the content of the calls carried by both companies pertained to orders purportedly placed by the called parties.[43] The personnel connections between One Owl, One Eye, and Illum are summarized in the table below.

[30] *Id.* at 6.

[31] The Notice also directed One Owl to investigate and mitigate the identified traffic within 48 hours, consistent with section 64.1200(k)(4). *Id.*; *see* 47 CFR § 64.1200(k)(4). One Owl did not meet that deadline, either.

[32] Letter from Rosemary C. Harold, Chief, Enforcement Bureau, to Prince Anand, CEO, Illum Telecommunication (Oct. 21, 2021), https://docs.fcc.gov/public/attachments/DOC-376749A1.pdf; Letter from Loyaan A. Egal, Chief, Enforcement Bureau, to Kaushal Bhavsar, CEO, One Eye LLC (Feb. 15, 2023), https://docs.fcc.gov/public/attachments/DOC-391103A1.pdf.

[33] *One Eye Final Determination Order*, *supra* note 15.

[34] Notice, *supra* note 1, at 2.

[35] *Id.*

[36] *Id.*

[37] *Id.* at 2-3.

[38] *Id*. at 3.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Compare id.* at 2, *with One Eye Final Determination Order*, *supra* note 15, para. 5.

INDIVIDUALS	COMPANIES
Aashay Khandelwal, resident of Maryland,[44] with a presence in Las Vegas, Nevada,[45] and Mumbai, India[46]	**CEO** at One Owl[47] **Human Resources Representative** at Illum[48]
Julya Barros, resident of Mumbai, India[49] and Dubai, United Arab Emirates[50]	**Vice President of Sales and Marketing** at One Owl[51]
Prince Anand, also known as Frank Murphy,[52] with a presence in Mumbai, India[53] and Dubai, United Arab Emirates[54]	**CEO & Director** at Illum[55] **De facto Founder** of One Eye[56]
Kaushal Bhavsar, resident of Ahmedabad, Gujarat, India,[57] with a presence in Delaware[58]	**Director** at Illum[59] **CEO** at One Eye[60]

III. DISCUSSION

8. Pursuant to Section 64.1200(n)(5) of the Commission's rules, One Owl must investigate and block traffic identified by the Bureau after receiving the Notice.[61] One Owl must then report the

[44] *See* Aashay Khandelwal, LinkedIn, https://www.linkedin.com/in/aashay-khandelwal-ab6179238 (last visited July 14, 2023) (screenshots on file at EB-TCD-20-00030805).

[45] *See id*.

[46] *See* Incorp Services Interrogatories Response at para. 3 (on file at EB-TCD-20-00030805).

[47] One Owl Telecom Inc. Listing, Fed. Commc'ns Comm'n, Robocall Mitigation Database (Apr. 25, 2022), https://fccprod.servicenowservices.com/rmd?id=rmd_form&table=x_g_fmc_rmd_robocall_mitigation_database&sys_id=b1ab8b061bcb4110823a419ae54bcb64&view=sp (showing Khandelwal as the CEO of One Owl).

[48] Illum Telecommunication, https://www.illumtelecommunication.com/ (last visited Sept. 12, 2023).

[49] *See* Julya Barros (@julyabarross), Instagram, http://www.instagram.com/julyabarross_/ (last visited July 14, 2023) (screenshots on file at EB-TCD-20-00030805).

[50] *See* Julya Barros, LinkedIn, https://ae.linkedin.com/in/julya-barros-928008245 (last visited July 13, 2023) (screenshots on file at EB-TCD-20-00030805).

[51] *See id.*

[52] Prince Anand Skype Chat, June 10, 2021 at 8:18:53 PM (on file at EB-TCD-20-00030805) (Anand Skype Chat).

[53] *Id.* at June 17, 2021 at 3:26:34 PM.

[54] *Id.* at November 30, 2021 at 3:53:35 AM.

[55] *See* Illum Telecommunication, https://www.illumtelecommunication.com/ (last visited Sept. 12, 2023); Illum Telecommunication Limited Listing, Fed. Commc'ns Comm'n, Robocall Mitigation Database (Sept. 15, 2021), https://fccprod.servicenowservices.com/rmd?id=rmd_form&table=x_g_fmc_rmd_robocall_mitigation_database&sys_id=1e1084661ba6bc107ccf20ecac4bcb93&view=sp (showing Anand as the CEO of Illum).

[56] Anand Skype Chat, at October 24, 2021 at 9:02:21 AM.

[57] *See* Kaushal Bhavsar, LinkedIn, https://in.linkedin.com/in/kaushal-bhavsar-a69a3a255 (last visited Sept. 12, 2023) (screenshots on file at EB-TCD-20-00030805).

[58] *See* One Eye LLC, Fed. Commc'ns Comm'n, Form 499 Filer Database, Detailed Information, https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=834729 (last visited July 14, 2023).

[59] Illum Telecommunication, https://www.illumtelecommunication.com/ (last visited Sept. 12, 2023).

[60] One Eye LLC Listing, Fed. Commc'ns Comm'n, Robocall Mitigation Database (Oct. 26, 2021), https://fccprod.servicenowservices.com/rmd?id=rmd_form&table=x_g_fmc_rmd_robocall_mitigation_database&sys_id=9e1373b31b53b0107ccf20ecac4bcb3b&view=sp.

[61] 47 CFR § 64.1200(n)(5)(i)(A).

results of its investigation to the Bureau.[62] The rules direct the Bureau to provide at least 14 days for One Owl to comply with the Notice.[63]

9. The Bureau issued the Notice to One Owl on August 1, 2023.[64] The Notice directed One Owl to take the following actions: (i) promptly investigate the suspected unlawful transmissions identified in the Notice; (ii) if One Owl's investigation determined that One Owl served as the gateway provider for the identified transmissions, block all of the identified unlawful traffic within 14 days of the Notice (and continue to block the identified traffic as well as substantially similar traffic on an ongoing basis); and (iii) report the results of One Owl's investigation to the Bureau within 14 days of the date of the Notice.[65] The Notice required One Owl to respond within 14 days (by August 15, 2023).[66] The Bureau has received no information to suggest One Owl has done any of these things.

10. We direct One Owl to reply with a final response to this Initial Determination Order. The response should provide an explanation as to why the Bureau should not issue a Final Determination Order mandating that providers immediately downstream from One Owl block *all* of One Owl's traffic.[67] One Owl shall file its response with the Bureau within 14 calendar days of the date of this Initial Determination Order. Failure to respond to this Initial Determination Order or submit an adequate response providing a reasonable basis for why the identified traffic is legal, or continued transmission of substantially similar traffic, will result in the Bureau issuing a Final Determination Order.[68] The Final Determination Order will be published in EB Docket No. 22-174 and serve as notification to all immediate downstream providers that they must block and cease accepting all traffic received directly from One Owl beginning 30 days after release of the Final Determination Order.[69]

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i), 4(j), 227(b), 251(e), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 227(b), 251(e), 403; sections 0.111, 0.311, 1.1, 1.102(b)(1), and 64.1200 of the Commission's rules, 47 CFR §§ 0.111, 0.311, 1.1, 1.102(b)(1), 64.1200; and the *Gateway Provider Order*,[70] One Owl **SHALL FILE** a written final response to this Order **within 14 calendar days** from the release date of this Initial Determination Order.[71]

12. The response must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division. The response must also be e-mailed to Kristi Thompson, Division Chief, Telecommunications Consumers Division, at kristi.thompson@fcc.gov, Daniel Stepanicich, Assistant Division Chief, Telecommunications Consumers Division, at daniel.stepanicich@fcc.gov, and Jessica Manuel, Attorney Advisor, Telecommunications Consumers Division, at jessica.manuel@fcc.gov.

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[62] *Id.*

[63] *Id.*

[64] Notice, *supra* note 1, at 1.

[65] *Id.* at 5.

[66] *Id.*

[67] *See* 47 CFR § 64.1200(n)(5)(ii)-(iii), (n)(6).

[68] *Id.* § 64.1200(n)(5)(iii).

[69] *Id.* § 64.1200(n)(6).

[70] *Gateway Provider Order*, *supra* note 6, at 6897-6898, para. 74.

[71] 47 CFR § 64.1200(n)(5)(ii).

13. **IT IS FURTHER ORDERED** that copies of this Initial Determination Order shall be filed in EB Docket No. 22-174 and sent by email and registered mail, return receipt requested, to: Aashay Khandelwal, CEO, One Owl Telecom Inc., 1519 York Road, Lutherville, MD 21093.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 23-867
Released: September 19, 2023

WIRELESS TELECOMMUNICATIONS BUREAU AND OFFICE OF ENGINEERING AND TECHNOLOGY ANNOUNCE MODIFIED CITIZENS BROADBAND RADIO SERVICE DEVICE REAUTHORIZATION PROCEDURES

GN Docket Nos. 17-258 and 15-319

With this Public Notice, the Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET) of the Federal Communications Commission (Commission or FCC) direct Spectrum Access System (SAS) administrators that they are permitted to implement longer Citizens Broadband Radio Service Device (CBSD) reauthorization policies consistent with the methodology described in a September 18, 2023 letter from the National Telecommunications and Information Administration (NTIA).[1] As detailed further below, these policies will apply solely in geographic areas and portions of the 3.55-3.7 GHz band (3.5 GHz band) that are outside of the scope of current federal operations.

Currently, all CBSDs are reauthorized at least once every 300 seconds to ensure compliance with Commission rules. Specifically, under the Commission's rules governing the Citizens Broadband Radio Service, "within 300 seconds after the [Environmental Sensing Capability] ESC communicates that it has detected a signal from a federal system in a given area, or the SAS is otherwise notified of current federal incumbent use of the band, the SAS must either confirm suspension of the CBSD's operation or its relocation to another unoccupied frequency, if available."[2] The Commission's rules also require that "[i]f the President of the United States (or another designated Federal Government entity) issues instructions to discontinue use of CBSDs pursuant to 47 U.S.C. 606, SAS Administrators must instruct CBSDs to cease operations as soon as technically possible."[3] There is a similar set of requirements applicable to the 3.65-3.7 GHz band.[4] These requirements were designed to ensure that federal operations are continuously protected from harmful interference from Citizens Broadband Radio Service operations in the 3.5 GHz band.[5]

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[1] Letter from Charles Cooper, Assoc. Admin., Office of Spectrum Mgt., NTIA, to Ronald T. Repasi, Chief, OET, FCC, and Joel Taubenblatt, Chief, WTB, FCC, (Sept. 18, 2023) (September 18, 2023 NTIA Letter), https://www.fcc.gov/ecfs/document/10918103597534/1.

[2] 47 CFR § 96.15(a)(4). Each CBSD must comply with any incoming commands from its associated SAS regarding any changes to power limits and frequency assignments within 60 seconds of receipt. *See* 47 CFR § 96.39(c)(2).

[3] 47 CFR § 96.15(a)(4). *See also* 47 U.S.C. 606.

[4] 47 CFR § 96.15(b)(4).

[5] The SAS administrators have implemented these requirements by establishing signaling protocols through an industry led process, specifically in this case the CBSD "heartbeat" procedure. Under this procedure, SASs send a "heartbeat" signal to each CBSD every 240 seconds indicating whether the CBSD is authorized to operate or not. If a CBSD receives a message that it is deauthorized, it must shut down within 60 seconds. *See* WInnForum, *Signaling*
(continued….)

Since the rules were adopted to protect federal operations in the 3.5 GHz band, the SAS administrators have applied a 300 second maximum CBSD reauthorization period nationwide.[6] In its letter, NTIA informed the Commission of its determination that SAS administrators may adopt longer CBSD reauthorization procedures where doing so does not adversely affect federal operations in the 3.5 GHz band.[7] NTIA notes that "lengthening this reauthorization period from five minutes to 24 hours in geographic areas and portions of the spectrum band that are outside of the scope of current federal operations will help to provide a more stable and predictable spectrum environment for Citizens Broadband Radio Service users while ensuring an interference-free environment for critical federal operations."[8]

We agree with NTIA that allowing SAS administrators to modify their implementation of the CBSD reauthorization period under these circumstances will create a more stable, predictable spectrum environment for all 3.5 GHz band users without jeopardizing the protection of critical federal operations from harmful interference. We also believe that permitting this implementation approach within geographic areas and portions of the spectrum band that are outside of the scope of current federal operations is consistent with the purpose and intent of the Commission's Citizens Broadband Radio Service federal protection rules—namely, to ensure that incumbent federal operations are continuously protected from harmful interference from Citizens Broadband Radio Service operations in the 3.5 GHz band. This modified approach to implementation of CBSD reauthorization also ensures that SAS administrators will maintain the ability to timely respond to instructions from the President of the United States, or another designated Federal government entity, issued pursuant to 47 U.S.C. § 606.[9]

Specifically, consistent with the NTIA letter,[10] we direct the SAS administrators to apply the following procedures for CBSD reauthorization:

- For grants in the 3550-3700 MHz band, CBSDs outside of Dynamic Protection Area (DPA)[11] Neighborhoods[12] may continue to transmit for up to 24 hours on the approved grants without SAS re-authorization.
- For grants in the 3650-3700 MHz band, CBSDs inside of DPA Neighborhoods may continue to transmit for up to 24 hours on the approved grants without SAS re-authorization.

(Continued from previous page)
Protocols and Procedures for Citizens Broadband Radio Service (CBRS): Spectrum Access System (SAS) – Citizens Broadband Radio Service Device (CBSD) Interface Technical Specification, WINNF-TS-0016-V1.2.7 (March 21, 2022), https://winnf.memberclicks.net/assets/CBRS/WINNF-TS-0016.pdf.

[6] *Id.; see also* 47 C.F.R. §§ 96.53 (e)-(g) and 96.63 (c), (l).

[7] September 18, 2023 NTIA Letter at 1.

[8] September 18, 2023 NTIA Letter at 1.

[9] *See* 47 U.S.C. § 606; 47 CFR §§ 96.15(a)(4), (b)(4), 96.63.

[10] September 18, 2023 NTIA Letter at 2.

[11] 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. *See Promoting Investment in the 3550-3700 MHz band,* GN Docket No. 17-258, Order, 33 FCC Rcd 4987 (WTB/OET 2018) (*DPA Waiver Order*). *See also* Letter from Paige R. Atkins, Assoc. Admin., Office of Spectrum Mgt., NTIA, to Julius P. Knapp, Chief, OET, FCC, and Donald Stockdale, Chief, WTB, FCC, (May 17, 2018) (2018 NTIA Letter). NTIA depicts the DPAs in Attachment A. 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.

[12] The coordinates of the DPA Neighborhoods are available at: https://www.ntia.gov/fcc-filing/ntia-letter-fcc-commercial-operations-3550-3650-mhz-band.

- For grants in the 3550-3650 MHz band, CBSDs inside of DPA Neighborhoods shall continue to transmit for up to 300 seconds on the approved grants without SAS re-authorization.[13]

WTB and OET will consider any SAS implementing these modified procedures to be compliant with applicable rules, including rules regarding the Presidential shut down requirement.[14] We look forward to continuing our productive collaboration with NTIA, DoD, and industry stakeholders to promote efficient use of the 3.5 GHz band, expand commercial opportunities in the Citizens Broadband Radio Service, and safeguard the security of important federal operations in the band.

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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Additional Information. For further information regarding this Public Notice, please contact Paul Powell, Associate Division Chief, Wireless Telecommunications Bureau, Mobility Division at paul.powell@fcc.gov or 202-418-1613.

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

-FCC-

[13] *See* 47 CFR § 96.15(a)(4).

[14] *See* 47 U.S.C. § 606; 47 CFR §§ 96.15(a)(4), (b)(4), 96.63.

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 23-868
Released: September 19, 2023

ANNOUNCEMENT OF OMB APPROVAL

MEDIA BUREAU ANNOUNCES SEPTEMBER 19, 2023 EFFECTIVE DATE OF REMAINING REVISIONS TO PART 74 COMMISSION RULES FOR LOW POWER TELEVISION AND TELEVISION TRANSLATOR STATIONS

MB Docket Nos. 03-185, 22-261

On April 17, 2023, the Commission released a Report and Order (*Report and Order*) in its proceeding to update the Commission's Part 74 rules for low power television and television translator services to reflect the current operating environment.[1] The *Report and Order* adopted rules to reflect the all-digital nature of these services since they were required to terminate all analog television operations by July 13, 2021, and made other updates to ensure the rules clearly reflect the Commission's requirements and are understandable to all stakeholders. On June 12, 2023, the Media Bureau announced that the following rule sections became effective as of that date: sections 74.702, 74.708, 74.709, 74.710, 74.737, 74.750, 74.762, 74.783, 74.786, 74.787, 74.789, 74.790, 74.791, and 74.795.[2]

The Office of Management and Budget (OMB) has approved the Commission's associated Paperwork Reduction Act submissions[3] for the remainder of those rules adopted in the *Report and Order* that did not take effect on June 12, 2023. Accordingly, on September 19, 2023, the Office of the Federal Register published OMB's approval and announced that the rule changes to sections 74.703, 74.734, 74.735, 74.751, 74.763, and 74.784 would be effective on September 19, 2023.[4]

For further information, contact Emily Harrison, Media Bureau, Video Division at Emily.Harrison@fcc.gov or Mark Colombo, Media Bureau, Video Division at Mark.Colombo@fcc.gov.

- FCC -

[1] *Amendment 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*, MB Docket Nos. 03-185 and 22-261, Report and Order, FCC 23-25 (Apr. 17, 2023) (*Report and Order*).

[2] *Media Bureau Announces June 12, 2023 Effective Date of Certain Revisions to Part 74 Commission Rules for Low Power Television and Television Translator Stations*, MB Docket Nos. 03-185 and 22-261, Public Notice, DA 23-498 (MB June 12, 2023); 47 CFR §§ 74.702, 74.708, 74.709, 74.710, 74.737, 74.750, 74.762, 74.783, 74.786, 74.787, 74.789, 74.790, 74.791, and 74.795; *see also Establishing Rules for Digital Low Power Television and Television Translator Stations*, 88 Fed. Reg. 30654 (May 12, 2023).

[3] *See Information Collections Being Reviewed by the Federal Communications Commission*, 88 Fed. Reg. 28547 (May 4, 2023); 47 CFR §§ 74.703, 74.734, 74.735, 74.751, 74.763, and 74.784.

[4] *Establishing Rules for Digital Low Power Television and Television Translator Stations*, 88 FR 64382 (Sept. 19, 2023).

Federal Communications Commission
Washington, D.C. 20554

September 19, 2023

DA 23-869
In Reply Refer To:
1800B3-ATS
Released: September 19, 2023

First Dallas Media, Inc.
c/o Joseph C. Chautin, III, Esq.
Hardy, Carey, Chautin & Balkin, LLP
1080 West Causeway Approach
Mandeville, LA 70471
(sent by electronic email to: jchautin@hardycarey.com)

East Texas Community Broadcasting
c/o Guy Betten
3554 FM 747 S
Jacksonville, TX 75766
(sent by electronic email to: gwbetten@gmail.com)

Albert Alan David
2632 Kenilworth Ave.
Berwyn, IL 60402
(sent by electronic email to: albert.a.david@hotmail.com)

In re: **NCE MX Group 205**

First Dallas Media, Inc.
New NCE (FM), Golinda, Texas
Facility ID No. 763726
Application File No. 0000165973

East Texas Community Broadcasting
New NCE (FM), Riesel, Texas
Facility ID No. 768280
Application File No. 0000167216

Informal Objections

Dear Applicants, Counsel, and Objector:

We have before us two mutually exclusive (MX) applications filed by First Dallas Media, Inc. (FDMI), and East Texas Community Broadcasting (ETCB) for construction permits for new noncommercial educational (NCE) FM stations for different communities in Texas, which the Media Bureau (Bureau) designated as NCE MX Group 205.[1] The Bureau initially identified the FDMI

[1] *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations; Opens Window to Accept Settlements and Technical*

Application as the tentative selectee and granted the application.[2] The Bureau subsequently rescinded the tentative selection and grant, and directed FDMI and ETCB to file amendments to their respective applications.[3] Albert Alan David (David) then filed two Informal Objections to the ETCB Application (First David Objection and Second David Objection, respectively, and collectively, David Objections).[4] Based on its review of the responsive amendments, the Bureau identified the ETCB Application as the new tentative selectee, established a 30-day petition to deny period, and deferred action on the David Objections until after that 30-day period.[5] For the reasons set forth below, we deny the David Objections, grant the ETCB Application, and dismiss the FDMI Application.

Background. The subject applications were filed during the November 2021 NCE FM filing window.[6] In the *Fifth Fair Distribution Order*, the Bureau conducted a fair distribution analysis pursuant to section 307(b) of the Communications Act of 1934, as amended, identified the FDMI Application as the tentative selectee of NCE MX Group 205, and established a 30-day petition to deny period.[7] No petitions to deny were filed, and the Bureau granted the FDMI Application and dismissed the remaining applications as non-tentative selectees.[8]

Amendments, Public Notice, 36 FCC Rcd 16452 (MB 2021); *see also* Application File Nos. 0000165973 (FDMI Application) and 0000167216 (ETCB Application).

[2] *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 6, para. 12 (MB Nov. 9, 2022) (*Fifth Fair Distribution Order*); *Actions*, Public Notice, Report No. PN-2-221213-01 (MB Dec. 13, 2022) (December 13 Public Notice) (granting FDMI Application).

[3] *NCE MX Group 205*, Letter Order, DA 23-264 (MB Mar. 29, 2023) (*First Letter Order*).

[4] *See* Pleading File Nos. 0000213747 (filed Apr. 12, 2023) and 0000214116 (filed Apr. 22, 2023). ETCB filed separate oppositions to the First David Objection and the Second David Objection. Pleading File Nos. 0000213797 (filed Apr. 12, 2023) (First ETCB Opposition) and 0000214175 (filed Apr. 24, 2023) (Second ETCB Opposition). David filed separate replies to the First ETCB Opposition and the Second ETCB Opposition. Pleading File Nos. 0000214115 (filed Apr. 22, 2023) (First David Reply) and 0000214334 (filed Apr. 29, 2023) (Second David Reply).

[5] *NCE MX Group 205*, Letter Order, DA 23-500 (MB June 12, 2023) (*Second Letter Order*).

[6] *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).

[7] *See Fifth Fair Distribution Order* at 5, para. 12. At the time of the *Fifth Fair Distribution Order*, NCE MX Group 205 consisted of eight applications: the FDMI and ETCB applications, and the applications of Ministerio Espiritu Santo (Application File No. 0000167797), Iglesia Cristian Restauracion y Vida (Application File No. 0000167785), Alpha Consulting Christian Education (Application File No. 0000166689), Specialized Educational Broadcasting (SEB) (Application File No. 0000166809), Centro Familiar de Restauracion y Vida (Application File No. 0000167080), and Red-C Apostolate: Religious Education for the Domestic Church (Red-C) (Application File No. 0000167206). FDMI, ETCB, and SEB each claimed a fair distribution preference, and the other five applicants did not claim such a preference. FDMI provided a second NCE service to 14,178 people; SEB to 6,151 people; and ETCB a combined first and second NCE service to 8,575 people. Because FDMI proposed to provide a new second NCE service to at least 5,000 more people than ETCB, it prevailed.

[8] After the issuance of the *Fifth Fair Distribution Order* but prior to the Bureau taking action on the applications in NCE MX Group 205, Red-C filed an amendment which rendered its application a singleton. The remaining six applications, including the ETCB Application, were dismissed as non-tentative selectees. Only ETCB sought reconsideration of its dismissal, and the dismissals of the other five applications are now final. *See December 13 Public Notice* (granting FDMI Application and dismissing mutually exclusive ECTB Application and remaining five applications).

On December 19, 2022, ETCB filed a Petition for Reconsideration, claiming that FDMI misrepresented its fair distribution population figures and did not qualify for a fair distribution preference.[9] Additionally, on January 8, 2023, ETCB filed a second Petition for Reconsideration seeking *nunc pro tunc* reinstatement of its dismissed application.[10] In the second Petition for Reconsideration, ETCB also acknowledged that its own application contained typographical errors in the directional antenna pattern and attached an amendment correcting those errors.[11]

On March 29, 2023, the Bureau released the *First Letter Order* in which it (1) rescinded the grant and tentative selection of the FDMI application; (2) reinstated the ETCB Application; and (3) afforded FDMI and ETCB each 15 days to file amendments to their applications before further Bureau or Commission action.[12]

On April 5, 2023, ETCB filed a timely responsive amendment to correct the errors it identified in the directional antenna pattern proposed in the ETCB Application.[13] However, the Bureau determined that the ETCB Application, as modified by the April 5 Amendment, was defective, dismissed the amended ETCB Application, and directed ETCB to the procedures for filing curative amendments.[14] On April 12, 2023, ETCB filed an amendment to correct the errors identified by the Bureau and sought reinstatement of its application.[15] Separately, on April 10, 2023, FDMI amended its Application to disclaim its eligibility for a fair distribution preference.[16] Finally, on June 12, 2023, the Bureau issued the *Second Letter Order*, which identified ETCB, the only remaining applicant to claim a fair distribution preference, as the new tentative selectee of NCE MX Group 205 and established a new 30-day petition to deny period.[17]

In the First David Objection, David argues that ETCB's initial application did not qualify for a fair distribution preference, and the April 5 Amendment, therefore, constitutes a prohibited increase in ETCB's comparative standing. Specifically, David contends that "[t]he overall population covered by the proposed facility under its initial antenna pattern greatly exceeded the population claimed on its initial application, causing the number of people receiving first or second NCE service under the proposed facility to be less than 10%,"[18] making ETCB ineligible for a Section 307(b) preference. David argues

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[9] *See* Pleading File No. 0000205723 (filed Dec. 19, 2022).

[10] *See* Pleading File No. 0000206492 (filed Jan. 8, 2023).

[11] *Id*. at 4.

[12] *First Letter Order, supra* note 3, at 3.

[13] ETCB Application, Amendment (filed Apr. 5, 2023) (April 5 Amendment).

[14] *See Actions*, Public Notice, Report No. PN-2-230414-01 (MB Apr. 14, 2023) ("Application, as amended 4/5/2023, dismissed 4/12/2023 via Public Notice for the following reason: Section 73.509 violation – 54 sq km. overlap caused to the granted construction permit, File No. 0000167146, of co-channel Class A FM station in Bedias, Texas. See DA 21-1516 for general information about this dismissal and for information about filing curative amendments.") (April 14 Public Notice).

[15] ETCB Application, Amendment (filed Apr. 12, 2023) (April 12 Amendment).

[16] FDMI Application, Amendment (filed Apr. 10, 2023).

[17] *Second Letter Order* at 4. The Bureau noted that it would withhold action on the David Objections until the end of the new 30-day petition to deny period.

[18] First David Objection at 1. David states that "under the originally proposed pattern, the city of Waco was included in the 60 dBu contour. As a result the 8,575 claimed by the application to be receiving first or second NCE service was far under 10% of the total population covered…" *Id.*

that because the April 5 Amendment "brought the overall population down so that the number of people receiving first or second NCE service exceeds 10%, this constitutes a prohibited increase in comparative standing."[19]

In the First Opposition, ETCB argues that "enhancements" refers to "changes filed per numbers in the tech/point boxes (population, new area, points) and original declaration of primary and secondary services population numbers in the original application" and that their April 5 Amendment made no changes to those types of figures.[20] Rather, ETCB argues that the April 5 Amendment merely corrected a typographical error in the antenna data, and that it has always qualified for a fair distribution preference.[21]

In the Second David Objection, David argues that ETCB's April 12 Amendment was not permitted because the application had been previously dismissed, amended, and reinstated.[22] Specifically, David asserts that "ETCB had already had one opportunity to file a curative amendment, which it filed on April 5, 2023,"[23] and cites the *Singletons Public Notice* to support his contention that the April 12 Amendment is prohibited.[24] David, therefore, urges the Commission to dismiss the ETCB Application.

In the Second Opposition, ETCB argues that the one curative amendment policy is inapplicable here because the ETCB Application was only dismissed once for a technical defect. Rather, the first dismissal of the application occurred because the Bureau determined that ETCB was a non-tentative selectee in the *Fifth Distribution Order*.[25] Thus, ETCB argues that it was permitted to file the April 12 Amendment to correct the specific technical defect identified for the first time by the Bureau.[26]

Discussion. Pursuant to section 309(d) of the Act,[27] petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.[28]

We first reject David's argument that ETCB's initial application did not qualify for a fair distribution preference, and the April 5 Amendment was, therefore, a prohibited attempt to enhance its

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[19] *Id.*

[20] First ETCB Opposition at 3.

[21] *Id.* In the First Reply, David reiterates his contention that based on the antenna pattern proposed in the initial application, ETCB was ineligible for a Section 307(b) preference. *See* First David Reply at 1.

[22] Second David Objection at 1.

[23] *Id.*

[24] *Id.* at 1-2 (citing *Media Bureau Dismisses Defective Singleton Applications Submitted in the November 2021, Filing Window For New Noncommercial Educational FM Stations*, Public Notice, 36 FCC Rcd 16718 (MB 2021) (*Singletons Public Notice*)).

[25] Second ETCB Opposition at 4. ETCB also argues that the Second David Objection was procedurally improper. *Id.* at 3. We find no merit to this allegation and do not consider it further.

[26] *Id.* In the Second David Reply, David reiterates his contention that the ETCB exhausted its one opportunity to file a curative amendment, and the ETCB Application must, therefore, be dismissed. *See* Second David Reply at 2.

[27] 47 U.S.C. § 309(d).

[28] *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). .

comparative position. David does not support his argument with any technical studies or population data. Rather, David merely submits a contour map, which is a screenshot from the Commission's Licensing and Management System, and the standalone map does not provide any data by which the staff can verify if David's argument has merit.[29] Accordingly, we deny the First David Objection.

We also reject David's argument that the April 12 Amendment was prohibited and that the ETCB Application should, therefore, be dismissed. The initial dismissal of the ETCB Application was not for a specific application defect, but rather was based on its classification as a non-tentative selectee. Therefore, this dismissal action did not trigger the Commission's one curative amendment policy.[30] Specifically, under our procedures, an application that is found to be defective is dismissed by public notice, and the dismissal public notice advises the applicant what defects were found in its application and triggers the opportunity to submit a curative amendment.[31] The staff never reviewed the ETCB Application for acceptability prior to its initial dismissal as a non-tentative selectee, nor did it do so when it issued the *First Letter Order*—to the contrary, the *First Letter Order* explicitly held that the staff would *not* review the paper-filed amendment ETCB attached to the Second Petition.[32] In contrast, the Bureau's subsequent acceptability review of the application and April 12 dismissal of the ETCB Application for specific defects triggered ETCB's one curative amendment opportunity. In fact, in the April 14 Public Notice, dismissing the ETCB Application as amended on April 5, 2023, the Bureau explicitly directed ETCB to information on filing curative amendments.[33] Thus, prohibiting ETCB from filing the April 12 Amendment would have deprived ETCB of the same opportunity provided to other applicants—one opportunity to amend following a dismissal for an application defect.[34]

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the Informal Objections filed by Albert Alan David on April 12, 2023 (Pleading File No. 0000213747), and April 22, 2023 (Pleading File No. 0000214116) **ARE DENIED**.

IT IS FURTHER ORDERED that the application filed by East Texas Community Broadcasting (Application File No. 0000167216) **IS GRANTED 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.

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[29] *See e.g*, *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (the Commission need not sift through pleadings and documents to identify arguments not stated with clarity), *cert. denied*, 409 U.S. 1027 (1972); *Northside Sanitary Landfill v. Thomas*, 849 F.2d 1515, 1519 (D.C. Cir. 1988) (the petitioner has the burden of clarifying its position before the agency), *cert. denied*, 489 U.S. 10978 (1989). *See also MCI WorldCom v. FCC*, 209 F.3d 760, 765 (D.C. Cir. 2000) (finding that a party did not raise an argument with sufficient force to obligate the Commission to respond). Moreover, we note that David is incorrect in his assertion that the original ETCB Application included Waco in its 60 dbu contour. As David's own exhibit shows, the 60 dbu contour of the original ETCB Application did not cover the entire city of Waco, but only a small portion of the city.

[30] *See Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications,* Public Notice, 56 RR 2d 776 (1984) (providing for reinstatement of "*incomplete and patently defective*" applications "after an initial dismissal or return of an application *as unacceptable for filing*" (emphasis added)).

[31] *See, e.g., supra* n.14 (stating technical defects found in the ETCB Application, as amended on April 5).

[32] *First Letter Order* at 5.

[33] *See* April 14 Public Notice, *supra* n. 14 (directing ETCB to "DA 21-1516 [*Singletons Public Notice*] for general information about this dismissal and for information about filing curative amendments").

[34] To the extent that the *First Letter Order* advised ETCB that it could only file a single corrective amendment, without opportunity to amend, we find that instruction was erroneous and disavow it. *First Letter Order* at n.35.

IT IS FURTHER ORDERED that the mutually exclusive application of First Dallas Media, Inc. (Application File No. 0000165973) **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

In the Matter of	)	
	)	
Sonia P. Spencer	)	File No.: EB-FIELDNER-22-00034657
	)	
Joppa, Maryland	)	
	)	

CITATION AND ORDER

Surveillance Device Causing Harmful Interference to Satellite Radio Services

Adopted: September 19, 2023 **Released: September 19, 2023**

By the Regional Director, Region One:

I. NOTICE OF CITATION

1. This **CITATION AND ORDER** (Citation), notifies Sonia P. Spencer (Spencer) that she operated a radio frequency device at her residence (Spencer Residence) that caused harmful interference to a Commission licensee. We therefore direct Spencer to immediately cease and desist from using the device and to comply with Federal Communications Commission (Commission or FCC) interference regulations. If Spencer fails to comply with these laws, she may be liable for significant fines up to $23,727 per day.

2. ***Notice of Duty to Comply with the Law***: We issue this Citation pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (Act), which states that the Commission may not impose monetary forfeitures against non-regulatees who violate Commission rules or the Act unless and until: (a) the Commission issues a citation to the violator; (b) the Commission provides the violator a reasonable opportunity to respond; and (c) the violator subsequently engages in conduct described in the citation.[1] Accordingly, Spencer is hereby on notice that she must comply with sections 301, 302 and 333 of the Act[2] and sections 15.5(b) and 15.5(c) of the Commission's rules.[3] If Spencer subsequently engages in any conduct described in this Citation — including specifically any violation of sections 301, 302, and 333 of the Act or sections 15.5(b) or 15.5(c) of the Commission's rules — she may be subject to civil penalties, including but not limited to, substantial monetary forfeitures. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following the Citation.[4] Spencer should take immediate steps to come into compliance with the Commission's rules, including eliminating the interference.

3. ***Notice of Duty to Provide Information***: Pursuant to sections 4(i), 4(j), and 403 of the Act,[5] we direct Spencer to respond in writing, within thirty (30) calendar days after the release date of this Citation, to the questions and requests for documents set out in Section IV of this Citation.

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[1] *See* 47 U.S.C § 503(b)(5).

[2] 47 U.S.C. §§ 301, 302a, 333.

[3] 47 CFR § 15.5(b)-(c).

[4] *See* S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability for forfeiture "would attach not only for the conduct occurring subsequently *but also for the conduct for which the citation was originally sent*.") (emphasis added).

[5] 47 U.S.C. §§ 154(i), 154(j), 403.

II. BACKGROUND

4. The Commission is charged with protecting licensed radio operations from harmful interference. Harmful interference to satellite radio providers, such as Sirius XM Radio Inc. (Sirius XM), is particularly problematic as it can hinder subscribers from receiving crucial public safety information and emergency alerts and undermines the Commission's ability to manage the nation's radio spectrum. On November 11, 2022, a consumer filed a complaint with the Commission concerning interference emanating from a location near Joppa, Maryland that prevented the reception of satellite radio signals.

5. On December 20, 2022, agents from the Enforcement Bureau's Columbia Field Office (Columbia Office) went to Joppa, Maryland in response to the consumer's interference complaint. Using direction-finding techniques, the agents confirmed that the source of the interference was a device located in Joppa, Maryland at the Spencer Residence. Agents traced the source of the interference to a surveillance camera located above the Spencer Residence's garage door. The camera did not bear an FCC Identifier nor any other labeling required by the Commission's rules.[6] An agent issued an on-scene Notice of Interference to Authorized Radio Stations (Notice) to Spencer informing her that she was operating a radio frequency device causing harmful interference to radio communications in the 2.3 GHz band.[7] Moreover, the Notice provided citations to applicable Commission rules and regulations with which Spencer was advised that she must comply.[8] The agents left the Notice on the door of the Spencer Residence.

6. On January 25, 2023, agents from the Columbia Office returned to Joppa, Maryland to conduct on-scene investigations. Using direction-finding techniques, the agents confirmed that unauthorized radio emissions were still emanating from the surveillance camera at the Spencer Residence and causing harmful interference to licensed operations.

7. On February 10, 2023, the Enforcement Bureau issued a Notice of Harmful Interference (NOHI) to Spencer.[9] The NOHI informed Spencer that radio emissions emanating from a 2.4 GHz camera at her residence were causing harmful interference to Sirius XM radio services and requested that she take steps to identify the source and eliminate the interference.[10] The NOHI also stated that operation of the transmitting device on frequencies that cause harmful interference must cease immediately and must not resume.[11]

8. On April 25, 2023, agents from the Columbia Office returned to Joppa, Maryland to conduct on-scene investigations in response to continuing complaints from consumers that the interference to Sirius XM had not been resolved. Using direction-finding techniques, the agents confirmed that the surveillance camera located at the Spencer Residence was still the source of the interference.

III. APPLICABLE LAW AND VIOLATIONS

9. The Commission is charged with protecting licensed radio operations from harmful interference. Harmful interference to satellite radio providers like Sirius XM is particularly problematic in that it can hinder subscribers from receiving crucial public safety information and emergency alerts and

[6] *See* 47 CFR § 2.925(a).

[7] *See Sonia P. Spencer*, Notice of Interference to Authorized Radio Stations (Dec. 20, 2022) (on file in EB-FIELDNER-22-00034657). The 2.3 GHz Wireless Communications Service (WCS) band spans 2305-2320 MHz and 2345-2360 MHz and consists of 2 paired five-megahertz blocks (A and B) and 2 unpaired five-megahertz blocks (C and D). The two segments of the 2.3 GHz WCS band straddle the Satellite Digital Audio Radio Service which is located at 2320-2345 MHz.

[8] *See id.*

[9] *Sonia P. Spencer*, Notification of Harmful Interference to Licensed Communications, (Feb. 10, 2023) (on file in EB-FIELDNER-22-00034657).

[10] *Id.*

[11] *Id.*

undermines the Commission's ability to manage the nation's radio spectrum. Section 333 of the Act states that "[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this chapter or operated by the United States Government."[12] Section 301 of the Act states that "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio"[13] within the United States or its territories without a license or authorization granted by the Commission. Part 15 of the Commission's rules provides an exception to this general license requirement and sets forth conditions under which devices may operate without an individual license.[14] Section 15.5(b) of the Commission's rules requires that "[o]peration of an intentional, unintentional, or incidental radiator is subject to the conditions that no harmful interference is caused . . . ."[15] Similarly, section 15.5(c) of the Commission's rules states that the "operator of a radio frequency device shall be required to cease operating the device upon notification by a Commission representative that the device is causing harmful interference. Operation shall not resume until the condition causing the harmful interference has been corrected."[16] Section 15.3(m)'s definition of harmful interference includes "[a]ny emission, radiation or induction that . . . obstructs or repeatedly interrupts a radiocommunications service operating in accordance with this chapter."[17] Section 302(b) if the Act states that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, *or use devices*, which fail to comply with regulations promulgated pursuant to this section.[18] Section 2.925(a) of the Commission's rules states, in relevant part, that "[e]ach equipment covered in an application for equipment authorization shall bear a label listing the following: (1) FCC Identifier consisting of the two elements in the exact order specified in § 2.926. The FCC Identifier shall be preceded by the term FCC ID in capital letters on a single line, and shall be of a type size large enough to be legible without the aid of magnification."[19]

10. We find that Spencer violated sections 301, 302 and 333 of the Act[20] and sections 15.5(b) and 15.5(c) of the Commission's rules by operating a device causing harmful interference to Sirius XM radio services, by operating a device which failed to comply with the Commission's device labeling rules, and by failing to cease operating the device upon notification by a Commission representative that the device was causing harmful interference.[21]

IV. REQUEST FOR INFORMATION

11. Pursuant to sections 4(i), 4(j), and 403 of the Act, we direct Spencer to confirm in writing, within thirty (30) days of the release of this Citation, that she has taken the corrective measures to eliminate the harmful interference, as well as provide a timeline for any pending corrective actions. Failure to respond in writing, or the provision of an inadequate, incomplete, or misleading response, may subject Spencer to additional sanctions.

V. OPPORTUNITY TO RESPOND TO THIS CITATION

12. Spencer must respond to this Citation within 30 calendar days from the release date of this Citation. Spencer may respond by any of the following methods: (1) a written statement, (2) a

[12] 47 U.S.C. § 333.

[13] *Id*. § 301.

[14] 47 CFR § 15.1 *et seq.*

[15] *Id.* § 15.5(b).

[16] *Id.* § 15.5(c).

[17] *Id.* § 15.3(m); *see also id*. § 2.1(c).

[18] 47 U.S.C. § 302a(b) (emphasis added).

[19] 47 CFR § 2.925(a).

[20] 47 U.S.C. §§ 301, 302a, 333.

[21] 47 CFR § 15.5(b)-(c).

teleconference interview, or (3) a personal interview at the Commission Field Office nearest to Spencer's residence. The Commission Field Office nearest to Spencer's residence is located in Columbia, Maryland.

13. If Spencer requests a teleconference or personal interview, please contact David C. Dombrowski, by telephone at: (301) 725-1996. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If Spencer prefers to submit a written response with supporting documentation, she must send the response within 30 calendar days of the release date of this Citation to the contact and address provided in paragraph 14 below.

14. All written communications should be sent to the mailing and e-mail address below and reference File Number EB-FIELDNER-22-00034657.

Federal Communications Commission
EB Columbia Regional Office
Attn: David C. Dombrowski
9050 Junction Drive
Annapolis Junction, Maryland 20701
FIELD@FCC.GOV
Re: EB-FIELDNER-22-00034657

15. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, Spencer should provide a description of the accommodation required, and include as much detail as possible, and also provide a telephone number and other contact information. Spencer should allow at least five business days advance notice; last minute requests will be accepted but may be impossible to fill. Spencer should send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau:

> For sign language interpreters, CART, and other reasonable accommodations: (202) 418-0530 (voice), (202) 418-0432 (tty); and
>
> For accessible format materials (braille, large print, electronic files, and audio format): (202) 418-0531 (voice), (202) 418-7365 (tty).

16. We advise Spencer that it is a violation of section 1.17 of the Commission's rules[22] for any person to make any false or misleading written or oral statement of fact to the Commission. Specifically, no person shall:

> (1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and
>
> (2) In any written statement of fact, provide 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.

17. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment.[23]

18. Violations of section 1.17 of the Commission's rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to section 503 of the Act.

[22] *Id.* § 1.17.

[23] 18 U.S.C. § 1001.

19. Finally, we warn Spencer that, under the Privacy Act of 1974,[24] Commission staff will use all relevant material information before it, including information disclosed in interviews or written statements, to determine what, if any, enforcement action is required to ensure Spencer's compliance with the Act and the Commission's rules.[25]

VI. FUTURE VIOLATIONS

20. If, after receipt of this Citation, Spencer again violates sections 301, 302 or 333 of the Act, and/or sections 15.5(b) or 15.5(c) of the Commission's rules by engaging in conduct of the type described herein, the Commission may impose sanctions for each such violation. For example, the Commission may impose monetary forfeitures. The Commission may impose forfeitures not to exceed $23,727 for each such violation or each day of a continuing violation, and up to $177,951 for any single act or failure to act.[26] The Commission may further adjust the forfeiture reflecting enumerated statutory factors, which include 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 other such matters as justice may require.[27] Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.[28] In addition, future violations may subject Spencer to seizure of equipment through *in rem* forfeiture actions,[29] as well as criminal sanctions, including imprisonment.[30]

VII. ORDERING CLAUSES

21. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act, 47 U.S.C. § 154(i), (j), Sonia P. Spencer must cease and desist from causing harmful interference in violation of section 333 of the Act, 47 U.S.C. § 333, operating a device that fails to comply with the Commission's rules in violation of section 302 of the Act, 47 U.S.C. § 302a, and operating without authorization in violation of section 301 of the Act, 47 U.S.C. § 301, and sections 15(b) and 15(c) of the Commission's rules, 47 CFR § 15.5(b)-(c).

22. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 403 of the Act,[31] Sonia P. Spencer must provide the written information requested in paragraph 11IV above. Sonia P. Spencer must support her responses with an affidavit or declaration under penalty of perjury, signed and dated by Sonia P. Spencer, attesting personal knowledge of the representations provided in the response, verifying the truth and accuracy of the information therein and that all of the information requested has been produced. All such declarations provided must comply with section 1.16 of the Commission's rules and be substantially in the form set forth therein.[32] The Commission must receive the response within thirty (30) calendar days of the release date of this Citation and Order.

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[24] 5 U.S.C. § 552a(e)(3).

[25] 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.

[26] *See* 47 U.S.C. § 503; 47 CFR § 1.80(b). These amounts are subject to further annual adjustment for inflation.

[27] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

[28] *See supra* paras. 4-8.

[29] *See* 47 U.S.C. § 510.

[30] *See id*. §§ 401, 501.

[31] 47 U.S.C. §§ 154(i), (j), 403.

[32] 47 CFR § 1.16.

23. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent by first class mail and certified mail, return receipt requested, to Sonia P. Spencer at her residence in Joppa, Maryland.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
Regional Director, Region One
Enforcement Bureau
Federal Communications Commission

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

In the Matter of	)	
	)	
Applications Filed by Altice N.V. and Cablevision Systems Corporation to Transfer Control of Authorizations from Cablevision Systems Corporation to Altice N.V.	)	WC Docket No. 15-257

ORDER

Adopted: September 19, 2023 **Released: September 19, 2023**

By the Chief, Media Bureau:

1. On May 3, 2016, the Wireline Competition Bureau, International Bureau, Media Bureau, and Wireless Telecommunications Bureau adopted an Order approving a series of applications filed by Altice N.V. (Altice) and Cablevision Systems Corporation (Cablevision) in connection with Altice's acquisition of Cablevision and certain subsidiaries.[1] On June 2, 2016, Zoom Telephonics, Inc. ("Zoom") filed a Petition for Reconsideration[2] (the "Petition") of the Bureaus' action. Altice and Cablevision filed an Opposition to Petition for Reconsideration[3] on June 13, 2016, and Zoom filed a Reply[4] on June 20, 2016.

2. On July 25, 2023, Minim, Inc. ("Minim"), Zoom's successor in interest, submitted a Dismissal of Petition for Reconsideration, requesting to withdraw the Petition.[5]

3. Accordingly, **IT IS ORDERED** that the Dismissal of Petition for Reconsideration, and Minim's request to withdraw the Petition, **ARE GRANTED.**

4. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.[6]

[1] *Applications Filed by Altice N.V. and Cablevision Systems Corporation to Transfer Control of Authorizations from Cablevision Systems Corporation to Altice N.V.*, WC Docket No. 15-257, Memorandum Opinion and Order, 31 FCC Rcd 4365 (WCB 2016).

[2] Petition for Reconsideration, WC Docket No. 15-257 (filed June 2, 2016).

[3] Opposition to Petition for Reconsideration, WC Docket No. 15-257 (filed June 13, 2016).

[4] Reply to Opposition to Petition for Reconsideration, WC Docket No. 15-257 (filed June 20, 2016).

[5] Dismissal of Petition for Reconsideration, WC Docket No. 15-257 (filed July 25, 2023). Minim and Zoom merged on December 4, 2020. Since that time, the company has operated under the Minim corporate name**.** *Id.* at 1 n. 1.

[6] 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

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

In the Matter of	)	
	)	
Applications of	)	
	)	
Charter Communications, Inc.,	)	MB Docket No. 15-149
Time Warner Cable Inc., and	)	
Advance/Newhouse Partnership	)	
	)	
For Consent to Assign or Transfer Control of	)	
Licenses and Authorizations	)	

ORDER

Adopted: September 19, 2023 **Released: September 19, 2023**

By the Chief, Media Bureau:

1. On May 5, 2016, the Commission adopted an Order approving, subject to conditions, the applications of Charter Communications, Inc. ("Charter"), Time Warner Cable Inc. ("TWC"), and Advance/Newhouse Partnership (Advance/Newhouse or Bright House) for consent to the transfer of various Commission licenses and other authorizations from Charter, Time Warner Cable, and Bright House to a new company, New Charter, pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended (the Act).[1] On June 8, 2016, Zoom Telephonics, Inc. ("Zoom") filed a Petition for Reconsideration[2] (the "Petition") of the Commission's action. Charter filed an Opposition to Petition for Reconsideration[3] on June 20, 2016, and Zoom filed a Reply[4] on June 24, 2016.

2. On July 25, 2023, Minim, Inc. ("Minim"), Zoom's successor in interest,[5] submitted a Dismissal of Petition for Reconsideration, requesting to withdraw the Petition.

3. Accordingly, **IT IS ORDERED** that the Dismissal of Petition for Reconsideration, and Minim's request to withdraw the Petition, **ARE GRANTED**, and this proceeding **IS TERMINATED.**

4. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.[6]

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[1] *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Memorandum Opinion and Order, 31 FCC Rcd 6327 (2016); 47 U.S.C. §§ 214(a), 310(d).

[2] Petition for Reconsideration, MB Docket No. 15-149 (filed June 8, 2016).

[3] Opposition of Charter Communications, Inc. to Zoom Telephonics, Inc's Petition for Reconsideration, MB Docket No. 15-149 (filed June 20, 2016).

[4] Reply to Opposition to Petition for Reconsideration, MB Docket No. 15-149 (filed June 24, 2016).

[5] Dismissal of Petition for Reconsideration, MB Docket No. 15-149 (filed July 25, 2023). Minim and Zoom merged on December 4, 2020. Since that time, the company has operated under the Minim corporate name. *Id.* at 1 n. 1.

[6] 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

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 23-873
Released: September 19, 2023

INTERCONNECTED VOIP NUMBERING AUTHORIZATION APPLICATION FILED BY DIALOGA GROUP, LLC PURSUANT TO SECTION 52.15(g)(3) OF THE COMMISSION'S RULES

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 16-280[1]

Comments Due: October 19, 2023

Dialoga Group, LLC (Dialoga Group or Applicant), an interconnected Voice over Internet Protocol (VoIP) provider with 10% or greater foreign ownership,[2] has filed a Numbering Authorization Application (Application), pursuant to section 52.15(g)(3) of the Federal Communications Commission's (Commission) rules, seeking authorization to obtain North American Numbering Plan telephone numbers directly from the Numbering Administrator.[3] In its Application, Dialoga Group indicates that it intends to initially request numbers in California, Florida, Maryland, Massachusetts, New York, New Jersey, Pennsylvania, Rhode Island, Texas, Virginia, and Washington D.C.[4] We find that Dialoga Group's application for authorization for direct access to telephone numbers requires further analysis to determine

[1] We assign WC Docket No. 16-280 for this application and all related filings by the applicant and interested parties. *See Wireline Competition Bureau Announces Commencement Date and Process for Interconnected VoIP Providers to File Applications for Authorization to Obtain Telephone Numbers*, Public Notice, 31 FCC Rcd 949, 950 (WCB 2016).

[2] *See* Supplement to Dialoga Group Application of Dialoga Group for Authorization to Obtain Numbering Resources at 1-2, WC Docket No. 16-280 (filed Jan. 23, 2017), https://www.fcc.gov/ecfs/search/search-filings/filing/1012013730636 (Dialoga Group Supplement) (listing country of citizenship as Spain, with 100% ownership via Jorge Fernandez, Chief Executive Officer, and Asier de Felipe, Chief Operating Officer).

[3] *See* Application of Dialoga Group for Authorization to Obtain Numbering Resources, WC Docket No. 16-280 (filed Aug. 23, 2016), https://www.fcc.gov/ecfs/search/search-filings/filing/1082365744955 (Dialoga Group Application); Dialoga Group Application at 1-10; Dialoga Group Supplement at 1-3; Supplement to Dialoga Group Application, WC Docket No. 16-280 (filed Jun. 19, 2018), https://www.fcc.gov/ecfs/search/search-filings/filing/1061900722451 (Dialoga Group Supplement 2); Supplement to Dialoga Group Application, WC Docket No. 16-280 (filed Jul. 28, 2018), https://www.fcc.gov/ecfs/search/search-filings/filing/107252984911132 (Dialoga Group Supplement 3); Supplement to Dialoga Group Application, WC Docket No. 16-280 (filed Jul. 10, 2023), https://www.fcc.gov/ecfs/document/10711522000362/1, (Dialoga Group Supplement 4); 47 CFR § 52.15(g)(3). For purposes of this Public Notice, the Numbering Administrators include the North American Numbering Plan Administrator and the Pooling Administrator.

[4] *See* Dialoga Group Supplement 4 at 2. *See also Numbering Policies for Modern Communications et al.*, Report and Order, 30 FCC Rcd 6839, 6850, para. 24 & n.74 (2015) (*VoIP Direct Access to Numbers Order*).

whether granting the Application would serve the public interest, and we hereby notify Dialoga Group that the Application is being accepted on a non-streamlined basis and will not be granted automatically.[5]

In its Application, Dialoga Group includes the contact information and acknowledgements required by section 52.15(g)(3)(i) of the Commission's rules.[6] Dialoga Group provides evidence that it will be capable of providing service within 60 days of the numbering resources activation date.[7] Dialoga Group also certifies that it complies with the contribution, regulatory fee, and 911 obligations set forth in section 52.15(g)(3)(i)(E).[8] In addition, Dialoga Group certifies that it has the financial, managerial, and technical expertise to provide reliable service.[9] Dialoga Group further certifies that none of its key management and technical personnel are being or have been investigated by the Commission, or any law enforcement or regulatory agency, for failure to comply with any law, rule, or order.[10] Finally, Dialoga Group certifies that no party to the Application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.[11]

The Commission has discretion to refer applications to the 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 the Applicants.[12] Here we are exercising our discretion and are not referring the Application to the Executive Branch. Although we are not formally referring this Application, we will provide a courtesy copy of this public notice to the Executive Branch agencies.[13]

GENERAL INFORMATION

The Application identified herein has been found, upon initial review, to be acceptable for filing as a non-streamlined application. The Commission reserves the right to return any 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 52.15(g)(3)(iii)(D) of the Commission's rules,[14] interested parties may

[5] 47 CFR § 52.15(g)(3)(iii)(D).

[6] Application at 1-10; Dialoga Group Supplement 4 at 1; *see* 47 CFR § 52.15(g)(3)(i)(A)-(C), (F).

[7] Application at 6-7, Exhibit A; Dialoga Group Supplement, Exhibit B; Dialoga Group Supplement 4; *see* 47 CFR § 52.15(g)(3)(i)(D).

[8] Application at 7; *see* 47 CFR § 52.15(g)(3)(i)(E); *see also* 47 CFR §§ 1.1154, 52.17, 52.32, 64.604(c)(5)(iii); 47 CFR pts. 9 and 54, subpt. H.

[9] Application at 7-8; Dialoga Group Supplement 4 at 1; *see* 47 CFR § 52.15(g)(3)(i)(F).

[10] Application at 8.

[11] Application at 8; *see* 47 CFR § 52.15(g)(3)(i)(G); *see also* 21 U.S.C. § 862.

[12] 47 CFR § 1.40001; *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, 35 FCC Rcd 10927, 10935-38, paras. 24-28 (2020) (*Executive Branch Review Order*) (setting out which types of applications will generally be referred to the Executive Branch, but noting the Commission has the discretion to refer additional types of applications if it finds that the specific circumstances of an application require the input of the Executive Branch as part of the Commission's public interest determination). *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).

[13] *See Executive Branch Review Process Order* at 10941, para. 36, n. 99; *see also id*. at 10939, para 30, n. 81.

[14] 47 CFR § 52.15(g)(3)(iii)(D).

file comments in WC Docket No. 16-280 **on or before October 19, 2023**. Commenters must serve a copy of comments on Dialoga Group no later than the above comment filing date.

- *Electronic Filers*: Comments may be filed electronically by accessing ECFS at https://apps.fcc.gov/ecfs/.[15]
- *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. *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

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 or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

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

1) DAA@fcc.gov;

2) Margoux Newman, Competition Policy Division, Wireline Competition Bureau, Margoux.Newman@fcc.gov;

3) Michelle Sclater, Competition Policy Division, Wireline Competition Bureau, Michelle.Sclater@fcc.gov.

The proceeding in this Notice will 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

[15] *See VoIP Direct Access to Numbers Order*, 30 FCC Rcd at 6858, para. 39; *see also* 47 CFR § 52.15(g)(3)(ii).

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).[16] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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.[17] 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.

Please contact DAA@fcc.gov, Margoux Newman at Margoux.Newman@fcc.gov, or Michelle Sclater at Michelle.Sclater@fcc.gov for further information.

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[16] 47 CFR § 1.1206(b).

[17] *See id.* § 1.45(c).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 23-874
Released: September 20, 2023

MEDIA BUREAU ANNOUNCES TERMINATION OF CDBS PUBLIC NOTICES

On July 26, 2023, the Media Bureau completed the transition of Media Bureau filings and electronic records from the Consolidated Database System (CDBS) to the Licensing and Management System (LMS). Commencing that date, the public must submit through LMS all filings that were previously submitted using CDBS. All submissions or actions taken through LMS that require public notice appear in the Media Bureau's daily "Applications", "Actions" or "Pleadings" Public Notices.

As part of the transition from CDBS to LMS, effective October 2, 2023, the Media Bureau will discontinue issuing the daily "Broadcasting Applications" and "Broadcast Actions" Public Notices that announce filings submitted or actions taken using CDBS. In the event there are future filings or actions relating to pending applications that were submitted using CDBS, the Media Bureau will announce those matters in the relevant LMS "Applications", "Actions" or "Pleadings" Public Notices or other periodic notices the Media Bureau releases.

For further information contact James Bradshaw, Audio Division, Media Bureau, james.bradshaw@fcc.gov; or Albert Shuldiner, Audio Division, Media Bureau, albert.shuldiner@fcc.gov. Press inquiries should be directed to Janice Wise, janice.wise@fcc.gov, at (202) 418-8165.

– FCC –

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

In the Matter of	)	
	)	
Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs	)	WC Docket No. 18-89
	)	
	)	
	)	

ORDER

Adopted: September 22, 2023 **Released: September 22, 2023**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) addresses a Petition filed by Stealth Communications Services, LLC (Stealth) requesting an extension of its removal, replacement, and disposal term under the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program).[1] For the reasons stated below, the Bureau grants Stealth's extension request pursuant to Commission rule 1.50004(h)(2).[2] The Bureau thus extends the term for Stealth from September 29, 2023 to March 29, 2024, as requested.

II. BACKGROUND

2. As directed by the Secure and Trusted Communications Networks Act of 2019, as amended (Secure Networks 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, i.e., communications equipment or services produced or provided by Huawei Technologies Company (Huawei) or ZTE Corporation (ZTE), that were obtained by providers on or before June 30, 2020.[3] The Reimbursement Program was later funded by a

[1] Request of Stealth for Extension of Time, WC Docket No. 18-89 (filed Aug. 5, 2023), https://www.fcc.gov/ecfs/search/search-filings/filing/1080531483482 (Stealth Petition).

[2] 47 CFR § 1.50004(h)(2) (explaining that "[t]he Wireline Competition Bureau may grant an extension for up to six months after finding that due to no fault of [a] recipient, such recipient is unable to complete the permanent removal, replacement, and disposal by the end of the [removal, replacement, and disposal] term.").

[3] Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, § 4(a)-(c), 134 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601–09) (defining "advanced communications services," by reference to 47 U.S.C. § 1302(d)(1), as ""high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology"). The Commission adopted rules implementing 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, 11959, Appx. A (July 13, 2021) (*2021 Supply Chain Order*). The Commission later clarified that, for purposes of the Reimbursement Program, covered communications equipment or services is limited to the communications

(continued….)

$1.9 billion congressional appropriation,[4] less than the $5.6 billion in collective funds requested by applicants.[5] Because demand exceeded available funding, the Secure Networks Act required the Bureau to implement a prioritization scheme where funding was allocated first to approved applicants with 2,000,000 or fewer customers (Priority 1 applicants).[6] Demand from Priority 1 applicants alone exceeded the congressional appropriation, and these applicants consequently received a partial, pro-rated funding allocation of approximately 39.5% of their reasonable and supported estimated costs for removing, replacing, and disposing of covered communications equipment and services.[7]

3. Consistent with the Secure Networks Act, the Commission's rules require that Reimbursement Program recipients complete the removal, replacement, and disposal of covered communications equipment and services within one year from the initial disbursement of funds to the recipient.[8] Pursuant to section 4(d)(6)(C) of the Secure Networks Act, the Commission may grant recipients extensions of this term on an individual basis.[9] The Commission delegated authority to the Bureau to grant or deny individual petitions for an extension.[10] According to Commission rule 1.50004(h)(2), a recipient may petition the Bureau for an extension of time prior to the expiration of their term, and the Bureau "may grant an extension for up to six months after finding, that due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal by the end of the term."[11] The Commission noted that extensions will be granted only where a recipient "demonstrates the delay is due to factors beyond its control" and directed the Bureau "to be guided by the Commission's precedent in dealing with similar requests involving wireless facilities under section 1.946

(Continued from previous page)
equipment or services produced or provided by Huawei Technologies Company (Huawei) or ZTE Corporation (ZTE) that were obtained by providers on or before June 30, 2020. *See 2021 Supply Chain Order*, 36 FCC Rcd at 11965, Appx. A; *see also generally 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 (PSHSB 2020) (*Huawei Designation Order*); *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 (PSHSB 2020) (*ZTE Designation Order*).

[4] 47 U.S.C. § 1603(k) ("In carrying out [the Reimbursement Program], the Commission may not expend more than $1,900,000,000.").

[5] *See Wireline Competition Bureau Announces the Grant of Applications for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 22-774, at 1-2 (WCB July 18, 2022) (*SCRP Granted Applications Public Notice*) (explaining that "[e]ach applicant was required to include in its application estimates for the costs that it will reasonably incur for the permanent removal, replacement, and disposal of covered communications equipment and services" and identifying that, across all filed applications, applicants sought a total of "approximately $5.6 billion in gross program support").

[6] *See* 47 U.S.C. § 1603(d)(5)(C); *see also* 47 C.F.R. § 1.50004(f)(1) (requiring the Bureau to "issue full funding allocations for all eligible providers in the Priority 1 prioritization category before issuing funding allocations in any subsequent prioritization categories"); *SCRP Granted Applications Public Notice* at 2-3.

[7] *See* 47 CFR § 1.50004(f)(1) (stating that "[i]f there is insufficient funding to fully fund all requests in a particular prioritization category, then the Wireline Competition Bureau will pro-rate the available funding among all eligible providers in that prioritization category."); *see also SCRP Granted Applications Public Notice* at 2-3 (noting that Priority 1 applicants received a pro-rated 39.5% share of their reasonable and supported estimated costs for carrying out their removal, replacement, and disposal).

[8] *2020 Supply Chain Order*, 35 FCC Rcd at 14331, para. 169 (establishing a one-year timeline for removal, replacement, and disposal).

[9] *See* Secure Networks Act § 4(d)(6)(C); *see also* 47 CFR § 1603(d)(6)(C).

[10] 47 CFR § 1.50004(h)(2).

[11] *Id.*; *see also 2020 Supply Chain Order*, 35 FCC Rcd at 14354-56, paras. 171, 173.

of the Commission's rules,"[12] which requires licensees of wireless spectrum to meet certain construction and coverage requirements within specified time periods.[13]

4. As of September 14, 2023, six recipients had filed requests for extension of their removal, replacement, and disposal term.[14] Among these, Stealth has the earliest expiring removal, replacement, and disposal term. This Order addresses only Stealth's request, and the Bureau intends to address other filed extension requests though subsequent action.

5. *Stealth Petition*. On August 5, 2023, Stealth filed its petition in ECFS requesting an extension of its removal, replacement, and disposal term, from September 29, 2023 to March 29, 2024.[15] Stealth requests that the Commission withhold portions of its petition from public inspection pursuant to sections 0.457 and 0.459 of the Commission's rules.[16] In the petition, Stealth states that its progress has been delayed due to ongoing supply chain issues and issues related to {[ ]} and {[ ]}[17]

6. Stealth claims that "[t]he supply chain has been slower than anticipated, . . . despite [its] best efforts to expedite the process.[18] Specifically, Stealth claims that it is still awaiting {[ ]} from {[ ]} and notes that it is dependent {[ ]}.[19] Stealth also claims that an extension is necessary due to two issues not directly related to supply chain or funding shortfall matters that require it to coordinate with third parties. Specifically, Stealth claims that the extension is required for it to complete "{[ ]} and {[ ]} that {[ ]} our {[ ]} to {[ ]} with the {[ ]}," a process which it claims requires {[ ]} with multiple {[ ]}.[20] Second, Stealth states that its crews are engaged in {[ ]}

[12] *2020 Supply Chain Order*, 35 FCC Rcd at 14356, para. 173 and n.501 (citing 47 CFR § 1.946(e) (allowing for an extension of time "if the licensee shows that failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond its control" and establishing that requests will not be granted (1) "for failure to meet a construction or coverage deadline due to delays caused by a failure to obtain financing, to obtain an antenna site, or to order equipment in a timely manner"; (2) "because the licensee undergoes a transfer of control or because the licensee intends to assign the authorization"; or (3) "solely to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct")).

[13] Section 1.946 is generally enforced when a wireless licensee has applied to build a microwave link. *See generally* 47 CFR § 1.946. *See also* 47 CFR § 1.946(a)-(b), (e) (describing requirements related to construction and coverage periods and deadlines). The rule permits the Wireless Telecommunications Bureau (WTB) to extend a licensee's construction or coverage period when the licensee shows that additional time is needed due to "causes beyond its control." *See* 47 CFR § 1.946(e)(1); *see also* 47 CFR § 1.946(e)(4). In determining whether to grant such requests, WTB looks to see if the delay is caused by circumstances beyond the licensee's control and whether the licensee has acted diligently.

[14] The recipients are Stealth Communications, James Valley Cooperative Telephone Company, Mediacom Communications Corporation, Virginia Everywhere, LLC, NE Colorado Cellular Inc. and WorldCell Solutions, LLC.

[15] *See generally* Stealth Petition. On August 5, 2023, Stealth filed its request in the Reimbursement Program Online Portal, available at https://fccprod.servicenowservices.com/scrp, and a redacted copy of the request in the Commission's Electronic Comment Filing System (ECFS).

[16] Request of Stealth for Confidential Treatment, WC Docket No. 18-89 (filed Aug. 7, 2023), https://www.fcc.gov/ecfs/search/search-filings/filing/1080531483482; *see also* Stealth Petition at 1.

[17] Stealth Petition at 2.

[18] *Id.*

[19] *Id.*

[20] *Id.*

]} additional {[ ]} and {[ ]}, which it claims needs to be coordinated with {[ ]} and {[ ]} to limit any downtime.[21]

III. DISCUSSION

7. We find that Stealth has established that supply chain issues have impacted it so that, "due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal by the end of the term" as set forth in Commission rule 1.50004(h)(2).[22] We grant Stealth's extension request on this ground. To the extent Stealth raises additional, independent bases in support of its request, we find it unnecessary to address their merits at this time.[23]

8. Stealth explains that supply chain issues have rendered it unable to take specific necessary actions towards the completion of its removal, replacement, and disposal processes. In this regard, we recognize Stealth's representations that it is "still awaiting {[ ]} from {[ ]}."[24] We find this is a critical and vital aspect of a recipient's removal, replacement, and disposal process and that the described supply chain issues are impeding the timely completion of that process.[25] Accordingly, we conclude that Stealth, due to supply chain issues, is unable to complete the removal, replacement, and disposal by the end of its current removal, replacement, and disposal term.[26]

9. In addition, we find that Stealth bears no fault for its failure to comply with its removal, replacement, and disposal obligations by its current removal replacement, and disposal term because Stealth has acted diligently to mitigate delays caused by the supply chain issues outlined in its extension request. For example, Stealth explains that its work has been slowed despite its efforts to expedite the process as it awaits the {[ ]}.[27] We agree with Stealth that it lacks control over delays stemming from its interactions with third parties and find that Stealth has demonstrated that the delays are due to factors beyond its control.[28]

10. Stealth's quarterly status updates provide additional context for the supply chain issues it has faced and support its claim of supply chain issues impeding its ability to meet its current removal, replacement, and disposal term. In its status updates, Stealth reported that supply chain complications were delaying deliveries of equipment.[29]

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[21] *Id.*

[22] 47 CFR § 1.50004(h)(2).

[23] Stealth Petition at 2 (arguing that an extension is warranted due to issues it has faced related to {[ ]} and {[ ]}).

[24] Stealth Petition at 2.

[25] We acknowledge Stealth's contention that service would be interrupted during their current removal replacement, and disposal terms due to the lack of replacement equipment caused by supply chain delays. *See* Stealth Petition at 2.

[26] 47 CFR § 1.50004(h)(2).

[27] Stealth Petition at 2.

[28] We note that granting Stealth the requested extension on the basis of the supply chain issues is consistent with the principles of Commission rule 1.946. 47 CFR § 1.946. For the reasons already described above, we find that Stealth has established that it requires additional time to meet its removal, replacement, and disposal obligations due to "causes beyond its control" despite having acted diligently in an attempt to meet its obligations within its originally assigned removal, replacement, and disposal term. *See* 47 CFR § 1.946(e)(1)-(2), (4).

[29] Stealth Reimbursement Program Status Update, at 3 (Dec. 13, 2022), https://www.fcc.gov/sites/default/files/scrp-stealth-communications-12132022.pdf.

11. Accordingly, for these reasons, we conclude that Stealth has established, based on the ongoing supply chain issues, that "due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal by the end of the term" as required by Commission rule 1.50004(h)(2). We grant Stealth's extension request on this ground.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to section 4(i)-(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i)-(j), and sections 0.204, 0.291, and 1.50004(h)(2) of the Commission's rules, 47 CFR §§ 0.204, 0.291, 1.50004(h)(2), the Petitions for Extensions of term filed by Stealth is GRANTED.

13. IT IS FURTHER ORDERED that the removal, replacement, and disposal term for Stealth under 47 CFR 1.50004(h)(2) IS EXTENDED to March 29, 2024.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

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
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DA 23-876
Released: September 20, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES STATUS OF THE LIST OF EQUIPMENT AND SERVICES COVERED BY SECTION 2 OF THE SECURE AND TRUSTED COMMUNICATIONS NETWORKS ACT

WC Docket No. 18-89, ET Docket No. 21-232, EA Docket No. 21-233

Pursuant to sections 2(a) and (d) of the Secure and Trusted Communications Networks Act of 2019,[1] and sections 1.50002 and 1.50003 of the Commission's rules,[2] the Federal Communications Commission's Public Safety and Homeland Security Bureau (Bureau) announces the status of the list of covered communications equipment and services (Covered List).[3]

The Secure and Trusted Communications Networks Act states that the Covered List shall be updated upon one of the following four events: (1) a specific determination made by any executive branch interagency body with appropriate national security expertise, including the Federal Acquisition Security Council established under section 1322(a) of title 41; (2) a specific determination made by the Department of Commerce pursuant to Executive Order No. 13873 (84 Fed. Reg. 22689; relating to securing the information and communications technology and services supply chain); (3) the communications equipment or service being covered telecommunications equipment or services, as defined in section 889(f)(3) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1918); and (4) a specific determination made by an appropriate national security agency.[4]

Consistent with the Secure and Trusted Communications Networks Act, the Commission's rules require[5] the Commission to place on the Covered List any communications equipment or service if a

[1] Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601–1609) .

[2] *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) (*Supply Chain Second Report and Order*) (adopting 47 CFR §§ 1.50002, 1.50003).

3 *See Public Safety and Homeland Security Bureau Announces Additions To The List of Equipment and Services Covered by Section 2 of the Secure Networks Act*, WC Docket No. 18-89 *et al*., Public Notice, DA 22-979 (rel. Sep. 20, 2022). The Covered List can be found at https://www.fcc.gov/supplychain/coveredlist.

[4] 47 U.S.C. § 1601(c).

[5] The Commission found that if a determination by an enumerated national security agency, or intergovernmental agency with national security expertise, "indicates that a specific piece of equipment or service poses an unacceptable risk to the national security of the United States and the security and safety of United States persons, the Commission will automatically include this determination on the Covered List." *Supply Chain Second Report and Order*, 35 FCC Rcd at 14382, para. 80. The Commission took this approach "because of the plain language in section 2(b)(2)(C) which lists, among other equipment or service capabilities mandating inclusion on the Covered List, whether the equipment or service poses an unacceptable risk to the national security of the United States or the security and safety of United States persons. If an enumerated source has already performed this analysis as part of

(continued….)

source enumerated in the Secure and Trusted Communications Networks Act determines that the equipment or service poses an unacceptable risk to the national security of the United States and if the communications equipment or service is capable of posing an unacceptable risk to the national security of the United States.[6]

Section 2(d)(3) of the Secure and Trusted Communications Networks Act and section 1.50003(c) of the Commission's rules require the Bureau to notify the public that no updates were made for each 12-month period during which the Covered List is not updated.[7] The Covered List was last updated on September 20, 2022, and during the preceding 12 months, the Commission did not receive any "specific determinations" from the enumerated sources in Section 2(c) of the Secure and Trusted Communications Networks Act.[8] Accordingly, the Bureau provides notice that no updates have been made to the Covered List for the last 12 months.

For further information, please contact Zenji Nakazawa, Associate Bureau Chief, Public Safety and Homeland Security Bureau at Zenji.Nakazawa@fcc.gov.

– FCC –

its determination, the only action we need take is to incorporate this determination onto the Covered List." *Id.* The Commission, in adopting the rules, interpreted Congress's use of the words "shall place" to mean it has no discretion to disregard determinations from these enumerated sources. *Supply Chain Second Report and Order*, 35 FCC Rcd at 14312, para. 59.

[6] *See* 47 CFR § 1.50002(b)(2)(iii); *see also id.* § 1.50002(b)(2)(i)-(ii) (listing other capabilities that, together with a determination pursuant to paragraph (b)(1), qualifies equipment or service for placement on the Covered List).

[7] *See* 47 U.S.C. § 1601(d)(3); *see also* 47 CFR § 1.50003(c) ("After each 12-month period during which the Covered List is not updated, the Public Safety and Homeland Security Bureau will issue a Public Notice indicating that no updates were necessary during such period.").

[8] The chiefs of the Office of Engineering and Technology and the Public Safety and Homeland Security Bureau recently notified the enumerated sources of potential security risks by cellular connectivity modules, as raised by the House Select Committee on the Chinese Communist Party in a letter to FCC Chairwoman Jessica Rosenworcel. *See e.g.*, Letter from Debra Jordan, Chief, Public Safety and Homeland Security Bureau, and Ronald T. Repasi, Chief, Office of Engineering and Technology, to Lee G. Licata, National Security Division, U.S. Department of Justice (Sep. 1, 2023); *see also* Letter from FCC Chairwoman Jessica Rosenworcel to Representatives Mike Gallagher and Raja Krishnamoorthi (Sep. 5, 2023) (responding to their letter regarding the security risks posed by cellular connectivity modules provided by companies subject to the jurisdiction, direction, or control of the People's Republic of China or the Chinese Communist Party), https://docs.fcc.gov/public/attachments/DOC-396816A2.pdf.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 6437027
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: September 20, 2023 **Released: September 21, 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.[1] 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.[2] The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.[3] 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.[4] 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.[5]

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.[6] Under the rules, upon a finding of material misrepresentation during

[1] *See* Informal Complaint No. 6437027 (filed Sept. 1, 2023); *see also* 47 CFR §§ 64.1100 – 64.1190.

[2] 47 U.S.C. § 258(a).

[3] *See* 47 CFR § 64.1120.

[4] *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.

[5] 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.

[6] *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.[7] 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.[8]

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without his authorization.[9] In the complaint, Complainant states that he had been a Verizon business customer for over thirty years when his receptionist received a call "saying that they could lower our bill. . .because we are such good customers."[10] He explained that "[d]uring the entire time of the conversation, [the receptionist] was led to believe Clear Rate was making this offer on behalf of Verizon [s]o she authorized this on my behalf."[11] Complainant stated that his receptionist agreed to the service change, "thinking it would save me at least $40 per month."[12] At the end of the conversation, Complainant said his receptionist was told the bill would be coming from Clear Rate. Complainant states that he then contacted Verizon's business services and was told they were lied to and possibly "slammed," as Verizon does not outsource billing and customer service. Verizon suggested they contact the FCC.[13]

5. Pursuant to our rules, we notified Clear Rate of the complaint.[14] Clear Rate responded, stating that Complainant agreed to and authorized the carrier switch, and that the terms and conditions of service were described in detail for Complainant on the TPV call.[15] Clear Rate provided two audio recordings—the TPV recording and a recording Clear Rate characterized as a "quality assurance call."[16] Clear Rate did not provide a recording of the sales call or any other evidence related to the sales call.

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 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

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[7] *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).

[8] *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*.

[9] *See* Informal Complaint No. 6437027.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] 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.

[15] *See* Clear Rate Response to Informal Complaint No. 6437027 (filed Sept. 8, 2023); *see also* 47 CFR § 64.1160.

[16] We note that on the "quality assurance call," the Clear Rate representative states that "you will not have any interruptions in your service. This is through a contract agreement between Verizon and Clear Rate. Clear Rate just provides the billing at a wholesale rate and manages your customer service needs in a more timely manner." The Clear Rate representative also states that "Clear Rate is one of the many rate carriers contracted by Verizon to give small businesses a wholesale rate."

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."[17] We therefore find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service provider, as defined by the rules, and we discuss Clear Rate's liability below.[18]

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.[19] 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.[20] 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.[21]

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

[17] *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)).

[18] 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.

[19] *See id.* § 64.1160(b).

[20] *See id.* § 64.1160(d).

[21] *See id.* § 64.1140, 64.1160.

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

In the Matter of Assurance Wireless USA, LP, f/k/a Virgin Mobile USA, L.P., Sprint Corporation, and T-Mobile US, Inc.	)	File No.: EB-IHD-19-00028966 Acct. No.: 202132080011 FRN: 0014194476

ORDER

Adopted: September 22, 2023 **Released: September 22, 2023**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has agreed to amend the terms of its 2020 Consent Decree with T-Mobile US, Inc., doing business as Assurance Wireless USA, L.P. (T-Mobile or the Company) to resolve the Bureau's investigation into whether T-Mobile had violated the Commission's Lifeline rules regarding the submission of claims for ineligible subscribers due to non-usage after the effective date of the 2020 Consent Decree. To settle this matter, T-Mobile, or any party acting on its behalf, shall pay an additional seven million five hundred thousand dollars ($7,500,000) civil penalty.

2. After reviewing the terms of the Consent Decree Amendment and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree Amendment and terminating the referenced investigation regarding T-Mobile's compliance with the Commission's lifeline rules regarding the receipt of Lifeline support for ineligible subscribers, including sections 54.405(e)(3), 54.407(a), 54.410(a), 54.410(b), or 54.410(c) of the Commission's rules.[1]

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of T-Mobile's basic qualifications to hold or obtain any Commission license or authorization.[2]

4. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act, 47 U.S.C. § 154(i), and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, the attached Consent Decree Amendment **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** in accordance with the terms of the attached Consent Decree Amendment.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree Amendment shall be sent by first class mail and certified mail, return receipt requested, to Michele K.

[1] 47 CFR §§ 54.405(e)(3), 54.407(a), 54.410(a), 54.410(b), 54.410(c). This Consent Decree Amendment does not terminate any other investigations into the Company's Lifeline compliance that have been or might be conducted by other law enforcement agencies or offices.

[2] *See* 47 CFR § 1.93(b).

Thomas, Esq., VP Regulatory – Government Affairs, T-Mobile US, Inc., 601 Pennsylvania Avenue, NW, Suite 800, Washington, DC 20004 and to Patrick O'Donnell, Esq., Counsel to T-Mobile, Harris, Wiltshire & Grannis LLP, 1919 M Street NW, Suite 800, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
Assurance Wireless USA, LP, f/k/a Virgin Mobile USA, L.P., Sprint Corporation, and T-Mobile US, Inc.	)	File No.: EB-IHD-19-00028966
	)	Acct. No.: 202132080011
	)	FRN: 0014194476

CONSENT DECREE AMENDMENT

1. This amendment (Amendment) is made by T-Mobile USA, Inc., and the Enforcement Bureau, parties to the Consent Decree adopted and released on November 4, 2020 (Consent Decree), in case number, EB-IHD-19-00028966. The terms and definitions of the Consent Decree are incorporated herein except as modified in this Amendment.

2. The Consent Decree is amended as follows:

Paragraph 2(b) of the Consent Decree is deleted and replaced with the following:

> "Adopting Order" means an order of the Commission adopting the terms of the Consent Decree dated November 4, 2020, and subsequent Amendments to the Consent Decree that are agreed upon by the Parties.

Paragraph 2(k) of the Consent Decree is deleted and replaced with the following:

> "Effective Date" means November 4, 2020.

Paragraph 17 of the Consent Decree is deleted and replaced with the following:

> In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Commission agrees to terminate the Investigation. In consideration for the termination of the Investigation, the Company agrees to the terms, conditions, and procedures contained herein. The Commission further 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 new proceeding, formal or informal, or take any action on its own motion against the Company concerning the matters that were the subject of the Investigation. The Commission further agrees that it will not seek any further monetary forfeitures under section 503 of the Act in connection with any violations of the Lifeline rules by the Company arising prior to the Amendment Effective Date. The Commission 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 Company's basic qualifications to be a Commission licensee or hold

Commission licenses or authorizations.[1] The Parties agree this Consent Decree is for settlement purposes only and does not constitute an adjudication on the merits or a factual or legal determination regarding compliance or non-compliance, nor does it constitute a settlement or compromise of the Demand for Repayment of Lifeline Funds and Notice of Intent to Withhold, Recoup and/or Offset Funds made by the Office of Managing Director on December 19, 2019, nor the pending Petition for Reconsideration of December 19, 2019, Demand Letter, filed on January 21, 2020. This Consent Decree shall not be used as evidence or precedent in any action or proceeding, except an action to enforce this Consent Decree or subsequent Amendments.

Paragraph 24 of Consent Decree is deleted and replaced with the following:

The Company, or any party acting on its behalf, shall pay a total civil penalty to the United States Treasury in the amount of two hundred seven million five hundred thousand dollars ($207,500,000). Two hundred million dollars ($200,000,000) of the civil penalty was paid on November 30, 2020. The Company, or any party acting on its behalf, shall pay the remaining balance of seven million five hundred thousand dollars ($7,500,000) within thirty (30) calendar days after the date the Amendment is fully-executed (Amendment Effective Date). The Company acknowledges and agrees that upon execution of the Amendment, the remaining balance of seven million five hundred thousand dollars ($7,500,000) shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).[2] Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. The Company shall send electronic notification of payment to Patrick M. McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and Pam Slipakoff at Pam.Slipakoff@fcc.gov on the date said remaining balance is made. The payment must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),[3] 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.[4] Except as set forth in the Amendment, the Consent Decree is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between the Amendment and the Consent Decree, the terms of the Amendment will prevail.

Paragraph 25 of the Consent Decree is deleted and replaced with the following:

The Company agrees that an Event of Default shall occur upon its failure to pay the full amount as described in Paragraph 24 by the due date specified in this Consent Decree and modified by the Amendment.

Paragraph 32 of the Consent Decree is deleted and replaced with the following:

The Parties agree and acknowledge that this Consent Decree and Amendment shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or

[1] *See* 47 CFR § 1.93(b).

[2] Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

[3] Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

[4] 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.

legal finding regarding any compliance or noncompliance with the requirements of the Communications Laws.

3. The provisions of this Amendment shall be incorporated by the Commission in an Adopting Order.

4. The Company agrees that the Commission has jurisdiction over it and the matters contained in the Consent Decree and this Amendment and has the authority to enter into and adopt this Amendment.

5. Each Party represents and warrants to the other that it has full power and authority to enter into this Amendment. Each person signing this Amendment on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Amendment to bind the Party to its terms and conditions.

6. This Amendment 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.

By: _____
Loyaan A. Egal
Chief
Enforcement Bureau

Dated: _____

By: ___
Kathleen O'Brien Ham
Senior Vice President, Government Affairs
T- Mobile US, Inc.

Dated: _____

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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DA 23-883
Released: October 2, 2023

STREAMLINED RESOLUTION OF REQUESTS RELATED TO ACTIONS BY THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

CC Docket No. 02-6
WC Docket No. 21-93
WC Docket No. 02-60
WC Docket No. 18-213
WC Docket No. 10-90

Pursuant to our procedure for resolving requests for review, requests for waiver, and petitions for reconsideration of decisions related to actions taken by the Universal Service Administrative Company (USAC) that are consistent with precedent (collectively, Requests), the Wireline Competition Bureau (Bureau) grants, dismisses, or denies the following Requests.[1] The deadline for filing petitions for reconsideration or applications for review concerning the disposition of any of these Requests is 30 days from the release date of this Public Notice.[2]

Schools and Libraries (E-Rate)
CC Docket No. 02-6

Dismiss as Moot—USAC Took Action Requested[3]

George West School District, TX, Application No. 211015904, Request for Review, CC Docket No. 02-6 (filed Feb. 24, 2022)

[1] *See Streamlined Process for Resolving Requests for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60, 06-122, 08-71, 10-90, 11-42, and 14-58, Public Notice, 29 FCC Rcd 11094 (WCB 2014). Sections 54.719(b) and 54.1718(a)(1) of the Commission's rules provide that any person aggrieved by an action taken by a division of USAC, after first seeking review at USAC, may seek review from the Commission. Sections 54.719(c) and 54.1718(a)(3) of the Commission's rules provide that parties seeking waivers of the Commission's rules shall seek review directly from the Commission. 47 CFR §§ 54.719(b)-(c); 54.1718(a)(1)-(2). In this Public Notice, we have reclassified as Requests for Waiver any appeals seeking review of a USAC decision that appropriately should have requested a waiver of the Commission's rules. Similarly, we have reclassified as Requests for Review any appeals seeking a waiver of the Commission's rules but that are, in fact, seeking review of a USAC decision.

[2] *See* 47 CFR §§ 1.106(f), 1.115(d); *see also* 47 CFR § 1.4(b)(2) (setting forth the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission).

[3] *See, e.g., Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Al-Noor High School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 8223, 8224, para. 2 (WCB 2012) (*Al-Noor High School Order*) (dismissing as moot requests for review where USAC had taken the action the petitioner requested and issued new decisions approving funding).

Dismiss to Allow Appeal to be Filed with USAC[4]

Gilroy Unified School District, CA, Application No. 201041280, Request for Review, CC Docket No. 02-6 (filed May 12, 2022, supplemented June 27, 2022)

Gilroy Unified School District, CA, Application No. 211038623, Request for Review, CC Docket No. 02-6 (filed May 12, 2022, supplemented June 27, 2022)

Dismissed for Failure to Comply with the Commission's Basic Filing Requirements[5]

Mapleton School District, OH, Application No. 221019543, CC Docket No 02-6 (filed Mar. 30, 2023)

The Hope Center for Autism, FL, No Application Number Given, CC Docket No 02-6 (filed Mar. 29, 2022)

Dismissed on Reconsideration[6]

Everly Public Library, IA, No Application Filed, Petition for Reconsideration, CC Docket No 02-6 (filed Aug. 14, 2023)

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[4] *See Petitions for Reconsideration by Little Falls Township School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, DA 23-110, para. 10 (WCB Feb. 8, 2023) (*Little Falls Township Order*) (dismissing without prejudice appeals that are filed with the Commission before being reviewed at USAC and waiving the 60-day appeal filing deadline to allow the party to refile its appeal with USAC). In this instance, Gilroy Unified School District filed an untimely appeal with USAC more than a few weeks after it submitted a timely-filed appeal to the Commission. As a result, USAC denied the appeal because it was filed more than 60 days after the date of the FCC Form 486 notification letter, which was the adverse decision. As a result, USAC dismissed the appeal on procedural grounds and did not make a determination on the merits. Gilroy Unified School District should now refile its appeals with USAC to allow the appeals to be considered on the merits by USAC without being considered late.

Parties seeking review of USAC decisions must first file an appeal with USAC. *See* 47 CFR § 54.719(a). Because the petitioners filed their appeal with the Commission first, we now provide them 60 days from the release date of this Public Notice to refile their appeal at USAC. Pursuant to the *Little Falls Township Order*, we also waive the 60-day appeal filing deadline, 47 CFR § 54.720(a), to allow the appeal to be considered on the merits by USAC without being considered late. *See Little Falls Township Order* at para. 10. Appeals for funding year 2016 and forward should be filed in the E-Rate Productivity Center portal, found here: EPC. Appeals from funding year 2015 and prior funding years should be filed by email to Appeals@usac.org.

[5] 47 CFR § 54.721 (setting forth general filing requirements for requests for review of decisions issued by USAC, including the requirement that the request for review include supporting documentation); *see also Wireline Competition Bureau Reminds Parties of Requirements for Request for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 11-42, 13-184, 14-58, Public Notice, 29 FCC Rcd 13874 (WCB 2014) (reminding parties submitting appeals to the Bureau of the general filing requirements contained in the Commission's rules which, along with a proper caption and reference to the applicable docket number, require: (1) a statement setting forth the party's interest in the matter presented for review; (2) a full statement of relevant, material facts with supporting affidavits and documentation; (3) the question presented for review, with reference, where appropriate, to the relevant Commission rule, order or statutory provision; and (4) a statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought); *Universal Service Contribution Methodology*; *Request for Review by Alternative Phone, Inc. and Request for Waiver*, WC Docket No. 06-122, Order, 26 FCC Rcd 6079 (WCB 2011) (dismissing without prejudice a request for review that failed to meet the requirements of section 54.721 of the Commission's rules).

[6] *See, e.g.*, *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Allan Shivers*

(continued….)

Northfield School District 659, MN, Application No. 231039602, Petition for Reconsideration, CC Docket No 02-6 (filed Aug. 18, 2023)

Packer Collegiate Institute, NY, Application No. 221040841, Petition for Reconsideration, CC Docket No 02-6 (filed Nov. 29, 2022)

Granted[7]

Bid Accepted After Filing for FCC Form 471[8]

Rockdale County School District, GA, Application No. 201036764, Request for Review, CC Docket No. 02-6 (filed Jan. 31, 2023)

Contract Agreement in Place[9]

Coffeyville Unified School District 445, KS, Application No. 191037080, Request for Review and/or Waiver, CC Docket No. 02-6 (filed June 6, 2022)

Huntingdon Area School District, PA, Application No. 201015489, Request for Review and/or Waiver, CC Docket No. 02-6 (filed May 9, 2023)

St. Louis City School District, MO, Application No. 211005276, Request for Review, CC Docket No. 02-6 (filed June 6, 2023)

Library et al.; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 29 FCC Rcd 10356, 10357, para. 2 (WCB 2014) (*Allan Shivers Library Order*) (dismissing petitions for reconsideration that fail to identify any material error, omission, or reason warranting reconsideration, and rely on arguments that have been fully considered and rejected by the Bureau within the same proceeding).

[7] We remand these applications to USAC and direct USAC to complete its review of the applications and issue a funding decision based on a complete review and analysis, no later than 90 calendar days from the release date of this Public Notice. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications. 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. *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).

[8] USAC denied Rockdale County School District's application because it did not comply with the E-Rate program's competitive bidding requirements. Upon de novo review, we find that Rockdale County School District did wait 28 days before accepting the bid of the winning service provider. The acceptance of the bid, however, was done shortly after the FCC Form 471 was filed, in violation of our rules. Consistent with precedent, we grant a waiver of our rules in this instance. *See, e.g., Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15526, 15529-30, para. 7 (WCB 2008) (*Barberton City School District Order*); *Requests for Review and/or Waiver of the Decisions of the Universal Service Administrator by Amphitheater Unified School District 10 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 7536, 7536-37, para. 2 (WCB 2013) (*Amphitheater Unified School District 10 Order*) (granting waivers of the signed contract requirement in instances where applicants misunderstood the program rules and submitted their FCC Form 471 applications before entering into an agreement).

[9] *See, e.g., Barberton City School District Order,* 23 FCC Rcd at 15532, para. 10 (granting on the merits when petitioners submitted evidence to the Commission demonstrating that they had a valid contract in place at the time it submitted its FCC Forms 471 to USAC).

Discount Calculation[10]

Orange Board of Education, CA, Application No. 221014587, Request for Waiver, CC Docket No. 02-6 (filed July 8, 2022)

Discount Calculation—Allowing Submission of Discount Calculation Information[11]

International Baseball Academy and High School, Inc., PR, Application No. 221037268, Request for Waiver, CC Docket No. 02-6 (filed July 7, 2022)

McIntosh Area School, FL, Application No. 231031158, Request for Waiver, CC Docket No. 02-6 (filed Sept. 8, 2023)

Yeshivat Darche Eres Elementary School, NY, Application No. 221021277, Request for Waiver, CC Docket No. 02-6 (filed May 19, 2022)

Discount Calculation—Remand for USAC Determination[12]

The Walden School, PA, Application No. 211019393, Request for Review, CC Docket No. 02-6 (filed Dec. 15, 2022)

Duplicative Services—Remand for USAC Determination[13]

Seneca Family of Agencies, CA, Application No. 221038295, Request for Review, CC Docket No. 02-6 (filed Jan. 4, 2023)

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[10] *See, e.g., Requests for Review of the Decision of the Universal Service Administrator by Academia Claret et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 10703, 10709, para. 13-14 (WCB 2006) (*Academia Claret Order*) (allowing the submission of discount calculation information when the applicant was previously unable to fully comply with the document request within USAC's permitted time period).

[11] *See, e.g., Academia Claret Order*, 21 FCC Rcd at 10709, para. 13-14 (allowing the submission of discount calculation information when the applicant was previously unable to fully comply with the document request within USAC's permitted time period).

[12] The Walden School's E-Rate application was approved at a 20 percent discount level when it was seeking a discount at the 40 percent level. On appeal to USAC, it did not present adequate evidence to demonstrate that The Walden School was eligible at the 40-percent level. After the appeal at USAC was denied, it submitted additional evidence to USAC regarding its discount eligibility. That appeal and evidence was transmitted to the Commission without USAC making an additional determination. We make no determination based on this new evidence presented by The Walden School but remand this appeal back to USAC for further review. *See, e.g., Academia Claret Order,* 21 FCC Rcd at 10708, para. 12 (remanding discount calculation appeals back to USAC for review and issue an award or denial based on a complete review and analysis further processing). *See also supra* note 7.

[13] USAC referred this appeal to the Commission based on its determination that the issue raised on appeal relates to the denial of funding for which USAC had already issued its decision. While USAC has issued a decision, we find that the explanation in the denial raises an issue which Seneca Family of Agencies has not had an opportunity to address—specifically, that its funding request contained ineligible duplicative services. Based on this new justification for reducing its funding, Seneca Family of Agencies now submits evidence that USAC's determination was in error. Pursuant to Commission rules, USAC should be the first to make a determination of the duplicative services issue. *See 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, 8970-71, paras. 250-52 (2014) (*First 2014 E-Rate Modernization Order*) (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). We make no determination based on this issue but remand this appeal to USAC for further review. *See also supra* note 7.

Eligible Entities[14]

Teach Wisconsin, WI, Application No. 201002322, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023, supplemented Jun. 8, 2023)

Equipment Manufacturer or Equivalent[15]

Baldy View Regional Occupation Program, CA, Application No. 221038295, Request for Review and/or Waiver, CC Docket No. 02-6 (filed July 17, 2023)

Inadvertent Cancellation of FRN[16]

Fort Wayne Community School District, IN, Application No. 211021419, Request for Review, CC Docket No. 02-6 (filed Jan. 26, 2023)

Incorrect Service Start Date on FCC Form 486[17]

Lake District School District 813, MN, Application No. 201029279, Request for Waiver, CC Docket No. 02-6 (filed Dec. 16, 2022)

Ineligible Service[18]

Orange County Public Schools, FL, Application No. 201015031, Request for Review CC Docket No. 02-6 (filed Jun. 9, 2023)

[14] *See Requests for Review of Decisions of the Universal Service Administrator by Bootheel Consortium et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8747, 8750-51, paras. 7-8 (2007) (*Bootheel Consortium Order*) (finding that applicants had provided sufficient documentation to show that they might be eligible for E-Rate support, justifying further review by USAC to reach a definitive determination). Consistent with precedent, we remand this application to USAC for consideration of the eligibility of entities listed on the invoice given the additional documentation submitted. *Id. See also supra* note 7.

[15] *Request for Review of a Decision of the Universal Service Administrator by Queen of Peace High School*, CC Docket No. 02-6, Order, 26 FCC Rcd 16466 (WCB 2011) (*Queen of Peace Order*) (requiring that applicants include "or equivalent" with any description in which they may list a specific manufacturer's name, brand, product or service when seeking bids on an FCC Form 470 or an RFP).

[16] *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Joseph Jingoli & Son, Inc., et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 19227, 19228-29, paras. 3-4 (WCB 2007) (*Joseph Jingoli & Son Order*) (granting petitioners' requests to restore mistakenly cancelled funding requests).

[17] *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) (granting waiver requests when the applicants inadvertently listed the wrong service start date on their FCC Forms 486).

[18] *See, e.g., Request for Review by Terral School District 3, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc*., CC Dockets No. 96-45, 97-21, Order, 15 FCC Rcd 17969 (CCB 2000) (remanding where USAC has failed to provide an explanation for its ineligibility determination).

Ministerial and/or Clerical Errors[19]

Accelerated Learning Solutions, TN, Application No. 191033212, Request for Review and/or Waiver, CC Docket No. 02-6 (filed May 16, 2023, supplemented Sept. 5, 2023)

Beloved Community Charter School, NJ, Application No. 231014465, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Sept. 11, 2023, supplemented Sept. 18, 2023)

Brookville Area School District, PA, Application No. 231018459, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Aug. 24, 2023)

Celina City School District, OH, Application No. 231029416, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Sept. 8, 2023, supplemented Sept. 13, 2023)

CENIC-Corporation for Education Network Initiatives in California, CA, Application No. 221024593, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Aug. 22, 2023, supplemented Aug. 22, 2023)

Frontier Public Schools, OK, Application No. 231022460, Request for Waiver, CC Docket No. 02-6 (filed Sept. 1, 2023)

Hamilton School District, WI, Application No. 231004856, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Aug. 17, 2023)

Lynchburg City School District, VA, Application No. 231013797, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Aug. 17, 2023, supplemented Sept. 5, 2023)

Prague Public Schools, OK, Application No. 231029286, Request for Waiver, CC Docket No. 02-6 (filed Sept. 1, 2023)

Sumner County School District, TN, Application No. 231005580, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Aug. 31, 2023)

Ministerial and/or Clerical Errors – Invoicing[20]

Junction City School District 69, OR, Application No. 201021256, Request for Waiver, CC Docket No. 02-6 (filed Dec. 30, 2022)

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[19] *See*, *e.g.*, *Requests for Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools,* CC Docket No. 02-6, Order, 25 FCC Rcd at 17319, 17319-20, nn. 5, 9, 15, 16, 17, 19 (WCB 2010) (*Ann Arbor Public Schools Order*) (granting waivers where the applicant or USAC entered the wrong date, discount rate or the applicant omitted entities or services from source documents onto its FCC Form 471); *Joseph Jingoli & Son Order*, 22 FCC Rcd at 19228-29, paras. 3-4 (granting petitioners' request to correct a mistaken cancellation of a funding request).

[20] *See Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Accomack County Public School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 23-48, para. 7-9 (WCB Jan. 19, 2023) (*Accomack County Public School Order*) (granting waivers where the E-Rate invoice filers entered the wrong service start date, application number, funding request number, customer bill date or inadvertently requested an invoice filing deadline extension for the wrong funding request number). We also waive

(continued….)

Sandwich Isles Communications, Inc. (Kanu O Ka Aina New Century Public Charter School), HI, Application No. 201013735, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Yankton School District 63-3, SD, Application No. 211003347, Request for Waiver, CC Docket No. 02-6 (filed June 3, 2023)

Permitting Contract End Date Change[21]

Las Cruces Public Schools, NM, Application No. 181015597, Request for Waiver, CC Docket No. 02-6 (filed Feb. 16, 2023)

Price as Primary Factor[22]

Coffeyville Unified School District 445, KS, Application No. 221032083, Request for Waiver, CC Docket No. 02-6 (filed Nov. 29, 2022)

Meridian Independent School District, TX, Application No. 201024914, Request for Waiver, CC Docket No. 02-6 (filed June 26, 2023)

Rialto Unified School District, CA, Application No. 221032698, Request for Review and/or Waiver, CC Docket No. 02-6 (filed June 26, 2023)

USAC Funding Error[23]

Madison Metropolitan School District, WI, Application Nos. 201006894, 201006895, 201041583, Request for Review, CC Docket No. 02-6 (filed Nov. 12, 2022)

section 54.720 of the Commission's rules in cases where the petitioners filed their waiver request within 60 days of discovering or receiving notice of the ministerial or clerical error. *See id*. at para. 12.

[21] Consistent with our obligation to conduct a de novo review of decisions made by USAC, we grant this request for review. *See* 47 CFR § 54.723. Based on the facts and circumstances of this case, we find that USAC should allow Las Cruces Public Schools to change its contract end date to June 30, 2021 to allow its invoices to be processed.

[22] *See, e.g., Requests for Review of Decisions of the Universal Service Administrator by Allendale County School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6109, 6114-15, para. 9 (WCB 2011) (granting appeals where the record demonstrated that applicants gave the most weight to price during the bid evaluation process).

[23] We remand to USAC to evaluate whether an error was made in the reduction in funding. Based on the USAC Commitment Adjustment Letters, the school district's Category 2 budget exceeded its limit by $5,832.30, however, USAC seeks to reduce funding by $25,311.31. *Requests for Review of a Decision of the Universal Service Administrator by West Branch-Rose City Area School; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd. 15470, 15472, para. 5 (WCB 2012) (remanding an application back to USAC when it appears a funding discrepancy could be resolved through USAC's review of the documentation submitted by the petitioner as part of its appeal).

Waiver of Appeal Filing Deadline[24]

DC Preparatory Academy, DC, Application No. 211040364, Request for Waiver, CC Docket No. 02-6 (filed July 20, 2023)

Vector Resources, Inc. (Los Angeles Unified School District), CA, Application No. 442526, Request for Waiver, CC Docket No. 02-6 (filed Sept. 12, 2023)

Waiver of Special Construction Service Delivery Deadline[25]

CENIC-Corporation for Education Network Initiatives in California, CA, Application No. 201026123, Request for Waiver, CC Docket No. 02-6 (filed Aug. 2, 2023)

CENIC-Corporation for Education Network Initiatives in California, CA, Application No. 201030231, Request for Waiver, CC Docket No. 02-6 (filed Aug. 8, 2023)

CENIC-Corporation for Education Network Initiatives in California, CA, Application No. 211023509, Request for Waiver, CC Docket No. 02-6 (filed Aug. 18, 2023)

CENIC-Corporation for Education Network Initiatives in California, CA, Application No. 201031673, Request for Waiver, CC Docket No. 02-6 (filed Aug. 17, 2023)

Central Consolidated School District 22, NM, Application No. 211002700, Request for Waiver, CC Docket No. 02-6 (filed July 5, 2023)

[24] *See, e.g.*, *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District, et al*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, para. 2 (WCB 2011) (*ABC Unified School District Order*) (granting waivers of the appeal filing deadline when the petitioners submitted their appeals or waiver requests only a few days late or within a reasonable period of time after receiving actual notice of USAC's adverse decision). We make no finding on the underlying issues in these appeals and remand these applications back to USAC to make a determination on the merits. *See supra* note 7.

[25] *See, e.g.*, *Requests for Waiver of the Decisions of the Universal Service Administrator by Grants/Cibola County School District and Jemez Pueblo Tribal Consortium*, CC Docket No. 02-6, Order, 33 FCC Rcd 10048, 10051, para. 8 (WCB 2018) (*Grants/Cibola Order*) (waiving the special construction service delivery deadline because the applicant was unable to complete implementation for reasons beyond the service provider's control and the petitioner made good faith efforts to comply with Commission rules and procedures).

We find that these entities were unable to complete implementation for reasons beyond their and their service providers' control and made good faith efforts to comply with Commission rules and procedures. CENIC notes that its projects are in various stages of completion but that all should be done by the end of the year. We therefore give CENIC up until December 31, 2023 to complete the projects. We grant Central Consolidated School District 22 until June 30, 2024 to complete its project. We grant Education Service Center Region 10 d/b/a Fiber Network Consortium until December 31, 2023 to complete its project. We grant Mitchell School District 55 and Luckiamute Valley Charter School Consortia until June 30, 2024 to complete their projects. Accordingly, we waive the special construction service delivery deadline and direct USAC to provide the applicants this additional time to complete their special construction projects. We also waive any associated administrative or procedural deadlines, including the invoice filing deadline, that might be necessary to effectuate our ruling. *See supra* note 7.

Education Service Center Region 10 DBA Fiber Network Consortium, TX, Application No. 211035072, Request for Waiver, CC Docket No. 02-6 (filed May 5, 2023)[26]

Luckiamute Valley Charter School Consortia, OR, Application No. 221008884, Request for Waiver, CC Docket No. 02-6 (filed Sept. 15, 2023)

Mitchell School District 55, OR, Application No. 221035214, Request for Waiver, CC Docket No. 02-6 (filed Sept. 15, 2023)

Denied

Duplicative Services[27]

Addie Mae Collins Community Service, NY, Application No. 221006772, Request for Review, CC Docket No. 02-6 (filed Jan. 4, 2023)

Nash-Edgecomb Economic Development Inc., NC, Application No. 221005238, Request for Review, CC Docket No. 02-6 (filed Jan. 3, 2023)

Failure to File FCC Form 470 for Current Funding Year[28]

Hammond Public Library, IN, Application No. 843658, Request for Waiver, CC Docket No. 02-6 (filed Nov. 30, 2012)

Late-Filed FCC Form 471 Applications[29]

Chicago Jewish Day School, IL, Application No. 221040895, Request for Waiver, CC Docket No. 02-6 (filed Oct. 26, 2022)

De La Salle Academy, NY, Application No. 231039757, Request for Waiver, CC Docket No. 02-

[26] Education Service Center Region 10 d/b/a Fiber Network Consortium argues that it should have received an automatic one-year extension of the service delivery deadline for non-recurring services under the Commission's rules because its FCDL was issued after March 1 of the funding year. *See* 47 CFR §54.507(d)(4)(i). While this is true for most non-recurring services, applicants receiving E-Rate funding for special construction do not receive automatic extensions. If an applicant has not received an FCDL on or before the June 30 deadline, they must request an extension of this deadline by filing a customer service case in EPC and attaching a completed Special Construction Deadline Extension Request (SCDER) to the case on or before June 30. *See* https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=1012.

[27] *See Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 92009-10, paras. 22-23 (2003) (*Universal Service Second Report and Order*) (noting that requests for duplicative services, described as services that provide the same functionality for the same population in the same location during the same period of time, will be rejected).

[28] *See, e.g., Review of the Decision of the Universal Service Administrator by Aberdeen School District; School and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757, 8763, para. 10 (2007) (*Aberdeen School District Order*) (denying appeal where applicant failed to file a new FCC Form 470 and solicit bids in the year for which it sought services, thereby circumventing the competitive bidding process).

[29] *See, e.g.*, *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science, et al*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9261-62, para. 13 (2010) (*Academy of Math and Science Order*) (denying waivers of the FCC Form 471 application filing window deadline where petitioners failed to present special circumstances justifying a waiver of our rules).

6 (filed Aug. 15, 2023)

Midland School District #7, IL, Application No. 221040843, Request for Waiver, CC Docket No. 02-6 (filed Sept. 8, 2023)

Norris School District, WI, Application No. 221040838, Request for Waiver, CC Docket No. 02-6 (filed Dec. 13, 2022)

North Country Library System, NY, Application No. 221040906, Request for Waiver, CC Docket No. 02-6 (filed Dec. 8, 2022)

Ohr Chadash Academy, MD, No Application Filed, Request for Waiver, CC Docket No. 02-6 (filed Aug. 9, 2023)

Smith Academy for Excellence, IN, Application No. 231039651, Request for Waiver, CC Docket No. 02-6 (filed Aug. 16, 2023)

Tapestry Public Charter School, GA, Application No. 221040836, Request for Waiver, CC Docket No. 02-6 (filed Sept. 19, 2022)

Wood County Coop, TX, Application No. 231039758, Request for Waiver, CC Docket No. 02-6 (filed Aug. 16, 2023)

Yankton School District 63-3, SD, Application No. 221041061, Request for Waiver, CC Docket No. 02-6 (filed Dec. 20, 2022)

Late-Filed Invoice or Invoice Deadline Extension[30]

Aspire Technology Partners, LLC (Elizabeth Public School), NJ, Application No. 191025499, Request for Waiver, CC Docket No. 02-6 (filed Aug. 29, 2023)

Comcast Business Communications (Elverta Joint Elementary School District), PA, Application No. 211000850, Request for Waiver, CC Docket No. 02-6 (filed Aug. 15, 2023)

Edinburg CISD, TX, Application Nos. 211022484, 211023670, 211036828, Request for Waiver, CC Docket No. 02-6 (filed Sept. 1, 2023)

School District of Maple, WI, Application No. 211033997, Request for Waiver, CC Docket No. 02-6 (filed Feb. 15, 2023)

[30] 47 CFR § 54.514. *See also, e.g., Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 3834, 3836, para. 8 (WCB 2016) (*Ada School District Order*) (denying requests for waiver of the Commission's invoice filing deadline rule for petitioners that failed to demonstrate extraordinary circumstances justifying a waiver); *see also Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8966, para. 240 (2014) (*First 2014 E-Rate Order*) (establishing that it is generally not in the public interest to waive the Commission's invoicing rules absent extraordinary circumstances).

Red Light Rule Violation[31]

Southeastern Victory College, PR, Application Nos. 201033723, 201033710, Request for Waiver, CC Docket No. 02-6 (filed Mar. 17, 2022)

Relying on FCC Form 470 That Did Not Seek Bids on Types of E-rate Services Later Requested[32]

Madison Metro School District, WI, Application No. 161056119, Request for Waiver, CC Docket No. 02-6 (filed Dec. 26, 2018)

Spokane School District 81, WA, Application No. 161028639, Request for Waiver, CC Docket No. 02-6 (filed Apr. 7, 2017)

Untimely Filed Appeals or Waiver Requests[33]

Mequon-Thiensville School District, WI, Application Nos. 221039254, 221039253, 221039252, Request for Waiver, CC Docket No. 02-6 (filed Sept. 21, 2022)

Riverside Technologies, Inc. (Douglas School District 51-1), SD, Application No. 211023216, Request for Waiver, CC Docket No. 02-6 (filed Jun. 6, 2023)

Riverside Technologies, Inc. (Eldora-New Providence School District), IA, Application No. 191038563, Request for Waiver, CC Docket No. 02-6 (filed Jun. 6, 2023)

Riverside Technologies, Inc. (Red Oak Community School District), IA, Application No. 211017632, Request for Waiver, CC Docket No. 02-6 (filed Jun. 6, 2023)

Riverside Technologies, Inc. (Verdigre Public Library), NE, Application No. 201020351, Request for Waiver, CC Docket No. 02-6 (filed May 30, 2023)

SFM Charities, Inc., PR, Application Nos. 201035434, 201035476, 211036698, Request for Review, CC Docket No. 02-6 (filed Jan. 13, 2023)

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[31] *See, e.g., Requests for Review of Decisions of the Universal Service Administrator by Net56, Inc., Wheeling School District 21, Schools and Libraries Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13122, 13126, para 6 (WCB 2013) (*Net56 Order*) (denying E-Rate applicant's request for a waiver of the red light rule and dismissing their E-Rate application where the applicant failed to timely pay the debt).

[32] *See, e.g., Request for Review of a Decision of the Universal Service Administrator by Albert Lea Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 24 FCC Rcd 4533 (WCB 2009); *Petition for Reconsideration by Chicago Public Schools; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 9289 (WCB 2014) (denying applicants' appeals that filed FCC Forms 470 that did not include the types of services for which the applicants later requested E-rate funding).

[33] *See, e.g*., *Requests for Review of Decisions of the Universal Service Administrator by Agra Public Schools I-134 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5684, 5688, para. 6 (WCB 2010) (*Agra Public Schools Order*); *Requests for Waiver or Review of Decisions of the Universal Service Administrator by Bound Brook School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 5823, para. 1 (WCB 2014) (*Bound Brook School District Order*) (denying requests for review and/or waiver on the grounds that the petitioners failed to (1) submit their appeals either to the Commission or to USAC within 60 days or failed to submit their waiver requests to the Commission within 60 days as required by the Commission's rules; and (2) did not demonstrate special circumstances required for the Commission to waive the rule).

West Central School District, IA, Application No. 221039300, Request for Waiver, CC Docket No. 02-6 (filed Jan. 30, 2023)

Violation of the Competitive Bidding 28-Day Rule[34]

Bayonne School District, NJ, Application No. 825783, Funding Request Number 2263698, Request for Review, CC Docket No. 02-6 (filed Feb. 28, 2014)

Eastport/South Manor Central School District, NY, Application No. 760734, Request for Review, CC Docket No. 02-6 (filed Aug. 20, 2013)

Emergency Connectivity Fund Program
WC Docket No. 21-93

Dismissed as Moot[35]

Biblioteca Rio Canas Abajo, PR, Application No. ECF202114810, Request for Waiver, WC Docket No. 21-93 (filed Nov. 2, 2022)

Grand Rapids Public School, MI, Application Nos. ECF202107664, ECF202206487, Request for Waiver, WC Docket No. 21-93 (filed Feb. 27, 2023)[36]

Youthbuild Charter School, CA, Application No. ECF202104794, Request for Waiver, WC Docket No. 21-93 (filed June 23, 2023)[37]

[34] *See, e.g., Application for Review of a Decision of the Universal Service Administrator by Challis Joint School District #181; School and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd. 3812, 3814, para. 5 (WCB 2011) (*Challis Joint School District Order*) (denying request for review where applicant selected a service provider for E-rate services prior to submitting its FCC Form 470 when the rule requires the applicant to wait at least 28 days after such posting).

[35] *See, e.g.*, *Al-Noor High School Order*, 27 FCC Rcd at 8223 (dismissing as moot requests for review where USAC took the requested action).

[36] In its request, Grand Rapids Public Schools requested an extension of the invoice filing deadline. The record shows that the invoice filing deadlines were extended for Grand Rapids Public School's funding requests as a result of recent actions taken by the Wireline Competition Bureau. *See Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 23-405, 2023 WL 3579192, at *4 (WCB May 12, 2023) (*May 2023 Service Delivery Deadline Extension Order*); *Request for Waiver by T-Mobile USA, Inc.; Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 23-669, 2023 WL 5262666, at *2, para. 8 (WCB Aug. 14, 2023) (*ECF Invoice Filing Waiver Order*).

[37] In its request, Youthbuild Charter School requested an extension of the service delivery deadline. The record shows that the service delivery deadline was extended for Youthbuild Charter School's funding request as a result of recent actions taken by the Wireline Competition Bureau. *See Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 23-405, 2023 WL 3579192, at *4 (WCB May 12, 2023) (*May 2023 Service Delivery Deadline Extension Order*).

Granted[38]

Early Delivery[39]

Griffith Public Schools, IN, Application No. ECF202109103, Request for Waiver, WC Docket No. 21-93 (filed Aug. 23, 2023)

Ministerial and/or Clerical Error[40]

George County School District, MS, Application No. ECF202115221, Request for Review and/or Waiver, WC Docket No. 21-93 (filed Mar. 30, 2022)

Heritage Academy, MS, Application No. ECF202115114, Request for Review and/or Waiver, WC Docket No. 21-93 (filed Mar. 30, 2022)

North Tippah School District, MS, Application No. ECF202114987, Request for Review and/or Waiver, WC Docket No. 21-93 (filed Mar. 30, 2022)

Payment Verification[41]

Felicity-Franklin School District, OH, Application No. ECF202108806, Request for Waiver and/or Review, WC Docket No. 21-93 (filed Aug. 23, 2023)

San Juan Christian Academy, PR, Application No. ECF202114890, Request for Waiver, WC Docket No. 21-93 (filed Aug. 29, 2023)

[38] *See supra* note 7.

[39] *See Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 21-93, 06-122, Public Notice, 37 FCC Rcd 7445, 7459 n.25 (WCB 2022) (granting requests for waivers for equipment delivered before the start of the approved funding year).

[40] *See, e.g.*, *Ann Arbor Public Schools Order*, 25 FCC Rcd at 17320-21, para. 2, n.20 (permitting correction when applicant selected the wrong category of service in its FCC Form 471). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to resolve these petitions for waiver of the Emergency Connectivity Fund program rules.

[41] *See, e.g.*, *Request for Review of a Decision of the Universal Service Administrator by Youthbuild Columbus Community School; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 337, 339, paras. 5-6 (WCB 2011) (granting an appeal of a commitment adjustment action where applicant provided evidence of payment of non-discount share on appeal). Consistent with precedent, we also find good cause exists to waive section 54.1718(b)(1) of the Commission's rules, which requires petitioners to file their appeals within 30 days of an adverse USAC decision, because the applicant filed its request within a reasonable period of time of receiving actual notice, there was no actual violation of program rules, and this is an emergency program. *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 within a reasonable period of time after receiving actual notice of USAC's adverse decision). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E- Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to this petition for waiver of the Emergency Connectivity Fund program rules.

Denied

Failure to Satisfy Debt/Red Light Rule[42]

Faith Christian School, IN, Application No. ECF202209889, Request for Waiver, WC Docket No. 21-93 (filed June 16, 2022 & July 21, 2022)

Late-Filed ECF FCC Form 471 Applications[43]

John C. Fremont Library District, CO, No Application No., Request for Waiver, WC Docket No. 21-93 (filed Aug. 13, 2021)

St. Elizabeths School, CO, Application No. ECF222121217, Request for Waiver, WC Docket No. 21-93 (filed Mar. 22, 2022)

St. Thomas Aquinas, IA, No Application No., Request for Waiver, WC Docket No. 21-93 (filed Aug. 12, 2021)

Rural Health Care Program
WC Docket No. 02-60

Granted

Competitive Bidding– Requirement to Submit Copies of All Bids Received[44]

Quality of Life Health Services, AL, Appeal, WC Docket No. 02-60, Funding Request No. 19657061 (filed March 5, 2021)

[42] *See, e.g., Net56 Order*, 28 FCC Rcd. at 13126, para 6 (denying E-Rate applicant's request for a waiver of the red light rule and dismissing their funding request for not paying an outstanding debt).

[43] *See, e.g., Academy of Math and Science Order*, 25 FCC Rcd at 9259, para. 8 (denying requests for waiver of the FCC Form 471 filing window deadline where petitioners failed to present special circumstances justifying waiver of our rules); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 21-93, 06-122, Public Notice, 37 FCC Rcd 6423, 6439 n.13 (WCB 2022) (denying late-filed ECF FCC Form 471 applications).

[44] *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5320 (2006) (granting appeals of decisions by USAC due to minor clerical or ministerial errors in the applications). Quality of Life Health Services (Quality of Life) received six bids in response to its request for Healthcare Connect Fund supported services to its W.T. Scruggs Medical Center site for funding year 2019. Quality of Life submitted copies of these six bids with its request for funding. However, Quality of Life's funding request mistakenly indicated that eight such bids were received, apparently counting two proposals that it received for services to other Quality of Life sites as bids. Our review of these two proposals confirms that the service providers in question did not bid on the W.T. Scruggs Medical Center site. Accordingly, we find that Quality of Life properly provided the six bids required to be submitted with its funding request, *see* 47 CFR § 54.643(a)(4) (2018), and that the mistaken notation that eight bids were received amounts to harmless ministerial error. We therefore grant Quality of Life's appeal and remand the funding request to USAC for further action.

Waiver of the Invoice Filing Deadline—Sua Sponte Waiver[45]

LMAS District Health Department, MI, *Sua Sponte* Waiver, WC Docket No. 02-60, Funding Request No. 21144251 (June 1, 2023)

Connected Care Pilot Program
WC Docket No. 18-213

Granted

Waiver of Project End Date[46]

MA FQHC Telehealth Consortium, MA, WC Docket No. 18-213, Connected Care Pilot Program Funding Request Nos. 22255271, 22257161, 22258571, 22258581, 22258591, 22258991, 22260221, 22260231, 22260241, 22260251, 22260261, 22260551, 22260981 (Aug. 4, 2023)

High-Cost Program (Connect America Fund)
WC Docket No. 10-90

Granted

Letter of Credit[47]

St. Paul Cooperative Telephone Association Petition for Waiver of Letter of Credit Requirements, WC Docket No. 10-90 (filed Sept. 15, 2023)

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[45] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 1986, 1994 (WCB 2020); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 32 FCC Rcd 5065, 5065-66, paras. 2, 4 (WCB 2017) (granting a waiver *sua sponte* of the invoice filing deadline when the deadline had already passed when health care providers received USAC's decision, thus making compliance with program rules impossible). We waive the petitioner's invoice filing deadline and allow it 120 days from the later of the release of this Public Notice or the issuance of a Funding Commitment Letter to file invoices with USAC.

[46] *See Wireline Competition Bureau Announces Key Deadlines for Connected Care Pilot Program*, WC Docket No. 18-213, Public Notice, 37 FCC Rcd 6386 (WCB 2022) (waiving the original project end date of June 20, 2025 and extending it until December 31, 2025, recognizing that strict compliance with the original program end date is inconsistent with the public interest because it prevented some projects from completing a full three-year project). MA FQHC Telehealth Consortium requests an extension of its Pilot Project end date until December 31, 2025, the latest possible project end date available in the Connected Care Pilot Program. Pilot project end dates are generally three years from the first date of service on the funding request for the respective Pilot project. *See Promoting Telehealth for Low-Income Consumers*, WC Docket 18-213, Second Report and Order, 36 FCC Rcd 10642, 10655, para. 28 (2021) (stating that all funding commitments shall end three years from the first date of service for the respective Pilot project). MA FQHC received a single funding commitment with a start date of June 1, 2022, which established the start date of its project, but subsequently filed multiple funding requests for services that would not start until well after June 1, 2022. To ensure that MA FQHC can receive a full three years of service for those later funding requests, we extend its project end date until December 31, 2025.

[47] St. Paul Cooperative Telephone Association seeks a temporary 120 day waiver of the Rural Digital Opportunity Fund Program (RDOF) Letter of Credit rules, which require a recipient of RDOF support to maintain a Letter of Credit (LOC) with a bank that maintains a Weiss safety rating of B- or better. 47 CFR 54.804(c)(2)(i)(B). We grant this temporary waiver for 120 days (from the date of the petition), until January 16, 2024. *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 22-951 (WCB Sept. 13, 2022) (*Point Broadband Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 23-419 (WCB May 17, 2023) (*ECFiber Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 23-513 (WCB June 14, 2023) (*DoCoMo Order*); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative*

(continued….)

For additional information concerning this Public Notice, please contact James Bachtell in the Telecommunications Access Policy Division, Wireline Competition Bureau, at james.bachtell@fcc.gov or (202) 418-2694.

- FCC -

Company, CC Docket No. 02-6, WC Docket Nos. 21-93, 10-90, 02-60 and 06-122, Public Notice, DA 23-756, n.52 (WCB Aug. 31, 2023) (granting temporary waiver of the Connect America Fund Phase II Auction (CAF II) Letter of Credit rules, which require a recipient of CAF II support to maintain a Letter of Credit (LOC) with a bank that maintains a Weiss safety rating of B- or better).

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 23-884
September 22, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 10 (GEORGIA) REGIONAL PLANNING COMMITTEES TO HOLD 700 MHZ AND 800 MHZ MEETINGS

PR Docket No. 92-189 and WT Docket 02-378

The Region 10 (Georgia) 700 MHz and 800 MHz Regional Planning Committees (RPCs)[1] will hold two consecutive planning meetings on Thursday, December 21, 2023. Beginning at 10:00 a.m., the 700/800 MHz RPC will convene at the Georgia Public Safety Training Center (Training Bay A), located at 1000 Indian Springs Road, Forsyth, Georgia 31029.

The agenda for the 700 and 800 MHz meeting is as follows:

- Informal information sharing
- Welcome and Introduction of Officers
- Review and approval of minutes
- FCC Application process
- CAPRAD
- Old business
- New business
- Standing Committee Reports (including technical committee)
- Discuss/vote on any needed proposed changes to Region 10's 700 and 800 MHz Plan
- FCC Regulatory Update
- Nomination and election of new RPC officers
- Schedule 2024 RPC meeting
- Adjourn

Both Region 10 RPC meetings are open to the public. All eligible public safety providers in Region 10 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. It is critical that agencies currently licensed to operate on the public safety 700 MHz or 800 MHz bands, or who are considering designing and building a 700 MHz or 800 MHz system must attend this meeting.

All interested parties wishing to participate in planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 10 should plan to attend. For further information, please contact:

[1] The Region 10 700 MHz and 800 MHz Regional Planning Committees' area includes all 159 counties in the State of Georgia.

Howell McKinnon
Chairperson, 700/800 MHz RPCs
Radio Systems Coordinator, Athens-Clarke County
3035 Lexington Rd
Athens, GA 30605
Phone: 706-613-3710
Mobile: 706-340-0314
chairregion10rpc2021@gmail.com

Mike Ward
Vice Chairperson
E911 Radio System Administrator
Cobb County Government
141 N. Marietta Parkway
Marietta, GA 30060
Phone: 770-499-4115
Mobile: 404-402-2231
vicechairregion10rpc2021@gmail.com

- FCC -

PUBLIC NOTICE

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

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

DA 23-885
Released: September 21, 2023

FCC TASK FORCE TO PREVENT DIGITAL DISCRIMINATION TO HOST A LISTENING SESSION IN NEW YORK CITY

GN Docket No. 22-69

On September 29, 2023, the FCC's Task Force to Prevent Digital Discrimination will host a listening session to gain additional information and understanding from affected communities, state, local, and Tribal governments, public interest advocates, and providers about challenges, barriers and experiences in ensuring all people of the United States benefit from equal access to broadband. The purpose of the listening session is to continue the Commission's outreach in support of its ongoing efforts to promote equal access to broadband for everyone.

The listening session will take place, from 1 p.m. to 3:30 p.m. EDT, at the Medgar Evers College, Academic Complex Building AB1, Edison O. Jackson Auditorium, 1638 Bedford Ave, Brooklyn, NY 11225. The program agenda will include presentations from the Task Force, local leaders, and stakeholders, and will include an opportunity for members of the public to share their broadband access experiences in furtherance of the Commission's goals to create a framework for addressing digital discrimination. The listening session will be recorded and archived on the FCC's website.

Reasonable accommodations for people with disabilities are available upon request. Requests for accommodations should be submitted via e-mail to 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. Last minute requests will be accepted but may not be possible to accommodate.

On December 21, 2022, the Commission adopted a Notice of Proposed Rulemaking looking to implement provisions of the Bipartisan Infrastructure Act pertaining to the prevention and elimination of digital discrimination. The Act establishes various requirements for the prevention and elimination of digital discrimination and tasks the FCC to adopt rules to facilitate equal access to broadband internet access service. The Task Force has hosted a series of listening sessions to help inform the FCC as it develops these new rules.

Additional information about the listening sessions and the Task Force's work can be found at: https://www.fcc.gov/task-force-prevent-digital-discrimination. To contact or request a meeting with the Task Force to Prevent Digital Discrimination, email PreventDigitalDiscrimination@fcc.gov.

-FCC-

PUBLIC NOTICE

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

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

DA 23-886
Released: September 21, 2023

FCC TASK FORCE TO PREVENT DIGITAL DISCRIMINATION TO HOST A LISTENING SESSION IN TOPEKA, KS

GN Docket No. 22-69

On October 5, 2023, the FCC's Task Force to Prevent Digital Discrimination will host a listening session to gain additional information and understanding from affected communities, state, local, and Tribal governments, public interest advocates, and providers about challenges, barriers and experiences in ensuring all people of the United States benefit from equal access to broadband. The purpose of the listening session is to continue the Commission's outreach in support of its ongoing efforts to promote equal access to broadband for everyone.

The listening session will take place, from 11:30 a.m. to 1 p.m., at the Sunflower Foundation, 5820 SW 6th Avenue, Topeka, KS 66606 (https://sunflowerfoundation.org/about-sunflower-foundation/). The program agenda will include presentations from the Task Force, local leaders, and stakeholders, and will include an opportunity for members of the public to share their broadband access experiences in furtherance of the Commission's goals to create a framework for addressing digital discrimination. The listening session will be recorded and archived on the FCC's website.

Reasonable accommodations for people with disabilities are available upon request. Requests for accommodations should be submitted via e-mail to 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. Last minute requests will be accepted but may not be possible to accommodate.

On December 21, 2022, the Commission adopted a Notice of Proposed Rulemaking looking to implement provisions of the Bipartisan Infrastructure Act pertaining to the prevention and elimination of digital discrimination. The Act establishes various requirements for the prevention and elimination of digital discrimination and tasks the FCC to adopt rules to facilitate equal access to broadband internet access service. The Task Force has hosted a series of listening sessions to help inform the FCC as it develops these new rules.

Additional information about the listening sessions and the Task Force's work can be found at: https://www.fcc.gov/task-force-prevent-digital-discrimination. To contact or request a meeting with the Task Force to Prevent Digital Discrimination, email PreventDigitalDiscrimination@fcc.gov.

-FCC-

PUBLIC NOTICE

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

News media information 202-418-0500
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TTY (202) 418-2555

DA No. 23-887

Report No. FCN-00126 **Friday September 22, 2023**

Foreign Carrier Affiliation Notification

Pursuant to the Commission's rules, the U.S. international carriers and submarine cable landing licensees listed below filed with the Commission a notification of the affiliation they have or propose to have with foreign carriers. These notifications are filed pursuant to Sections 63.11 and 1.768 of the Commission's rules, 47 CFR §§ 63.11 and 1.768.

FCN-NEW-20230331-00001 E Fusion Connect, Inc.

Notification

Pursuant to section 63.11 of the Commission's rules, Fusion Connect, Inc. (Fusion), which holds an international section 214 authorization (ITC-214-19971001-00592), has notified the Commission that it became affiliated with the following foreign carriers when it was acquired by NH Credit Partners III Holdings L.P. on March 1, 2023 (see ITC-T/C-20220317-00038): (1) Fusion Cloud Services (UK) Limited (United Kingdom); (2) Fusion Cloud Services (Ireland) Limited (Belgium, Czech Republic, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Poland, Spain, Sweden, and Switzerland); (3) ibus Network & Infrastructure Pvt. Ltd. (India); (4) Altán Redes (Mexico); and (5) FastFiber - Infraestruturas de Comunicações, S.A. (Fast Fiber) (Portugal). According to Fusion, all of these carriers except Fast Fiber do not have a 50% or greater market share in their respective countries, and thus it qualifies to be classified as non-dominant under section 63.10(a)(3) of the Commission's rules for these affiliations. 47 CFR § 63.10(a)(3). Regarding Fast Fiber, Fusion states it terminates de minimis traffic on the U.S.-Portugal route and does so entirely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services, and thus it qualifies to be classified as non-dominant under section 63.10(a)(4) of the Commission's rules for that affiliation. 47 CFR § 63.10(a)(4).

For further information concerning this matter, please contact David Krech, Telecommunications and Analysis Division, International Bureau, (202) 418-1480.

Unless otherwised specified, interested parties may file comments with respect to these notifications within 14 days of the date of this public notice (see Section 1.4(b)(4)). The notifying carrier may respond within 10 days after any such pleadings are filed, and the parties that filed such pleadings may reply within 5 days. See Section 63.52(c), 1.45(c)-(j). It is requested that such comments refer to the notification file number shown above. A copy of the notification is available for public inspection in the Reference Information Center, Court Yard Level, 445 12th Street, S.W., Washington, D.C. 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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

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

In the Matter of	)	
	)	
DISH Operating L.L.C.	)	File No.: EB SED-22-00034635
	)	CD Acct. No.: 202032100004
	)	FRN: 0010500338

ORDER

Adopted: October 2, 2023 **Released: October 2, 2023**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree with DISH Operating L.L.C. (DISH) to resolve the Bureau's investigation into whether DISH failed to move its direct broadcast satellite (DBS) service EchoStar-7 satellite to the proper disposal orbit at the satellite's end-of-life as required by DISH's license terms and conditions. Specifically, DISH disposed of the EchoStar-7 satellite at 122 kilometers (km) above its operational geostationary orbit, short of the 300 km above its operational geostationary orbit specified in its orbital debris mitigation plan in DISH's license. Orbital debris in space jeopardizes the nation's terrestrial and space-based communication systems by increasing the risk of damage to satellite communications systems. Therefore, it is important for the Commission to ensure that satellite licensees meet post-mission disposal requirements in a manner compliant with their authorizations. To settle this matter, DISH admits that it failed to operate the EchoStar-7 satellite in accordance with its authorization, will implement a compliance plan, and will pay a $150,000 civil penalty.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding DISH's compliance with sections 301 of the Communications Act of 1934, as amended (Act)[1], and section 25.102 of the Commission's rules.[2]

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of DISH's basic qualifications to hold or obtain any Commission license or authorization.[3]

4. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act, 47 U.S.C. § 154(i), and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

[1] 47 U.S.C. § 301.

[2] 47 CFR § 25.102.

[3] *See* 47 CFR § 1.93(b).

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Alison Minea, Vice President and Associate General Counsel, DISH Operating L.L.C., 1110 Vermont Ave NW, Suite 450, Washington, DC 20005, United States.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
DISH Operating L.L.C.	)	File No.: EB-SED-22-00034635
	)	CD Acct. No.: 202332100010
	)	FRN: 0010500338

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and DISH Operating L.L.C., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether the Company violated section 301 of the Act and section 25.102 of the Commission's rules in connection with the failure to minimize the creation of space debris in connection with relocating DISH's direct broadcast satellite ("DBS") service EchoStar-7 satellite at the satellite's end-of-life to a disposal orbit above 300 kilometers (km), contrary to the orbital debris mitigation plan set forth in an amendment to a modification application that was granted by the Commission. To resolve this matter, the Company agrees to the terms and conditions of this Consent Decree, including an admission of liability, implementation of a compliance plan, and a Civil Penalty of $150,000.

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.[1]

(b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.

(c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.

(d) "CD Acct. No." means account number 202332100010, associated with payment obligations described in paragraph 22 of this Consent Decree.

(e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.

(f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which DISH is subject by virtue of its business activities, including but not limited to the Satellite Rules.

(g) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 18.

(h) "Covered Employees" means those employees and agents of the Company who perform, or directly supervise, directly oversee, or directly manage the performance of, duties that relate to the Company's responsibilities under the Satellite Rules.

(i) "DISH" or "Company" means DISH Operating L.L.C., along with its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

(j) "Effective Date" means the date by which both the Bureau and the Company have signed the Consent Decree and the Bureau has released an Adopting Order.

(k) "Investigation" means the investigation commenced by the Bureau in File No.

[1] 47 U.S.C. § 151 *et seq.*

EB-SED-22-00034635 regarding whether the Company violated the Satellite Rules.

(l) "Operating Procedures" means the standard internal operating procedures and compliance policies established by the Company to implement the Compliance Plan.

(m) "Parties" means the Company 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) "Satellite Rules" means the Act, the Rules (including but not limited to section 25.102),[2] and Commission orders related to satellite and radio frequency device operations to which DISH is subject by virtue of its commercial satellite operations.

II. BACKGROUND

3. Section 301 of the Act and section 25.102(a) of the Rules, prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a space or earth station except under and in accordance with a Commission-granted authorization.[3] This important rule prevents interference in satellite operations and allows the Commission to coordinate and evaluate those operations, including minimizing the creation of space debris and ensuring responsible end-of-life satellite disposal.

4. On January 15, 2002, the International Bureau (IB), Satellite Division,[4] granted the Company authority to construct, deploy, and operate one DBS satellite known as EchoStar-7 at 119° W.L. that would be used to provide satellite TV to DISH subscribers.[5] EchoStar-7 was launched on February 21, 2002, and commenced operations at the 119° W.L. orbital location on April 22, 2002.[6]

5. On March 29, 2010, the Company filed for a modification to its authorization, requesting authority to permanently operate the EchoStar-7 satellite at 118.8° W.L.[7] In the modification, the Company stated that the prior authorization parameters were unaffected by the requested modification other than a slight change in orbital location.[8]

6. The Company amended the pending modification on June 10, 2010, to include an orbital debris mitigation plan.[9] The amendment narrative indicated that, upon mission completion, DISH would maneuver the EchoStar-7 satellite to a disposal orbit at least 300 km above its operational geostationary orbit and that, based on data from the satellite manufacturer, it would reserve 11 kilograms (kg) of fuel for this maneuver.[10]

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[2] 47 CFR § 25.102.

[3] 47 U.S.C. § 301; 47 CFR § 25.102.

[4] On April 11, 2023, the Commission reorganized 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. *Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket No. 23-12, Order, FCC 23-1 (rel. Jan. 9, 2023).

[5] IBFS File Nos. SAT-MOD-20010810-00071 and SAT-A/O-20010810-00073.

[6] *Id.*

[7] *Id*.

[8] *Id.*

[9] *See* IBFS File No. SAT-AMD-20100610-00127.

[10] IBFS File No. SAT-AMD-2010610-00127, Narrative at 4. When submitting the amendment, DISH stated that the amendment was not necessary because "an orbital debris mitigation plan is not required for this application" due to no change to the overall orbital debris risk environment, but agreed to submit a plan "at the request of the Bureau."

(continued….)

7. While the modification was pending, the Company filed for a 10-year license extension on January 24, 2012, to extend the license term from April 22, 2012, to April 22, 2022. The Company incorporated its pending modification by reference.[11] The license extension application stated that the predicted end-of-life for the EchoStar-7 satellite, based on the remaining fuel and projected operational parameters, was May 2022.[12] On October 18, 2012, IB granted the application "in accordance with the terms, conditions, and technical specifications set forth in the Company's application and the FCC's rules . . . ."[13] The grant was subject to several conditions, including that the Company "operate the EchoStar-7 satellite in accordance with the terms of its current authorization, IBFS File Nos. SAT-MOD-20100329-00058 and SAT-AMD-20100610-00127."[14]

8. In mid-February 2022, the Company asked its satellite manufacturer for assistance in investigating thruster operations on the EchoStar-7 satellite after satellite maneuvers conducted by the Company did not produce the expected change in satellite trajectory. As part of that investigation, and based on data provided by the satellite manufacturer, on February 28, 2022, the Company determined that the EchoStar-7 satellite was unexpectedly running low on propellant and would need to be deorbited shortly. On the same day, Company personnel called International Bureau staff to alert the Commission about the possibility that the satellite might no longer be capable of executing its end-of-life disposal plan as authorized.

9. On April 7, 2022, the Company met with International Bureau, Satellite Division staff to provide an update. Thereafter, on May 6, 2022, the Company notified the Commission that the EchoStar-7 satellite had completed end-of-life deorbit maneuvers and surrendered its license for the EchoStar-7 satellite.[15] The notice indicated that the satellite had been placed in a disposal orbit approximately 122 km above the geostationary arc, short of the disposal orbit of 300 km specified in its orbital debris mitigation plan.[16]

10. The International Bureau referred the matter to the Enforcement Bureau and on December 27, 2022, the Enforcement Bureau issued a Letter of Inquiry (LOI) to the Company directing it to submit a sworn written response to a series of questions relating to the EchoStar-7 satellite end-of-life deorbit maneuvers.[17] The Company timely responded to the LOI.[18]

11. In its response to the LOI, the Company concedes that, in late February 2022, it determined that not enough propellant was available to maneuver EchoStar-7 to a disposal orbit of at least 300 km above its operational geostationary orbit as specified by its orbital debris mitigation plan as it was approved by the Commission, and that the Company placed the satellite at a disposal orbit approximately

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Id. at 2. The minimum perigee requirement of the end-of-life disposal provision, 47 CFR § 25.283(a), is not applicable because EchoStar-7 was launched prior to March 18, 2002. *See* 47 CFR § 25.283(d).

[11] IBFS File No. SAT-MOD-20120124-00011 (granted Oct. 18, 2012); *see also* IBFS File No. SAT-AMD-20100610-00127.

[12] IBFS File No. SAT-MOD-20120124-00011, Narrative at 2.

[13] IBFS File No. SAT-MOD-20120124-00011 (granted Oct. 18, 2012). *See also DISH Operating L.L.C.*, Memorandum Opinion and Order, 27 FCC Rcd. 13123, 13127, para. 11 (2012).

[14] *Id.* IBFS File No. SAT-AMD-20100610-00127 amended the Company's modification application to include the orbital debris plan.

[15] IBFS File No. SAT-MOD-20100329-00058, Surrender of Authorization Letter (filed May 6, 2022).

[16] *Id*.

[17] *See* Letter of Inquiry from Spectrum Enforcement Division, FCC Enforcement Bureau, to DISH Operating, L.L.C. (Dec. 27, 2022) (on file in EB-SED-22-00034635).

[18] *See* Letter of Inquiry Response from DISH Operating, L.L.C., to Spectrum Enforcement Division, FCC Enforcement Bureau (Feb. 16, 2022) (LOI Response) (on file in EB-SED-22-00034635).

122 km above the geostationary arc.[19] The Company and the Bureau subsequently engaged in settlement negotiations. To resolve this matter, the Company and the Bureau enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

12. **Adopting Order**. The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

13. **Jurisdiction**. The Company 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.

14. **Effective Date; Violations**. The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. 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.

15. **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 consideration for the termination of the Investigation, the Company agrees to the terms, conditions, and procedures contained herein. The Bureau further 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 any new proceeding on its own motion against the Company concerning the matters that were the subject of the Investigation, or to set for hearing the question of the Company's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.[20]

16. **Admission of Liability**. The Company admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 15 herein, that its actions described in paragraphs 4-9 violated section 301 of the Act and section 25.102 of the Rules, which requires operations in accordance with an authorization granted by the Commission.[21]

17. **Compliance Officer**. Within thirty (30) calendar days after the Effective Date, the Company shall designate a senior corporate manager or above with requisite corporate, budget, and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that the Company complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Satellite Rules prior to assuming his/her duties.

18. **Compliance Plan**. For purposes of settling the matters set forth herein, the Company agrees that it shall, within sixty (60) calendar days after the Effective Date, develop or update, keep in its files, and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Satellite Rules, the Company will implement, at a minimum, the following:

(a) **Operating Procedures**. Within forty-five (45) calendar days after the Effective Date, the Company shall establish Operating Procedures that the Company must follow for current and future United States satellites owned and operated during the term of the consent decree to help ensure the Company's compliance with the Satellite Rules. The Company shall also develop a Compliance Checklist that describes the steps that the Company must follow to ensure compliance with the Satellite Rules. With respect to

[19] LOI Response at 7.

[20] *See* 47 CFR § 1.93(b).

[21] 47 U.S.C. § 301; 47 CFR § 25.102.

the Satellite Rules Operating Procedures, the Company will implement the following procedures:

i. **Develop and Improve Upon Propellant Tracking.** The Company will utilize all manufacturer recommended methods to assess satellite propellant usage, including: (1) utilizing bookkeeping, Pressure-Volume-Temperature (PVT), and any other available manufacturer recommended method of propellant gauging (such as Propellant Gauging System (PGS), Propellant Depletion Gauge Operations (PDGO), or bookkeeping/PVT combined statistical analysis), and (2) any other methods that enhance the accuracy of accounting for the amount of satellite propellant remaining. The Company will audit the application of the manufacturer-recommended methods on an annual basis to identify application steps that can be improved upon. The Company will analyze unexpected discrepancies in the data between any and all of the methodologies used, and will request that its satellite manufacturers review these results annually with the Company. In addition, the Company will arrange for a third-party propellant gauging expert to complete a full PGS analysis to determine the amount of remaining fuel on DISH owned Lockheed Martin manufactured A2100-model operational satellites in the Company's fleet, including previously deployed and new A2100-model satellite launches of DISH. The expert will prepare three periodic reports, due by April 30, 2024 (based on 2022 data), June 30, 2024 (based on 2023 data), and June 30, 2025 (based on 2024 data), respectively.

ii. **Develop and Improve Upon End-of-Mission Disposal Plans.** The Company will document for each operational satellite an End-of-Mission Disposal Plan (EOMDP) that includes, at a minimum, information on the geostationary orbital position, the intended disposal orbit, the amount of propellant necessary for disposal, the necessary systems and capabilities for disposal and their reliability, criteria for initiating disposal, energy sources that must be depleted before end-of-life, the schedule for initiating and executing the disposal action and depleting energy sources, and a list of entities to be informed of the end-of-mission and disposal. In addition, the Company will update the EOMDP plans based on any changed circumstances, but not less than annually, as well as work with the satellite manufacturer to establish worst-case values to calculate satellite propellant usage and consider those values for EOMDP calculations.

iii. **Satellite Disposal Planning.** The Company will create clear criteria for initiating the satellite disposal process, incorporate them into the EOMDP, and monitor those criteria at least every quarter throughout the license term.

(b) **Compliance Manual**. Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall review, update as needed, and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Satellite Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure the Company's compliance with the Satellite Rules and to implement the Operating Procedures. The Company shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. The Company shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

(c) **Compliance Training Program**. The Company shall establish and implement a Compliance Training Program to ensure Covered Employees comply with the Satellite Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of the Company's obligation to report any

noncompliance with the Satellite Rules under the next paragraph of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within thirty (30) calendar days after the Compliance Manual is distributed, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. The Company shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

19. **Reporting Noncompliance**. The Company shall report to the Commission any noncompliance with the Satellite Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that the Company has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted electronically to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission at EB-SED-Response@fcc.gov.

20. **Compliance Reports.** The Compliance Officer on behalf of the Company shall file a certification with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

(a) Each Compliance Report shall include a detailed description of the Company's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Satellite Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of the Company, stating that the Compliance Officer has personal knowledge that the Company: (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, including the reporting obligations set forth in paragraph 18 of this Consent Decree.

(b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.[22]

(c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Company, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that the Company has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

(d) All Compliance Reports shall be submitted electronically to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, via EB-SED-Response@fcc.gov.

21. **Termination Date**. Unless stated otherwise, the requirements set forth in paragraphs 17

[22] 47 CFR § 1.16.

through 20 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

22. **Civil Penalty.** The Company will pay a Civil Penalty to the United States Treasury in the amount of one hundred fifty thousand dollars ($150,000) within thirty (30) calendar days of the Effective Date. The Company acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).[23] Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. The Company shall send electronic notification of payment to EB-SED-Response@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card using the Commission's Registration System (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 payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[24]

- 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[25] or printed CORES form[26] must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to 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).[27] 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 CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 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 with 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 CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to

[23] Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

[24] 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.

[25] FCC Form 159 is accessible at https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159.

[26] 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.

[27] Instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

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. **Event of Default**. The Company agrees that an Event of Default shall occur upon the failure by the Company to pay the full Civil Penalty on or before the due date specified in this Consent Decree.

24. **Interest, Charges for Collection, and Acceleration of Maturity Date**. After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by the Company.

25. **Waivers**. As of the Effective Date, the Company 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 Company 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 the Adopting Order, neither the Company nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Company shall waive any statutory right to a trial *de novo*. The Company hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[28] relating to the matters addressed in this Consent Decree.

26. **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.

27. **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.

28. **Subsequent Rule or Order**. The Parties agree that if any provision of the 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 Company does not expressly consent) that provision will be superseded by such Rule or order.

29. **Successors and Assigns**. The Company agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

30. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

31. **Modifications**. This Consent Decree cannot be modified without the advance written consent of both Parties.

32. **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.

33. **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

[28] *See* 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

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.

34. **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.

_____
Loyaan A. Egal
Chief
Enforcement Bureau

_____
Date

_____
Alison Minea
Vice President and Associate General Counsel, Regulatory Affairs
DISH Operating, L.L.C.

_____
Date

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. 23-889

Report No. SAT-01761 **Friday September 22, 2023**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

The Commission, by its Space 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-STA-20230523-00123 E Space Exploration Holdings, LLC
Special Temporary Authority
Grant of Authority Effective Date: 07/13/2023

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

SAT-STA-20230809-00195 E S2381 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/21/2023

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20230809-00199 E S2368 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/21/2023

On September 21, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC, for special temporary authority for an additional period of 180 days to continue to operate one of the Ku-band beams of the Intelsat 1R space station at the 157.1° E.L. orbital location in the fixed-satellite service over a new coverage area in the 11.45-11.7 GHz (space-to-Earth) and 14.0-14.25 GHz (Earth-to-space) frequency bands.

SAT-STA-20230829-00212 E S2381 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/21/2023

On September 21, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority for a period of 30 days to Intelsat License LLC in order for Galaxy 3C to: (1) 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), and 5925-6425 MHz and 13.75-14.5 GHz (Earth-to-space) frequency bands; and (2) operate with new Ku-band coverage.

SAT-STA-20230830-00213 E S2386 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 09/21/2023

On September 21, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC, for special temporary authority for a period of 30 days to conduct telemetry, tracking and command operations necessary to drift Galaxy 13 from the 127.0° W.L. orbital location to the 150.0° W.L. orbital location.

SAT-STA-20230907-00219 E S2381 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 09/21/2023

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20230912-00222 E BlackSky Global LLC

Special Temporary Authority

Grant of Authority Effective Date: 09/21/2023

On September 21, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of BlackSky Global LLC for special temporary authority for an additional period of up to 30 days to operate with the Global 8 satellite while the satellite is at lower altitudes than specified in the license. Specifically, the Division granted special temporary authority to BlackSky to operate in the earth exploration-satellite service and to conduct telemetry, tracking, and command with the Global 8 satellite at altitudes between 340 km and 385 km.

INFORMATIVE

SAT-APL-20210104-00002 S2976 Telesat LEO Inc.

The Satellite Programs and Policy Division clarifies that the above-captioned proceeding is a "permit-but-disclose" declaratory ruling proceeding under the Commission's ex parte rules. See 47 CFR § 1.1206(a)(3).

SAT-APL-20220616-00059 S2976 Telesat LEO Inc.

The Satellite Programs and Policy Division clarifies that the above-captioned proceeding is a "permit-but-disclose" declaratory ruling proceeding under the Commission's ex parte rules. See 47 CFR § 1.1206(a)(3).

SAT-MPL-20200526-00053 S2976 Telesat LEO Inc.

The Satellite Programs and Policy Division clarifies that the above-captioned proceeding is a "permit-but-disclose" declaratory ruling proceeding under the Commission's ex parte rules. See 47 CFR § 1.1206(a)(3).

For more information concerning this Notice, contact the Satellite Licensing Division and Satellite Programs and Policy Division at (202) 418-0719.

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

In the Matter of	)	
	)	
KVUE Television, Inc.	)	Facility ID No. 35867
	)	NAL/Acct. No. 202341420038
Licensee of Station KVUE(TV),	)	FRN: 0001545581
Austin, Texas	)	LMS File No. 0000188281

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 22, 2023 **Released: September 22, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)[1] of KVUE Television, Inc. (Licensee), for renewal of its license for full power television station KVUE(TV), Austin, Texas (Station). In this *Notice of Apparent Liability for Forfeiture* (*NAL*), we find the Licensee apparently willfully and repeatedly violated the Commission's rules (Rules) by failing to timely file the Station's TV quarterly issues/programs lists (IP Lists) in violation of section 73.3526(e)(11)(i) of the Rules.[2] Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of six thousand dollars ($6,000).

II. BACKGROUND

2. Section 73.3526(e)(11)(i) of the Rules requires every commercial television licensee to place in its Online Public Inspection File (OPIF), on a quarterly basis, an IP List that details programs that have provided the station's most significant treatment of community issues during the preceding three month period and must include a brief narrative of the issues addressed, as well as the time, date, duration, and title of each program in which the issues were treated.[3] IP Lists must be placed in the station's OPIF by the tenth day of the succeeding calendar quarter and copies must be retained until final action on the station's next license renewal application.[4]

3. On March 31, 2022, the Licensee filed its Application. A staff inspection of the Station's OPIF revealed that the Licensee failed to upload copies of its IP Lists for a total of 12 quarters by the deadline established in section 73.3526(e)(11)(i) of the Rules.[5] Specifically, it uploaded two lists more than one year late, six lists between one month and one year late, and four lists between one day and one month late. In the Application, the Licensee states that its failure to timely file its IP Lists was

[1] LMS File No. 0000188281 (filed Mar. 31, 2023).

[2] 47 CFR § 73.3526(e)(11)(i).

[3] *Id.*

[4] *Id*.

[5] *Id.* The Bureau staff inspection was consistent with the Licensee's disclosures in its Application.

inadvertent and due to "[t]he responsible person" being "new to the position and [] unfamiliar with the requirements at the time they were due."[6]

III. DISCUSSION

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), 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.[7] 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.[8] 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,[9] and the Commission has so interpreted the term in the section 503(b) context.[10] 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."[11]

5. *Apparent Violation.* We find that the Licensee is apparently liable for a forfeiture in the amount of $6,000. The Licensee failed to upload in a timely manner to the Station's OPIF copies of the Station's IP Lists for 12 quarters. These late filings constitute an apparent willful and repeated violation of section 73.3526(e)(11)(i) of the Rules.[12]

6. *Proposed Forfeiture Amount*. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $10,000 for public file violations.[13] 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."[14]

7. In this case, the Licensee failed to timely upload to its OPIF copies of its IP Lists for 12 quarters in violation of section 73.3526(e)(11)(i) of the Rules.[15] These late filings included two lists that were filed over one year late, six lists that were filed between one month and one year late, and four lists that were filed between one day and one month late. While the Licensee indicates that its repeated failure to timely upload its issue/programs lists was in advertent and the result of an error of a new employee due to their lack of familiarity with the requirement,[16] we note that "employee acts or omissions, such as

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[6] LMS File No. 0000188281, attach. KVUE Renewal Application - PIF Exhibit.pdf, 1.

[7] *See* 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

[8] 47 U.S.C. § 312(f)(1).

[9] *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

[10] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

[11] 47 U.S.C. § 312(f)(2).

[12] *See* 47 CFR § 73.3526(e)(11)(i).

[13] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

[14] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

[15] *See* 47 CFR § 73.3526(e)(11)(i).

[16] *See supra* para. 3.

clerical errors in failing to file required forms, do not excuse violations."[17] Further, it is well established precedent that inadvertence is, "at best, ignorance of the law, which the Commission does not consider a mitigating circumstance."[18] Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we find that under the facts of this case, including the number of late filings and the extent by which they were late, a forfeiture in the amount of $6,000 is appropriate for the Licensee's apparent failure to timely upload its IP Lists.

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[19] 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 application.[20] 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 as are appropriate, including renewal for a term less than the maximum otherwise permitted."[21]

9. We find that the Licensee's apparent violation of section 73.3526(e)(11)(i) of the Rules does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.[22] Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.[23]

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 1.80 and 0.283(d) of the Commission's rules, 47 CFR §§ 1.80 and 0.283, that KVUE Television, Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand dollars ($6,000) for its apparent willful and repeated violation of section 73.3526(e)(11)(i) of the Commission's rules, 47 CFR §

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[17] *Southern California*, 6 FCC Rcd at 4387, para. 3 (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Comm'cns Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358, para. 4 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

[18] *Southern California*, 6 FCC Rcd at 4387, para. 3.

[19] 47 U.S.C. § 309(k).

[20] 47 U.S.C. § 309(k)(1).

[21] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[22] For example, we do not find here that the Licensee's Station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, paras. 10-11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

[23] Our action today addresses known apparent violations from the date the prior license renewal application was granted through the adoption date of this item. Any violations that are discovered or may occur following the adoption date of this item and prior to the grant of the current Application would be separate violations and potentially subject to additional Commission action.

73.3526(e)(11)(i).

11. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) days of the release date of this *NAL*, KVUE Television, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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),[24] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, Licensee must send notice that payment has been made by e-mail to VideoRenewals@fcc.gov.** Below are instructions that payors should follow based on the form of payment selected:[25]

- 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 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).[26] 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.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant

[24] Payments made using CORES do not require the submission of an FCC Form 159.

[25] 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.

[26] Instructions for completing the form may be obtained at https://www.fcc.gov/Forms/Form159/159.pdf.

to sections 1.16 and 1.80(g)(3) of the Rules.[27] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. **A copy must also be sent by e-mail to VideoRenewals@fcc.gov to assist in processing the response.**

- 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.[28]

14. 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 47 U.S.C. § 503(b)(2)(E) support that result.[29]

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[30] 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.

16. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to KVUE Television, Inc., Denise Branson, TEGNA, Inc., 8350 Broad Street, Suite 2000, Tysons, Virginia 22102, and by e-mail to dbranson@TEGNA.com. A copy will also be sent to the Station's counsel, Michael Beder, Associate General Counsel, TEGNA Inc., by e-mail to mbeder@TEGNA.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[27] 47 CFR §§ 1.16 and 1.80(g)(3).

[28] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

[29] *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

[30] *See* 47 CFR § 1.1914.

PUBLIC NOTICE

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DA 23-891

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WIRELESS TELECOMMUNICATIONS BUREAU AND OFFICE OF ECONOMICS AND ANALYTICS SEEK COMMENT ON AT&T PETITION FOR RULEMAKING AND MOBILE SPECTRUM HOLDINGS POLICIES

WT Docket No. 23-319
RM-11966

Comments Due: October 23, 2023
Reply Comments: November 8, 2023

The Commission's statutory mandate regarding mobile spectrum holdings policies is to "include safeguards to protect the public interest"[1] and to "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible . . . by avoiding excessive concentration of licenses."[2] The Commission's "fundamental goal" guiding its mobile spectrum holdings policies has been to preserve and promote competition, which "enables consumers to make choices among numerous service providers and leads to lower prices, improved quality, and increased innovation."[3] The Commission's spectrum aggregation policies reflect the need to ensure "that sufficient spectrum is available for multiple existing mobile service providers as well as potential entrants."[4]

AT&T filed a petition for rulemaking asking that the Commission establish a mid-band spectrum screen.[5] As a broader development relating to competition policy, AT&T points to the July 2021 issuance by President Biden of an Executive Order that encouraged the Commission to consider actions to promote competition, including specifically to avoid excessive concentration of spectrum license holdings in the United States.[6] In this Public Notice, the Wireless Telecommunications Bureau and the Office of Economics and Analytics first seek comment on AT&T's request that the Commission initiate a rulemaking proceeding. We then seek comment more broadly on whether we should recommend that the

[1] 47 U.S.C. § 309(j)(3).

[2] 47 U.S.C. § 309(j)(3)(B).

[3] *Policies Regarding Mobile Spectrum Holdings Expanding the Economic Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-269, Report and Order, 29 FCC Rcd 6133, 6143-44, para. 17 (2014) (*Mobile Spectrum Holdings Report and Order*).

[4] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6143-44, para. 17.

[5] AT&T Petition for a Rulemaking to Establish a Mid-Band Spectrum Screen (filed Sept. 1, 2021) (AT&T Mid-Band Screen Petition).

[6] Executive Order on Promoting Competition in the American Economy, White House Briefing Room, Presidential Actions, section 5(l)(ii) (July 9, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.

Commission, in the context of initiating a rulemaking, propose other changes to its mobile spectrum holdings rules and policies.

Background. When the Commission reviews proposed secondary market transactions, it uses an initial spectrum screen to help identify, for case-by-case review, local markets where changes in spectrum holdings that would result from the transaction may be of particular concern.[7] In 2004, the Commission for the first time articulated its framework for case-by-case review of spectrum aggregation and market concentration.[8] In that 2004 order, the Commission established a spectrum screen "trigger" of approximately one-third of the total suitable and available spectrum for commercial mobile radio services,[9] which was later expanded to mobile telephony/broadband services.[10] Since that time, the Commission has continued to evaluate which bands of spectrum are "suitable and available" for use and should be included in the spectrum screen,[11] and it has continued to apply case-by-case review and the approximate one-third spectrum screen trigger in reviewing secondary market transactions.

In addition, the Commission in 2014 determined that it would treat as an "enhanced factor" in its case-by-case review any proposed increase in below-1-GHz spectrum holdings resulting in the acquiring entity holding approximately one-third or more of the suitable and available spectrum below 1 GHz.[12]

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[7] *See, e.g.*, *Applications of T-Mobile US, Inc., and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10607-08, paras. 70-72 (2019) (*T-Mobile-Sprint Order*); *SprintCom, Inc., Shenandoah Personal Communications, LLC, and NTELOS Holdings Corp. for Consent to Assign Licenses and Spectrum Lease Authorizations and to Transfer Control of Spectrum Lease Authorizations and an International Section 214 Authorization*, WT Docket No. 15-262, Memorandum Opinion and Order, 31 FCC Rcd 3631, 3638-39, para. 17 (WTB/IB 2016) (*Sprint-Shentel-NTELOS Order*); *Applications of Cricket License Company, LLC, et al., Leap Wireless International, Inc., and AT&T Inc. for Consent to Transfer Control of Authorizations*, *Application of Cricket License Company, LLC and Leap Licenseco Inc. for Consent to Assignment of Authorization*, WT Docket No. 13-193, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2753, para. 41 (WTB/IB 2014) (*AT&T-Leap Order*); *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169, 6221-22, paras. 71, 225.

[8] *Applications of AT&T Wireless Inc. and Cingular Wireless Corporation For Consent To Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21525, para. 4 (2004) (*Cingular-AT&T Wireless Order*). In addition, the screen also identifies markets where changes in market concentration resulting from the transaction, as measured by the Herfindahl-Hirschman Index (HHI), may be of particular concern. *See*, *e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614-15, para. 87; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568, para. 106.

[9] *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69, paras. 106-12.

[10] *See, e.g.*, *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17469-70, paras. 45-46 (2008); *Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, WT Docket No. 08-246, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13931-32, 13935-36, paras. 34, 37, 43-44 (2009).

[11] *See, e.g.*, *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, 2381-84, paras. 83-89 (2020) (*3.7 GHz Report and Order*), *aff'd PSSI Global Services v. FCC*, No. 20-1142 (D.C. Cir. Dec. 8, 2020) (per curiam); *Incentive Auction Closing and Channel Reassignment*, AU Docket No. 14-252, Public Notice, 32 FCC Rcd 2786 (WTB 2017); *Sprint-Shentel-NTELOS*, 31 FCC Rcd at 3637-38, paras. 15-16; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6172, paras. 82-134; *Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, Nextwave Wireless, Inc., and San Diego Gas & Electric Company for Consent to Assign and Transfer Licenses*, WT Docket No. 12-240, Memorandum Opinion and Order, 27 FCC Rcd 16459, 16470-71, para. 31 (2012).

[12] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240, paras. 267, 286-88. Since 2014, the Commission has analyzed numerous transactions in which the enhanced factor review standard was applied. *See,*

Further, where the acquiring entity already holds approximately one-third or more of the below-1-GHz spectrum in a particular market, the demonstration of the public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms, irrespective of other factors.[13] In 2016, the Commission adopted a separate millimeter wave (mmW) spectrum threshold that would apply to its case-by-case review of proposed secondary market transactions implicating mmW spectrum bands.[14]

In 2008, the Commission determined that its case-by-case review would also apply to the initial licensing of spectrum acquired at auction, similar to the Commission's analysis of secondary market transactions.[15] Further, in the 2014 *Mobile Spectrum Holdings Report and Order*, the Commission determined that it would apply band-specific spectrum limits if it found that they were necessary.[16] Since that order, the Commission has adopted pre-auction limits for certain spectrum bands (e.g., 3.5 GHz and 3.45 GHz bands)[17] and post-auction, case-by-case review for other spectrum bands (e.g., the 24 GHz, 28 GHz, 37 GHz, 39 GHz, 47 GHz,[18] and 3.7-3.98 GHz bands).[19]

AT&T's Petition for Rulemaking. AT&T argues that mid-band spectrum is essential for 5G deployment, and as such, the Commission must "ensure that every provider has a fair and efficient

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e.g., Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent to Assign Licenses, WT Docket No. 14-145, Memorandum Opinion and Order, 30 FCC Rcd 13055 (2015) (*AT&T-Club 42 Order*); *Application Applications of AT&T Inc., E.N.M.R Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership for Consent To Assign Licenses and Authorizations*, WT Docket No. 14-144, Memorandum Opinion and Order, 30 FCC Rcd 5107 (2015); *Application of The Alaska Wireless Network, LLC, and T-Mobile License LLC for Consent to Assign License*, WT Docket No. 15-265, Memorandum Opinion and Order, 31 FCC Rcd 4447 (WTB 2016) (*AWN-T-Mobile Order*).

[13] *Mobile Spectrum Holdings Report and Order*, 29 FCC at 6240, para. 287; *see, e.g.*, *AWN-T-Mobile Order*; *AT&T-Club 42 Order*; *Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations*, WT Docket No. 11-18, Order, 36 FCC Rcd 17589 (2011).

[14] *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, GN Docket No. 14-177, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8081, 8083-84, paras. 184, 189 (2016) (*2016 Spectrum Frontiers Order*). The Commission's mmW spectrum threshold was updated in 2017 to include the 24 GHz and 47 GHz bands. *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, GN Docket No. 14-177, Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, 32 FCC Rcd 10988, 11011, para. 74 (2017) (*2017 Spectrum Frontiers Order*).

[15] *Applications of Union Telephone Company and Cellco Partnership d/b/a Verizon Wireless Applications for 700 MHz Band Licenses, Auction No. 73*, Order, 23 FCC Rcd 16787, 16791-92, 16796, paras. 9, 18 (2008).

[16] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6135, 6192-93, paras. 4, 139-45.

[17] For more information on these classifications, see the relevant Commission items. *See, e.g.*, *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, 6022-24, paras. 101-04 (2021); *Promoting Investment in the 3550-3700 MHz Band*, GN Docket No. 17-258, Report and Order, 33 FCC Rcd 10598, 10653-54, para. 107 (2018); *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, 3998-99, paras. 117-21 (2015).

[18] *See, e.g.*, *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, *et al.*, GN Docket No. 14-177, Third Report and Order, Memorandum Opinion and Order, and Third Further Notice of Proposed Rulemaking, 33 FCC Rcd 5576, 5587-91, paras. 29-34 (2018) (eliminating the pre-auction, bright-line limit of 1250 megahertz for the 28 GHz, 37 GHz, and 39 GHz bands that had been adopted previously in the *2016 Spectrum Fronters Order*, 31 FCC Rcd at 8018-19, 8081-83, paras. 4, 184-87); *2017 Spectrum Frontiers Order*, 32 FCC Rcd at 10990, 11010-11, paras. 4, 73-74.

[19] *See, e.g.*, *3.7 GHz Report and Order*, 35 FCC Rcd at 2381-84, paras. 83-89.

opportunity to acquire the mid-band spectrum it needs."[20] AT&T asserts that foreclosure strategies are more likely to be successful in today's competitive environment[21] and asks that the Commission adopt a spectrum screen specific to mid-band spectrum in its review of proposed secondary market transactions.[22] Specifically, AT&T requests that the Commission apply "enhanced review" and should apply even greater scrutiny to acquisitions of unpaired mid-band spectrum by an entity that already holds more than one-third of that spectrum in a particular area.[23] AT&T also asks that the Commission enforce any mid-band spectrum screen with "flexible but completely effective divestiture remedies."[24] In particular, AT&T requests that the Commission undertake a case-by-case review of the long-form license applications filed for the spectrum and not adopt *ex ante* limits at the initial licensing stage.[25] AT&T also asks that any divestitures that the Commission would require as part of its case-by-case review should promote competition in a 5G environment.[26]

We seek comment generally on AT&T's petition for a rulemaking, including its request that the Commission initiate a proceeding to adopt a spectrum screen specific to mid-band spectrum. We seek comment on AT&T's assertion that a mid-band specific screen in the secondary market context is needed to prevent anticompetitive foreclosure strategies. In particular, we seek comment on AT&T's request that the Commission apply "enhanced factor review," as it currently does for below-1-GHz spectrum, to any acquisition of unpaired mid-band spectrum (which AT&T would define as spectrum between 2.5 GHz to 6 GHz)[27] that would cause a service provider to hold more than one third of the total amount of mid-band spectrum available. We seek comment on AT&T's proposed definition of mid-band spectrum, including AT&T's suggestion that the lower end of mid-band spectrum should be 2.5 GHz and not 1 GHz.

We also seek comment on AT&T's request that the Commission undertake case-by-case review of long-form license applications rather than adopt *ex ante* limits. We also request comment on AT&T's assertion that the Commission play a greater role in structuring spectrum divestitures to require divestitures of contiguous spectrum. Specifically, we seek comment on AT&T's "fix it first" approach as set forth in its petition, which proposes that the Commission would condition its approval of an acquisition on its approval of a divestiture transaction to address any competitive risks posed by the acquisition.[28] Should the Commission consider alternative proposals for structuring spectrum divestitures?

Mobile Spectrum Holdings Rules and Policies. In addition, we seek comment generally on whether and how we should recommend to the Commission that it propose additional amendments to its mobile spectrum holdings rules and policies, in light of evolutions in technology and market dynamics. We seek comment on amendments to the Commission's rules or policies that might promote competition in the wireless marketplace to ensure that there is sufficient spectrum available for multiple existing mobile service providers as well as potential entrants. We invite comment on how the Commission's policies and rules might preserve and promote competition, while also affording interested parties greater certainty, transparency, and predictability to make investment and transactional decisions. We seek comment on whether the Commission should modify its market definitions or other factors examined in

[20] AT&T Mid-Band Screen Petition at 1.

[21] AT&T Mid-Band Screen Petition at 17-21.

[22] AT&T Mid-Band Screen Petition at 1, 15.

[23] AT&T Mid-Band Screen Petition at 15.

[24] AT&T Mid-Band Screen Petition at 6.

[25] AT&T Mid-Band Screen Petition at 6, 23.

[26] AT&T Mid-Band Screen Petition at 6.

[27] AT&T Mid-Band Screen Petition at 2.

[28] AT&T Mid-Band Screen Petition at 27.

its competitive analysis for secondary market transactions. We seek comment on whether and how we should recommend to the Commission to take technological advances or other developing frameworks into account.

We seek comment on whether and how we should recommend that the Commission make changes to the spectrum screen that applies to the review of proposed transactions. For example, should we recommend to the Commission that it update the spectrum bands that are included in that spectrum screen, or adjust the approximate one-third trigger for the spectrum screen that the Commission currently applies? Are there other factors that the Commission should consider in establishing the spectrum screen trigger? Should we recommend to the Commission that it make changes to the standards that it applies to review proposed transactions involving specific band ranges, such as "enhanced factor review" for certain below-1-GHz spectrum aggregations or the separate mmW threshold for mmW spectrum bands? How should the Commission address spectrum aggregation as new bands become available? In the *Mobile Spectrum Holdings Report and Order*, the Commission stated that spectrum weighting had the potential to enhance our competitive analysis of proposed spectrum acquisitions. We seek comment on whether the Commission should consider spectrum weighting and, if so, what specific weighted factors should be considered.[29] Additionally, should we recommend to the Commission that it consider other factors, such as contiguity of spectrum holdings, in its evaluation of proposed secondary market transactions?

We also seek comment on whether and how we should recommend to the Commission that it make changes to the mobile spectrum holdings policies that apply at the initial licensing stage. For example, should there be more uniformity in applying *ex ante* bright-line limits (either band-specific or in the aggregate across multiple bands) or *ex post* case-by-case review to spectrum?

Further, we seek comment on whether and how we should recommend to the Commission that it reevaluate its attribution rules for determining ownership of mobile spectrum holdings.[30] We also request comment on whether and how we could recommend to the Commission that it evaluate the effectiveness of the various remedies it uses (such as spectrum divestitures) to facilitate the Commission's goals of diverse spectrum ownership and ensuring a competitive marketplace. We seek comment on whether and how we should recommend to the Commission that it evaluate how its mobile spectrum holding policies and rules can promote competition in rural areas presently and in the future,[31] as well as in urban areas, and how these policies and rules can help to bring affordable, reliable, high-speed broadband to everyone in the country. Finally, we seek comment on policies that we could recommend to the Commission to address digital equity concerns through its spectrum holding policies.

For this proceeding, we herein open a docket and assign a rulemaking number, as is typically assigned to petitions for rulemaking.

Filing Requirements. Pursuant to sections 1.403 and 1.405 of the Commission's rules,[32] interested parties may file comments and reply comments on or before the dates indicated above and must

[29] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6236, para. 274.

[30] 47 CFR § 20.22(b).

[31] In November 2021, the Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States adopted a report that included a recommendation that the Commission address policies to facilitate access to spectrum in rural areas. Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States Adopted Report (Nov. 10, 2021), https://www.fcc.gov/sites/default/files/precision-ag-report-11102021.pdf. The Precision Agriculture Connectivity Task Force arose out of the Farm Bill of 2018 and continues until January 2025. Agriculture Improvement Act of 2018, Pub. L. 115-334, 132 Stat 4490, Section 12511 (Dec. 20, 2018).

[32] 47 CFR §§ 1.403, 1.405.

reference WT Docket No. 23-319. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[33]

- *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.
    - 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.[34]

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 or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

Ex Parte Rules. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[35] 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 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.

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[33] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998); 63 FR 24121 (1998).

[34] *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.

[35] *See* 47 CFR § 1.1200 *et seq*.

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 further information regarding this Public Notice, please contact Monica DeLong, Attorney Advisor, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, at Monica.DeLong@fcc.gov or Judith Dempsey, Associate Chief, Economic Analysis Division, Office of Economics and Analytics, at Judith.Dempsey@fcc.gov.

– FCC –

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WIRELESS TELECOMMUNICATIONS BUREAU AND OFFICE OF ENGINEERING AND TECHNOLOGY APPROVE SPECTRUM ACCESS SYSTEM ADMINISTRATOR RED TECHNOLOGIES FOR FULL SCALE COMMERCIAL DEPLOYMENT IN THE 3.5 GHZ BAND, TO SUPPORT SPECTRUM MANAGER LEASING, AND TO USE KEY BRIDGE WIRELESS LLC'S ENVIRONMENTAL SENSING CAPABILITY

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 RED Technologies (RED) as a Spectrum Access System (SAS) Administrator in the 3.55-3.7 GHz band (3.5 GHz band). WTB/OET, in consultation with the Department of Defense (DoD) and the National Telecommunications and Information Administration (NTIA), have reviewed RED's Initial Commercial Deployment (ICD) report, and each has attested that RED has met the requirements in Part 96 of the Commission's rules and is authorized to make its SAS available for commercial use for a five-year term.[1] WTB/OET also approve RED to support spectrum manager leasing for Priority Access Licenses (PALs),[2] and approve RED to use Key Bridge Wireless LLC's (Key Bridge) Environmental Sensing Capability (ESC) to protect federal incumbent operations in the 3.55-3.65 GHz portion of the 3.5 GHz band.[3]

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 SAS administrators in the 3.5 GHz band.[4] The *2015 Report and Order* required all prospective SAS administrators to complete a two-stage review process prior to final certification.[5] In the first stage, a prospective SAS administrator must submit

[1] *See* 47 CFR 96.63(e).

[2] *See* 47 CFR §§ 1.9046, 96.32, and 96.66; *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550- 3650 MHz Band*, GN Docket No. 15-319, Order on Reconsideration and Second Report and Order, 31 FCC Rcd 5011, 5014 (2016 WTB/OET) (*Second Report and Order*).

[3] *See* 47 CFR §§ 0.241(j), 0.331(f) (delegating authority to WTB/OET to oversee the SAS approval process and facilitate the testing and development of multiple SAS operators).

[4] *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).

[5] *See Wireless Telecommunications Bureau and Office of Engineering and Technology Establish Procedure and Deadline for Filing Spectrum Access System (SAS) Administrators(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) (*First Wave Proposal Public Notice*).

a proposal describing how its system will comply with all Commission rules governing the construction, operation, and approval of SASs and will perform all core functions described in the *2015 Report and Order*.[6] The second stage involves SAS testing both in a controlled lab environment and in a real-world setting.[7] On May 7, 2021, WTB/OET conditionally approved RED as a SAS administrator, thus concluding the first stage of the review process.[8]

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, to complete the laboratory testing requirement.[9] 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.[10]

4. In order to comply with the field-testing requirement, RED filed an ICD proposal with the Commission, which described its proposed short-term, limited geographic commercial deployment.[11] On January 12, 2023, WTB/OET found that RED had satisfied the Commission's SAS laboratory testing requirements, and they approved RED to begin ICD as described in their ICD proposals.[12] In accordance with the *RED ICD Approval PN*, RED notified the Commission of commencement of its ICD.[13] After the

[6] *See 2015 Report and Order*, 30 FCC Rcd at 4054-55, para. 320 (listing SAS core functions); *see also First Wave Proposal Public Notice*, 30 FCC Rcd 14170; *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 (WTB/OET 2016) (*First Wave SAS Conditional Approval Public Notice*).

[7] *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 Initial Commercial Deployment (ICD) proposals. *See 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 (WTB/OET 2018) (*ICD Proposals Public Notice*). The ICD requirement 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.

[8] *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) (*Second Wave SAS Conditional Approval Public Notice*) (conditionally approving the following three SAS Administrators: Fairspectrum LLC, Nokia, and RED Technologies).

[9] 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.

[10] RED requested confidential treatment for its submission. *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 Sep. 25, 2022) (RED SAS Test Report); *see also ICD Proposals Public Notice*, 33 FCC Rcd at 7390, para. 1. Conditionally approved SAS administrators were permitted to file their laboratory testing reports in GN Docket No. 15-319. *ICD Proposals Public Notice*, 33 FCC Rcd at 7392, para. 5.

[11] *ICD Proposals Public Notice*, 33 FCC Rcd at 7390, para. 1. ICD proposals and any supplements were filed in GN Docket No. 15-319 consistent with the Commission's instructions. *ICD Proposals Public Notice*, 33 FCC Rcd at 7394-95, para. 11. *See* RED Technologies SAS Proposal for Spectrum Access System Initial Commercial Deployment, GN Docket No. 15-319 (filed Nov. 6, 2022) (RED ICD Proposal).

[12] *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, Public Notice, 2023 WL 183635 (WTB/OET 2023) (*RED ICD Approval PN*).

[13] Letter from Pierre-Jean Muller, Chief Executive Officer, RED Technologies SAS, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 15-319 (filed Mar. 2, 2023) (notifying Commission of ICD commencement date of April 12, 2023).

requisite 30-day ICD period and consistent with the *ICD Proposals Public Notice*, RED filed its ICD report with the Commission in GN Docket 15-319 and requested confidential treatment.[14] WTB/OET, in coordination with NTIA and DoD, reviewed the ICD report in detail.

III. DISCUSSION

A. Full Scale Commercial Deployment

5. Based on our review of the information contained in RED's ICD Report, in addition to all relevant additional information filed by RED in this proceeding,[15] we certify that RED's SAS complies with the Commission's rules, and we approve RED for commercial operation subject to ongoing compliance with the Commission's rules, including the compliance obligations set forth below. Specifically, RED may operate as a SAS administrator on a commercial basis subject to the following compliance obligations, which are consistent with those described in the *SAS Conditional Approval Public Notice*, our rules, and the conditions required of other SAS administrators approved for full scale commercial deployment:[16]

- RED must comply with all current and future Commission rules and policies, as well as all instructions issued by WTB, OET, or the Enforcement Bureau (EB), including any processes for interference reporting, consistent with sections 0.241(j) and 0.331(f) of the Commission's rules and procedures[17] applicable to SASs on an ongoing basis.[18] RED must also comply with requests for additional information from the Commission, WTB, OET, or EB.
- As commercial deployments expand, RED must demonstrate continued compliance with all current and future Commission rules and policies, which may include working with commercial and non-commercial users to demonstrate compliance with protection criteria. For example, RED may be required to further demonstrate proper interoperation with its associated ESC to demonstrate effective protection of federal incumbents from actual commercial deployments.
- RED must protect current and future federal incumbent operations in and near the 3.5 GHz band, as set forth in the Commission's rules.[19] RED must be attentive to changes in protection criteria, such as those NTIA identified in January 2020 for Category B base

[14] *See* RED Technologies SAS Initial Commercial Deployment Report Submission, GN Docket No. 15-319 (filed Jun. 1, 2023) (RED ICD Report).

[15] *See, e.g.*, RED Technologies Spectrum Access System ESC Testing Report, GN Docket No. 15-319 (filed Jul. 3, 2023); RED Technologies SAS Notification of Initial Commercial Deployment, GN Docket No. 15-319 (filed Mar. 2, 2023).

[16] *See First Wave SAS Conditional Approval Public Notice*, 31 FCC Rcd at 13356-58, para. 7; *Wireless Telecommunications Bureau and Office of Engineering and Technology Approve Four Spectrum Access 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, 118-20, para. 5 (WTB/OET 2020); *Wireless Telecommunications Bureau and Office of Engineering and Technology Approve Spectrum Amdocs for Full Scale Commercial Deployment in the 3.5 GHz Band*, GN Docket No. 15-319, Public Notice, 35 FCC Rcd 3687, 3689, para. 5 (WTB/OET 2020); *Wireless Telecommunications Bureau and Office of Engineering and Technology Approve 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 (WTB/OET 2021).

[17] *See* 47 CFR §§ 0.241(j), 0.1331(f) (delegating authority to WTB/OET to oversee the SAS approval process and facilitate the testing and development of multiple SAS operators).

[18] *See, e.g.*, 47 CFR §§ 96.53-96.65.

[19] *See* 47 CFR § 96.15.

stations, and to modifications to the list of sites identified by NTIA.[20] RED must be able to receive and address reports of interference from federal Incumbent Access tier users. In addition, RED must work with the Commission, NTIA, and DoD to address interference issues expeditiously and to implement any new reporting processes as they are developed.[21]

- RED is certified to operate in the contiguous United States, Alaska, Hawaii, Puerto Rico, and Guam. If RED intends to operate in additional U.S. Territories and Possessions, it must submit a filing in GN Docket No. 15-319 detailing the additional territories that it plans to cover. These supplemental filings must include all information necessary for WTB/OET to make a determination regarding RED's ability to provide service to each territory, including terrain maps and associated ESC sensor coverage information (where applicable).
- If RED plans to make substantive changes to its system, for example, to comply with new releases of industry standards, RED must supplement or amend its filings in GN Docket No. 15-319 to reflect these changes. Before WTB/OET approves the use of new or modified SAS features, RED must demonstrate that the modified SAS will continue to comply with the Commission's rules, and it may be required to submit its systems for additional testing. Upon request, RED must provide external testing interfaces to enable WTB/OET, in collaboration with NTIA and DoD, to verify that the proposed modifications comply with the relevant rules as specified by the Commission.

6. The above conditions will ensure that RED will continue to comply with the Commission's rules. RED's certification may be revoked at any time if RED fails to comply with the Commission's rules and guidance on an ongoing basis.

B. Spectrum Manager Leasing

7. RED has also chosen to support PAL leasing and has submitted additional information in GN Docket No. 15-319 to demonstrate the functionality of its leasing system so that it may offer PAL leasing services.[22] The Commission has established minimum standards that SAS administrators must meet if they choose to accept and support spectrum manager leasing arrangements.[23] These minimum requirements establish that for a SAS administrator to support leasing arrangements, it must: (a) accept and store the information required in a licensee's notification; (b) verify whether the lessee has made the required certification with the Commission; (c) verify that the lease will not result in the lessee holding more than the 40 megahertz of Priority Access spectrum in a given License Area, and that lessee operation will not extend beyond the licensee's Service Area or within its PAL Protection Area; (d) inform the licensee as to whether the notification has been received and verified; and (e) provide the

[20] *See* Letter from Charles Cooper, Assoc. Admin., Office of Spectrum Mgt., NTIA, to Ronald T. Repasi, Chief (Acting) OET, and Donald Stockdale, Jr., Chief, WTB, FCC (Jan. 22, 2020), *available at* https://www.ntia.doc.gov/fcc-filing/2015/ntia-letter-fcc-commercial-operations-3550-3650-mhz-band; https://www.fcc.gov/ecfs/filing/101220466714222. *See also* September 21, 2023 NTIA Letter; *See also* Letter from Charles Cooper, Associate Administrator, Office of Spectrum Management, NTIA to Ronald T. Repasi, Acting Chief, OET, FCC and Joel Taubenblatt, Acting Chief, WTB, FCC (August 14, 2023) (August 2023 NTIA Letter), *available at*: https://www.fcc.gov/ecfs/document/10814108365840/1; *Promoting Investment in the 3550-3700 MHz Band*, GN Docket Nos. 17-258 and 15-319, Order, DA 23-734 (WTB/OET 2023); and *Wireless Telecommunications Bureau and Office of Engineering and Technology Announce Deployment of a New Federal Portal System and Revision to the List of Protected Facilities in the 3.5 GHz Band*, GN Docket Nos. 17-258 and 15-319, Public Notice, DA 23-733 (WTB/OET 2023).

[21] *See, e.g.*, 47 CFR §§ 96.53, 96.55.

[22] *See* 47 CFR § 96.66; *see also* RED ICD Report at 139-147.

[23] *See* 47 CFR §§ 1.9046, 96.32, and 96.66. Other types of leases, including *de facto* transfer leases, are governed by the standard processes described in part 1 of the Commission's rules. *See* 47 CFR §§ 1.9001, *et seq* and 96.32.

Commission with electronic reports of the leasing notifications it received on a daily basis.[24]

8. RED has provided all required information regarding its ability to interact with Commission systems to acquire and submit all required lease information.[25] RED has also agreed to support PAL spectrum manager lease agreements in compliance with sections 96.32 and 96.66 of the Commission's rules, certified that it will satisfy the requirements outlined in the *Second Report and Order*, and demonstrated the ability to successfully interact with the requisite Commission systems.[26] Accordingly, RED is approved to support spectrum manager leasing of Priority Access Licenses subject to the conditions set forth below and ongoing compliance with the Commission's rules and instructions.[27]

9. This approval is conditioned on ongoing compliance with technical limitations governing use of the ULS API.[28] Specifically, leasing information may only be entered into the API Monday through Friday between the hours of 9:00 am and 5:00 pm eastern.[29] Although SAS administrators may enter information into the API only during the identified hours and days, this does not affect their ability to accept leases at other times. We also remind SAS administrators that they are permitted to execute leases only between Priority Access Licensees and qualified lessees.[30]

C. Environmental Sensing Capability

10. As set forth in the conditions to full commercial deployment above, a SAS administrator may be required to demonstrate its ability to operate with an associated ESC prior to using that ESC to authorize commercial deployments in the band.[31] RED does not operate its own approved ESC.[32] On July 3, 2023, RED filed its ESC Interoperability Testing Report showing successful interoperation between RED's SAS and Key Bridge's ESC.[33] After reviewing this submission, we find that RED has demonstrated that its SAS can properly interoperate with Key Bridge's ESC and that it will comply with all relevant provisions of the Commission's Part 96 rules. As such, we approve RED's request, subject to ongoing compliance with the Commission's rules and policies, to use Key Bridge as its associated ESC

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[24] The Commission implemented a "light-touch" leasing notification framework to replace the immediate processing procedures of spectrum manager leases under section 1.9020(e)(2) of our existing rules. Priority Access Licensees and lessees may also enter into spectrum manager leases using the general 21-day notification procedure in section 1.9020(e)(1) of our current rules. *See* 47 C.F.R. §§ 1.9020 and 1.9046; *Second Report and Order*, 31 FCC Rcd at 5071, para. 213 & n.485. Regardless of whether the Priority Access Licensee and lessee enter into a spectrum manager lease via the light-touch notification process or the 21-day notification process, the Priority Access Licensee must notify a SAS administrator before the lessee is permitted to operate. *See* 47 C.F.R. § 1.9046(c); *Second Report and Order*, 31 FCC Rcd at 5074, para. 220. SAS administrators are required to comply with all applicable Commission rules regardless of the notification made.

[25] *See* 47 CFR § 96.66(a)(2). The Commission developed a dedicated application programming interface (API) within the Universal Licensing System (ULS) to support notifications from the SASs regarding spectrum manger lease notifications submitted under the immediate processing rules. *See* 47 C.F.R. §§ 1.9020(e) and 1.9046.

[26] *See* RED Technologies SAS Supplemental Filing Regarding Priority Access Leasing Functionality of its Citizens Broadband Radio Service Spectrum Access System, GN Docket No. 15-319 (filed Sep. 5, 2023).

[27] *See SAS Certification Public Notice*, 35 FCC Rcd at 118-120, para. 5.

[28] *See* note 25.

[29] Each SAS administrator is permitted to submit a maximum of five leases per minute during this window.

[30] *See* 47 CFR § 1.9046(b). A list of Priority Access Licensees and other qualified lessees can be found at: https://www.fcc.gov/35-ghz-band-overview ("Secondary Markets for Priority Access Licenses" tab).

[31] *See* para. 5, *supra*.

[32] *See* RED ICD Report at 77.

[33] *See* RED Technologies Spectrum Access System ESC Testing Report, GN Docket No. 15-319 (filed Jul. 3, 2023).

provider to protect federal incumbent operations consistent with the Commission's rules and its SAS authorization.

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

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PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU AND OFFICE OF ENGINEERING AND TECHNOLOGY ANNOUNCE TEMPORARY PORTAL-BASED PROTECTIONS FOR FEDERAL OPERATIONS IN AND AROUND HAWAII

GN Docket Nos. 17-258 and 15-319

With this Public Notice, the Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET) of the Federal Communications Commission (Commission or FCC) announce a temporary arrangement with the National Telecommunications and Information Administration (NTIA), Department of Defense (DoD), and the Department of the Navy (Navy) that will allow Citizens Broadband Radio Service users—including Priority Access Licensees—to begin operating in the 3550-3650 MHz band in Hawaii before Environmental Sensing Capability (ESC) sensors are locally deployed.[1] This arrangement will be valid until June 30, 2024.[2] After that time, federal operations near Hawaii will be protected by certified ESCs.

As described in NTIA's September 21, 2023 Letter, under this arrangement, Navy will temporarily utilize the TARDyS3 portal to schedule and protect its operations in and around Hawaii.[3] Specifically, to ensure a stable and predictable spectral environment, Navy has agreed to utilize three 10-megahertz channels in the 3550-3650 MHz band,[4] making the remaining seven 10-megahertz channels available for Citizens Broadband Radio Service Users. The three channels will be registered with TARDyS3 and will be considered "in use" while the temporary portal-based solution is in place. The

[1] *See* Letter from Charles Cooper, Associate Administrator, Office of Spectrum Management, NTIA to Ronald T. Repasi, Chief, OET, FCC and Joel Taubenblatt, Chief, WTB, FCC (September 21, 2023) (September 21, 2023 NTIA Letter), *available at*: https://www.fcc.gov/ecfs/document/1092117317824/1. *See also* Letter from Seth L. Williams Counsel Hawaiian Electric Company, to Ronald Repasi (Acting) Chief OET, and Joel Taubenblatt (Acting) Chief WTB (Aug. 29, 2022) (HEC Letter), https://www.fcc.gov/ecfs/search/search-filings/filing/108292012911004. Hawaiian Electric Company (HEC) encouraged FCC, NTIA, and DoD to consider using a portal-based scheduling solution to protect federal operations near Hawaii until an ESC could be deployed.

[2] *See* September 21, 2023 NTIA Letter.

[3] *See* September 21, 2023 NTIA Letter; *See also* Letter from Charles Cooper, Associate Administrator, Office of Spectrum Management, NTIA to Ronald T. Repasi, Acting Chief, OET, FCC and Joel Taubenblatt, Acting Chief, WTB, FCC (August 14, 2023) (August 2023 NTIA Letter), *available at*: https://www.fcc.gov/ecfs/document/10814108365840/1; *Promoting Investment in the 3550-3700 MHz Band*, GN Docket Nos. 17-258 and 15-319, Order, DA 23-734 (WTB/OET 2023); and *Wireless Telecommunications Bureau and Office of Engineering and Technology Announce Deployment of a New Federal Portal System and Revision to the List of Protected Facilities in the 3.5 GHz Band*, GN Docket Nos. 17-258 and 15-319, Public Notice, DA 23-733 (WTB/OET 2023) (WTB/OET TARDyS3 PN).

[4] The specific frequency ranges of the channels are 3550-3560 MHz (channel 1), 3630-3640 MHz (channel 9), and 3640-3650 MHz (channel 10). *See* September 21, 2023 NTIA Letter at 2, note 6.

Navy will retain priority rights to utilize the remainder of the 3550-3650 MHz band on an "as needed" basis (e.g., major exercises) consistent with part 96 of the Commission's rules and the Navy's spectrum use will be coordinated via the TARDyS3 coordination portal.[5]

We direct all certified Spectrum Access System administrators to begin using the TARDyS3 portal to coordinate Citizens Broadband Radio Service operations in the 3550-3650 MHz band—consistent with the terms described in this Public Notice and the September 21, 2023 NTIA Letter—in and around Hawaii until June 30, 2024.

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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Additional Information. For further information regarding this Public Notice, please contact Paul Powell, Associate Division Chief, Wireless Telecommunications Bureau, Mobility Division at paul.powell@fcc.gov or 202-418-1613.

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

[5] *See* September 21, 2023 NTIA Letter at 2. *See also* WTB/OET TARDyS3 PN.

PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON WHETHER PROPOSED 3.45-3.55 GHZ BAND REIMBURSEMENT CLEARINGHOUSE SATISFIES SELECTION CRITERIA

WT Docket No. 19-348

Comments Due: October 10, 2023
Reply Comments Due: October 20, 2023

With this Public Notice, the Wireless Telecommunications Bureau (Bureau) seeks comment on whether Summit Ridge Group, LLC, the Reimbursement Clearinghouse (Clearinghouse) selected by a committee of stakeholders in the 3.45-3.55 GHz band (3.45 GHz Band), satisfies the criteria established by the Commission in the 3.*45 GHz Second Report and Order*[1] and the Bureau in the *3.45 GHz Clearinghouse Selection Process Order*.[2]

On March 8, 2021, in the *3.45 GHz Second Report and Order*, the Commission adopted rules to make 100 megahertz of mid-band spectrum available for flexible use throughout the contiguous United States and, determined that secondary, non-federal radiolocation licensees in the band would be relocated to the 2.9-3.0 GHz band in order to facilitate this goal.[3] The Commission further determined that secondary, non-federal radiolocation authorizations would sunset 180 days after new 3.45 GHz Service licenses were granted in the band.[4] Because these licenses were granted on May 4, 2022,[4] the non-federal radiolocation authorizations sunset on October 31, 2022.[5]

In addition, the Commission required "new flexible-use licensees in the 3.45 GHz Service to reimburse secondary, non-federal radiolocation licensees for reasonable costs related to the relocation of those operations to the 2.9-3.0 GHz band, including the costs of a relocation clearinghouse's

[1] *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 (2021) (*3.45 GHz Band Second R&O*).

[2] *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Order, DA 22-1188 (WTB 2022) (*3.45 GHz Clearinghouse Selection Process Order*).

[3] *See 3.45 GHz Band Second R&O*; *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, 11086, para. 20 (2020) *(3.45 GHz Band R&O and FNPRM*).

[4] *Wireless Telecommunications Bureau Grants Auction 110 Licenses*, Public Notice, DA 22-462 (WTB May 4, 2022) (*3.45 GHz Band Grant PN*).

[5] The Bureau granted conditional STAs to Nexstar and NBCUniversal to conduct reduced operations on a noninterference basis for a limited period of time beyond October 31, 2022. *See* ULS File Nos. 0010238879, 0010423178, 0010283405, 0010293981, 0010256744, 0010340943, 0010340871, and 0010341173.

administration of the reimbursement."[6] Specifically, each new 3.45 GHz Service licensee "will be responsible for reimbursement of a pro rata share of reasonable relocation costs of non-federal radiolocation operations."[7]

In the *3.45 GHz Clearinghouse Selection Process Order*, the Bureau, pursuant to delegated authority, established a search committee to select a Clearinghouse that would be responsible for handling all cost-related aspects of the transition.[8] The Bureau required the selection committee to select, no later than May 2, 2023, an entity that must be able to demonstrate its ability to perform the duties of the Clearinghouse, including: (1) engaging in strategic planning and adopting goals and metrics to evaluate its performance, (2) adopting internal controls for its operations, (3) using enterprise risk management practices, and (4) using best practices to protect against improper payments and to prevent fraud, waste, and abuse in its handling of funds.[9] The Bureau also required that the selected entity create written procedures for its operations and that it use the Government Accountability Office's (GAO) Green Book to serve as a guide in satisfying such requirements.[10]

Further, the Bureau required the search committee to ensure that the Clearinghouse adopt robust privacy and data security best practices in its operations, given that it will receive and process information critical to ensuring a successful and expeditious transition.[11] In addition, the Bureau required the selected entity to hire a third-party firm to independently audit and verify, on an annual basis, the Clearinghouse's compliance with privacy and information security requirements. It also required the Clearinghouse to provide recommendations based on any audit findings, correct any negative audit findings and adopt any additional practices suggested by the auditor, and report the results to the Bureau.

The Bureau also required the search committee, in notifying the Bureau of its selection for the Clearinghouse, to: (a) fully disclose any actual or potential organizational or personal conflicts of interest or appearance of such conflict of interest of the Clearinghouse or its officers, directors, employees, and/or contractors; and (b) detail the salary and benefits associated with each position.[12]

On August 1, 2023, the search committee announced that they had selected Summit Ridge Group, LLC.[13] We seek comment on whether Summit Ridge Group, LLC satisfies the criteria established by the Commission in the *3.45 GHz Second Report and Order,* and the Bureau in the *3.45 GHz Clearinghouse*

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[6] *3.45 GHz Band Second R&O,* 36 FCC Rcd at 6042, para. 155. The Commission "anticipate[d] clearinghouse costs to be minimal, given the limited number of licensees being relocated and relatively small estimated cost of their transition. The radiolocation service incumbents will initially fund the clearinghouse and can request reimbursement from new flexible-use licensees for the clearinghouse costs." *Id.* at 6042, para. 155, n.386.

[7] *Id.* at 6044, para. 161. As the Commission explained, "the total relocation costs will be divided by the number of 3.45 GHz Service licenses and each licensee will be required to pay their share based on the number of licenses they hold." *Id.*; *see also* 47 CFR § 27.1604.

[8] *3.45 GHz Clearinghouse Selection Process Order*, DA 22-1188 at 4, para. 7. The search committee is composed of four entities that the Commission found, collectively, reasonably represent the interests of stakeholders the incumbents NBCUniversal and Nexstar and the new entrants represented by CCA and CTIA.

[9] *Id.* at 6, para. 18.

[10] *Id.* (citing GAO, The Green Book: Standards for Internal Control in the Federal Government, GAO-14-704G, (rel. Sep 10, 2014), available at http://www.gao.gov/greenbook/overview)).

[11] *Id.* at 7, para. 23 ("The Clearinghouse should therefore also comply with, on an ongoing basis, all applicable laws and Federal government guidance on privacy and information security requirements such as relevant provisions in the Federal Information Security Management Act (FISMA), National Institute of Standards and Technology (NIST) publications, and Office of Management and Budget guidance.") (internal citations omitted).

[12] *Id.* at 8, para. 25.

[13] Letter from Angela Y. Ball, et al., Members of 3.45 GHz Clearinghouse Search Committee, to Joel Taubenblatt, Chief, FCC, WT Docket No. 19-348 (filed August 1, 2023).

Selection Process Order.[14]

As directed by the Bureau in the *3.45 GHz Clearinghouse Selection Process Order*, following the comment period, the Bureau will issue an order announcing whether the selection criteria have been satisfied.[15] Should the Bureau be unable to find that the criteria have been satisfied, the *3.45 GHz Clearinghouse Selection Process Order* required that the selection process will start over and the search committee will submit a new proposed entity.[16]

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Filing Requirements. Parties may file comments, identified by **WT Docket No. 19-348**, by any of the following methods:

- 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 courier or by the U.S. Postal Service. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial deliveries (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 or call the Consumer & Government Affairs Bureau at 202-418-0530 (voice, 202-418-0432 (tty)).

Additional Information. For further information regarding this Public Notice, please contact Morgan Mendenhall, Wireless Telecommunications Bureau, at Morgan.Mendenhall@fcc.gov or 202-418-0154.

-FCC-

[14] 47 CFR §§ 27.1604, 27.1605; *3.45 GHz Second R&O*, 36 FCC Rcd at 59, para. 163; *3.45 GHz Clearinghouse Selection Process Order*, DA 22-1188 at 7-9, paras. 20-28 (establishing selection criteria and directing the Bureau to seek comment on whether the selected entity satisfies such criteria).

[15] *3.45 GHz Clearinghouse Selection Process Order,* DA 22-1188 at 8-9, para. 27.

[16] *Id.*

Federal Communications Commission
Washington, D.C. 20554

September 22, 2023

DA 23-896

Via Certified Mail, Return Receipt Requested

Advantage Spectrum, L.P.
10935 SE 177th Place, Suite 307
Summerfield, FL 34491
ATTN: William Vail

Re: Final Bid Withdrawal Payment for Auction 97

Dear Mr. Vail:

By this letter we notify you of the availability of a refund in connection with Advantage Spectrum, L.P.'s (Advantage Spectrum) bid withdrawal payment in the Federal Communications Commission's (Commission) auction of AWS-3 spectrum licenses in the 1695-1710 MHz, 1755-1780 MHz and 2155-2180 MHz bands (Auction 97) and provide instructions for requesting that refund.

In its short-form application to participate in Auction 97, Advantage Spectrum requested, and ultimately qualified for, a 25% bidding credit as a very small business.[1] It was the winning bidder for 124 licenses.[2] Advantage Spectrum withdrew provisionally winning bids on 25 licenses during Auction 97.[3] Each of the 25 licenses received subsequent bids in Auction 97. Therefore, in accordance with the Commission's rules, final bid withdrawal payments for Advantage Spectrum's withdrawn bids were determined at the close of Auction 97. For 18 of its 25 withdrawn bids, the licenses received subsequent winning bids in Auction 97 that were higher than the withdrawn bid, and therefore no bid withdrawal payment was assessed.[4] The aggregate amount of Advantage Spectrum final bid withdrawal payments for the seven withdrawn bids where the licenses received subsequent winning bids in Auction 97 that

[1] *See Auction of Advanced Wireless Services (AWS-3) Licenses; 70 Bidders Qualified to Participate in Auction 97*, Public Notice, 29 FCC Rcd 13465, Attach. A (WTB 2014) (listing Advantage Spectrum as a qualified bidder claiming a very small business bidding credit of 25%).

[2] *See Auction of Advanced Wireless Services (AWS-3) Licenses Closes; Winning Bidders Announced for Auction 97*, Public Notice, 30 FCC Rcd 630, 640-734, Attach. A (WTB 2015) (listing Advantage Spectrum, L.P. as the winning bidder on 124 licenses in Auction 97) (*Auction 97 Winning Bidders Public Notice*). Advantage Spectrum's long-form application for licenses won in Auction 97, including its request for bidding credits, was granted on July 5, 2016. *Wireless Telecommunications Bureau Grants AWS-3 Licenses in the 1695-1710 MHz, 1755-1780 MHz and 2155-2180 MHz Bands*, Public Notice, 31 FCC Rcd 7129, 7131-37, Attach. A (WTB 2016).

[3] *Auction 97 Winning Bidders Public Notice*, 30 FCC Rcd at 738-40, Attach. C.

[4] *See* 47 CFR § 1.2104(g)(1). For two of Advantage Spectrum's withdrawn bids, it was subsequently the winning bidder for those licenses and its bid withdrawal payment obligations were fully satisfied by a portion of its upfront payment. *97 Winning Bidders Public Notice*, 30 FCC Rcd at 735, Attach. B, 738-40, Attach. C.

were lower than the withdrawn bid was $2,256,750, and Advantage Spectrum fully satisfied this amount with a portion of its upfront payment.[5]

Under the Commission's rules, a bidder that withdraws a provisionally winning bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the bidder's withdrawn bid and the subsequent winning bid.[6] When a bidding credit applies to any of the relevant bids, the Commission uses either the difference between the net withdrawn bid and the net winning bid or the gross withdrawn bid and the gross winning bid, whichever is less.[7]

With respect to 11 of Advantage Spectrum's 25 bid withdrawals, SNR Wireless LicenseCo, LLC (SNR Wireless) was the winning bidder for six licenses from which Advantage Spectrum had withdrawn provisionally winning bids, and Northstar Wireless, LLC (Northstar Wireless) was the winning bidder for five licenses from which Advantage Spectrum had withdrawn provisionally winning bids.[8] Thus, the 11 winning bids of SNR Wireless and Northstar Wireless (each of whom also claimed a 25% bidding credit in its short-form application) were used to calculate Advantage Spectrum's bid withdrawal payment amounts at the close of Auction 97 for the 11 licenses.[9] Pursuant to the Commission's rules, Advantage Spectrum's bid withdrawal payment amount for each of these 11 licenses was originally calculated based on the difference between Advantage Spectrum's net withdrawn provisionally winning bid, which reflected its claimed 25% bidding credit, and the subsequent net winning bid of SNR Wireless or Northstar Wireless, which also reflected their claimed 25% bidding credits. Based on this calculation, the aggregate withdrawal payments for these 11 licenses amounted to $1,975,500.[10]

After the close of Auction 97, however, the Commission determined that neither SNR Wireless nor Northstar Wireless was eligible for its claimed 25% bidding credit[11] Thus their subsequent net winning bids for Auction 97 were adjusted upward to exclude the 25% bidding credits.[12] In accordance

[5] *Auction 97 Winning Bidders Public* Notice, 30 FCC Rcd at 735, Attach. B.

[6] 47 CFR § 1.2104(g)(1).

[7] 47 CFR § 1.2104(g)(1).

[8] *Auction 97 Winning Bidders Public Notice,* 30 FCC Rcd at 640-734, Attach. A (applying a 25% bidding credit to the net winning bids of SNR Wireless and Northstar Wireless). The six licenses subsequently won by SNR Wireless were AW-CMA110-G (Huntington-Ashland, WV-KY-OH), AW-CMA270-G (Bellingham, WA), AW-CMA339-G (California 4 – Madera), AW-BEA015-H (Richmond-Petersburg VA), AW-CMA099-G (York, PA), and AW-CMA168-G (Tallahassee, FL). The five licenses subsequently won by Northstar Wireless were AW-BEA079-H (Montgomery, AL), AW-BEA144-H (Billings, MT-WY), AW-CMA150-G (Visalia-Tulare-Porterville, CA), AW-CMA446-G (Kentucky 4 – Spencer), AW-CMA078-G (Lansing-East Lansing, MI).

[9] *See Auction 97 Winning Bidders Public Notice*, 30 FCC Rcd at 640-734, 738-40, Attachs. A, C.

[10] *See Auction 97 Winning Bidders Public Notice*, 30 FCC Rcd at 738-40, Attach. C.

[11] *Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Applications for New Licenses in the 1695-1710 MHz, 1755-1780 MHz and 2155-2180 MHz Bands*, Memorandum Opinion and Order, 30 FCC Rcd 8887 (2015), *remanded in part by SNR Wireless LicenseCo, LLC v. FCC*, 868 F.3d 1021 (D.C. Cir. 2017) *denial of bidding credits aff'd by Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Applications for New Licenses in the 1695-1710 MHz, and 1755-1780 MHz and 2155-2180 MHz Bands*, Memorandum Opinion and Order on Remand, 35 FCC Rcd 13317, 13365, paras. 158-59 (2020), *aff'd Northstar Wireless, LLC v. FCC*, 38 F.4th 190 (D.C. Cir. 2022), *cert. denied* Case No. 22-672 (June 30, 2023).

[12] *See Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Applications for New Licenses in the 1695-1710 MHz, 1755-1780 MHz and 2155-2180 MHz Bands*, Memorandum Opinion and Order, 30 FCC Rcd 8887 at 8949-51, paras. 152-155 (2015) (denying bidding credits and requiring each party to pay the full amount of its winning bids).

with section 1.2104(g)(1) of the Commission's rules,[13] we have recalculated Advantage Spectrum's bid withdrawal payment amount for these 11 licenses using the adjusted net winning bids of SNR Wireless and Northstar Wireless. As shown in Attachment A, we have determined that Advantage Spectrum's adjusted bid withdrawal payment obligation for these 11 licenses is $0.00 and, therefore, $1,975,500 of the bid withdrawal payment deducted from Advantage Spectrum's upfront payment for Auction 97 is now available for refund. Refund instructions can be found in Attachment B.

Ordering Clauses

Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 309 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i), 309, and section 1.2104(g)(1) of the Commission's rules, 47 CFR § 1.2104(g)(1), Advantage Spectrum, L.P. is ASSESSED an adjusted bid withdrawal payment as computed in Attachment A.

IT IS FURTHER ORDERED that, pursuant to sections 1.2104 and 1.2106 of the Commission's rules, 47 C.F.R. §§ 1.2104 and 1.2106, the bid withdrawal payment refund amount as computed in Attachment A is available for refund to Advantage Spectrum upon appropriate request in accordance with the instructions in Attachment B.

IT IS FURTHER ORDERED that this Order shall be sent to Advantage Spectrum, L.P. and its representatives by certified mail, return receipt requested. This action is taken pursuant to authority delegated by sections 0.21(m) and 0.271 of the Commission's rules, 47 CFR §§ 0.21(m), 0.271.

Sincerely,

Gary D. Michaels
Deputy Chief, Auctions Division
Office of Economics and Analytics

Attachments

cc: Thomas Gutierrez, Esq.

[13] 47 CFR § 1.2104(g)(1).

ATTACHMENT A

Adjusted Bid Withdrawal Payment Report

License	Withdrawn Gross Bid Auction 97	Withdrawn Net Bid Auction 97	Winning Bidder Auction 97	Original Net Winning Bid Auction 97	Adjusted Net Winning Bid Auction 97	Original Withdrawal Payment	Adjusted Withdrawal Payment
AW-BEA079-H	$3,828,000	$2,871,000	Northstar Wireless	$2,631,750	$3,509,000	$239,250	$0
AW-BEA144-H	$634,000	$475,500	Northstar Wireless	$951,000	$1,268,000	$0	$0
AW-CMA110-G	$1,039,000	$779,250	SNR Wireless	$649,500	$866,000	$129,750	$0
AW-CMA150-G	$2,280,000	$1,710,000	Northstar Wireless	$2,118,750	$2,825,000	$0	$0
AW-CMA270-G	$339,000	$254,250	SNR Wireless	$927,750	$1,237,000	$0	$0
AW-CMA339-G	$1,317,000	$987,750	SNR Wireless	$2,942,250	$3,923,000	$0	$0
AW-CMA446-G	$507,000	$380,250	Northstar Wireless	$378,750	$505,000	$1,500	$0
AW-BEA015-H	$10,066,000	$7,549,500	SNR Wireless	$6,291,000	$8,388,000	$1,258,500	$0

License	Withdrawn Gross Bid Auction 97	Withdrawn Net Bid Auction 97	Winning Bidder Auction 97	Original Net Winning Bid Auction 97	Adjusted Net Winning Bid Auction 97	Original Withdrawal Payment	Adjusted Withdrawal Payment
AW-CMA078-G	$3,148,000	$2,361,000	Northstar Wireless	$4,910,250	$6,547,000	$0	$0
AW-CMA099-G	$1,462,000	$1,096,500	SNR Wireless	$1,259,250	$1,679,000	$0	$0
AW-CMA168-G	$2,771,000	$2,078,250	SNR Wireless	$1,731,750	$2,309,000	$346,500	$0

Original Bid Withdrawal Payment	$1,975,500.00
Less Adjusted Bid Withdrawal Payment	$0.00
Bid Withdrawal Payment Refund	**$1,975,500.00**

ATTACHMENT B

Refund Instructions

Monies paid to the Commission in excess of Advantage Spectrum, L.P.'s adjusted bid withdrawal payment obligation may be refunded to the payer of record as identified on the FCC Form 159 submitted with the upfront payment for Auction 97, unless that payer submits written authorization providing the information listed in the paragraph below for an alternative payee.

To receive a refund, Advantage Spectrum, L.P. must submit a written refund request with the information listed below:

1. Name, address, contact and phone number of Bank
2. Automated Clearing House (ACH) ABA Number (Please verify this number with your Bank)
3. Account Number to Credit
4. Name of Account Holder
5. FCC Registration Number (FRN)

The refund request must be signed and submitted by fax to the Revenue & Receivables Operations Group/Auctions at (202) 418-2843, or by email to RROGWireFaxes@fcc.gov.

An applicant seeking a refund should verify that the taxpayer identification number (TIN) associated with its FCC Registration Number (FRN) is correct by visiting the FRN website at https://apps.fcc.gov/cores to update its records before submitting a refund request. A refund request related to an FRN with no TIN on file cannot be processed until a TIN is provided in CORES.

Refund processing generally takes up to two weeks to complete. Any questions concerning refunds should be directed to the Scott Radcliffe at (202) 418-7518, Scott.Radcliffe@fcc.gov, or Theresa Meeks at (202) 418-2945, Theresa.Meeks@fcc.gov. Auctions Accounting Branch staff may also be reached through the FCC Auctions Hotline at (717) 338-2868.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 23-897
Released: September 25, 2023

FCC TO EXTEND APPLICATION DEADLINE FOR FALL 2024 HONORS PROGRAM

Applications Must Be Submitted by October 24

WASHINGTON, September 25, 2023 – The Federal Communications Commission announced today that it will extend the deadline for accepting applications from graduating law students and current judicial clerks for its Fall 2024 Attorney Honors Program. In an effort to accommodate all qualified candidates directly or indirectly affected by the recent extreme weather events and other disasters, the Commission will keep the application window open until 11:59 p.m. EST on October 24, 2023. This extension should provide those affected sufficient time to submit their online application materials.

For additional information on the FCC Attorney Honors Program and the application process, please visit the Honors Program webpage at www.fcc.gov/attorneyhonorsprogram. You may also contact Shannon Hyatt, Office of General Counsel, at honors.program@fcc.gov.

-FCC-

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

In the Matter of	)	
	)	Facility ID Nos. 187539, 187540, 187541,
Leavenworth Non-Profit TV Association	)	187542, 187543
	)	NAL/Acct. No. 202341420039
Licensee of Stations K03IN-D, K05MU-D,	)	FRN: 0008540445
K09ZA-D, K07ZL-D, and K13IY-D Leavenworth	)	LMS File No. 0000208760
WA	)	

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 25, 2023 **Released: September 25, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application) of Leavenworth Non-Profit TV Association (Licensee), for renewal of its licenses for K03IN-D, K05MU-D, K09ZA-D, K07ZL-D, and K13IY-D Leavenworth WA (Stations).[1] In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*), we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)[2] by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of seven thousand five hundred dollars ($7,500).

II. BACKGROUND

2. 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."[3] The application for renewal of the Stations' licenses should have been filed by October 3, 2022, the first day of the fourth full calendar month prior to the Stations' license expiration date of February 1, 2023.[4] However, the Licensee did not file the Application until January 30, 2023. As part of their renewal application, the Licensee requested that the Commission accept the late-filed Application, but it did not provide an explanation or justification for the late filing.

[1] Application Leavenworth Non-Profit TV Association for Renewal of License, LMS File No. 0000208760 (filed Jan. 30, 2023). K03IN-D, K05MU-D, K09ZA-D, K07ZL-D, and K13IY-D Leavenworth WA and are each television translators. In this case, the Licensee filed for the joint renewal of the licenses of the Stations in a single renewal application, as is permitted.

[2] 47 CFR § 73.3539(a).

[3] *Id*.

[4] *See* 47 CFR §§ 73.1020, 73.3539(a); *Media Bureau Announces Procedures for 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (MB 2020). The filing deadline was Saturday, October 1, 2022, which as a weekend is considered a "holiday" making the filing due on the next business day – Monday, October 3, 2022. *See* 47 CFR § 1.4.

III. DISCUSSION

3. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), 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.[5] 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.[6] 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,[7] and the Commission has so interpreted the term in the section 503(b) context.[8] 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."[9]

4. *Apparent Violation.* We find that the Licensee is apparently liable for a forfeiture in the amount of $7,500. In this case, the Licensee failed to file the Application on or before October 3, 2022, as required by section 73.3539(a) of the Rules.[10] The Application was filed on January 30, 2023, over three months late.

5. *Proposed Forfeiture.* The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $3,000 per station for failure to file a required form or information.[11] 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."[12]

6. In this case, the Licensee failed to timely file a license renewal application for five (5) stations, as required by section 73.3539(a) of the Rules.[13] he Licensee did not provide an explanation for the late filing. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,[14] we will reduce the forfeiture from the base amount to $1,500 per station for the Licensee's failure to file a timely renewal application, because, as television translators, the

[5] *See* 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

[6] 47 U.S.C. § 312(f)(1).

[7] *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

[8] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

[9] 47 U.S.C. § 312(f)(2).

[10] 47 CFR § 73.3539(a).

[11] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

[12] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

[13] 47 CFR § 73.3539(a).

[14] *Supra* note 11.

Stations are providing a secondary service.[15] Furthermore, as translators, the Stations are not originating programing, but instead providing important "fill-in" service to areas that otherwise may be unable to receive over-the-air television signals. Because the Application included five (5) stations the total proposed forfeiture amount is $7,500.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[16] 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 application.[17] 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 as are appropriate, including renewal for a term less than the maximum otherwise permitted."[18]

8. We find that the Licensee's apparent violation of section 73.3539(a) of the Rules[19] does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.[20] Further, based on our review of the Application, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,[21] and sections 1.80 and 0.283(d) of the Commission's Rules,[22] that Leavenworth Non-Profit TV Association is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR**

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[15] *See, e.g.*, *Juan Carlos Matos*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8932 (MB 2021) (paid Jun. 11, 2021); *H&R Production Group*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8937 (MB 2021) (paid Jun. 9, 2021); *Nichols Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8978 (MB 2021) (paid Jun. 10, 2021) (each reducing proposed fine for a late-filed renewal application to $1,500 because the stations "provid[e] a secondary service."). *See also Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19333-34, paras. 2-6 (2004) ("The low power television service consists of LPTV, TV translator, and television booster stations . . . . Stations in the low power television service are authorized with 'secondary' frequency use status.").

[16] 47 U.S.C. § 309(k).

[17] 47 U.S.C. § 309(k)(1).

[18] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[19] 47 CFR § 73.3539(a).

[20] For example, we do not find here that the Licensee's operation of the Station "was conducted in an exceedingly careless, inept, and negligent manner, and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "[t]he number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, paras. 10-11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc*., Hearing Designation Order, 7 FCC Rcd 4037 (1992).

[21] 47 U.S.C. § 503(b).

[22] 47 CFR §§ 1.80 and 0.283.

FORFEITURE in the amount of seven thousand five hundred dollars ($7,500) for its apparent willful violation of section 73.3539(a) of the Commission's Rules.[23]

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules,[24] within thirty (30) days of the release date of this *NAL*, Leavenworth Non-Profit TV Association **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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),[25] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, Licensee must send notice that payment has been made to VideoLOI@fcc.gov.** Below are instructions that payors should follow based on the form of payment selected:[26]

- 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 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).[27] 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

[23] 47 CFR § 73.3539(a).

[24] 47 CFR § 1.80.

[25] Payments made using CORES do not require the submission of an FCC Form 159.

[26] 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.

[27] Instructions for completing the form may be obtained at https://www.fcc.gov/Forms/Form159/159.pdf.

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.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[28] 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.

13. The written response 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(g)(3) of the Rules.[29] The written response **MUST BE FILED** with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. **A copy must also be emailed to VideoLOI@fcc.gov to assist in processing the response.**

- 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.[30]

14. 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 act support that result.[31]

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Leavenworth Non-Profit TV Association 341 Grant Road

[28] *See* 47 CFR § 1.1914.

[29] 47 CFR §§ 1.16 and 1.80(g)(3).

[30] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

[31] 47 U.S.C. § 503(b)(2)(E). *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

East Wenatchee, WA 98802. A copy shall also be sent to the Stations' counsel, John C. Trent, Esq., by electronic mail to fccman3@shentel.net.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

In the Matter of	)	
	)	
Liberty University, Inc.	)	NAL/Account No. MB-202341410024
WQLU(FM), Lynchburg, Virginia	)	FRN: 0004990974
	)	Facility ID No. 37248

ORDER

Adopted: September 29, 2023 **Released: September 29, 2023**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Liberty University, Inc. (Licensee), the licensee of a noncommercial educational (NCE) and student-run FM station, WQLU(FM), Lynchburg, Virginia (Station). The Consent Decree resolves the Bureau's investigation into Licensee's operation of the Station, and statements Licensee made to the Commission regarding the Station's operations.

2. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated (1) section 301 of the Act, and section 73.1350 of the Commission's Rules (Rules) by operating the Station at a variance from its licensed parameters,[1] and (2) section 1.17(a)(2) of the Rules by making incorrect statements regarding the Station's operations to the Commission.[2] Pursuant to the Consent Decree, Licensee agrees to surrender the Station's License and to make a Ten Thousand Dollar ($10,000) civil penalty payment to the United States Treasury.

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 Act and 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 continue to be a Commission licensee.[3]

5. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i), 4(j) and 503(b) of the Communications Act of 1934, as amended,[4] and by the authority delegated by sections 0.61 and 0.283 of the Commission's rules,[5] the Consent Decree attached hereto **IS ADOPTED** without change, addition, or modification.

[1] 47 U.S.C. § 301; 47 CFR § 73.1350.

[2] 47 CFR § 1.17(a)(2).

[3] Licensee also holds FCC authorizations for seven noncommercial educational (NCE) full power FM stations, a commercial full power FM station, nine NCE FM translators, and one commercial FM translator. Unlike the Station, these stations are not student-run.

[4] 47 U.S.C. § 154(i).

[5] 47 CFR §§ 0.61, 0.283.

6. **IT IS FURTHER ORDERED** that the license for radio station WQLU(FM), Lynchburg, Virginia **IS CANCELLED**.

7. **IT IS FURTHER ORDERED** that the investigation by the Media Bureau of the matters noted above **IS TERMINATED**.

8. **IT IS FURTHER ORDERED** that copies of this Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Liberty University, Inc., 3765 Candlers Mtn Road, Lynchburg, VA 24506, and its counsel, Timothy G. Nelson, Brooks Pierce, 1700 Wells Fargo Capitol Center, 150 Fayetteville Street, Raleigh, NC 27601.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

In the Matter of	)	
	)	
Liberty University, Inc.	)	NAL/Account No. MB-202341410024
WQLU(FM), Lynchburg, Virginia	)	FRN: 0004990974
	)	Facility ID No. 37248

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Liberty University, Inc. (hereafter "Licensee," as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau's inquiry into the Licensee's operation of FM station WQLU(FM), Lynchburg, Virginia (hereafter "Station," as defined below), and statements Licensee made to the Commission about the Station's operations. To resolve this matter, Licensee agrees to terminate the Station's license and pay a civil penalty in the amount of Ten Thousand Dollars ($10,000).

II. DEFINITIONS

2. For 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) "Bureau" means the Media Bureau of the Commission.

(d) "Civil Penalty" means the payment Licensee has agreed to pay to the United States Treasury.

(e) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices.

(f) "Effective Date" means the date on which the Bureau releases the Adopting Order.

(g) "Execution Date" means the date by which both the Bureau and the Licensee have signed the Consent Decree.

(h) "Inquiry" means the Bureau's inquiry into Licensee's operation of the Station, and statements Licensee made to the Commission regarding the Station's operations;

(i) "Licensee" means Liberty University, Inc. (FRN: 0004990974), and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

(j) "Parties" means Licensee and the Bureau, each of which is a "Party."

(k) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations;

(l) "Station" means WQLU(FM), Lynchburg, Virginia (Facility ID No. 37248).

(m) "Violations" means the violations of section 301 of the Act, and sections 1.17(a)(2), and 73.1350 of the Rules, which are stipulated in paragraph 14 of this Consent Decree.

III. BACKGROUND

3. Section 301 of the Act prohibits the operation of a broadcast station except under, and in accordance with, a Commission-granted authorization. Section 73.1350 of the Rules specifies that "[e]ach licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization." Section 1.17(a)(2) prohibits applicants from providing material information to the FCC that is incorrect without a reasonable basis for believing such information is not incorrect or misleading.

4. The Station is a student-operated noncommercial educational radio station. Between May 12, 1993, and December 2, 2020, Licensee was authorized to operate the Station from a site located on Candlers Mountain at 37 degrees 20 minutes 56.5 seconds North, 79 degrees 10 minutes 4 seconds West.[1] Between September 2011 and October 2, 2017, Licensee operated the Station from a different site located on Monogram Hill at 37 degrees 21 minutes 32 seconds North, 79 degrees 9 minutes 32 seconds West. Licensee obtained special temporary authority for the Station's non-conforming operations.[2] However, that authority lapsed on May 25, 2015.

5. In June 2019, Licensee filed an application to renew the Station's License.[3] Because none of Licensee's certifications raised any concerns, the unopposed application was routinely processed and granted on September 25, 2019.

6. In August 2020, for the first time in more than five years, Licensee requested special temporary authority to operate the Station from Monogram Hill.[4] As the Bureau reviewed this request, it determined that Licensee's previous special temporary authority to operate from Monogram Hill had lapsed. Given this lapse in special temporary authority, Licensee's statement in its initial request for special temporary authority that the tower at Candlers Mountain had been dismantled,[5] and the fact that Licensee had not sought authorization to operate the Station from a new site, the Bureau sent Licensee a letter of inquiry, which sought information about the Station's operations since its last special temporary authority to operate the Station from Monogram Hill had expired.[6]

7. Licensee timely responded to the Commission's letter of inquiry and notified the Bureau that the Station had resumed operation "with its licensed facilities" as of October 3, 2017.[7] However, in its response to the letter of inquiry,[8] Licensee revealed that the Station had resumed operations from a different tower and at different geographic coordinates—37 degrees 20 minutes 57.8 seconds North, 79 degrees 10 minutes 4.8 seconds West—than specified in the Station's license. On December 2, 2020, Licensee obtained a license to operate with those facilities.[9]

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[1] *See* Application File No. BLED-19930211KF.

[2] *See* Application File Nos. BSTA-20110906AAN (Initial STA Request), BSTA-20111025AAF, BSTA-20120302AAV, BESTA-20120904AAO, BESTA-20130306ABN, BSTA-20141113AAO.

[3] *See* Application File No. 74652.

[4] *See* Application File No. BSTA-20200819AAG.

[5] *See* Initial STA Request at Exh. 4.

[6] Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to Liberty University, Inc. (dated Oct. 26, 2020).

[7] Letter from Kathleen Victory, Counsel to Liberty University, Inc., to Marlene Dortch, Secretary, FCC (dated Nov. 20, 2020).

[8] Letter from Kathleen Victory, Counsel to Liberty University, Inc., to Marlene Dortch, Secretary, FCC (dated Nov. 24, 2020).

[9] *See* Application File No. 127053.

8. In light of the compliance issues uncovered by the Inquiry, the Parties have agreed to enter into this Consent Decree by which both the Licensee and the Bureau intend to be legally bound.

IV. AGREEMENT

9. **Adopting Order**. The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

10. **Jurisdiction**. 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.

11. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. As of the Effective Date, this Consent Decree shall have the same force and effect as any other order of the Commission. Licensee agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that Licensee fails to satisfy any condition or Rule, in the absence of Commission alteration of the condition or Rule, it will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, revocation of the relief, designation of the matter for hearing, letters of admonishment and/or forfeitures. Any violation of the Adopting Order or the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to enforcement of a Commission order.

12. **Termination of Inquiry.** 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 Inquiry. In consideration for such, Licensee agrees to the terms, conditions, and procedures contained herein.

13. The Bureau agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Inquiry 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 Licensee concerning the matters that were the subject of the Inquiry. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Inquiry 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 Licensee's basic qualifications to be a Commission licensee or to hold Commission licenses or authorizations.[10] Finally, the Bureau agrees that neither the facts developed in this Inquiry through the Effective Date nor the existence of this Consent Decree disqualify Licensee from applying for or holding any FCC authorization for which Licensee is qualified, including but not limited to a low power FM station authorization for a station that will be managed and operated on a day-to-day basis by students.

14. **Admission of Liability.** Licensee hereby stipulates that (1) the Station operated at a variance from its licensed parameters for more than 5 years in violation of section 301 of the Act, and section 73.1350 of the Rules, and (2) Licensee violated section 1.17(a)(2) of the Rules by providing material factual information that was incorrect without a reasonable basis for believing that such material factual information was correct and not misleading. However, Licensee believed in good faith that the change in the Station's tower site could be considered a correction of licensed coordinates rather than a site change, and thus Licensee did not intentionally provide false information to the Commission.

15. 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 Licensee.[11] Licensee acknowledges that the Commission or its delegated authority may consider Licensee's admission of

[10] *See* 47 CFR § 1.93(b).

[11] *See* 47 U.S.C. § 503(b)(2)(E).

liability in this Consent Decree in proposing any future forfeiture against Licensee in the event 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 Violations or otherwise.

16. **Civil Penalty.** Licensee agrees to pay a Civil Penalty to the United States Treasury in the amount of Ten Thousand Dollars ($10,000), 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.[12] Licensee will also send electronic notification of payment to Heather Dixon at Heather.Dixon@fcc.gov on the date said payment is made.

17. **Payment.** 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),[13] or by wire transfer. Payments by check or money order to pay a civil penalty are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:[14]

- 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 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).[15] 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

[12] Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

[13] Payments made using CORES do not require the submission of an FCC Form 159.

[14] 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.

[15] Instructions for completing the form may be obtained at https://www.fcc.gov/Forms/Form159/159.pdf.

payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

18. **Further Violations.** Licensee acknowledges that the Bureau retains the discretion and authority to propose sanctions against Licensee, including the issuance of notices of apparent liability for forfeitures, for any apparent willful and/or repeated violation by Licensee of the Act, or the Rules that occurs during the term of this Consent Decree.

19. **Waivers.** As of the Effective Date, Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Adopting Order. 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 Licensee nor the Commission shall contest the validity of the Consent Decree or Adopting Order, and Licensee shall waive any statutory right to a *trial de novo*. Licensee hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 CFR Section 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

20. **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.

21. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

22. **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 Licensee does not expressly consent), such provision will be superseded by such Rule or Order.

23. **Successors and Assigns.** Licensee agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

24. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties concerning the Inquiry and the Violations.

25. **Modifications.** This Consent Decree cannot be modified or amended without the advance written consent of both Parties.

26. **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.

27. **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.

28. **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.

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By:
Albert Shuldiner
Chief, Audio Division, Media Bureau

Date: 9/29/2023

LIBERTY UNIVERSITY, INC.

By: _____
Maj. Gen. (Ret.) Dondi E. Costin, Ph.D., President

Date: _____

28. **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.

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner
Chief, Audio Division, Media Bureau

Date: _____

LIBERTY UNIVERSITY, INC.

By: _____
Maj. Gen. (Ret.) Dondi E. Costin, Ph.D., President

Date: 27 September 2023

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

In the Matter of	)
	)
Opening an General FM Translator Window	)
	)

ORDER

Adopted: September 26, 2023 **Released: September 26, 2023**

By the Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the Petition for Rulemaking (Petition) filed by Travis Paul Arrington (Petitioner), requesting the opening of a general FM translator window. The Petition contains a one-lined sentence requesting that the Commission open up a general FM translator window no later than year 2025. For the reasons discussed below, we dismiss the Petition.[1]

2. The Petition fails to comply with section 1.52 of the Commission's rules.[2] Specifically, section 1.401(b) of the Commission's rules[3] states that a petition for rulemaking must conform to the requirements of section 1.52 of the rules. Section 1.52 states that a party who is not represented by an attorney must sign and verify the document and state the party's address, and if the original of a document is not signed or an electronic reproduction does not contain a facsimile signature, it may be stricken as sham and false, and the matter may proceed as though the document had not been filed.[4] Moreover, section 1.401(c) of the Commission's rules states that a petition must set forth the text or substance of the proposed rule, together with all facts, views, arguments and data deemed to support the action requested, and must indicate how the interests of petitioner will be affected.[5]

3. We find that the Petition violates section 1.52 of the Commission's rules because it contains no verification and it fails to provide Petitioner's signature and address. We conclude that the Petition also violates sections 1.401(b) and (c) of the Commission's rules.[6] Based on the foregoing, we dismiss the Petition pursuant to section 1.401(e) of the Commission's rules.[7]

4. IT IS ORDERED, that pursuant to Section 4(i) of the Communications Act of 1934, as amended,[8] and sections 0.61, 0.204(b), and 0.283 of the Commission's rules,[9] that the Petition for

[1] This action is taken under delegated authority pursuant to section 0.283 of the Commission's rules. *See* 47 CFR § 0.283.

[2] 47 CFR § 1.52.

[3] 47 CFR § 1.401(b).

[4] 47 CFR § 1.52.

[5] 47 CFR § 1.401(c).

[6] 47 CFR § 1.401(b) and (c).

[7] 47 CFR § 1.401(e).

[8] 47 USC § 154(i).

[9] 47 CFR §§ 0.61, 0.204(b), and 0.283.

Rulemaking filed by Travis Paul Arrington IS HEREBY DISMISSED.

5. For further information concerning this proceeding, contact Rolanda F. Smith, Audio Division, Media Bureau, at (202) 418-2054, Rolanda-Faye.Smith@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio 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
TTY: 888-835-5322

DA 23-902
Released: September 26, 2023

WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES NOVEMBER 2, 2023 WORKSHOP ON ENVIRONMENTAL COMPLIANCE AND HISTORIC PRESERVATION REVIEW PROCEDURES.

The Wireless Telecommunications Bureau will host a workshop on the environmental compliance and historic preservation review process required for the construction of communications facilities supporting Federal Communications Commission (FCC) licensed services. The workshop will include information relevant to the construction of new communications towers and the collocation of communications equipment on existing towers and other structures, including requirements for Antenna Structure Registration. The workshop will take place on Thursday, November 2, 2023, from 10:00 AM to 5:00 PM EDT in the Commission Meeting Room at FCC Headquarters, 45 L Street NE, Washington, DC. It will also stream live via the FCC's YouTube channel: https://www.youtube.com/FCC.

At the workshop, FCC and other federal agency subject-matter experts will provide information on a range of topics related to the National Environmental Policy Act, the National Historic Preservation Act (NHPA), and the FCC's implementing regulations and related agreements. FCC applicants (including licensees and registrants), those who construct or manage communications facilities for FCC licensees, environmental consultants, State Historic Preservation Office staff, Tribal Historic Preservation Office staff, and federal agencies that fund or permit wireless facilities are encouraged to attend. Topics may include: an overview of the FCC environmental and historic preservation rules and procedures; coordination with Tribes during the NHPA process; compliance with the Endangered Species Act and Migratory Bird Treaty Act; and presentations and discussion with other federal agencies including the Advisory Council on Historic Preservation, the Council on Environmental Quality, the National Telecommunications and Information Administration, and the U.S. Fish and Wildlife Service. The agenda for the workshop will be posted prior to the event at http://www.fcc.gov/FCCenvironmentalworkshop2023/.

Attendance. This workshop is open to the public. The workshop is scheduled to be held in a hybrid format to give attendees the option of participating either in-person or virtually. Participants must pre-register to attend in person and to receive a link to the live streamed event by submitting the participant's name, affiliation, and whether the participant intends to attend in-person or virtually in an email to FCCenvironmentalworkshop@fcc.gov no later than October 25, 2023. Live event attendees are advised to bring a driver's license or other valid identification and to arrive approximately 30 minutes prior to the start of the workshop to allow sufficient time to go through security. Additional requirements related to visiting the FCC's facility may be provided to in-person attendees after registration. The workshop will be recorded and publicly available at https://www.fcc.gov/news-events/events/archived after the event.

Accessibility Information. Reasonable accommodations for people with disabilities are available upon request. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Please include a description of the

accommodation you will need and tell us how to contact you. Requests for special accommodation should be made as early as possible. Last minute requests will be accepted but may not be possible to accommodate.

For additional information, contact FCCenvironmentalworkshop@fcc.gov.

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 23-903
Released: September 26, 2023

WIRELINE COMPETITION BUREAU SEEKS NOMINATION FOR TRIBAL BOARD MEMBER POSITION ON THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY BOARD OF DIRECTORS

CC Docket Nos. 96-45, 97-21

Nominations Due By: November 20, 2023

Pursuant to section 54.703(c) of the Federal Communications Commission's rules, the Wireline Competition Bureau (Bureau) seeks a nomination for the new Board member position[1] on the Board of Directors of the Universal Service Administrative Company (USAC) to represent Tribal communities for a three-year term.[2] The Commission recently adopted rules to add a Tribal representative to the USAC Board of Directors, recognizing that the Board would benefit from having a Tribal perspective that could speak to the unique political and geographical identity of Tribal communities. These rules will be effective September 29, 2023.[3]

Under the revised rule establishing the new director position, the group that is represented by the director shall nominate by consensus a new director.[4] We encourage nomination of a Board member with substantive areas of expertise relevant to running a large and complex organization with such skills as accounting, finance, auditing, procurement, data management and information technology will improve the management, administration and oversight of USAC. Nominations must include the name of the nominee, along with relevant professional and biographical information about the nominee.[5] If members of Tribal groups fail to reach consensus on a candidate to serve on the Board, or fail to submit a nomination for the particular Board member seat, the Chair of the Federal Communications Commission will select an individual to serve on the Board as outlined in section 54.703(c)(1) of the Commission's rules.[6]

Pursuant to section 54.703(c)(2) of the Commission's rules, each nomination must be captioned: **"In the Matter of: Nomination for Universal Service Administrative Company Board of Directors,**

[1] *See Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket No. 02-6, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 23-56, 2023 WL 4730084, at *14, para. 34 (rel. July 21, 2023) (*2023 E-Rate Tribal Report and Order*).

[2] 47 CFR § 54.703(c).

[3] *See* Schools and Libraries Universal Service Support Mechanism, Federal-State Joint Board on Universal Service, and Changes to the Board of Directors of the National Exchange Carrier Association., Final Rule, 88 Fed. Reg. 55401 (Aug. 15, 2023) (to be codified at 47 CFR §54.703(b)(13)).

[4] 47 CFR § 54.703(c)(1); *2023 E-Rate Tribal Report and Order*, at para. 35.

[5] 47 CFR § 54.703(c)(1).

[6] 47 CFR § 54.703(c)(1).

CC Docket Nos. 97-21 and 96-45."[7] Nominations may be filed using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies.

- 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 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 445 12th Street, SW, 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.[8]

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, or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

In addition to the electronic or paper filing, copies of each nomination should be submitted to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, via email Charles.Tyler@fcc.gov. Each nomination should specify the position on the Board of Directors for which such nomination is submitted and should be accompanied by the nominee's professional and biographical information, such as a résumé or professional biography. **All nominations must be filed with the Office of the Secretary by November 20, 2023.**

For further information, please contact Kate Dumouchel (kate.dumouchel@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-1839.

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[7] 47 CFR § 54.703(c)(2).

[8] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (Mar. 19, 2020).

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j), Table of TV	)	MB Docket No. 23-285
Allotments, Television Broadcast Stations	)	RM-11959
(Jacksonville, Oregon)	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: September 28, 2023 **Released: September 28, 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 (Bureau), has before it a petition for rulemaking (Petition) filed August 15, 2023, by theDove Media, Inc. (Petitioner).[1] The Petitioner requests the allotment of reserved noncommercial educational (NCE) television channel *4 to Jacksonville, Oregon as the community's first local television service and its first NCE television service.[2]

II. BACKGROUND

2. The Petitioner states that Jacksonville, Oregon qualifies as a community for allotment purposes. In support, it states that Jacksonville was incorporated in 1860 and had a population of 3,020 as of the 2020 Census.[3] Jacksonville has a mayor and six council members;[4] police, fire, public works, planning, and other government departments;[5] an elementary school;[6] a historic district;[7] and a chamber of commerce.[8] The Petitioner states its intention to file an application for channel *4, if allotted, and take all necessary steps to obtain a construction permit.[9]

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[1] theDove Media, Inc.'s Petition for Rulemaking, LMS File No. 0000219881(filed Aug. 15, 2023)(Petition).

[2] NCE television stations are identified in the Table by an asterisk to indicate they are reserved for noncommercial educational use. 47 CFR § 73.622(a). The Petitioner states that Jacksonville is currently served by two television translator stations, but that the Commission does not consider secondary services, such as translator stations, in determining service to a community. Petition at 3, n.3, citing *Expanding Economic Opportunities of Spectrum Through Incentive Auctions*, Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6838, n.1850 (2014).

[3] Petition at 3 and n.5.

[4] https://www.jacksonvilleor.us/180/City-Council (last visited Sept. 23, 2023).

[5] https://www.jacksonvilleor.us/149/Departments (last visited Sept. 23, 2023).

[6] https://www.medford.k12.or.us/jacksonville (last visited Sept. 23, 2023).

[7] https://traveloregon.com/places-to-go/cities/jacksonville (last visited Sept. 23, 2023).

[8] https://jacksonvilleoregon.org/ (last visited Sept. 23, 2023).

[9] Petition at 4. The Petitioner asserts that it "is qualified to be the licensee/permittee of an NCE TV station and these qualifications are a matter of record before the Commission," and refers to the grant of an application to assign the license of a noncommercial educational FM radio station to the Petitioner. We note that the licensing and service (continued….)

III. DISCUSSION

3. The proposed amendment to the Table of TV Allotments warrants consideration. The Petitioner's proposal would result in a first local service to Jacksonville under Priority (2) of the Commission's television allotment priority standard.[10] The Petitioner demonstrates, and a Bureau staff engineering analysis confirms, that channel *4 can be allotted to Jacksonville, Oregon, consistent with the minimum geographic spacing requirements for new allotments in section 73.623(d) of the Commission's rules (rules),[11] at 42° 17' 56" N and 122° 45' 00" W (allotment point). In addition, the allotment point complies with section 73.625(a)(1) of the rules as the entire community of Jacksonville is encompassed by the proposed 35 dBμ contour.[12]

4. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,[13] for the community listed below, to read as follows:

	Channel No.	
City and State	Present	Proposed
Jacksonville, Oregon	--	*4

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 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.[14] 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.[15]

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

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requirements for noncommercial educational FM radio stations and noncommercial educational television stations differ. *Compare* 47 CFR §§ 73.503 and 73.621.

[10] The Commission determines a preferential arrangement of television allotments based on the following five priorities: (1) provide at least one television service to all parts of the United States; *(2) provide each community with at least one television broadcast station*; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. *Amendment of Section 3.606 of the Commission's Rules and Regulations,* Sixth Report and Order, 41 F.C.C. 148, 167-173 (1952) (emphasis added).

[11] 47 CFR § 73.623(d). The Commission recently amended its rules to relocate the text from section 73.623(d), relating to the minimum distance separations for new TV allotments, to a new section 73.622(k) (Table of TV allotments). *See Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, FCC 23-72 at para. 37 (rel. Sept. 19, 2023) (*Part 73 Amendment R&O*). The amended rules are not yet effective.

[12] *See* 47 CFR § 73.625(a)(1) and Petition, Engineering Statement at 2. The Commission also amended its rules to create a new section 73.618 (Antenna location and principal community coverage), which relocates, verbatim, the language from section 73.625(a) (DTV coverage of principal community and antenna system). *See Part 73 Report and Order* at para. 37.

[13] 47 CFR § 73.622(j).

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

[15] 47 CFR § 1.420(j).

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.[16]

(b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.[17]

7. *Comments and Reply Comments*. Pursuant to sections 1.415, 1.419, and 1.420 of the rules,[18] 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).[19]

- 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.[20]
    - 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 to section 1.420 of the rules,[21] 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

[16] 47 CFR § 1.420(d).

[17] 47 CFR § 1.420(g)(2).

[18] 47 CFR §§ 1.415, 1.419, and 1.420.

[19] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

[20] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

[21] 47 CFR § 1.420.

directed. A certificate of service shall accompany such comments and reply comments.[22] Additionally, a copy of such comments should be served on the Petitioner, as follows:

Howard M. Liberman, Esq.
Wilkinson Barker Knauer, LLP
1800 M Street, NW, Suite 800N
Washington, D.C. 20036

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.[23] 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.[24] 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.[25] 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.[26] 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,[27] do not apply to a rulemaking proceeding to amend the Table of Allotments, section 73.622(j) of the rules.[28] This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.[29] 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.[30]

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[22] *See* 47 CFR § 1.420(a), (b) and (c).

[23] 47 CFR §§ 1.1200 *et seq.*

[24] 47 CFR § 1.1208.

[25] 47 CFR § 1.1204(a)(10).

[26] 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).

[27] *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).

[28] 47 CFR § 73.622(j).

[29] *See* 44 U.S.C. §§ 3501-3520.

[30] *See* 44 U.S.C. § 3506(c)(4).

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 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.

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 TV 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. 23-285 and RM-11959 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

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

In the Matter of	)	
	)	Facility ID Nos. 69501, 69506, 69513, 69503,
Upper Wenatchee Valley TV Association Inc.	)	69502, 69504, 69509
	)	NAL/Acct. No. 202341420040
Licensee of Stations K12LV-D, K08JP-D, K10LG-D, Dryden, WA; K13ER-D, K40AE-D, K09ES-D, K11EZ-D, Cashmere, WA	)	FRN: 0008540445
	)	LMS File Nos. 0000209024, 0000209021, 0000209023, 0000209027, 0000209030, 0000209035, 0000209037

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 2023 **Released: September 27, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application) of Upper Wenatchee Valley TV Association Inc. (Licensee), for renewal of its licenses for TV translators K12LV-D, K08JP-D, K10LG-D, Dryden, WA; K13ER-D, K40AE-D, K09ES-D, K11EZ-D, Cashmere, WA (Stations).[1] In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*), we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)[2] by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of ten thousand five hundred dollars ($10,500).

II. BACKGROUND

2. 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."[3] The application for renewal of the Stations' licenses should have been filed by October 3, 2022, the first day of the fourth full calendar month prior to the Stations' license expiration date of February 1, 2023.[4] However, the Licensee did not file the Application until February 1, 2023. The Licensee submitted an amendment to the Application stating that

[1] Applications of Upper Wenatchee Valley TV Association Inc. for Renewal of License, LMS File Nos. 0000209024, 0000209021, 0000209023, 0000209027, 0000209030, 0000209035, 0000209037 (filed Feb. 1, 2023).

[2] 47 CFR § 73.3539(a).

[3] *Id*.

[4] *See* 47 CFR §§ 73.1020, 73.3539(a); *Media Bureau Announces Procedures for 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (MB 2020) (Renewal Reminder PN). The filing deadline was Saturday, October 1, 2022, which as a weekend is considered a "holiday" making the filing due on the next business day – Monday, October 3, 2022. *See* 47 CFR § 1.4.

their contracted technical support expert was incarcerated in May 2021 and the Licensee was unaware of the renewal deadline.[5]

III. DISCUSSION

3. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), 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.[6] 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.[7] 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,[8] and the Commission has so interpreted the term in the section 503(b) context.[9] 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."[10]

4. *Apparent Violation.* We find that the Licensee is apparently liable for a forfeiture in the amount of $10,500. In this case, the Licensee failed to file the Application on or before October 3, 2022, as required by section 73.3539(a) of the Rules.[11] The Application was filed on February 1, 2023, over three months late.

5. *Proposed Forfeiture.* The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $3,000 per station for failure to file a required form or information.[12] 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."[13]

6. In this case, the Licensee failed to timely file a license renewal application for seven (7) stations, as required by section 73.3539(a) of the Rules.[14] The Licensee explained that the Application was filed late because its contracted technical support expert was incarcerated and as a result it was unaware of the renewal deadline. First, it is well established precedent that licensees are responsible for

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[5] Amendment to Applications Upper Wenatchee Valley TV Association Inc. for Renewal of License, Amendment Exhibit, LMS File Nos. 0000209024, 0000209021, 0000209023, 0000209027, 0000209030, 0000209035, 0000209037 (filed Mar. 17, 2023).

[6] *See* 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

[7] 47 U.S.C. § 312(f)(1).

[8] *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

[9] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

[10] 47 U.S.C. § 312(f)(2).

[11] 47 CFR § 73.3539(a).

[12] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

[13] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

[14] 47 CFR § 73.3539(a).

the actions, or as the case may be inactions, of their agents.[15] Furthermore, whether or not the Licensee's agent was incarcerated and unable to file for or remind the Licensee of its obligations to timely file a renewal application does not excuse the late filing. It is the licensee, not its agent that is required to be familiar with Commission rules and ensure compliance.[16] Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,[17] we will reduce the forfeiture from the base amount to $1,500 per station for the Stations' failure to file a timely renewal application because, as TV translators, the Stations are providing a secondary service.[18] Furthermore, as TV translators, some of the Stations are not originating programing, but instead providing important "fill-in" service to areas that otherwise may be unable to receive over-the-air television signals. Because the Application included seven (7) stations, the total proposed forfeiture amount is $10,500.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[19] 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 application.[20] 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 as are appropriate, including renewal for a term less than the maximum otherwise permitted."[21]

8. We find that the Licensee's apparent violation of section 73.3539(a) of the Rules[22] does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of

[15] *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); *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 F.C.C.2d 1235, 1242, para. 16 (1984) (holding that "[a] licensee will not be excused for violation because he may have been deceived by an employee since licensees are responsible for acts of their employees").

[16] *See* 47 CFR 74.769 (requiring TV translator and LPTV stations to be familiar with Commission rules). While the Bureau was not required to do so, prior to the start of the current license renewal cycle for television stations it reminded all television licensees of the requirement to file license renewal applications and provided the dates by which renewal applications were due based on the state where the station is located. *See Renewal Reminder PN*, 35 FCC Rcd 3656.

[17] *Supra* note 12.

[18] *See, e.g.*, *Juan Carlos Matos*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8932 (Vid. Div. 2021) (paid Jun. 11, 2021); *H&R Production Group*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8937 (Vid. Div. 2021) (paid Jun. 9, 2021); *Nichols Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8978 (Vid. Div. 2021) (paid Jun. 10, 2021) (each reducing proposed fine for a late-filed renewal application to $1,500 because the stations "provid[e] a secondary service."). *See also Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19333-34, paras. 2-6 (2004) ("The low power television service consists of LPTV, TV translator, and television booster stations . . . . Stations in the low power television service are authorized with 'secondary' frequency use status.").

[19] 47 U.S.C. § 309(k).

[20] 47 U.S.C. § 309(k)(1).

[21] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[22] 47 CFR § 73.3539(a).

abuse.[23] Further, based on our review of the Application, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,[24] and sections 1.80 and 0.283(d) of the Commission's Rules,[25] that Upper Wenatchee Valley TV Association Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand five hundred dollars ($10,500)** for its apparent willful violation of section 73.3539(a) of the Commission's Rules.[26]

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules,[27] within thirty (30) days of the release date of this *NAL*, Upper Wenatchee Valley TV Association Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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),[28] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, Licensee must send notice that payment has been made by e-mail to VideoRenewals@fcc.gov**. Below are instructions that payors should follow based on the form of payment selected:[29]

- 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 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).[30] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

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[23] For example, we do not find here that the Licensee's operation of the Station "was conducted in an exceedingly careless, inept, and negligent manner, and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "[t]he number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, paras. 10-11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc*., Hearing Designation Order, 7 FCC Rcd 4037 (1992).

[24] 47 U.S.C. § 503(b).

[25] 47 CFR §§ 1.80 and 0.283.

[26] 47 CFR § 73.3539(a).

[27] 47 CFR § 1.80.

[28] Payments made using CORES do not require the submission of an FCC Form 159.

[29] 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.

[30] Instructions for completing the form may be obtained at https://www.fcc.gov/Forms/Form159/159.pdf.

- 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.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[31] 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.

13. The written response 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(g)(3) of the Rules.[32] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A **complete copy of any response must also be sent by e-mail to VideoRenewals@fcc.gov to assist in processing the response**.

- 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

[31] *See* 47 CFR § 1.1914.

[32] 47 CFR §§ 1.16 and 1.80(g)(3).

protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[33]

14. 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 act support that result.[34]

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Upper Wenatchee Valley TV Association Inc. P.O. Box 253 Cashmere, WA 98815. A copy shall also be sent to the Stations' counsel, John C. Trent, Esq., by e-mail to fccman3@shentel.net.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[33] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

[34] 47 U.S.C. § 503(b)(2)(E). *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 23-906
Released: September 27, 2023

FCC ANNOUNCES UPDATED SUBSCRIBER THRESHOLD FOR THE DEFINITION OF SMALL CABLE OPERATOR

Section 76.901(e) of the Commission's rules define a small cable operator as an operator that, directly or through an affiliate, serves in the aggregate fewer than 1 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.[1] For purposes of this definition, an operator shall be deemed affiliated with another entity if that entity holds a 20 percent or greater equity interest (not including truly passive investment) in the operator or exercises *de jure* or *de facto* control over the operator.[2] Section 76.901(e)(1) states that, using the most reliable sources publicly available, the Commission periodically will determine and give public notice of the subscriber count that will serve as the 1 percent threshold until a new number is calculated.[3]

The Commission has determined that there are 49.8 million cable subscribers in the United States using the most reliable source publicly available.[4] Accordingly, by this Public Notice, the Commission establishes the threshold for determining whether a cable operator meets the definition of small cable operator at 498,000 subscribers. For purposes of defining a small cable operator under section 76.901(e), a cable operator that serves fewer than 498,000 subscribers, either directly or through affiliates, and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000, will meet the definition of a small cable operator. This threshold will remain in effect until the Commission issues a superseding Public Notice.

For further information, please contact Katie Costello, Policy Division, Media Bureau, at katie.costello@fcc.gov or (202) 418-2233. Press inquiries should be directed to Janice Wise at janice.wise@fcc.gov or (202) 418-8165.

[1] *See* 47 CFR § 76.901(e); *see also* 47 U.S.C. § 543(m)(2).

[2] *See* 47 CFR § 76.901(e); s*ee also Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, CS Docket No. 96-85, Report and Order, 14 FCC Rcd 5296 (1999), at para. 65.

[3] *See, e.g., FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (CSB 2001).

[4] *See* 2022 *Communications Marketplace Report*, GN Docket No. 22-203, FCC 22-103 (released Dec. 30, 2022), Fig. II.E.1, at para. 218. The total of 49.8 million cable subscribers includes subscribers to video services provided by both cable and telephone companies as identified in the Communications Marketplace Report.

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

In the Matter of	)	
	)	
Jesse Coppage	)	File No.: EB-FIELDNER-22-00034353
	)	
York, Pennsylvania	)	

CITATION AND ORDER

Surveillance Devices Causing Harmful Interference to Wireless Communications

Adopted: September 28, 2023 **Released: September 28, 2023**

By the Regional Director, Region One:

I. NOTICE OF CITATION

1. This **CITATION AND ORDER** (Citation), notifies Jesse Coppage (Coppage) that he operated radiofrequency devices at his residence that caused harmful interference to a Commission licensee. We therefore direct that Coppage immediately cease and desist from using the devices and to comply with Federal Communications Commission (Commission or FCC) interference regulations. If Coppage fails to comply with these laws, he may be liable for significant fines up to $23,727 per day.

2. ***Notice of Duty to Comply with the Law***: We issue this Citation pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (Act), which states that the Commission may not impose monetary forfeitures against non-regulatees who violate Commission rules or the Act unless and until: (a) the Commission issues a citation to the violator; (b) the Commission provides the violator a reasonable opportunity to respond; and (c) the violator subsequently engages in conduct described in the citation.[1] Accordingly, Coppage is hereby on notice that he must comply with sections 301, 302, and 333 of the Act[2] and sections 15.5(b) and 15.5(c) of the Commission's rules.[3] If Coppage subsequently engages in any conduct described in this Citation — including specifically any violation of sections 301, 302, and 333 of the Act or sections 15.5(b) or 15.5(c) of the Commission's rules — he may be subject to civil penalties, including but not limited to, substantial monetary forfeitures. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following the Citation.[4] Coppage should take immediate steps to come into compliance with the Commission's rules, including eliminating the interference.

3. ***Notice of Duty to Provide Information***: Pursuant to sections 4(i), 4(j), and 403 of the Act,[5] we direct Coppage to respond in writing, within thirty (30) calendar days after the release date of this Citation, to the questions and requests for documents set out in Section IV of this Citation.

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[1] *See* 47 U.S.C § 503(b)(5).

[2] *Id*. §§ 301, 302a, 333.

[3] 47 CFR § 15.5(b)-(c).

[4] *See* S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability "would attach not only for the conduct occurring subsequently *but also for the conduct for which the citation was originally sent*.") (emphasis added).

[5] 47 U.S.C. §§ 154(i), 154(j), 403.

II. BACKGROUND

4. The Commission is charged with protecting licensed radio operations from harmful interference. Harmful interference to wireless providers, such as T-Mobile USA, Inc. (T-Mobile), is particularly problematic in that it can undermine the Commission's primary mission to manage radio spectrum and interfere with 911 service. On October 3, 2022, T-Mobile filed a complaint with the Commission concerning interference to its wireless communication system operating in the 2500 MHz band. T-Mobile uses the 2500 MHz band to provide wireless service to business and residential customers. T-Mobile noted that the interference appeared to be emanating from a surveillance camera system located at a single-family home on Oatman Street in York, Pennsylvania. T-Mobile notified the FCC that the residents at this location failed to take corrective action after being contacted by T-Mobile.

5. On October 17, 2022, agents from the Bureau's Columbia Field Office (Columbia Office) went to York, Pennsylvania in response to T-Mobile's complaint about interference. Using direction-finding techniques, the agents confirmed that the source of the interference was a device or devices located at 779 Oatman Street, York, Pennsylvania (the Coppage Residence). Agents determined by public records search that Coppage is the owner of the property. Agents observed a potential source of the interference as a surveillance camera situated on the front porch of the Coppage Residence. The camera did not have any visible marking or labelling that identified the make and model number, and agents were not permitted to enter the house to inspect and photograph the system base unit. Agent made contact with Coppage's spouse but was not permitted to enter the house to inspect or photograph the surveillance camera system.

6. On October 18, 2022, an agent from the Columbia Office received a telephone call from Coppage. During the phone conversation, the agent warned Coppage that if the Commission determined that the interference was caused by his surveillance camera system, he could face fines for continued operation. The agent requested that Coppage turn off the power to the cameras for a few hours to determine whether his equipment was causing the interference. Coppage agreed to comply with this request. The agent later confirmed with T-Mobile personnel that the interference abated during the time the cameras were off.

7. On November 7, 2022, agents from the Columbia Office returned to York, Pennsylvania to conduct on-scene investigations in response to continuing complaints from T-Mobile that the interference to its wireless service had not been resolved. Using direction-finding techniques, the agents confirmed that the surveillance cameras located at the Coppage Residence were still the source of the ongoing interference to T-Mobile's wireless network.

8. On November 23, 2022, the Enforcement Bureau (Bureau) issued a Notice of Harmful Interference to Coppage.[6] The notice informed Coppage that unauthorized radio emissions causing harmful interference to T-Mobile's licensed operations were emanating from his residence and requested that he take steps to identify the source and eliminate the interference.[7]

9. On February 22, 2023, agents from the Columbia Office returned to York, Pennsylvania to conduct on-scene investigations in response to continuing complaints from T-Mobile that the interference to its wireless service had not been resolved. Using direction-finding techniques, the agents confirmed that the surveillance cameras located at the Coppage Residence were still the source of the ongoing interference to T-Mobile's wireless network.

III. APPLICABLE LAW AND VIOLATIONS

10. The Commission is charged with protecting licensed radio operations from harmful interference. Harmful interference to wireless providers, such as T-Mobile, is particularly problematic in that it can undermine the Commission's primary mission to manage radio spectrum and interfere with 911

[6] *Jesse Coppage,* Notification of Harmful Interference to Licensed Communications, (November 23, 2022) (on file in EB-FIELDNER-22-00034353).

[7] *Id.*

service. Section 301 of the Act states that "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio"[8] within the United States or its territories without a license or authorization granted by the Commission. Part 15 of the Commission's rules provides an exception to this general license requirement and sets forth conditions under which devices may operate without an individual license.[9] Section 15.5(b) of the Commission's rules requires that "[o]peration of an intentional, unintentional, or incidental radiator is subject to the conditions that no harmful interference is caused . . . ."[10] Similarly, section 15.5(c) of the Commission's rules states that the "operator of a radio frequency device shall be required to cease operating the device upon notification by a Commission representative that the device is causing harmful interference. Operation shall not resume until the condition causing the harmful interference has been corrected."[11] Section 15.3(m)'s definition of harmful interference includes "[a]ny emission, radiation or induction that . . . obstructs or repeatedly interrupts a radiocommunications service operating in accordance with this chapter."[12] Section 302(b) of the Act states that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, *or use devices*, which fail to comply with regulations promulgated pursuant to this section."[13] Section 2.925(a)(1) of the Commission's rules states in relevant part that "[e]ach equipment covered in an application for equipment authorization shall bear a label listing the following: (1) FCC Identifier consisting of the two elements in the exact order specified in § 2.926. The FCC Identifier shall be preceded by the term FCC ID in capital letters on a single line, and shall be of a type size large enough to be legible without the aid of magnification."[14]

11. We find that Coppage violated sections 301, 302, and 333 of the Act[15] and sections 15.5(b) and 15.5(c) of the Commission's rules[16] by operating devices causing harmful interference to T-Mobile's licensed operations, by operating a device which failed to comply with the Commission's device labeling rules, and by failing to promptly eliminate the interference upon notification by a Commission representative, and by failing to cease operating the devices upon notification by a Commission representative that the devices were causing harmful interference.[17]

IV. REQUEST FOR INFORMATION

12. Pursuant to sections 4(i), 4(j), and 403 of the Act, we direct Coppage to submit a written response within thirty (30) days of the release of this Citation. The response shall (a) include the brand, model, serial number, and any other identifying information for each surveillance camera installed at the Coppage Residence; (b) confirm whether each such device has been deactivated; (c) for any such device that is still in operation, state with particularity the specific corrective measures taken to eliminate the harmful interference to T-Mobile's licensed operations, including how resolution of the interference was verified. Failure to respond in writing, or the provision of an inadequate, incomplete, or misleading response, may subject Coppage to additional sanctions.

[8] 47 U.S.C. § 301.

[9] 47 CFR § 15.1 *et seq.*

[10] *Id.* § 15.5(b).

[11] *Id.* § 15.5(c).

[12] *Id.* § 15.3(m); *see also Id.* § 2.1(c).

[13] 47 U.S.C. § 302a(b) (emphasis added).

[14] 47 CFR § 2.925(a)(1).

[15] 47 U.S.C. §§ 301, 302a, 333.

[16] 47 CFR § 15.5(b)-(c).

[17] *Id.* § 15.5(b)-(c).

V. OPPORTUNITY TO RESPOND TO THIS CITATION

13. Coppage must respond to this Citation within 30 calendar days from the release date of this Citation. Coppage may respond by any of the following methods: (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to Coppage's residence. The Commission Field Office nearest to the Coppage Residence is located in Columbia, Maryland.

14. If Coppage requests a teleconference or personal interview, please contact David C. Dombrowski, by telephone at: (301) 725-1996. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If Coppage prefers to submit a written response with supporting documentation, he must send the response within 30 calendar days of the release date of this Citation to the contact and address provided in paragraph 15 below.

15. All written communications should be sent to the mailing and e-mail address below and reference File Number EB-FIELDNER-22-00034353.

Federal Communications Commission
EB Columbia Regional Office
Attn: David C. Dombrowski
9050 Junction Drive
Annapolis Junction, Maryland 20701
FIELD@FCC.GOV
Re: EB-FIELDNER-22-00034353

16. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, Coppage should provide a description of the accommodation required, and include as much detail as possible, and also provide a telephone number and other contact information. Coppage should allow at least five business days advance notice; last minute requests will be accepted but may be impossible to fill. Coppage should send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
(202) 418-0530 (voice), (202) 418-0432 (tty); and

For accessible format materials (braille, large print, electronic files, and audio format):
(202) 418-0531 (voice), (202) 418-7365 (tty).

17. We advise Coppage that it is a violation of section 1.17 of the Commission's rules[18] for any person to make any false or misleading written or oral statement of fact to the Commission. Specifically, no person shall:

> (1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and
>
> (2) In any written statement of fact, provide 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.

[18] *Id.* § 1.17.

18. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment.[19]

19. Violations of section 1.17 of the Commission's rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to section 503 of the Act.

20. Finally, we warn Coppage that, under the Privacy Act of 1974,[20] Commission staff will use all relevant material information before it, including information disclosed in interviews or written statements, to determine what, if any, enforcement action is required to ensure Coppage's compliance with the Act and the Commission's rules.[21]

VI. FUTURE VIOLATIONS

21. If, after receipt of this Citation, Coppage again violates sections 301, 302, or 333 of the Act, and/or sections 15.5(b) or 15.5(c) of the Commission's rules by engaging in conduct of the type described herein, the Commission may impose sanctions for each such violation. For example, the Commission may impose monetary forfeitures. The Commission may impose forfeitures not to exceed $23,727 for each such violation or each day of a continuing violation, and up to $177,951 for any single act or failure to act.[22] The Commission may further adjust the forfeiture reflecting enumerated statutory factors, which include 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 other such matters as justice may require.[23] Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.[24] In addition, future violations may subject Coppage to seizure of equipment through *in rem* forfeiture actions,[25] as well as criminal sanctions, including imprisonment.[26]

VII. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act, 47 U.S.C. § 154(i), (j), Jesse Coppage must cease and desist from causing harmful interference in violation of section 333 of the Act, 47 U.S.C. § 333, operating a device that fails to comply with the Commission's rules in violation of section 302 of the Act, 47 U.S.C. § 302, and operating without authorization in violation of section 301 of the Act, 47 U.S.C. § 301, and sections 15(b) and 15(c) of the Commission's rules, 47 CFR § 15.5(b)-(c).

23. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 403 of the Act,[27] Jesse Coppage must provide the written information requested in paragraph 12 above. Jesse Coppage must support his responses with an affidavit or declaration under penalty of perjury, signed and dated by Jesse Coppage, attesting personal knowledge of the representations provided in the response, verifying the truth and accuracy of the information therein and that all of the information requested has been produced. All such declarations provided must comply with section 1.16 of the Commission's rules and

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[19] 18 U.S.C. § 1001.

[20] 5 U.S.C. § 552a(e)(3).

[21] 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.

[22] *See* 47 U.S.C. § 503; 47 CFR § 1.80(b). These amounts are subject to further adjustment for inflation.

[23] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b).

[24] *See supra* paras. 4-9.

[25] *See* 47 U.S.C. § 510.

[26] *See id*. §§ 401, 501.

[27] *Id*. §§ 154(i), (j), 403.

be substantially in the form set forth therein.[28] The Commission must receive the response within thirty (30) calendar days of the release date of this Citation and Order.

24. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent by first class mail and certified mail, return receipt requested, to Jesse Coppage at his residence in York, Pennsylvania.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
Regional Director, Region One
Enforcement Bureau
Federal Communications Commission

[28] 47 CFR § 1.16.

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. 23-908

Report No. TEL-02306 **Thursday September 28, 2023**

International Authorizations Granted

Section 214 Applications (47 CFR §§ 63.18, 63.24); Section 310(b) Petitions (47 CFR § 1.5000)

By the Chief, Telecommunications and Analysis Division, Office of International Affairs:

The following applications have been granted pursuant to the Commission's processing procedures set forth in sections 63.12 and 63.20 of the Commission's rules. 47 CFR §§ 63.12, 63.20.

Unless otherwise noted, these grants authorize the applicants to: (1) become a facilities-based international common carrier subject to 47 CFR §§ 63.21, 63.22 and/or a resale-based international common carrier subject to 47 CFR §§ 63.21, 63.23; (2) assign or transfer control of international section 214 authority in accordance with 47 CFR § 63.24; or (3) 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 30 (thirty) days of this public notice. See 47 CFR § 1.4(b)(2).

ITC-214-20230818-00102 E PondIOT LLC

International Telecommunications Certificate

Service(s): Global or Limited Global Resale Service

Grant of Authority Date of Action: 09/22/2023

PondIOT LLC (PondIOT) filed an application for authority to provide resale services in accordance with section 63.18(e)(2) of the Commission's rules. 47 CFR § 63.18(e)(2).

PondIOT is a Nevada limited liability company. The 10% or greater owners of PondIOT are SPR Holdings LLC (38.2%), Alex Molozanov (19.1%), Alena Molozanov (19.1%), and Fred Khodorov (15.3%), all of whom are U.S. citizens. Sergey Porotsky, a U.S. citizen, is the sole owner of SPR Holdings LLC.

SURRENDER

ITC-214-20031031-00520 Digicel Caribbean Limited

By letter dated September 20, 2023, Digicel Caribbean Limited notified the Commission that it surrendered its international section 214 authorization effective September 20, 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-MSC-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.

(15) Each carrier shall notify the Commission of any change in its contact information. Such notification shall be filed in the file number(s) for the international section 214 authorization(s) through the International Communications Filing System (ICFS).

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 Office of International Affairs, Telecommunications and Analysis Division at (202) 418-1480.

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

In the Matter of	)	
	)	
Alpha Media Holdings Inc.	)	MB Docket No. 23-11
	)	
Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended	)	

DECLARATORY RULING

Adopted: September 28, 2023 **Released: September 28, 2023**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling (Declaratory Ruling), the Media Bureau grants the petition for declaratory ruling (Petition) filed by Alpha Media Holdings Inc. (New Alpha or Petitioner).[1] The Petition asks the Commission to exercise its discretion to permit New Alpha to exceed the 25% benchmarks for investment established in section 310(b)(4) of the Communications Act of 1934, as amended (the Act),[2] and sections 1.5000 *et seq*. of the Commission's rules (Rules).[3] As discussed below, the Petition seeks authority for up to 100% aggregate foreign investment (voting and equity) in the controlling U.S. parent, New Alpha, and specific approval[4] for certain foreign investors to hold more than 5% equity and/or voting

[1] 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). Concurrent with the filing of the Petition, New Alpha submitted related applications seeking Commission consent to 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).

[2] Section 310(b)(4) of the Act states:

> 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.

47 U.S.C. § 310(b)(4).

[3] *See* 47 U.S.C. § 310(b)(4); 47 CFR §§ 1.5000 *et seq.*; *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 Order*), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017).

[4] 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 the equity and/or voting interests, or a controlling interest, in the petitioner's controlling

interest in New Alpha.[5] New Alpha filed the Petition on behalf of itself and each of its indirect wholly owned subsidiaries that hold Commission broadcast licenses.[6] No comments or oppositions were filed in response to the Petition.[7] As discussed below, and consistent with the input received from the National Telecommunications and Information Administration (NTIA) on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), we find that it will serve the public interest to grant the Petition, subject to the conditions specified below.[8]

II. BACKGROUND

2. *Bankruptcy Proceeding and Transactions*. New Alpha seeks a declaratory ruling due to changes in its ownership structure that are an outgrowth of the bankruptcy reorganization of the company and its subsidiaries, which hold broadcast licenses. After filing voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code before the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division,[9] New Alpha's predecessor, Alpha Media Holdings LLC, Debtor-in-Possession (Old Alpha), sought Commission consent to a two-step plan to facilitate the company's emergence from bankruptcy. Specifically, the parties sought Commission consent to transfer control of the broadcast licenses to New Alpha and the grant of a temporary waiver to permit the company to emerge from bankruptcy before filing a petition for declaratory ruling that would seek approval for foreign ownership in excess of the 25% benchmarks set forth in section 310(b)(4) of the Act.[10]

3. On July 13, 2021, the Commission granted New Alpha's transfer applications along with a temporary waiver of section 1.5000(a)(1) of the Commission's rules conditioned upon New Alpha filing a petition for declaratory ruling within 30 days of closing the transaction.[11] New Alpha emerged from bankruptcy on July 15, 2021.[12] As a result, New Alpha became owned by former creditors that held

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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).

[5] Petition at 1-2. Each of the entities and individuals requiring specific approval will hold a non-controlling interest in New Alpha. *Id.* According to the Petition, following grant of this Declaratory Ruling, day-to-day operations of New Alpha will remain under the control of U.S. citizens. *Id.* at 2.

[6] Petition 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.

[7] The Petition was placed on public comment on January 6, 2023, with comments due February 6, 2023, and replies due February 21, 2023. *Media Bureau Announces Filing of Petition for Declaratory Ruling by Alpha Media Holdings Inc.*, Public Notice, MB Docket No. 23-11, DA 23-18 (Jan. 6, 2023) (*Public Notice*).

[8] *See infra* at paras. 12-14 and 18.

[9] *See* Final Decree Closing Chapter 11 Cases Pursuant to 11 U.S.C. § 350(A) and Federal Rules of Bankruptcy Procedure 3022 for Alpha Media Holdings LLC et al., Case No. 21-30209 (KRH) (Bankr. E.D.V.A. Mar. 4. 2022).

[10] *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*).

[11] *Alpha Approval Order* at 15-16, paras. 42-46 (granting a 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 benchmarks 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 that New Alpha file a petition for declaratory ruling within 30 days of emerging from bankruptcy).

[12] Petition at 3; *see also Alpha Approval Order*.

second lien note claims in Old Alpha prior to New Alpha's emergence from bankruptcy (the Owners).[13] Shortly thereafter, and consistent with the condition imposed in the *Alpha Approval Order*, New Alpha timely filed the present Petition seeking approval of the proposed foreign ownership pursuant to section 1.5000(a)(1) of the Commission rules.[14] Based on the record, at the end of these transactions the structure of Petitioner will be as described below.

4. *Corporate Structure*. As detailed in the Petition, the Owners holding direct attributable interests in New Alpha following 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).[15]

5. The Petition and pending applications seek Commission consent to the final step of New Alpha's bankruptcy Plan, which would permit a "substantial majority of the New Alpha Warrants [to] 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 would require specific approval."[16] New Alpha estimates that once the Warrants are fully exercised it will have foreign ownership of more than 70% on both an equity and voting basis.[17] Pursuant to section 1.5001(h) of the Commission's rules, the Petitioner requests approval of 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.

6. After the exercise of the Warrants, five entities will hold the following attributable interests in New Alpha: (1) MPEH (23.6% equity; 25% voting);[18] (2) FGH (7.9% equity; 8.3% voting);[19]

[13] Petition at 3. In accordance with New Alpha's Joint Plan of Reorganization (Plan), by which New Alpha acquired 100% of the equity interests in Old Alpha, 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). Petition at 4. In the Petition, 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. Petition at 3, n.6.

[14] *See Alpha Approval Order* at 17, para. 48 (requiring filing of a petition for declaratory ruling within 30 days of emergence from bankruptcy).

[15] Petition 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* Petition at Attach. C-1.

[16] Petition at 5; *Public Notice* at 2-3, note 14.

[17] Petition at 8. New Alpha indicates 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.

[18] Petition at 13 (detailing MPEH's interest in New Alpha).

[19] *Id.* at 14 (detailing FGH's interest in New Alpha).

(3) HLSOF (7.9% equity; 8.3% voting);[20] (4) ICGNA (39.1% equity; 41.4% voting);[21] and (5) BigSur Capital Partners Three Corp. (BigSur), a British Virgin Islands corporation (6.3% equity; 6.7% voting).[22]

7. Petitioner requests specific approval for BigSur, ICGNA, and four foreign entities affiliated with ICGNA, to each hold, indirectly, more than 5% of New Alpha's equity and/or voting interests. In addition, Petitioner seeks advance approval for these same six entities to hold up to 49.99% of New Alpha's equity and/or voting interests.[23] Specifically, Petitioner makes the following requests for advance approval: BigSur Capital Partners Three Corp. (British Virgin Islands) to hold up to 49.99% equity and 49.99% voting; ICG North America Holdings Ltd. (Cayman Islands) to hold up to 49.99% equity and 49.99% voting; Intermediate Capital Group PLC (United Kingdom) to hold up to 49.99% equity and 49.99% voting; ICG FMC Limited (United Kingdom) to hold up to 49.99% equity and 49.99% voting; ICG Global Investment Jersey Limited (Jersey) to hold up to 49.99% equity and 49.99% voting; and ICG Global Investment UK Limited (United Kingdom) to hold up to 49.99% equity and 49.99% voting.

8. *Public Interest Showing.* New Alpha contends that granting the Petition is in the public interest because it would, *inter alia*, further the Commission's goals of encouraging foreign investment in the broadcast industry and promoting regulatory flexibility.[24] New Alpha further asserts that grant of the Petition is in the public interest as it would enable New Alpha "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."[25] 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."[26]

9. *National Security, Law Enforcement, Foreign Policy and Trade Policy Review.* Pursuant to Commission practice, we referred the Petition to the relevant Executive Branch agencies for their review of any national security, law enforcement, foreign policy, or trade policy concerns related to the

[20] *Id.* at 15 (detailing HLSOF's interest in New Alpha).

[21] *Id.* at 9-12 (detailing ICGNA's interest in New Alpha).

[22] Petition at 12 (detailing BigSur's interest in New Alpha); *see also* Petition at 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* Petition at Attach. C-5.

[23] *See* Petition at 16 & nn. 40-41. The ownership of these entities, and projected equity and voting interests in New Alpha, is discussed in detail in the Petition. *See* Petition, Attach. E; Supplement at 2-3 & Attach. A; *see also Public Notice* at 2-6.

[24] Petition at 9-10; *see also 2016 Foreign Ownership Order*, para. 12 (2016).

[25] Petition 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.*

[26] *Id.* at 23.

foreign ownership of New Alpha.[27] On January 12, 2023, the Committee notified the Commission that it was reviewing the Petition 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 Petition.[28] Subsequently, on June 14, 2023, the Committee notified the Commission that New Alpha had provided complete responses to the Committee's initial questions and that it was conducting its review to assess whether granting the Petition would pose a risk to the national security or law enforcement interests of the United States.[29] On September 7, 2023, the NTIA submitted a letter to the Commission in which the Committee advised that it has no recommendation at this time to the Commission and no objection to the Commission granting the Petition.[30]

10. *Standard of Review*. We review the Petition under section 310(b)(4) of the Act, which states that "[n]o broadcast . . . 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."[31] This section of the Act grants the Commission discretion to allow foreign investment in a licensee's controlling U.S.-organized parent above 25% unless the Commission finds that the public interest would be served by refusing to permit such foreign investment.[32] In evaluating petitions relating to foreign ownership, the Commission affords appropriate deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy.[33]

11. In the *2016 Foreign Ownership Order*, the Commission modified the broadcast licensee foreign ownership review process by extending the streamlined rules and procedures developed for review of foreign ownership of common carrier and certain aeronautical licensees under section 310(b)(4) to the broadcast context, with certain limited exceptions.[34] The *2016 Foreign Ownership Order* expressly provides for processing of petitions requesting approval for up to and including 100% aggregate foreign voting and/or equity investment by unnamed and future foreign investors in the controlling U.S. parent of a broadcast licensee.[35] To exercise in a meaningful way the discretion conferred by statute, the

[27] *Public Notice* at 6 (*citing, inter alia, 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) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913)).

[28] Letter from Mark Goldberg, Attorney Advisor, National Security Division, DOJ, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 23-11 (filed Jan. 12, 2023).

[29] Letter from Mark Goldberg, Attorney Advisor, National Security Division, DOJ, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 23-11 (filed June 14, 2023).

[30] Letter from Stephanie Weiner, Chief Counsel, NTIA, to Ethan Lucarelli, Chief, Office of International Affairs, FCC, MB Docket No. 23-11 (filed Sept. 7, 2023).

[31] 47 U.S.C. § 310(b)(4).

[32] *See id*; *2016 Foreign Ownership Order*, 31 FCC Rcd at 11276, para. 5.

[33] *2016 Foreign Ownership Order,* 31 FCC Rcd at 11277, para. 6.

[34] *See generally 2016 Foreign Ownership Order*.

[35] *Id.* at 11282, para. 15.

Commission must receive detailed information from the applicant sufficient for the Commission to make the public interest finding the statute requires.[36]

III. DISCUSSION

12. We find that the public interest would be served by permitting foreign ownership of New Alpha in excess of the 25% benchmarks in section 310(b)(4) of the Act and grant the Petition subject to the conditions described below. We also find that it is in the public interest to grant New Alpha's request to permit foreign investors to indirectly own up to 100% of New Alpha's voting and equity interests, in the aggregate. In addition, we grant the requests for specific and advance approval under the Commission's rules.

13. *Section 310(b)(4) Determination and Public Interest Analysis*. Pursuant to section 310(b)(4) of the Act, as well as sections 1.5001 through 1.5004 of the Commission's rules, we find that the public interest is served by permitting foreign ownership of New Alpha in excess of the 25% benchmarks set forth in section 310(b)(4) of the Act, and, consequently, grant the Petition as conditioned below. We also find that it is in the public interest to grant Petitioner's request for approval of up to an aggregate 100% indirect foreign ownership of New Alpha. We further find that it is in the public interest to grant specific and advance approval for the percentages set out to the entities specified in Section IV below. Specifically, we conclude that grant of New Alpha's Petition is in the public interest because it, among other things, provides the company with greater access to foreign capital and thereby contributes to the strengthening of the broadcast industry.[37]

14. *National Security and Law Enforcement Review.* As stated, as part of its public interest analysis, the Commission coordinates petitions for section 310(b) foreign ownership rulings with the relevant Executive Branch agencies for national security, law enforcement, foreign policy and trade policy issues.[38] The Executive Branch agencies with expertise on issues pertaining to national security, law enforcement, foreign policy, and trade policy concerns, have reviewed the Petition and do not object to the Commission granting it, nor do they request imposition of any conditions on the grant.[39] We also note that no pleadings were filed opposing the Petition.

IV. DECLARATORY RULING

15. Under these circumstances, pursuant to section 310(b) of the Act and sections 1.5001 through 1.5004 of the Commission's rules, we find that the public interest would be served by permitting foreign ownership of New Alpha to exceed the 25% benchmarks in section 310(b)(4) of the Act, as amended. We also find that it is in the public interest to permit up to an aggregate 100% indirect foreign ownership of New Alpha.

16. *Specific Approval.* We also find no grounds to deny the requests for specific approval. Therefore, pursuant to section 1.5001(i) of the Commission's rules,[40] this Declaratory Ruling grants

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[36] *See, e.g., 2016 Foreign Ownership Order*, 31 FCC Rcd at 11282, 11283-84, paras. 15, 20 (noting that the requirements adopted in the streamlined foreign ownership rules ensure that the Commission has the information necessary to evaluate and understand a licensee's ownership structure and to fulfill its obligations under section 310(b) of the Act).

[37] *See* Petition at 9-11 (describing public interest benefits related to this Declaratory Ruling).

[38] *See 2016 Foreign Ownership Order*, 31 FCC Rcd at 11282, 11289, paras. 15, 34. *See also 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, 10934-36, paras. 17, 24 (2020).

[39] *See* Letter from Stephanie Weiner, Chief Counsel, NTIA, to Ethan Lucarelli, Chief, Office of International Affairs, FCC, MB Docket No. 23-11 (filed Sept. 7, 2023).

[40] 47 CFR § 1.5001(i).

specific approval for the following entities to hold, indirectly, more than 5% of the equity and/or voting interests of New Alpha:

- BigSur Capital Partners Three Corp. (6.3% Equity and 6.7% Voting) (British Virgin Islands);
- ICGNA (39.1% Equity and 41.4% Voting) (Cayman Islands);
- Intermediate Capital Group PLC (10.6% Equity and 46.7% Voting) (United Kingdom);
- ICG FMC Limited (ICG FMC) (0% Equity and 43.2% Voting) (United Kingdom);
- ICG Global Investment Jersey Limited (7.3% Equity and 7.7% Voting) (Jersey); and
- ICG Global Investment UK Limited (7.3% Equity and 7.7% Voting) (United Kingdom).

17. *Advance Approval*. Pursuant to section 1.5001(k) of the Commission's rules,[41] this Declaratory Ruling also grants advance approval for each of the following entities to increase their interests in New Alpha up to the percentages noted below at some future time:

- BigSur Capital Partners Three Corp. (Up to 49.99% Equity and Voting) (British Virgin Islands);
- ICGNA (Up to 49.99% Equity and Voting) (Cayman Islands);
- Intermediate Capital Group PLC (Up to 49.99% Equity and Voting) (United Kingdom);
- ICG FMC Limited (ICG FMC) (Up to 49.99% Equity and Voting) (United Kingdom);
- ICG Global Investment Jersey Limited (Up to 49.99% Equity and Voting) (Jersey); and
- ICG Global Investment UK Limited (Up to 49.99% Equity and Voting) (United Kingdom).

18. *Additional Terms and Conditions*. Under this Declaratory Ruling, Petitioners 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,[42] and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act.[43] This Declaratory Ruling is subject to the terms and conditions set forth in section 1.5004 of the Commission's rules, including the requirement to obtain Commission approval before foreign ownership of New Alpha exceeds the terms and conditions of this Declaratory Ruling.[44] This includes the requirement that New Alpha obtain Commission approval for any new or additional foreign individual, entity, or group of such individuals or entities to hold, directly and/or

[41] 47 CFR § 1.5001(k).

[42] 47 CFR §§ 1.5002-1.5003.

[43] 47 CFR § 1.5004, note to paragraph (a).

[44] *See generally* 47 CFR § 1.5004. Section 1.5004, *inter alia*, specifies that licensees have an ongoing, proactive obligation to monitor their foreign ownership compliance and to take preemptive action to remain in compliance with the Commission's foreign ownership rules and any declaratory ruling they have received. 47 CFR § 1.5004(a). It sets out the requirements for when a licensee must seek Commission approval prior for any new, not previously approved foreign individuals, entities, or groups acquiring an interest in excess of the specific approval threshold. 47 CFR § 1.5004(a). It sets out a licensee's obligations regarding subsidiaries and affiliates and the insertion of new controlling or non-controlling foreign-organized companies. 47 CFR § 1.5004(b)-(d). It also specifies when a new petition for declaratory ruling must be filed and the obligations for continuing compliance, including how to report inadvertent non-compliance, and how to file a remedial petition for declaratory ruling, as well as the consequences of trying to evade the foreign ownership rules. 47 CFR § 1.5004(e)-(f).

indirectly, more than 5% (or more than 10% for certain investors) of the equity and/or voting interests, or for any foreign individual, entity, or group to hold a controlling interest, in the company.[45] If at any time New Alpha knows, or has reason to know, that it is no longer in compliance with this Declaratory Ruling, section 310(b) of the Act, or the Commission's foreign ownership rules, New Alpha shall file a statement with the Commission explaining the circumstances within 30 days of the date that it knew, or had reason to know, that it was no longer in compliance.[46] New Alpha may be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the foreign investment.[47]

V. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), and sections 1.5001 through 1.5004 of the Commission's rules, 47 C.F.R. §§ 1.5001-04, and pursuant to authority delegated to the Media Bureau in sections 0.61 and 0.283 of the Commission's rules, 47 CFR §§ 0.61, 0.283, the Petition for Declaratory Ruling filed by Alpha Media Holdings Inc., **IS GRANTED** subject to the conditions specified herein.

[45] 47 CFR §§ 1.5001(i), 1.5004(a)(1). Given the assumptions underlying the Petition (*see, e.g.*, Petition at 5-7), we clarify that, for purposes of calculating whether an individual or entity is a disclosable interest holder or requires specific approval, New Alpha should include any outstanding Special Warrants in its calculation of the individual's or entity's *pro rata* equity interest (i.e., on a fully diluted basis). Special warrants are considered on a case-by-case, temporary and limited basis in the context of a bankruptcy proceeding until the filing of a petition for declaratory ruling concerning foreign ownership upon closing of the transaction. *See, e.g., Liberman Television of Dallas License LLC*, *Debtor-in-Possession*, Order, DA 19-1012 (MB 2019) (reviewing the assignment of broadcast licenses held by indirect, wholly-owned subsidiaries of Liberman Broadcasting, Inc., Debtor-in-Possession (together with affiliated entities, the LBI Debtors), from the licensees, as debtors-in-possession, to the same licensees, as non-debtors in possession, following the emergence of the LBI Debtors from bankruptcy; granting a temporary and limited waiver of section 1.5000(a)(1) to permit the LBI Debtors to emerge from bankruptcy before filing any petition for declaratory ruling that may be required to allow aggregate foreign ownership in excess of the 25% benchmarks in section 310(b)(4) of the Act; and conditionally granting the applications on the filing of a petition for declaratory ruling concerning foreign ownership within 30 days of the closing of the transaction); *Fusion Connect, Inc., Debtor-In-Possession*, Public Notice, DA 20-43 (WCB 2020) (finding temporary and limited waiver of section 1.5000(a)(1) would effectively provide interim section 310(b)(4) authority only, in order to enable Fusion Connect's prompt emergence from bankruptcy while preserving the Commission's ability to review and rule on its proposed foreign ownership upon emergence from bankruptcy). *See also id*. (stating that "facilitating successful and timely emergence from bankruptcy 'advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors'"); *LaRose v. FCC*, 494 F.2d 1145, 1146, n.2 (D.C. Cir. 1974) (stating that, in applying its policies where an application arises from bankruptcy, the Commission should consider "the public interest in the protection of innocent creditors.").

[46] *See* 47 CFR § 1.5004(f)(1). If, for example, a foreign individual or entity should invest in New Alpha above the specific approval threshold without Commission approval, New Alpha, as licensee, is obligated to follow the steps set out in 47 CFR § 1.5004(f). Subsequent actions taken by or on behalf of New Alpha to remedy non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance.

[47] *Id.*

20. **IT IS FURTHER ORDERED** that this Declaratory Ruling **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

PUBLIC NOTICE

Federal Communications Commission
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DA 23-910
Released: September 28, 2023

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PREVIOUSLY GRANTED STIR/SHAKEN IMPLEMENTATION EXTENSIONS PURSUANT TO SECTION 64.6304(F) OF THE COMMISSION'S RULES

WC Docket No. 17-97

Comments Due: October 18, 2023
Reply Comments Due: November 2, 2023

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment for its annual reevaluation of the STIR/SHAKEN implementation extensions granted by the Commission on the basis of undue hardship for implementation of the STIR/SHAKEN caller ID authentication framework.[1] Specifically, we seek comment on the current extensions that are applicable to small voice service providers that originate calls via satellite using North American Numbering Plan (NANP) numbers and to voice service providers that cannot obtain the Service Provider Code (SPC) token necessary to participate in STIR/SHAKEN.

I. BACKGROUND

When Congress directed the Commission to mandate implementation of STIR/SHAKEN in the TRACED Act, it also required the Commission to assess the burdens of or barriers to implementation,[2] and granted the Commission discretion to extend the implementation deadline for a "reasonable period of time" based upon a "public finding of undue hardship."[3] In October 2020, the Commission performed its initial assessment and granted three categorical STIR/SHAKEN implementation extensions on the basis of undue hardship to: (1) small voice service providers with 100,000 or fewer voice subscriber lines; (2)

[1] 47 CFR § 64.6304(f) (requiring that the Bureau "in conjunction with an assessment of burdens and barriers to implementation of caller identification authentication technology, annually review the scope" of all STIR/SHAKEN implementation extensions previously granted by the Commission pursuant to the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)); *see* TRACED Act, Pub. L. No. 116-105, § 4(b)(5)(F), 133 Stat. 3274, 3279 (2019) (codified in 47 U.S.C. § 227b); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1896-97, paras. 71-73 (2020) (*Second Caller ID Authentication Report and Order*).

[2] TRACED Act § 4(b)(5)(A).

[3] *Id.* § 4(b)(5)(A)(ii). When considering whether a hardship is "undue" under the TRACED Act, and whether an implementation extension has been set for reasonable time, the Commission balances the hardship of compliance due to "the burdens and barriers to implementation" faced by a voice service provider or class of voice service providers with the benefit to the public of implementing STIR/SHAKEN expeditiously. *Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, FCC 23-18, at 42, para. 80 (2023) (*Sixth Caller ID Authentication Order and Further Notice*).

voice service providers unable to obtain the SPC "token" necessary to participate in STIR/SHAKEN; and (3) services scheduled for section 214 discontinuance.[4]

The TRACED Act further requires the Commission to assess the burdens of and barriers to implementation "as appropriate" after its initial assessment,[5] and directs the Commission to, "not less frequently than annually after the first [extension] is granted," reevaluate and potentially revise any extension granted on the basis of undue hardship.[6] It requires the Commission to issue a public notice addressing "why such [extension] remains necessary" and "when the Commission expects to achieve the goal of full participation" in caller ID authentication.[7] To comply with these TRACED Act obligations, the Commission directed the Bureau to annually assess the barriers to implementation and reevaluate the extensions granted for undue hardship, and to revise or extend them as necessary.[8]

In its previous annual reevaluations, the Bureau declined to modify the implementation extensions granted by the Commission on the basis of undue hardship.[9] The STIR/SHAKEN implementation extensions for services scheduled for section 214 discontinuance ended on June 30, 2022,[10] and the implementation extensions for non-facilities-based and facilities-based small voice service providers ended on June 30, 2022, and June 30, 2023, respectively.[11]

In the March 2023 *Sixth Caller ID Authentication Report and Order*, the Commission granted an indefinite STIR/SHAKEN implementation extension on the basis of undue hardship to small voice

[4] *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1877-83, paras. 39-51. Pursuant to Congress's direction in the TRACED Act, voice service providers also have a continuing extension for the portions of their networks that rely on technology that cannot initiate, maintain, or terminate SIP calls. *See* TRACED Act § 4(b)(5)(B); 47 CFR § 64.6304(d); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1892-96, paras. 66-70. Because this extension was not granted on the basis of undue hardship, we do not address it further in this Public Notice. *See* TRACED Act § 4(b)(5)(F).

[5] TRACED Act § 4(b)(5)(A)(i).

[6] *Id.* § 4(b)(5)(F)(i).

[7] *Id.* § 4(b)(5)(F)(iii).

[8] *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1896, paras. 71-72. In so doing, the Commission permitted the Bureau to lengthen the extensions to which voice service providers are already subject, but prohibited it from terminating an extension prior to the extension's originally set end date, or granting extensions for any voice service providers or services that are not already subject to one. If the Bureau decides to further lengthen a granted extension based on its assessments of burdens and barriers, it is permitted to decrease, but not expand, the scope of entities that are entitled to such an extension. *Id*.

[9] *Id.* at 1896, para. 72. *See Wireline Competition Bureau Reevaluates STIR/SHAKEN Extensions Pursuant to Section 4(b)(5) of the TRACED Act*, WC Docket No. 17-97, Public Notice, DA 21-1593 (WCB Dec. 16, 2021) (*First Reevaluation of STIR/SHAKEN Extensions Public Notice*); *Wireline Competition Bureau Performs Required Evaluation Pursuant to Section 64.6304(f) of the Commission's Rules*, WC Docket No. 17-97, Public Notice, DA 22-1342, at 3-6 (WCB Dec. 16, 2022) (*Second Reevaluation of STIR/SHAKEN Extensions Public Notice*).

[10] *See* 47 CFR § 64.6304(c) (providing a one-year implementation extension until June 30, 2022, for services scheduled for 214 discontinuance).

[11] *See id.* § 64.6304(a)(1)(i) (limiting the extension for non-facilities-based small voice service providers to June 30, 2022). The Commission initially granted a two-year extension until June 30, 2023, for all small voice service providers to implement STIR/SHAKEN. *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1877-82, paras. 40-48. However, the Commission shortened the extension for non-facilities-based small service providers to June 30, 2022, based on overwhelming record support and available evidence showing that this subset of providers were originating a large and disproportionate amount of robocalls, while retaining the full two-year extension for facilities-based providers. *Call Authentication Trust Anchor*, WC Docket No. 17-97, Fourth Report and Order, 36 FCC Rcd 17840, 17844, para. 9 (2021) (*Small Provider Order*).

service providers that originate calls via satellite using NANP numbers,[12] noting that the Commission would reevaluate the extension annually as required by the TRACED Act.[13]

II. DISCUSSION

Pursuant to the TRACED Act and section 64.6304(f) of the Commission's rules, we seek comment to enable our annual reevaluation of the remaining STIR/SHAKEN implementation extensions—for small satellite voice service providers originating calls with NANP numbers and for providers unable to obtain a SPC token—granted on the basis of undue hardship.

Extension for Small Satellite Providers Originating Calls Using NANP Numbers. We seek comment on the Commission's extension for small voice service providers that originate calls via satellite using NANP numbers. In the *Sixth Caller ID Authentication Report and Order*, the Commission concluded that an indefinite implementation extension is appropriate for such providers because "satellite service costs make the high-volume calling necessary for robocallers uneconomical," there was "little evidence that satellite providers or their users are responsible for illegal robocalls," and the number of satellite subscribers using NANP resources was "miniscule."[14] The Commission concluded that the balance of benefits and burdens counseled "against requiring such providers to implement" STIR/SHAKEN.[15] The Commission also noted that it must annually reevaluate TRACED Act extensions, which would enable it "to act quickly to prevent any unforeseen abuses" that may arise.[16]

We seek comment on the benefits, burdens, and barriers to STIR/SHAKEN implementation by small voice service satellite providers that originate calls via satellite using NANP numbers. Have these burdens, barriers, and benefits changed since the *Sixth Caller ID Authentication Report and Order* and, if so, how? Are any abuses likely to result from the extension? What impact does the extension have on the Commission's longstanding goal of achieving ubiquitous deployment of the STIR/SHAKEN framework? Is it necessary for the extension to remain indefinite?

Extension for Voice Service Providers That Cannot Obtain a SPC Token. We seek comment on the Commission's extension for voice service providers that cannot obtain a SPC token. To participate in STIR/SHAKEN, a voice service provider must obtain a SPC token through the STIR/SHAKEN governance system.[17] In the *Second Caller ID Authentication Report and Order*, the Commission granted voice service providers that are incapable of obtaining a SPC token due to Governance Authority policy

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[12] *Sixth Caller ID Authentication Order and Further Notice* at 42-43, paras. 79-82. The Commission also concluded that satellite providers originating calls using non-NANP numbers are not "voice service providers" within the meaning of the TRACED Act, and therefore, it did not reach the question of whether a STIR/SHAKEN implementation extension was necessary for such providers. *Id.* at 41-42, para. 78.

[13] *Id.* at 43, para. 82.

[14] *See id.* at 42-43, para. 81 (2023); Satellite Industry Association (SIA) Comments, CG Docket No. 17-59, WC Docket No. 17-97 at 8, 15-18 (rec. Aug. 17, 2022); YouMail, Inc. Comments, CG Docket No. 17-59, WC Docket No. 17-97 at 5, n.10 (rec. Aug. 16, 2022).

[15] *See Sixth Caller ID Authentication Order and Further Notice* at 42-43, paras. 80-82.

[16] *Id.* at 43, para. 82.

[17] *Call Authentication Trust Anchor, Appeals of the STIR/SHAKEN Governance Authority Token Revocation Decisions*, WC Docket Nos. 17-97 and 21-291, Third Report and Order, 36 FCC Rcd 12878, 12879-81, paras. 4-6 (2021) (explaining the STIR/SHAKEN governance system and policy for obtaining SPC tokens) (*Third Caller ID Authentication Report and Order*). As the current Governance Authority, the Secure Telephone Identity Governance Authority defines the policies and procedures for the issuance and use of SPC tokens. *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1864, para. 11 & n. 37; *see also* Secure Telephone Governance Authority, *STI Governance Authority*, https://sti-ga.atis.org (last visited Aug. 31, 2023).

an extension until they are capable of obtaining a token.[18] The Commission found that the extension was necessary because some voice service providers were unable to obtain SPC tokens, and participation in STIR/SHAKEN without access to the required token was impossible.[19] In May 2021, the Governance Authority revised the STI-GA Token Access Policy to enable token access by some voice service providers previously unable to receive a token.[20] In the 2021 and 2022 annual reevaluations, the Bureau found that token access no longer stood as a significant barrier to full participation in STIR/SHAKEN.[21] Nevertheless, the Bureau declined to revise the SPC token extension on the basis that it remained necessary for the reasons originally identified by the Commission.[22]

In the March 2023 *Sixth Caller ID Authentication Further Notice*, the Commission sought comment on whether to eliminate the STIR/SHAKEN implementation extension for providers that cannot obtain a SPC token.[23] The Commission also sought comment on its authority to eliminate an existing TRACED Act extension by action outside of the annual extension reevaluation process mandated by the TRACED Act.[24] The comments for the *Sixth Caller ID Authentication Further Notice* were due June 5, 2023, and the reply comments were due July 5, 2023.[25] The Commission is considering the record in response to the *Sixth Caller ID Authentication Further Notice*.[26]

Should the Bureau revise the ongoing extension for voice service providers that cannot obtain a SPC token while the full Commission considers the necessity of the extension in response to the *Sixth Caller ID Authentication Further Notice*? In light of the fact that the Bureau found in the 2021 and 2022 annual reevaluations that token access no longer stood as a significant barrier to full participation in

[18] 47 CFR § 64.6304(b); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1882-83, paras. 49-50. Recognizing that "a voice service provider may not be able to immediately come into compliance with its caller ID authentication obligations after it becomes eligible to receive" a SPC token, the Commission stated that it "will not consider a voice service provider that diligently pursues a certificate once it is able to receive one in violation of [its] rules." *Id.* at 1882-83, para. 50.

[19] *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1882-83, para. 50.

[20] *Caller ID Authentication Governance Framework Revised to Enable Earlier Participation by Providers Without Direct Access to Telephone Numbers*, WC Docket Nos. 13-97, 17-97, Public Notice, DA 21-549 (WCB May 10, 2021).

[21] *First Reevaluation of STIR/SHAKEN Extensions Public Notice* at 4; *Second Reevaluation of STIR/SHAKEN Extensions* at 6.

[22] *First Reevaluation of STIR/SHAKEN Extensions Public Notice* at 4; *Second Reevaluation of STIR/SHAKEN Extensions Public Notice* at 6.

[23] *Sixth Caller ID Authentication Order and Further Notice* at 51, paras. 107-08.

[24] *Id.* at 52, para. 110.

[25] *Wireline Competition Bureau Announces Comment Dates for Sixth Caller ID Authentication Further Notice of Proposed Rulemaking*, WC Docket No. 17-97, Public Notice, DA 23-371 (WCB May 8, 2023).

[26] Commenters to the *Sixth Caller ID Further Notice* have largely addressed SPC token access in the context of third-party caller ID authentication practices. *See, e.g.*, New York State Public Service Commission (NYPSC) Comments, WC Docket No. 17-97, at 2 (rec. June 5, 2023) (arguing that the Commission should eliminate the extension and require providers that cannot obtain an SPC token to use third-party authentication methods); NTCA Comments, WC Docket No. 17-97, at 3 (rec. June 6, 2023) (stating that "the low cost of obtaining tokens . . . is certainly outweighed by the benefit of closing a serious security vulnerability"); CTIA Reply, WC Docket No. 17-97, at 6 (rec. July 5, 2023) (arguing that requiring originating providers to obtain their own SPC tokens will encourage innovation in STIR/SHAKEN); ZipDX Reply, WC Docket No. 17-97, at 4 (rec. July 2, 2023) (arguing that "the cost to obtain and maintain a token is revenue-based and will be small for a small reseller"); *but see* INCOMPAS Reply, WC Docket No. 17-97, at 6 (rec. July 5, 2023) (arguing that requiring all providers to obtain a token will "necessitate changes with both the industry's token access policies and the Commission's current administration of voice service providers").

STIR/SHAKEN, should we recommend to the Commission that it terminate the extension, and if so what would be an appropriate end date? Are the remaining providers that are still unable to obtain a token materially compromising the implementation of the STIR/SHAKEN framework? Have any new burdens or barriers to STIR/SHAKEN implementation emerged for any providers that cannot obtain a SPC token? Overall, how should the Commission's recent *Sixth Caller ID Authentication Further Notice* inform or impact our reevaluation of the implementation extension for providers that cannot obtain a SPC token?

III. PROCEDURAL MATTERS

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.

Filing Requirements. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[27]

- 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.[28]

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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Ex Parte Rules. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[29] 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

[27] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

[28] *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.

[29] 47 CFR §§ 1.1200 *et seq.*

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).[30] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Contact Information. For further information, please contact Merry Wulff, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau at (202) 418-1084 or by email at Merry.Wulff@fcc.gov.

-FCC-

[30] *Id.* § 1.1206(b).

PUBLIC NOTICE

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DA No. 23-911

Report No. SAT-01762 **Friday September 29, 2023**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

The Commission, by its Space 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-LOA-20210511-00064 E S3087 Lynk Global, Inc.
Launch and Operating Authority
Grant of Authority Effective Date: 09/16/2022

Nature of Service: Mobile Satellite Service

On September 28, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Lynk Global, Inc. to extend by an additional 90 days, from October 16, 2023 until January 14, 2024, the deadline to file an approximately $1,700,000 bond in connection with the Lynk Towers 1-10 satellites. See ICFS File No. SAT-LOA-20210511-00064 (granted Sept. 16, 2022). Lynk confirms that the Lynk Towers 1, 3, and 4 satellites are launched and operating. Lynk also confirms that the Lynk Towers 5 and 6 satellites have been constructed and are planned for launch in November 2023.

SAT-STA-20230607-00133 E S2381 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 07/19/2023

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20230609-00135 E Space Exploration Holdings, LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/28/2023

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20230724-00184 E S2406 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/27/2023

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20230808-00194 E Space Exploration Holdings, LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/28/2023

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20230823-00208 E S2406 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/27/2023

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20230831-00216 E S2704 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/26/2023

On September 26, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC for special temporary authority, for an additional period of 60 days, to operate Intelsat 5 at the 166.15° E.L. orbital location. Intelsat 5 operates in the 3700-4200 MHz, 10.70-10.95 GHz, 11.2-11.7 GHz, (space-to-Earth), 5925-6425 MHz, 12.75-13.25 GHz, and 14.0-14.25 GHz (Earth-to-space) frequency bands. Intelsat conducts telemetry, tracking, and command operations with Intelsat 5 using the following center frequencies: 11.451 GHz, 11.452 GHz, 11.454 GHz (space-to-Earth), 13.999 GHz and 14.498 GHz (Earth-to-space).

SAT-STA-20230906-00217 E Space Exploration Holdings, LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/28/2023

On September 28, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Space Exploration Holdings, LLC (SpaceX), for a period of up to 60 days to continue to conduct communications between SpaceX's second generation non-geostationary orbit Starlink satellites and gateway earth stations in the E-band - specifically the 71.0-76.0 GHz (space-to-Earth) and 81.0-86.0 GHz (Earth-to-space) bands.

SAT-STA-20230906-00218 E S2382 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/28/2023

On September 28, 2023, the Satellite Policy and Programs Division granted, with conditions, the request of Intelsat License LLC for special temporary authority for an additional period of 60 days to operate Intelsat 10 at the 177.8° E.L. orbital location. The Intelsat 10 space station operates in the 3700-4200 MHz, 11.45-11.7 GHz, 12.25-12.75 GHz (space-to-Earth); and 5925-6425 MHz and 14.0-14.5 GHz (Earth-to-space) frequency bands. Intelsat conducts telemetry, tracking, and command operations with Intelsat 10 using the following center frequencies: 11699.0 MHz, 12747.5 MHz, 12748.5 MHz, and 12749.5 MHz (space-to-Earth); and 14000.5 MHz and 14499.5 MHz (Earth-to-space).

SAT-STA-20230920-00230 E S2406 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 09/27/2023

On September 27, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional period of 30 days, to operate Intelsat 902's C-band beam over new coverage areas in the fixed-satellite service using the 3625-4200 MHz (space-to-Earth) and 5850-6425 MHz (Earth-to-space) frequency bands at the 50.1° W.L. orbital location.

SAT-STA-20230926-00234 E Space Exploration Holdings, LLC

Special Temporary Authority

Grant of Authority Effective Date: 09/28/2023

On September 28, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Space Exploration Holdings, LLC (SpaceX), for special temporary authority for an additional period of up to 60 days to continue to operate a radiofrequency beacon with up to 56 SpaceX second generation non-geostationary-orbit Starlink satellites on each launch, up to a maximum of 300 simultaneously operating satellites, in order to track and maintain satellite positional information during satellite orbit-raising and for emergency operations once at operational orbit

INFORMATIVE

SAT-LOA-20230404-00070 S3165 ICEYE US, Inc.

On September 28, 2023, the Satellite Programs and Policy Division reissued a license grant to reflect a correction to condition 17 of the Attachment to Grant to conform to the Division's Order DA 23-797, released on August 31, 2023.

SAT-MOD-20220421-00042 S2912 Planet Labs PBC

On September 28, 2023, the Satellite Programs and Policy Division reissued a grant-in-part modifying the license of Planet Labs PBC to reflect a correction to condition 19 of the Attachment to Grant to conform to the Division's Order DA 23-799, released on August 31, 2023.

SAT-MOD-20230224-00040 S2912 Planet Labs PBC

See ICFS File No. SAT-MOD-20220421-00042 for a description of the action taken.

For more information concerning this Notice, contact the Satellite Licensing Division and Satellite Programs and Policy Division at (202) 418-0719.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-912
Released: September 29, 2023

WIRELINE COMPETITION BUREAU OPENS WC DOCKET NO. 23-320

WC Docket No. 23-320

By this Public Notice, the Wireline Competition Bureau opens WC Docket No. 23-320, which is captioned "Safeguarding and Securing the Open Internet."

Ex Parte Rules. Presentations are subject to "permit-but-disclose" *ex parte* rules. *See* 47 CFR §§ 1.1206, 1.1200(a). 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). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Accessibility Information. 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 or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Action by Chief, Wireline Competition Bureau.

-FCC-

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

In the Matter of	)	
	)	
Connect America Fund—Alaska Plan	)	WC Docket No. 16-271
	)	
GCI Communication Corp. Petition for Limited, Expedited Waiver in the Alaska Plan for Drive-Test Data Collection	)	
	)	
GCI Communication Corp. Request for Limited Waiver of 47 CFR § 22.925	)	

ORDER

Adopted: September 29, 2023 **Released: September 29, 2023**

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau (Bureau) partially grants GCI's Second Supplemental Waiver Petition (Second Supplemental Petition) and Third Supplemental Waiver Petition (Third Supplemental Petition)[1] for GCI's drive testing, as specified below. Specifically, for all but four grid cells raised in GCI's second and third supplemental petitions, we waive the 15 mph threshold for in-motion drive tests. For those 25 grid cells, we will accept GCI's original drive test results. For one grid cell on Adak Island, we allow GCI to perform testing in a proxy grid cell. Because we grant the aforementioned relief for all grid cells raised in the Second Supplemental Petition and Third Supplemental Petition, we dismiss as moot GCI's request for a waiver to permit unmanned aircraft system (UAS) testing in two grid cells. We also grant an extension of GCI's deadline for completing drive retesting in three grid cells in Utqiagvik until November 1, 2023 and extend that relief to all retested grid cells.

II. BACKGROUND

2. Mobile-provider participants in the Alaska Plan receiving more than $5 million annually must support their year five and year ten "minimum upload and download speed certifications" with "data from drive tests showing mobile transmissions to and from the network meeting or exceeding the speeds delineated in the approved performance plans."[2] The *Alaska Drive Test Order* specified the following requirements for such drive tests: "Within each selected grid cell, a carrier must conduct a minimum of

[1] GCI Communication Corp. Second Supplemental Waiver Petition, WC Docket No. 16-271 (filed Aug. 31, 2023) (Second Supplemental Petition); GCI Communication Corp., Third Supplemental Waiver Petition, WC Docket No. 16-271 (filed Sept. 15, 2023) (Third Supplemental Petition); *see also* Letter from Julie Veach, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, at 1-2 (filed Sept. 14, 2023); GCI Communication Corp. Petition for Limited, Expedited Waiver, WC Docket No. 16-271 (filed June 26, 2023) (Petition); GCI Communication Corp. Supplemental Waiver Petition, WC Docket No. 16-271 (filed July 18, 2023) (Supplement to Petition).

[2] *Connect America Fund et al*., WC Docket Nos. 10-90 and 16-271, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10173, para. 103 (2016) (*Alaska Plan Order*); *accord* 47 CFR § 54.321.

20 tests, no less than 50% of which are to be conducted while in motion from a vehicle. . . . A mobile test should initiate when moving away from the location of a stationary test after having reached the speed of the surrounding traffic, or a safe and reasonable operating speed in the event no traffic is present."[3] Under the drive-test methodology, if a grid cell does not meet the requirements set forth in the *Alaska Drive Test Order* (including the 50% threshold for in-motion drive tests), the grid cell does not "pass," and the population in that grid cell would not be counted toward population coverage commitments.[4]

3. In response to GCI's drive-test submission for its five-year certification, Commission staff sent a letter regarding GCI's use of low in-motion driving speeds (Letter).[5] The Letter stated that the low driving speeds of some of the in-motion tests were inconsistent with the requirements of the *Alaska Plan Order* and the *Alaska Drive Test Order*.[6] Specifically, the Letter stated that, "[i]n a significant number of grid cells, most of GCI's in-motion drive tests were performed at extremely low speeds that do not approximate reasonable operating speeds or the 'speed of the surrounding traffic'"; that "[m]any of GCI's mobile tests were performed at speeds between 0-14 mph"; and that with respect to those tests performed at speeds between 0 and 14 mph, "a large number of tests were performed at 2 mph or less."[7] The Letter also stated that, "[a]s a result, many of GCI's grid cells 'fail' because the grid cells do not have 50% or more in-motion drive tests."[8] Because a minimum speed was not specifically enumerated in the rules, however, the Letter offered GCI the option to retest grid cells where GCI's in-motion testing speed was too low (i.e., below 15 mph) or where GCI skipped testing the grid cell initially.[9] The Letter explicitly noted that GCI could seek a waiver where performing in-motion tests at 15 mph or above might be unsafe or illegal in a particular grid cell.[10] If GCI accepted the offer,[11] GCI was to complete the drive testing by August 2.[12] Accompanying the Letter was a list of 465 grid cells that could be retested.[13]

4. After accepting the offer to retest these grid cells, GCI filed a Petition for Limited, Expedited Waiver on June 26, 2023 (Petition).[14] From the list of grid cells the Competition and

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[3] *See Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order and Request for Comment, 37 FCC Rcd 5882, 5828-29, Appx. B (WTB 2022) (*Alaska Drive Test Order*).

[4] *See id.*

[5] Letter from Garnet Hanly, Chief, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, FCC, to Chris Nierman, Vice President & Senior Counsel, Federal Affairs, GCI (June 2, 2023) (Letter), *attached to* Email from Matthew Warner, Attorney Advisor, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, FCC, to Chris Nierman, Vice President & Senior Counsel, Federal Affairs, GCI (June 2, 2023, 11:38 ET).

[6] Letter at 1.

[7] *Id.*

[8] *Id.*

[9] *Id.* at 1-2. We are allowing GCI to retest the grid cells it skipped the first time in case the reasons or analysis that it used in its determination to skip them have changed upon retesting.

[10] *Id.* at 2 n.3.

[11] *Id.*at 2 ("If GCI wants to avail itself of this option, GCI must reply within seven (7) days from the date of this letter, stating whether it would be interested in retesting the grid cells where it did not have a sufficient percentage of mobile tests and/or skipped grid cells.").

[12] *Id.* ("If GCI accepts, it will have two (2) months to retest the specified grid cells (attached)—in those grid cells, it must completely redo testing (i.e., stationary and mobile tests)."). GCI was sent the Letter on June 2, 2023. Email from Matthew Warner, Attorney Advisor, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, FCC, to Chris Nierman, Vice President & Senior Counsel, Federal Affairs, GCI (June 2, 2023, 11:38 ET).

[13] *Id.*, Attach. 2.

[14] Petition.

Infrastructure Policy Division (Division) sent to GCI for retesting, GCI sought to waive the 15 mph threshold for 45 grid cells and requested that Commission staff analyze the initial data that were submitted for those grid cells.[15] GCI further identified 90 additional grid cells that likely were affected by a recent outage of Quintillion's fiber cable.[16] For these 90 grid cells, GCI requested two additional consecutive months—within May to October—to retest after the cable is repaired.[17] For all remaining grid cells that GCI is retesting, GCI requested that the deadline to submit results be October 2, 2023, rather than August 2.[18]

5. On July 18, 2023, GCI filed a supplement to its Petition (Supplement to Petition).[19] In this filing, GCI sought to waive the 15 mph threshold for an additional 110 grid cells.[20] GCI asserted that three of these grid cells present circumstances similar to those identified in its Petition and are unsafe to drive at 15 mph.[21] GCI asserted that the remaining 107 grid cells should not be subject to the minimum speed requirement where "the adopted Alaska Population-Distribution Model indicates that the grid cell has no road."[22]

6. On July 31, 2023, the Bureau affirmed that a speed of at least 15 mph is, in general, a necessary floor for in-motion drive testing for Alaska Plan participants, granted GCI's Petition with a modification, and partially granted GCI's Supplement to Petition.[23] Specifically, the Bureau waived the 15 mph threshold for all 45 grid cells in the Petition and three additional grid cells in the Supplement to Petition.[24] The Bureau did not take action at that time on another 107 grid cells where GCI sought waiver of the 15 mph threshold on the grounds that those grid cells are roadless.[25] The Bureau also granted an extension of GCI's deadline for completing all drive retesting until October 2, 2023.[26]

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[15] *Id.* at 1-15. The Commission sent GCI two lists of grid cells for re-testing. The first list contained the grid cells where it did not complete a sufficient number of mobile tests; the second list contained the grid cells where it did not complete enough tests in total (i.e., it performed fewer than 20 stationary and mobile tests in a grid cell). *See* Email from Matthew Warner, Attorney Advisor, Competition and Infrastructure Policy Division of the Wireless Telecommunications Bureau, FCC, to Chris Nierman, Vice President & Senior Counsel, Federal Affairs, GCI, Attach. 2 (June 2, 2023 11:38 ET).

[16] Petition at 16-20.

[17] *Id.* at 18.

[18] *Id.* at 2.

[19] Supplement to Petition at 1.

[20] *See generally* Supplement to Petition.

[21] *Id.* at 2-3.

[22] *Id.* at 3-5.

[23] *Connect America Fund—Alaska Plan; GCI Communication Corp. Petition for Limited, Expedited Waiver in the Alaska Plan for Drive-Test Data Collection*, WC Docket No. 16-271, Order, DA 23-648, at 1, para. 1 (WTB July 31, 2023) (*First Waiver Order*).

[24] *Id.* at 1, 5-6, 8, paras. 1, 9-11, Appx.

[25] *Id.* at 1, 6, paras. 1, 13. GCI initially sought a waiver of the 15 mph threshold for 45 grid cells, based on the individual circumstances of those grid cells. *See* Petition at 5-15. GCI filed the Supplement to Petition seeking relief for 3 grid cells where such testing would be unsafe and for another 107 grid cells because they did not have roads. *See* Supplement to Petition at 2-3. The Bureau granted the waiver for the 3 grid cells where GCI demonstrated it is unsafe to test at 15 mph in the Supplement to Petition, but it did not make a determination on the other 107 grid cells. *First Waiver Order* at 5, 6, paras. 9, 13.

[26] *First Waiver Order* at 6, para. 14.

7. On August 31, 2023, GCI filed the Second Supplemental Petition.[27] In this filing, GCI seeks to waive the 15 mph threshold for 20 grid cells on the grounds that these are unsafe or infeasible to test at 15 mph because they involve unsafe road conditions (12 grid cells), boardwalks (4 grid cells), lack of sufficient roadway (1 grid cell), road construction (1 grid cell), or local restrictions (2 grid cells).[28] Additionally, GCI seeks a waiver to permit UAS testing in two grid cells where "using a UAS would possibly allow GCI to achieve 15 MPH."[29] On September 15, GCI filed an *ex parte* letter providing additional details about three of the grid cells for which it seeks relief in the Second Supplemental Petition.[30]

8. On September 15, 2023, GCI filed the Third Supplemental Petition. In this filing, GCI seeks to waive the 15 mph threshold for an additional four grid cells on the grounds that these are unsafe or infeasible to test at 15 mph because they involve unsafe road conditions (2 grid cells), boardwalks (1 grid cell), or a lack of access due to mining operations (1 grid cell).[31] GCI also seeks 30 additional days to complete drive testing in three grid cells in Utqiagvik that were affected by the Quintillion cable outage.[32] GCI requests that the October 2, 2023 deadline not be strictly enforced,[33] as GCI will need to implement over 40 rollbacks to transition its service back to Quintillion's fiber and reflect GCI's performance in the "pre-outage state."[34]

III. DISCUSSION

9. We waive the 15 mph threshold and will analyze GCI's initial drive test data for 25 grid cells in total: (a) the 24 grid cells for which GCI claims drive testing at 15 mph would be unsafe or infeasible; and (b) one of the two grid cells for which GCI seeks a waiver to test with UAS. For the other grid cell subject to GCI's UAS waiver request, we waive the requirement that GCI must start a drive test in the grid cell randomly selected by the Bureau to be considered a valid test, and we provide a proxy grid cell. Accordingly, we dismiss as moot GCI's requests to perform testing with UAS in two grid cells. We also extend the drive test deadline to November 1, 2023, for submission of all retested data, which includes the grant of relief requested for the three grid cells in Utqiagvik.[35]

10. The Commission may waive any provision of the rules on its own motion or on petition "for good cause shown."[36] The "good cause shown" standard can be met when the Commission finds that

[27] Second Supplemental Petition at 1, 8.

[28] *Id.* at 2-7.

[29] *Id.* at 1, 7-8; *see also Alaska Drive Test Order* at 17, para. 30 n.127. As part of this request, GCI filed a petition requesting waiver of section 22.925 of the Commission's rules for the two grid cells where it seeks to conduct UAS testing. Second Supplemental Petition at 1, 7-8.

[30] Letter from Julie Veach, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, at 1-2 (filed Sept. 14, 2023).

[31] Third Supplemental Petition at 2-5.

[32] *Id.* at 1, 5-7.

[33] *Id.* at 5-7.

[34] *Id.* at 6. GCI notes that it was successfully able to test most of the grid cells affected by the outage, but that the additional traffic on the backhaul serving the area appears to have caused service speeds to fall below the minimum levels for service in Utqiagvik. *Id*. at 5. GCI states that "[r]esults of other affected grid cells" will be submitted by October 2, 2023. *Id*. at 7. However, "[s]trict enforcement of the October 2, 2023 deadline" "would provide the Bureau with incorrect information regarding the performance of GCI's mobile network" and "could also potentially result in penalties for GCI that would not arise if GCI had performed the retests before or after the outage." *Id*. at 6-7. We interpret the Petition as asking for leniency of the October 2, 2023 deadline in the service areas affected by the extended outage of the Quintillion fiber cable.

[35] *See* Third Supplemental Petition at 5-7.

[36] 47 CFR § 1.3.

(1) "special circumstances warrant a deviation from the general rule"; and (2) "such deviation will serve the public interest."[37] A rule waiver may serve the public interest when the relief would not undermine the policy objectives of the rule.[38] In this case, we find that both prongs of the test are met in granting a limited waiver of the 15 mph threshold for the specified grid cells and granting a *sua sponte* waiver of the requirement to start a drive test within a grid cell randomly selected by the Bureau for the specified grid cells.

11. For the 24 grid cells that GCI claims would be unsafe or infeasible to test at 15 mph in the Second Supplemental Petition and the Third Supplemental Petition,[39] we waive the 15 mph threshold and will analyze the initially submitted data.[40] Although 15 mph or greater is consistent with a drive test of a mobile service, the Letter recognized that a waiver may be warranted in certain grid cells "where speeds of 15 mph or above may be unsafe or illegal" in that particular grid cell.[41] GCI has demonstrated that these grid cells would be unsafe or infeasible to test at 15 mph or greater because they involve unsafe road conditions (14 grid cells),[42] boardwalks (5 grid cells),[43] lack of safe drivable area (1 grid cell),[44] road construction (1 grid cell),[45] lack of access due to local restrictions (2 grid cells),[46] or a lack of access due to mining operations (1 grid cell).[47] GCI has shown that testing these grid cells above 15 mph could pose safety risks, and we find that the hazards in these particular grid cells are special circumstances that warrant a deviation from the 15 mph threshold. Moreover, waiver of the 15 mph threshold here is in the public interest because the hazards or infeasibility of accessing these areas suggest that consumers would likely use their mobile service at less than 15 mph in these particular grid cells, and the objective of the 15 mph threshold is to reflect how the mobile network performs when the user is moving. As the weather is about to change toward notoriously harsh conditions, we find a waiver of the 15 mph threshold of unsafe and infeasible to test grid cells to be particularly warranted at this point the process, given the additional safety hazards that could occur from additional testing in these areas after over a year from the start of the drive testing period.

12. In addition, for one of the grid cells for which GCI requested a waiver to test with UAS, grid cell G24531774 in Prudhoe Bay, we waive *sua sponte* the 15 mph threshold and will analyze the initially submitted data. Like the grid cells above for which such a waiver was granted, we find based on GCI's submissions that this grid cell would be unsafe to test at 15 mph.[48] As GCI notes, the grid cell is comprised mostly of a lake that contains toxic chemicals and is located on an oil company's land with

[37] *E.g.*, *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969) (*WAIT Radio*).

[38] *See WAIT Radio*, 418 F.2d at 1157.

[39] *See* Second Supplemental Petition at 1, 2-7; Third Supplemental Petition at 1, 2-5; *see also* Letter from Julie Veach, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, at 1-2 (filed Sept. 14, 2023).

[40] *See infra* Appendix.

[41] Letter at 2 n.3; *see also First Waiver Order* at 5, para. 9; *Alaska Drive Test Order*, 37 FCC Rcd at 5828-29, Appx. B.

[42] Second Supplemental Petition at 2-5; Third Supplemental Petition at 3; *see* Letter from Julie Veach, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, at 1-2 (filed Sept. 14, 2023).

[43] Second Supplemental Petition at 5-6; Third Supplemental Petition at 4.

[44] Second Supplemental Petition at 6. Grid G23440601 lacks roadways and has dense vegetation in the nonroadway areas. *See id.* at 26.

[45] *Id.* at 6.

[46] *Id.* at 6-7.

[47] Third Supplemental Petition at 4.

[48] Second Supplemental Petition at 7, 30.

highly restricted access.[49] We find that a waiver is warranted for this grid cell due to the unsafe conditions of this particular grid cell as well as the likelihood that the general public presumably would not be using mobile service in this grid cell, given the unsafe nature of the area and the restricted access. In light of these unusual circumstances, as well as the onset of winter in Alaska, we find it reasonable to use GCI's original drive test data for this grid cell.

13. In the other grid cell that was the subject of GCI's UAS waiver request, grid cell G06100082 in Adak, we waive *sua sponte* the requirement that GCI must start its drive tests in the grid cell randomly selected by the Bureau to be considered a valid test. We do so based on GCI's statement that it is open to testing a proxy grid cell for this grid cell in Adak,[50] and because of the unique aspect that a single road in the original grid cell runs along the border of these two grids cells, making it difficult to remain in a single grid cell while testing this area. Because this grid cell contains limited roadway and rugged terrain,[51] GCI may conduct testing in the original grid cell, in a proxy grid cell (G06090082), or in both, consistent with the criteria set forth in the Bureau's July 2022 Order.[52] Based on the Alaska Population Distribution Model,[53] the population in this grid cell would be more likely to be counted as located near the single road, which traverses both grid cells. As such, we find that allowing GCI a means to drive test on the road in both grid cells will provide more accurate results of GCI's population coverage in that area than UAS testing. Accordingly, we will allow the testing to occur in both grids so that GCI can perform on-the-ground drive testing, rather than needing to use UAS to test the original grid cell. In light of these two actions, we dismiss as moot GCI's request for a waiver to permit UAS testing in these grid cells.

14. Despite waiving the retesting requirement for 25 grid cells as indicated above,[54] we will allow GCI to voluntarily retest any of those grid cells should it so choose.[55] Consistent with the *First Waiver Order*,[56] any voluntary retest of the 25 grid cells will be considered in-motion if conducted at speeds of at least the second-fastest speed from its initial testing for that grid cell (defined as the average speed for an uplink and downlink paired test) rounded down to the nearest mile per hour. For example, in grid cell G23440601, where the second-fastest speed was 10.95 mph, a test would be considered in motion if it were at least 10 mph in that grid cell.

15. In addition, we further extend the deadline for GCI to submit its drive testing results to November 1, 2023. GCI requested (i) that the Commission grant an extension of an additional 30 days from the date that Quintillion announces service is restored to allow GCI to submit results for three

[49] *Id.* at 7.

[50] Letter from Julie Veach, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, at 1-2 (filed Sept. 14, 2023).

[51] *See* Second Supplemental Petition at 7, 31; Letter from Julie Veach, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, at 1-2 (filed Sept. 14, 2023).

[52] *See generally Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order, 37 FCC Rcd 7960 (WTB 2022) (*Alaska Drive Test Waiver Order*).

[53] *See Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order, 35 FCC Rcd 10373, 10375-76, paras. 5, 9 (WTB 2020).

[54] These 25 grid cells are also listed in the Appendix attached to this Order. *See infra* Appendix.

[55] For example, GCI may not have performed a sufficient number of tests for some of the grid cells in its original drive testing, or may have entirely skipped some grid cells the first time around. *See* Email from Matthew Warner, Attorney Advisor, Competition and Infrastructure Policy Division of the Wireless Telecommunications Bureau, FCC, to Chris Nierman, Vice President & Senior Counsel, Federal Affairs, GCI, Attach. 2 (June 2, 2023 11:38 ET). Where GCI does not submit new drive test data as part of its retesting, Commission staff will have to rely on the data that were submitted in the initial testing, which includes some grid cells where GCI did not have a sufficient number of drive tests to pass..

[56] *See First Waiver Order* at 6, para. 12.

affected grid cells in Utqiagvik,[57] and (ii) that the Commission not strictly enforce the October 2 deadline due to the Quintillion fiber cut.[58] Quintillion announced repair of its fiber cable on September 19,[59] four days after GCI's Third Supplemental Petition was received by the Commission.[60] In addition to the Quintillion areas, we find it reasonable to give GCI additional time to complete drive testing in the original and proxy grid cells in Adak (G06100082 and G06090082), as detailed above. As noted in the prior waiver order, aligning the deadlines for GCI to submit all of its data in one batch will make efficient use of any quality check efforts it will give the data before submission.[61] Accordingly, we grant the sought relief for the three affected grid cells in Utqiagvik[62] and extend that relief: GCI must complete all retesting and submit its results by November 1, 2023.

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1-4, 201, 254, 301, 303, 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201, 254, 301, 303, 308, 309, 332, and sections 0.131, 0.311, 1.3, 1.925, 54.317, 54.320, and 54.321 of the Commission's rules, 47 CFR §§ 0.131, 0.311, 1.3, 1.925, 54.317, 54.320, 54.321 that these waivers ARE ADOPTED.

17. IT IS FURTHER ORDERED pursuant to the authority contained in sections 1-4, 201, 254, 301, 303, 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201, 254, 301, 303, 308, 309, 332, and sections 0.131, 0.311, 1.3, 1.925, 54.317, 54.320, and 54.321 of the Commission's rules, 47 CFR §§ 0.131, 0.311, 1.3, 1.925, 54.317, 54.320, 54.321 that the GCI Petition for Waiver to Permit UAS testing in grid cells G24531774 and G06100082 ARE DISMISSED AS MOOT.

18. 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

Joel Taubenblatt
Chief,
Wireless Telecommunications Bureau

[57] Third Supplemental Petition at 7.

[58] *See supra* note 34.

[59] Quintillion announced that it repaired its fiber line on September 19, 2023, and that service to customers has been fully restored. Press Release, Quintillion, *Quintillion Subsea Fiber Cable Repair Complete* (Sept. 19, 2023) (Quintillion Sept. 19, 2023, Press Release), https://www.quintillionglobal.com/quintillion-subsea-fiber-cable-repair-complete/.

[60] The Third Supplemental Petition was received by the Commission's Electronic Comment Filing System on September 15, 2023.

[61] *See First Waiver Order* at 7, para. 14.

[62] Third Supplemental Petition at 7.

APPENDIX:
List of 25 Grid Cells for which the 15 MPH Requirement is Waived

G16760680	Kwigillingok
G16760683	Kwigillingok
G16960932	Mountain Village
G18140875	Russian Mission
G24030779	Valley
G24080796	Valley
G25281180	Fairbanks/North Pole
G31880641	Klukwan
G31890640	Klukwan
G31890641	Klukwan
G31900639	Klukwan
G32260537	Gustavus
G16290699	Kipnuk
G17281034	Kotlik
G17291034	Kotlik
G23340578	Homer
G23440601	Fritz Creek
G24700818	Sutton-Alpine
G16521307	Teller
G19180549	Dillingham
G18200796	Tuluksak
G24850826	Chickaloon
G16230816	Newtok
G25901110	Fort Greely
G24531774	Prudhoe Bay

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

In the Matter of	)	
	)	
Amendment of the Commission's Rules Governing Standards for Hearing Aid-Compatible Handsets	)	WT Docket No. 20-3

ORDER

Adopted: September 29, 2023 **Released: September 29, 2023**

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. Today we grant a limited waiver of section 20.19(b)(1) and (b)(3) of the Commission's wireless hearing aid compatibility rules with respect to the volume control technical standard that handset manufacturers use in part to certify handsets as hearing aid-compatible under the 2019 ANSI Standard.[1] Our action is prompted by a request filed by the Alliance for Telecommunications Industry Solutions (ATIS) seeking waiver of certain aspects of these rules.[2] Under the terms of the time-limited waiver we grant today, a handset may be certified as hearing aid-compatible under the 2019 ANSI Standard if it meets the volume control testing requirements described in this Order as well as all other aspects of the 2019 ANSI Standard.

2. Consistent with ATIS's September 12, 2023, *ex parte* letter (ATIS Ex Parte Letter) and as a condition of this waiver, we require a handset to pass the conversational gain test at the 2 Newton (N) force level on all available narrowband and wideband codecs and air interface combinations.[3] With respect to the 8N force level test, we agree with the ATIS Ex Parte Letter that this test should be performed, and we waive the requirement that a handset achieve at least an 18 dB conversational gain.[4] This waiver is conditioned on manufacturers performing the 8N force level test using the same testing parameters that we are requiring for the 2N force level test and to place on the handset's package label the resulting conversational gain (even if it is below 18 dB) in a manner consistent with our existing hearing aid compatibility labeling rules.

3. With respect to the related receive distortion and noise performance (distortion/noise) and receive acoustic frequency response performance (frequency response) tests, we agree with the ATIS Ex Parte Letter that handsets must pass testing using at least one narrowband *and* one wideband codec of the

[1] The 2019 ANSI Standard refers to the technical document entitled Accredited Standards Committee C63®– Electromagnetic Compatibility, *American National Standard Methods of Measurement of Compatibility Between Wireless Communications Devices and Hearing Aids*, ANSI C63.19-2019 (approved Aug. 19, 2019) (2019 ANSI Standard).

[2] Petition of ATIS on Behalf of the Covered Entities of the Hearing Aid Compatibility Task Force for Limited, Interim Waiver, WT Docket Nos. 15-285 and 20-3 (filed Dec. 16, 2022) (ATIS Waiver Petition). ATIS filed its waiver petition on behalf of all manufacturers and service providers subject to section 20.19(b)(1) and (b)(3) of the Commission's wireless hearing aid compatibility rules. *Id*. at 1, 4.

[3] Letter from Thomas Goode, General Counsel, ATIS, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 15-285 and 20-3, at 2 (filed Sept. 12, 2023) (ATIS Ex Parte Letter); *see also* ATIS Waiver Petition at 4, 12-13. Below we explain the conversational gain test. *See infra* para. 9.

[4] ATIS Ex Parte Letter at 2. Originally, ATIS had proposed to waive the entire 8N force level test. ATIS Waiver Petition at 10-11, 13.

manufacturer's choosing.[5] We also accept ATIS's suggestion that at least one narrowband and one wideband codec must pass testing for distortion/noise and frequency response and tests will be limited to one bit rate and only with those air interfaces associated with the chosen codecs and that the other codecs used for conversational gain at the 2N and 8N force levels are not required to undergo the distortion/noise and frequency response tests.[6] Further, as detailed below, we accept ATIS's suggested method to set the volume control setting for testing these other codecs for conversational gain.[7]

4. By taking these steps, we ensure that when the exclusive use transition period ends on December 5, 2023, new handset models can be certified as hearing aid-compatible using the 2019 ANSI Standard as modified by the conditions established in this Order.[8] Our actions allow consumers with hearing loss who use hearing aids or cochlear implants to benefit from wider availability of handsets offering improved hearing aid compatibility under the 2019 ANSI Standard's radio frequency (RF) interference and inductive coupling requirements. In addition, our approach gives consumers assurance that a handset's amplifier/speaker combination will provide improved volume control functionality over narrowband and wideband modes of voice communications, and that consumers have the information that they need to make informed purchasing decisions. Our actions today will move us closer to the Commission's goal of reaching 100% hearing aid compatibility for wireless handsets, while also creating a path forward for testing to ensure that handsets have volume control capabilities.[9]

5. This waiver is effective immediately upon release of this Order so that manufacturers may afford the benefits of this relief to consumers with hearing loss as soon as feasible. In reliance upon ATIS's representations that efforts are underway to expeditiously develop a new volume control standard through the TIA standards setting process, we limit this waiver to a two-year period.[10] During this waiver period, we will evaluate the effectiveness of the waiver standard in meeting the needs of consumers with hearing loss and take action where appropriate. We expect that a two-year time limitation for the waiver will encourage all interested parties to work together to rapidly develop an improved volume control standard that we can incorporate into our rules in the future. To ensure this outcome, we condition this waiver in part on ATIS filing a status letter on the development of a new

[5] ATIS Ex Parte Letter at 2. Originally, ATIS had proposed that handsets would only have to pass testing using one narrowband *or* one wideband codec in combination with any air interface. ATIS Waiver Petition at 4, 12-13.

[6] ATIS Ex Parte Letter at 2 & n.5, 3 & n.7.

[7] Specifically, we accept the approach that ATIS refers to as its "alternative method." This method will be used to set the volume control setting for testing the other narrowband and wideband codecs for the conversational gain tests at the 2N and 8N force levels. *Id*. at 2 & n.5.

[8] *Amendment of the Commission's Rules Governing Standards for Hearing Aid-Compatible Handsets*, WT Docket No. 20-3, Order, DA 23-327, at para. 1 (rel. Apr. 14, 2023) (extending the start of the exclusive use period from June 5, 2023 to December 5, 2023) (*2023 HAC Extension Order*). Prior to December 5, 2023, handsets may be certified as hearing aid-compatible using either the 2019 ANSI Standard or the 2011 ANSI Standard that is being phased out. *See infra* paras. 10, 16, 35.

[9] *See* ATIS Ex Parte Letter at 1 ("Timely grant of the Waiver Request will keep the industry on the path to achieving 100% HAC for wireless handsets, while also incorporating testing to ensure that handsets have volume control."); *see also* Letter from Thomas Goode, General Counsel, ATIS, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 15-285 and 20-3, at 1-2 (filed Sept. 27, 2023) (ATIS Sept. 27, 2023 Ex Parte Letter) ("Members of the HAC Task Force reiterate their commitment to working towards the goal that all new handsets will meet HAC requirements. . . . This will include an applicable volume control requirement after a transition period. . . .").

[10] ATIS Waiver Petition at 13-14, 19; *see also* CCA Reply at 4; TIA Reply at 2. The Telecommunications Industry Association (TIA) develops technical standards such as the wireless handset volume control standard through a consensus driven process for the benefit manufacturers and consumers. *See* https://tiaonline.org/; *infra* para. 8 (explaining that the 2019 ANSI Standard incorporates by reference the TIA volume control standard for wireless handsets).

volume control standard with us on the one-year anniversary of the release date of this Order.[11] The two-year waiver period will run from the release date of this Order and ends 24 months after the release date of this Order.

II. BACKGROUND

6. The Commission's wireless hearing aid compatibility rules require handset manufacturers to ensure that at least 85% of the total number of handset models that they offer are certified as hearing aid-compatible.[12] Handsets are considered to be hearing aid-compatible if they meet certain ANSI technical standards that the Commission has incorporated by reference into the wireless hearing aid compatibility rules.[13] Before 2017 the Commission's wireless hearing aid compatibility rules addressed acoustic and inductive coupling,[14] but in 2017 the Commission modified its wireless hearing aid compatibility rules by adopting a volume control requirement similar to the requirement for wireline phones.[15] The Commission determined that the objectives of section 710 of the Communications Act would be served by modifying the Commission's acoustic coupling provisions for wireless handsets to include a volume control requirement designed to accommodate consumers with hearing loss who use hearing aids or cochlear implants and those with hearing loss who do not use these devices.[16] The Commission affirmed its belief that a volume control requirement that specifies certain levels of amplification as an element of hearing aid compatibility is just as necessary for wireless handsets as it is for wireline phones in order to ensure the provision of effective telecommunication services for people with hearing loss.[17]

7. While the Commission adopted a wireless volume control requirement in 2017, the Commission did not adopt a specific wireless volume control technical standard. Instead, the Commission noted that an industry approved technical standard was nearing completion and, once the Commission adopted this standard into its rules, compliance with this standard would constitute compliance with the Commission's new wireless volume control requirement.[18] The Commission suggested that this standard could include: (1) the use of conversational gain for measuring receive loudness; (2) the establishment of minimum value(s) for the acceptable maximum volume(s); (3) the use of a Head and Torso Simulator (HATS); and (4) the use of two force levels for holding the handset next to the ear—2N force for people who use hearing aids, and 8N force for people who do not use hearing aids.[19]

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[11] *See infra* para. 37.

[12] 47 CFR § 20.19(c)(1)(ii).

[13] 47 CFR § 20.19(b).

[14] Hearing aids operating in acoustic coupling mode receive sounds through a microphone and then amplify all sounds surrounding the user, including both desired sounds, such as a handset's audio signal, and unwanted ambient noise. To use a wireless handset with a hearing aid or cochlear implant in acoustic coupling mode, radiofrequency interference and other electromagnetic interference from the handset must be controlled. Hearing aids operating in inductive coupling mode turn off their microphone to avoid amplifying unwanted ambient noise, instead using a telecoil (T-Coil) to receive only audio signal-based magnetic fields generated by inductive coupling-capable telephones. The hearing aid converts these fields back to sound or to a signal appropriate for cochlear implant users.

[15] *See Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, Report and Order and Order on Reconsideration, 32 FCC Rcd 9063, 9073-074, para. 23 (2017) (*2017 HAC Report and Order*).

[16] *Id*. at 9073-074, 9079-080, paras. 23, 32-33.

[17] *Id*. at 9073-074, para. 23.

[18] *Id*. at 9080, 9083, paras. 34, 41.

[19] *Id*. at 9083, para. 41; TIA 5050 Standard § 4.3.

8. In September 2019, the ANSI Committee[20] petitioned the Commission to replace the existing 2011 ANSI Standard[21] referenced in the Commission's rules for handset certification with the new 2019 ANSI Standard.[22] The ANSI Committee oversees the development of the ANSI wireless hearing aid compatibility technical standard, and the committee is composed of handset manufacturers and testing laboratories, among other groups.[23] While the 2011 and the 2019 ANSI Standards address acoustic and inductive coupling between wireless handsets and hearing aids, the new standard also includes the wireless volume control technical standard referenced by the Commission in 2017. The 2019 ANSI Standard specifically incorporates by reference the TIA 5050 Standard for volume control and requires handsets to meet this standard along with the rest of the 2019 ANSI Standard in order for a handset to be certified as hearing aid-compatible under this standard.[24]

9. The TIA 5050 Standard establishes a volume control testing methodology which defines conversational gain as the acoustic output level of speech from a handset relative to the acoustic level that would be present in a face-to-face conversation with two people one meter apart.[25] To be compliant with this standard, a handset must undergo testing at 2N and 8N force levels with each force level requiring the passing of three interrelated tests.[26] The 2N test requires a handset to demonstrate at least 6 dB of conversational gain while also meeting certain distortion/noise and frequency response requirements.[27] The 8N force level test requires a handset to demonstrate at least 18 dB of conversational gain while also meeting the same distortion/noise and frequency response requirements.[28]

10. In February 2021, the Commission adopted the 2019 ANSI Standard and the related TIA 5050 Standard and made these standards the exclusive wireless hearing aid compatibility certification standards after a two-year transition period that at the time was set to end on June 5, 2023.[29] In adopting the 2019 ANSI Standard, the Commission noted that this standard was broadly supported by both

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[20] The ANSI Committee refers to the Accredited Standards Committee C63®–Electromagnetic Compatibility, which is the accredited standards development organization whose working group, C63.19, is responsible for developing and maintaining ANSI C63.19-the wireless hearing aid compatibility standard. ANSI, Introduction to ANSI, https://www.ansi.org/about_ansi/introduction/introduction.aspx?menuid=1 (last visited Aug. 20, 2023).

[21] The 2011 ANSI Standard refers to the technical document entitled Accredited Standards Committee C63®—Electromagnetic Compatibility, *American National Standard Methods of Measurement of Compatibility Between Wireless Communications Devices and Hearing Aids*, ANSI C63.19-2011 (approved May 27, 2011) (2011 ANSI Standard).

[22] *See* Report and Petition of American National Standards Institute Accredited Standards Committee C63®, CG Docket No. 13-46, WT Docket Nos. 07-250 and 10-254, at 1 (filed Sept. 23, 2019).

[23] 2019 ANSI Standard at 6-7 (list of participants).

[24] *Id*. at § 7 Volume Control ("For a [wireless device] to comply with this standard, ANSI C63.19, it shall also comply with ANSI/TIA-5050-2018"). The TIA 5050 Standard refers to the technical document entitled ANSI/TIA-5050-2018, Telecommunications – Communications Products – Receive Volume Control Requirements for Wireless (Mobile) Devices (approved January 17, 2018) (TIA 5050 Standard).

[25] TIA 5050 Standard at § 1; *see also* 47 CFR § 20.19(a), (l)(2).

[26] TIA 5050 Standard § 4.3.

[27] *Id*. at §§ 5.1.1, 5.2, 5.3.

[28] *Id*.

[29] *Amendment of the Commission's Rules Governing Standards for Hearing Aid-Compatible Handsets*, WT Docket No. 20-3, Report and Order, 36 FCC Rcd 4566, 4570, 4576, paras. 9, 22 (2021) (*2021 HAC Report and Order*). This order found that during the transition period handset manufacturers could use either the 2011 or the 2019 ANSI Standards when certifying new handset models as hearing aid-compatible. *Id*. at 4576, para. 23; 47 CFR § 20.19(b)(2).

industry and consumer groups.[30] Further, the Commission observed that the 2019 ANSI Standard "for the first time . . . incorporates a volume control requirement that will provide significant benefits to persons with hearing loss, whether or not they use hearing aids."[31]

11. On December 16, 2022, ATIS filed a petition requesting that we grant a limited interim waiver of section 20.19(b)(1) and (b)(3) of the Commission's wireless hearing aid compatibility rules for all entities subject to these rules to allow handsets to be certified under the 2019 ANSI Standard as hearing aid-compatible using a reduced volume control testing methodology.[32] ATIS asserts that the existing volume control testing standard is fundamentally flawed because it uses a pulsed-noise signal, which it claims is insufficiently voice-like to be compatible with many modern codecs.[33] ATIS states that the standard's use of a pulsed-noise signal resulted in none of the handsets that it tested passing the standard.[34]

12. ATIS's Waiver Petition requests that the Commission allow handsets to be certified as hearing aid-compatible if they meet the 2019 ANSI Standard's acoustical and inductive coupling standards in full and meet a reduced volume control standard that would only require a handset to: (1) pass conversational gain for all available codecs and air interface combinations at the 2N level, and (2) obtain passing results for at least one of the handset's available codecs for the distortion/noise and frequency response requirements.[35] Additionally, it requests that we limit the codecs to be tested to those that are within the scope of the TIA 5050 Standard, which includes narrowband and wideband codecs, and that we completely waive the 8N force level test.[36] Finally, it requests that the waiver remain in place until the new volume control technical standard that is being developed through the TIA process becomes effective.[37]

13. At the same time that ATIS filed its waiver petition for a reduced volume control testing standard, the HAC Task Force filed its Final Report setting forth its recommendations for how the Commission can achieve its goal of requiring that all new handsets be certified as hearing aid-compatible.[38] The HAC Task Force is an independent organization composed of groups who represent the interests of people with hearing loss, wireless service providers, and wireless handset manufacturers that formed for the purpose of reporting to the Commission on whether requiring 100% of new handsets to be certified as hearing aid-compatible is an achievable objective.[39] Part of the HAC Task Force's Final Report on how the Commission can achieve its 100% objective includes a recommendation that the Commission adopt ATIS's reduced volume control testing methodology and maintain it until the

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[30] *2021 HAC Report and Order*, 36 FCC Rcd at 4567, para. 2.

[31] *Id*. at 4568, 4571, 4582, paras. 4, 10, 38; *see also* TIA 5050 Standard at 1 (the standard establishes volume control requirements and testing methods to aid "individuals with hearing loss who may or may not using a hearing device"); TIA 5050 Standard at Annex C, § C.1 ("A volume control can also make a telephone more accessible to persons with hearing impairment who do not use a hearing device.").

[32] ATIS Waiver Petition at 1.

[33] *Id*. at 3-4. ATIS also states that "*these testing results do not mean that the handsets failed to produce sufficient volume control for consumers with hearing loss; tested handsets produced increased amplification, consistent with the Commission's goal for adopting the volume control requirement as part of the HAC rules*." *Id.* at 4 (emphasis in original).

[34] *Id*. at 3.

[35] *Id.* at 4, 12-13.

[36] *Id.* at 4, 12-13.

[37] *Id.* at 12, 19.

[38] HAC Task Force Final Report and Recommendation, WT Docket No. 15-285 (filed Dec. 16, 2022) (HAC Task Force Final Report).

[39] *Id*. at 1.

Commission has an opportunity to adopt a new volume control standard that is presently being developed through the TIA process.[40]

14. Similarly, ATIS's waiver petition cites data from the HAC Task Force's Final Report to support its description of the issues experienced in relation to the testing methodology for volume control.[41] Testing data included in the HAC Task Force's Final Report indicates that for the distortion/noise test the pulse noise signal passed through the Adaptive Multi-Rate (AMR) codec to produce unintended noise and distortion of the signal.[42] Conversely, testing data included with the Final Report indicates that this problem did not exist when testing was conducted on the Enhanced Voice Services (EVS) codec.[43] As a potential solution, the Final Report indicates that the TIA 5050 Standard's requirement that testing be done using any air interface but generally limited to using the AMR codec could be modified or reinterpreted to allow any codec and air interface combination to be used for the distortion/noise and frequency response measurements.[44]

15. On March 23, 2023, the Wireless Telecommunications Bureau (Bureau) released a Public Notice seeking comment on ATIS's waiver petition that established a 45-day comment period that closed on May 18, 2023.[45] The Public Notice sought comment on ATIS's waiver petition within the context of the Commission's commitment to attaining 100% hearing aid compatibility for all covered wireless handsets, as soon as achievable,[46] as well as the Commission's previous finding that a volume control requirement is necessary "to ensure the provision of effective telecommunications for people with hearing loss."[47] In addition to seeking comment on ATIS's waiver petition, Commission staff have met on an *ex parte* basis with the HAC Task Force on multiple occasions and with the Hearing Loss Association of America (HLAA).[48] HLAA claims to be "the nation's leading organization representing consumers with hearing loss,"[49] serves as Co-Chair of the HAC Task Force, and supports the HAC Task Force Final Report recommendations.[50]

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[40] *Id.* at ii, 18, 21-22. The Final Report specifically references ATIS's waiver petition and states that the Commission should grant the petition and allow "wireless handsets to meet a modified volume control test that ensures increased amplification for hearing device users until the TIA 5050 standard has been revised and adopted into the FCC's rules." *Id*. at ii. Given ATIS's waiver request, the Final Report does not recommend a handset model deployment benchmark for volume control. *Id*. at 19.

[41] ATIS Waiver Petition at 8-11.

[42] HAC Task Force Final Report at 85-86.

[43] *Id.*

[44] *Id*. at 89.

[45] *Wireless Telecommunications Bureau Seeks Comment on ATIS Waiver Request on Behalf of the Covered Entities of the Hearing Aid Compatibility Task Force*, WT Docket No. 20-3, Public Notice, DA 23-250 (rel. Mar. 23, 2023) (HAC Waiver PN). A summary of this public notice was published in the Federal Register on April 3, 2023, and established deadlines of May 3, 2023, for comments and May 18, 2023 for replies. 88 FR 19639 (Apr. 3, 2023).

[46] *See, e.g.*, *Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 15-285, Report and Order, 31 FCC Rcd 9336, 9337, 9345, paras. 4, 22 (2016) (*2016 HAC Report and Order*); *2021 HAC Report and Order*, 36 FCC Rcd at 4566, 4577-78, paras. 1, 27-28.

[47] *2017 HAC Report and* Order, 32 FCC Rcd at 9073-074, para. 23.

[48] Letters from Thomas Goode, General Counsel, ATIS, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 15-285 and 20-3 (filed June 2, 2023, July 18, 2023, July 24, 2023, Aug. 23, 2023); Letter from Lisa Hamlin, Director of Public Policy, HLAA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-3 (filed Apr. 18, 2023) (HLAA Letter).

[49] *See* https://www.hearingloss.org/about-hlaa/.

[50] HLAA Letter at 1.

16. On April 14, 2023, the Bureau released an order extending the transition period for exclusive use of the 2019 ANSI Standard and the related TIA 5050 Standard from June 5, 2023, as originally established by the Commission, to December 5, 2023.[51] The Bureau took this step to ensure that handset manufacturers can continue to certify new handset models with hearing aid compatibility features under the 2011 ANSI Standard while the Commission considers ATIS's waiver petition.[52] The Bureau stated that continuing to allow new handset models to be certified as hearing aid-compatible is essential as the Commission moves to its goal of all handsets being hearing aid-compatible.[53]

17. Finally, in the ATIS Ex Parte Letter, ATIS reiterates and clarifies its volume control testing proposals contained in its waiver petition, and partially revises its proposals.[54] Consistent with its original proposal, ATIS reiterates its suggestion that testing at the 2N force level should require passing of conversational gain for all available narrowband and wideband codecs and air interface combinations. With respect to the 8N force level test, however, ATIS modifies its original proposal and suggests that testing at this force level be done on all available narrowband and wideband codecs and air interface combinations; but that the requirement of at least an 18 dB conversational gain passing rate be waived; and that the resulting conversational gain from testing be placed on the handset's package label. Further, ATIS suggests a modification for its proposal for the distortion/noise and frequency response tests. It proposes obtaining "passing results for at least one of the device's narrowband *and* one wideband codecs for the distortion and frequency response," instead of its original suggestion that a passing result would only have to be obtained for one narrowband *or* one wideband codec.[55] ATIS clarifies, however, that testing of the chosen narrowband and wideband codecs for the distortion/noise and frequency response tests should be limited to one bit rate and only those air interfaces associated with the chosen codecs. Under its proposal, the other narrowband and wideband codecs used for the 2N and 8N force level conversational gain tests are not required to undergo distortion/noise and frequency response testing.[56]

III. DISCUSSION

18. Section 1.3 of the Commission's rules provides that the Commission may "on its own motion or on petition" waive a rule "for good cause shown, in whole or in part, at any time."[57] The Commission may find that the "good cause shown" standard is met when: (1) "special circumstances warrant a deviation from the general rule" and (2) "such deviation will serve the public interest."[58] In this case, we find good cause to grant ATIS's waiver request under the conditions discussed below. Further, we find that the underlying purpose of the rule would not be served by strictly applying all of the requirements at this time since such strict enforcement might have an effect of denying consumers most of the benefits of the latest standard.[59] For this additional reason, we find it in the public interest to grant limited relief and, thereby, permit consumers with hearing loss to benefit from the advantages that

[51] *2023 HAC Extension* Order, at para. 1.

[52] *Id.*

[53] *Id.*

[54] ATIS Ex Parte Letter at 2.

[55] *Id*. at 2 (emphasis added).

[56] *Id*. at 2 & n.5, 3 & n.7. Because the TIA 5050 Standard requires narrowband and wideband codecs to undergo distortion/noise and frequency response testing as part of determining the conversational gain for each codec at the 2N and 8N force levels, the ATIS Ex Parte Letter proposes two alternatives for performing the 2N and 8N conversational gain tests for those codecs that are not required to undergo distortion/noise and frequency response testing under ATIS's proposal. *Id*. at 2 & n.5

[57] 47 CFR § 1.3.

[58] *See, e.g*., *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969) (*WAIT Radio*).

[59] 47 CFR § 1.925(b)(3).

the 2019 ANSI Standard offers beyond just volume control while at the same time ensuring some volume control benefits.

19. We find special circumstances exist that warrant a deviation from the general rule as well as the fact that strict compliance with the volume control testing standard at this time would undermine the general purpose of the hearing aid compatibility rules. Specifically, ATIS asserts that there are "significant and material problems with the methodology used for testing volume control" that render compliance with the 2019 ANSI Standard functionally impossible given that the standard requires compliance with the TIA 5050 Standard.[60] According to ATIS, the problem relates to section 20.19(b)(3)(i) of the Commission's wireless hearing aid compatibility rules even though handset manufacturers never addressed this rule in their filed comments when the Commission was considering adopting the 2019 ANSI Standard and the related TIA 5050 Standard. This provision provides that "a handset is hearing aid-compatible if it meets the 2019 ANSI standard for all frequency bands that are specified in the ANSI standard and all air interfaces over which it operates on those frequency bands. . . ."[61] In turn, the 2019 ANSI Standard specifies that in order for a handset to meet the standard's volume control requirements the handset must meet the requirements of the TIA 5050 Standard.[62] The TIA 5050 Standard specifies that handsets must be tested for volume control using one AMR narrowband codec and one AMR wideband codec or the next closest codec if the AMR narrowband or wideband codec is not available in combination with any available air interface of the manufacturer's choosing that supports the codec being tested.[63]

20. While the TIA 5050 Standard generally limits testing to one AMR narrowband and one AMR wideband codec in combination with an air interface of the manufacturer's choosing, ATIS asserts that this is not the case in practice because of the testing guidance the Office of Engineering and Technology (OET) Laboratory Division has issued.[64] ATIS states that OET's testing guidance effectively requires a handset to pass the Commission's volume control standard on all available codecs and air interface combinations even though the TIA 5050 Standard does not specify this approach.[65] According to ATIS, this situation results from OET's guidance requiring handset manufacturers to investigate and document "worst-case test conditions and results."[66] ATIS states that this all air interface/frequency/codec testing requirement results in a testing standard that handsets cannot pass because the TIA 5050 Standard does not use a speech-like signal that can pass substantially unchanged through all possible speech codecs.[67]

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[60] ATIS Waiver Petition at 3, 6, 9; *see also* CTA Reply at 2; UL Solutions Reply at 1.

[61] 47 CFR § 20.19(b)(3)(i).

[62] 2019 ANSI Standard at § 7.

[63] TIA 5050 Standard at §§ 4.5, 4.5.1, 4.5.2, 4.6.

[64] ATIS Waiver Petition at 3-4 & n.9. OET's Laboratory Division issues staff guidance documents to assist the public in following Commission requirements. These documents do not constitute rules and are referred to as Knowledge Database documents or KDBs. *See* https://apps.fcc.gov/oetcf/kdb/.

[65] *See* 285076 DO4 Volume Control v01r01 at https://apps.fcc.gov/kdb/GetAttachment.html?id=sWZ54%2BmGi5Dx5TcA4B7QOQ%3D%3D&desc=285076%20D04%20Volume%20Control%20v01r01&tracking_number=36388 (KDB Volume Control Guidance).

[66] OET's KDB Volume Control Guidance states that: "Each submitted test report shall document the codec type (i.e., NB, WB, EVS, etc.), every air interface (i.e., LTE, 5G NR, WI-FI), and band supported for the worst-case codec bit rate, band channel, bandwidth, air interface bit rate, subcarrier spacings, and resource blocks, for the handset to be considered compliant to § 20.19(b)(3)." KDB Volume Control Guidance at § 2.

[67] ATIS Waiver Petition at 10. ATIS believes this problem has to do with the fact that the TIA 5050 Standard's testing methodology was developed using pulsed-noise signals that are insufficiently voice-like to be compatible with many modern codecs. *Id.* at 3-4, 10.

21. In support of its argument, ATIS states that all of the handsets that it tested using the 2019 ANSI Standard failed to pass this standard.[68] Specifically, ATIS states that it tested eighteen handset models that had recently been certified as hearing aid-compatible using the 2011 ANSI Standard and all of these handsets failed to pass the 2019 ANSI Standard because of the Commission's all air interface/frequency/codec testing requirement reflected in OET's Knowledge Database (KDB) Volume Control Guidance document.[69] According to ATIS, the tested handsets represented a range of handset models offered by manufacturers, with models being offered at a range of price points, having multiple form factors, and having multiple chip set providers.[70]

22. No party filed comments opposing ATIS's request for a reduced volume control testing methodology on an interim basis until a full volume control testing methodology can take effect.[71] Commenters echo ATIS's statement that the current volume control testing methodology is flawed and needs to be modified so consumers with hearing loss can benefit from other aspects of the 2019 ANSI Standard.[72] The unanimous supporters of ATIS's waiver request include HLAA, an advocacy organization which represents consumers with hearing loss.[73] In addition to these comments, handset manufacturers' most recent compliance filings reveal that not a single handset has been certified as hearing aid-compatible under the 2019 ANSI Standard.[74] Rather, these reports indicate that all of the handsets that manufacturers are currently offering have been certified as hearing aid-compatible using the 2011 ANSI Standard.

23. Based on these special circumstances and the fact that the underlying purpose of our hearing aid compatibility rules would be frustrated by strict adherence to the volume control testing standard, we find it in the public interest to take action to ensure that handset manufacturers can certify handsets as hearing aid-compatible under the 2019 ANSI Standard and consumers with hearing loss can benefit from the advantages that the 2019 ANSI Standard offers, including some volume control benefits. While ATIS is requesting that we waive certain aspects of the volume control testing methodology as an interim measure, ATIS is not requesting a waiver of the 2019 ANSI Standard's acoustic and inductive coupling requirements. We agree with ATIS and commenters that by waiving certain aspects of the volume control testing methodology, we allow consumers who use hearing aids or cochlear implants to receive the benefits of the 2019 ANSI Standard's heightened RF interference requirements, and we allow consumers who use telecoils to receive the benefits of the 2019 ANSI Standard's improved inductive coupling requirements.[75] In addition, the 2019 ANSI Standard offers other consumers benefits, including coverage of new technologies and devices, and an expanded frequency range.[76] As commenters observe, granting the waiver request will allow consumers with

[68] *Id*. at 3 & n.8, 8-9.

[69] *See supra* para. 20 (discussing the KDB Volume Control Guidance document).

[70] ATIS Waiver Petition at 3 & n.8, 8-9.

[71] MWF Comments at 4; CCA Reply at 3-4; CTA Reply at 2; HAC Task Force Reply at 1, 3-4, 5; TIA Reply at 2, 4; UL Solutions Reply at 1.

[72] MWF Comments at 5; CCA Reply at 2-4; CTA Reply at 2; Task Force Reply at 3-5; UL Solutions Reply at 1.

[73] HLAA Letter at 2; *see also* CTA Reply at 1.

[74] *See* FCC, Hearing Aid Compatibility Reports: Device Manufacturers Summary, Hearing Aid Compatibility Status Reporting, https://www.fcc.gov/wireless/systems-utilities/universal-licensing-system/hearing-aid-compatibility-status-reporting-1.

[75] ATIS Waiver Petition at 5, 13, 15; CCA Reply at 3-4; CTA Reply at 2.

[76] ATIS Waiver Petition at 5, 15; *2021 HAC Report and Order*, 36 FCC Rcd at 4571, para. 6.

hearing loss to fully benefit from the improvements that the 2019 ANSI Standard offers that go beyond those related to volume control.[77]

24. *2N Force Level Conversational Gain Test*. With these benefits in mind, for the conversational gain test at the 2N force level we accept ATIS's proposal as clarified in the ATIS Ex Parte Letter and condition this waiver on handsets having to pass testing using all available narrowband and wideband codecs and air interface combinations.[78] Further, we require handset manufacturers to place the lowest conversational gain that results from this testing on the handset's package label in a manner consistent with our hearing aid compatibility labeling rules. This approach is consistent with ATIS's waiver request. It is also consistent with our package labeling requirements, which require the lowest conversational gain that results from testing the various combinations of narrowband and wideband codecs and air interfaces to be placed on the package label in order to avoid an inflated test result being placed on the label.[79] In addition, commenters universally support ATIS's 2N force level test proposal as well as all other aspects of ATIS's waiver testing proposals.

25. *8N Force Level Conversational Gain Test*. As ATIS suggests in the ATIS Ex Parte Letter, manufacturers will continue to be required to conduct the 8N force level conversational gain test, but we waive the requirement that the test achieve at least an 18 dB passing rate.[80] Under this approach, manufacturers are required to perform the 8N force level test using the same testing parameters as established for the 2N force level test, and must place the resulting conversational gain (even if it is below 18 dB) on the handset's package label in a manner consistent with our existing hearing aid compatibility labeling rules.[81] This decision is consistent with one of the stated reasons that the Commission adopted a handset volume control requirement, which is not only to aid consumers with hearing loss who use hearing devices, but also to aid consumers with hearing loss who do not use hearing devices.[82] The approach we adopt for the 8N force level test is consistent with this objective and gives consumers with hearing loss who do not use hearing aids the relevant information that they need to make informed handset purchasing decisions.

26. *Distortion/Noise and Frequency Response Tests*. With respect to the related distortion/noise and frequency response tests at the 2N and 8N force levels, we accept ATIS's suggestions set forth in the ATIS Ex Parte Letter. Consistent with the ATIS Ex Parte Letter, we condition this waiver on handsets having to pass testing using at least one narrowband *and* one wideband codec of the manufacturer's choosing. Further, we accept ATIS's suggestion that the chosen narrowband and wideband codecs will be tested using one bit rate and with only those air interfaces associated with the chosen codecs.[83] We also accept ATIS's suggestion that only the chosen narrowband and wideband codecs will be tested for distortion/noise and frequency response and the other codecs used for testing for conversational gain at the 2N and 8N force levels are not required to undergo the

[77] HLAA Letter at 2; CCA Reply at 3-4; CTA Reply at 2; HAC Task Force Reply at 2, 5-6; UL Solutions Reply at 1.

[78] The ATIS Ex Parte Letter clarifies that the 2N and 8N force level testing will be done on all available codecs and with all air interfaces, but in performing the conversational gain test as specified in the TIA 5050 Standard, these codecs are not required to undergo testing for distortion/noise and frequency response unless they are the specific codecs that manufacturers have chosen for the distortion/noise and frequency response tests. ATIS Ex Parte Letter at 2 & n.5.

[79] 47 CFR § 20.19(f)(1); *see also infra* para. 32.

[80] ATIS Ex Parte Letter at 2.

[81] 47 CFR § 20.19(f)(1).

[82] *2017 HAC Report and Order*, 32 FCC Rcd at 9073-074, 9077-078, 9079-080, 9083, paras. 23, 29, 33, 41.

[83] ATIS states that testing over all bit rates as opposed to just one bit rate will "not benefit consumers because it would not create meaningfully helpful results." ATIS Ex Parte Letter at 3 & n.7. Further, ATIS "notes that the magnetic testing for telecoil (which tests all bitrates) is a fundamentally different test than the *audio* testing being done for volume control." *Id*. (emphasis in original).

distortion/noise and frequency response tests.[84] In this regard, we accept ATIS's "alternative method" for determining the volume control setting for purposes of testing the other codecs for conversational gain and for reporting those test results consistent with that method.[85]

27. This approach follows the TIA 5050 Standard's requirement that handsets pass testing using one narrowband and one wideband codec.[86] This approach also gives assurance that a handset's amplifier/speaker combination will meet consumer expectations over both narrowband and wideband modes of voice communications as envisioned by the current standard. At the same time, our decision to accept ATIS's proposed modification and allow manufacturers to choose which narrowband and wideband codecs to test gives manufacturers more flexibility than the TIA 5050 Standard, which specifies the narrowband and wideband codecs to be tested. We accept ATIS's suggestion on this point given the testing methodology flaw seen when testing an AMR codec.

28. ATIS's proposal to give manufacturers flexibility to choose any codec for testing appears linked to the data in the HAC Task Force's Final Report that handsets cannot pass the distortion/noise and frequency response tests using certain codecs. In particular, the data relied upon by ATIS indicates that handsets cannot pass the distortion/noise test when tested using the AMR codecs specified in the TIA 5050 Standard.[87] ATIS asserts that the developers of the TIA 5050 Standard did not attempt to resolve the technical difficulty of developing a test signal with speech-like characteristics that could pass substantially unchanged through all possible speech codecs or that would evaluate the end-to-end transparency of the various speech codecs.[88]

29. The HAC Task Force's Final Report, however, includes data from two unnamed manufacturers indicating that four of their handsets were able to pass the distortion/noise part of the volume control testing standard using an EVS wideband codec as opposed to an AMR wideband codec.[89] We are concerned that if manufacturers choose to test just narrowband codecs, the tested handsets will fail to demonstrate the performance of their speaker/amplifier combinations when a wideband voice codec is used. As a result, for the distortion/noise and frequency response tests at the 2N and 8N force level, rather than requiring testing of both narrowband and wideband AMR codecs, as generally required by the TIA 5050 Standard, we require that handsets pass testing of at least one narrowband codec and one wideband codec of the manufacturer's choosing, as discussed above.

30. For the distortion/noise and frequency response tests at the 2N and 8N force levels, manufacturers must choose codecs that are within the scope of the TIA 5050 Standard, which include narrowband and wideband codecs, but these codecs do not necessarily have to be AMR codecs. That is, we are not limiting the codecs that manufacturers can choose for testing to just AMR narrowband and

[84] *Id.* at 2 & n.5.

[85] Under ATIS's alternative method for testing the other codecs when it performs conversational gain testing, a manufacturer will first establish the volume control setting by conducting the full set of tests for the selected narrowband and wideband codecs. The manufacturer will then use this adjusted volume control setting for purposes of testing the other codecs and air interfaces for conversational gain at the 2N and 8N force levels. *Id.* This more conservative approach is preferable to the other approach ATIS suggests which is to test the other codecs and air interfaces without first determining the volume control adjustment. *Id*. Determining the volume control adjustment first—as part of the complete test for at least one narrowband and one wideband codec selected for distortion/noise and frequency response testing—before testing the other codecs and air interfaces may lead to more accurate conversational gain test results for these other codecs.

[86] TIA 5050 Standard §§ 4.5, 5.

[87] HAC Task Force Final Report at 84-87.

[88] *Id*. at 88-89; *see also* ATIS Waiver Petition at 3-4, 10. In addition, ATIS's waiver petition states that "TIA 5050 was not intended to be used to validate the quality of electrical transmission of the codec or air interface itself." ATIS Waiver Petition at 10.

[89] HAC Task Force Final Report at 84-87.

AMR wideband codecs as defined in sections 4.5.1 and 4.5.2 of the TIA 5050 Standard. While manufacturers may choose to test AMR narrowband and AMR wideband codecs, they can also choose EVS narrowband and EVS wideband codecs or any other narrowband or wideband codecs that are within the scope of the TIA 5050 Standard. If a handset does not have a wideband codec or the handset only has an AMR wideband codec, then the test report must document this fact and the passing requirement under these circumstances for the wideband codec test is waived. The passing results for the distortion/noise and frequency response tests must be reported in the handset's test report.

31. *Revised Volume Control KDB Guidance*. To help in this matter, OET, in coordination with WTB, will issue a revised KDB guidance document for volume control testing consistent with this Order.[90] This revised KDB guidance will address the technical testing requirements for the conversational gain, distortion/noise, and frequency response requirements that are part of the conditions of this Order. The KDB guidance will also address the reporting requirements for the test data required under the conditions of this Order. Manufacturers and testing laboratories are expected to fully follow the KDB guidance's testing instructions as issued. These testing requirements are to ensure the best listening experience for consumers with hearing loss as possible under the waiver we grant today.

32. *Labeling Requirements*. We remind handset manufacturers that our hearing aid compatibility labeling rules require certain information to be placed on a handset's package label and additional information be provided in the handset's package insert and user manual.[91] Our handset package labeling rules require that a handset that is certified as hearing aid-compatible state on the handset's package label that the handset is hearing aid-compatible. In addition, if the handset is certified under a standard that includes volume control requirements, such as under the 2019 ANSI Standard, the label must specify the handset's conversational gain with and without hearing aids.[92] These requirements give consumers the most pertinent information on a handset's package label and allow consumers to determine if the conversational gain of the handset meets their needs.[93]

33. In addition, for handsets certified as meeting volume control testing requirements, our rules require that package inserts and user manuals for these kinds of handsets provide an explanation of the handset's volume control capabilities and how special testing circumstances such as those permitted by this Order affect those functions.[94] Consumers must have this information to ensure they can purchase handsets that best meet their individual needs. Since we are waiving certain aspects of the all air interface/frequency/codec volume control testing approach, consumers must be informed as to how this change affects the volume control capabilities of a handset they are considering that has been certified as hearing aid-compatible under the conditions of this Order. We require package inserts and user manuals for these type of handsets to state which codecs and air interface combinations were used to pass testing for conversational gain and for the related distortion/noise and frequency response tests and which codecs and air interfaces were not tested. Consumers must be able to understand the volume control capabilities of tested operations and non-tested operations and what this means in terms of the volume control differences between the two types of operations.[95]

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[90] *See supra* n.64 (defining a KDB guidance document). The revised KDB guidance will be available through OET's KDB website using Publication Number 285076. *See* https://apps.fcc.gov/oetcf/kdb/.

[91] 47 CFR § 20.19(f).

[92] 47 CFR § 20.19(f)(1).

[93] *2021 HAC Report and Order*, 36 FCC Rcd at 4581, para. 35.

[94] 47 CFR § 20.19(f)(2)(vii)-(viii).

[95] Consumers may contact the FCC's Disability Rights Office with questions concerning our hearing aid compatibility requirements. The Office's contact information can be found here: https://www.fcc.gov/accessibility. The Office has prepared a consumer guide on Hearing Aid Compatibility for Wireline and Wireless Telephones that can be found here: https://www.fcc.gov/consumers/guides/hearing-aid-compatibility-wireline-and-wireless-telephones.

34. *Benchmark Compliance*. Pursuant to this Order, we allow handsets that pass the volume control testing requirements set forth above, as well as the rest of the 2019 ANSI Standard's testing requirements, to be certified as hearing aid-compatible under the 2019 ANSI Standard and the related TIA 5050 Standard. Handsets that satisfy all of these requirements may be marketed as meeting the Commission's hearing aid compatibility requirements and counted as hearing aid-compatible for benchmark deployment purposes. The same is true for handsets that meet the above testing requirements through the permissive change process. These types of handsets can also be marketed as meeting the Commission's hearing aid compatibility requirements and counted as hearing aid-compatible for benchmark deployment purposes. Handset manufacturers, however, must continue to comply with all other aspects of our wireless hearing aid compatibility rules, including labeling, website posting, and reporting requirements.

35. During the remainder of the exclusive use transition period that ends on December 5, 2023, handset manufacturers may continue to certify handsets as hearing aid-compatible using either the 2011 ANSI Standard or the 2019 ANSI Standard as conditioned by this Order.[96] Handsets certified as hearing aid-compatible under either of these standards may be counted for benchmark deployment purposes. Consistent with established practice, however, handset manufacturers must use one or the other standard for certification purposes and may not mix parts of each standard.[97] After December 5, 2023, handset manufacturers may only certify new handsets as hearing aid-compatible using the 2019 ANSI Standard as conditioned by this Order.

36. *Waiver Time Limit*. The waiver we adopt today becomes effective upon the release date of this Order and will continue to be effective for a two-year period after the release date of this Order. ATIS and commenters have indicated that a new volume control standard is being developed through the TIA process and that they expect the process to move quickly in order to make the new standard available to the Commission to make effective.[98] We plan to hold parties to this commitment, and we expect parties to expedite the process for developing a new volume control standard in time for the Commission to adopt the new standard prior to the waiver period expiring. In order to meet this objective, we encourage parties to work rapidly and cooperatively for the benefit of consumers with hearing loss.

37. We further condition this Order on ATIS filing with us a letter on the one-year anniversary of the release date of this Order. This letter must appraise the Commission on the status of the development of a new volume control standard and any issues that have arisen with respect to the establishment of the new standard. Further, the letter must inform us as to when the new standard will be made available to the Commission for adoption. This letter should be seen as an opportunity for ATIS to inform the Commission that parties are on track to petition the Commission to adopt the new standard prior to the waiver period expiring.

38. We find that our actions today are not only in the public interest but also fully consistent with the underlying purpose of our wireless hearing aid compatibility rules. These rules are based on the principle that consumers with hearing loss should have the same access to the newest and most advanced handsets as consumers without hearing loss.[99] By waiving certain handset testing requirements under the conditions of this Order, we ensure that the underlying purpose of our hearing aid compatibility rules is not frustrated. This Order allows new handsets to be certified under the 2019 ANSI Standard and consumers with hearing loss will be able to enjoy the benefits that these new handsets will be designed

[96] *2023 HAC Extension* Order, at paras. 1, 10.

[97] *2021 HAC Report and Order*, 36 FCC Rcd at 4577, para. 26.

[98] ATIS Waiver Petition at 13-14, 19; CCA Reply at 4; TIA Reply at 2.

[99] *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11167, 11174, para. 18 (2010).

to offer. In addition, our decision permits handset manufacturers to be able to certify new handsets as hearing aid-compatible after the exclusive use transition period ends this coming December. As such, our actions today are consistent with the underlying purpose of our hearing aid compatibility rules and avoid that purpose from being frustrated by strict adherence to the volume control testing requirements. In view of the unique and unusual factual circumstances of this case, we find that strict application of the volume control testing requirements would be contrary to the public interest.

39. Finally, our decision is consistent with our goal of requiring all new handsets to be certified as hearing aid-compatible.[100] We are encouraged by the members of the HAC Task Force reiterating "their commitment to working towards the goal that all new handsets will meet HAC requirements," including "an applicable volume control standard."[101] We continue to strive toward our goal of 100% hearing aid compatibility in the near future and our decision to conditionally waive certain aspects of our volume control testing requirements as discussed above is consistent with this objective. Our decision allows handset manufacturers to continue the process of certifying all of their handsets as hearing aid-compatible, as many currently do.[102]

40. *Paperwork Reduction Act*. This document does not contain new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), 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).

IV. ORDERING CLAUSE

41. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 303(r), and 610 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 710, and sections 0.331 and 1.3 of the Commission's rules, 47 CFR §§ 0.331 and 1.3, that ATIS's request for a partial waiver of Section 20.19(b)(1) and (b)(3) IS GRANTED to the extent indicated herein.

42. IT IS FURTHER ORDERED that this Order IS EFFECTIVE upon release and will remain effective for 24 months from the release date of this Order.

43. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this 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

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

[100] *2016 HAC Report and Order*, 31 FCC Rcd at 9337, 9345, paras. 4, 22; *see also* HAC Task Force Reply at 1-2.

[101] ATIS Sept. 27, 2023 Ex Parte Letter at 1-2.

[102] *See* FCC, Hearing Aid Compatibility Reports: Device Manufacturers Summary, Hearing Aid Compatibility Status Reporting, https://www.fcc.gov/wireless/systems-utilities/universal-licensing-system/hearing-aid-compatibility-status-reporting-1 (many handset manufacturers report 100% compliance).

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

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Structure and Practices of the Video Relay Services Program	)	CG Docket No. 10-51
	)	
Sorenson Communications, LLC Petition for Expedited Waiver	)	

ORDER

Adopted: September 29, 2023 **Released: September 29, 2023**

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. The Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) hereby grants to Sorenson Communications, LLC (Sorenson), limited waivers, as described below, of the Commission's rules to the extent that they require a Video Relay Service (VRS) provider to: (1) send a notice to a second VRS provider's users when the first provider is acquiring, by sale or transfer, part or all of the second provider's user base;[1] (2) re-register newly-acquired users in the Telecommunications Relay Services (TRS) User Registration Database (URD or User Database) before initiating service to those users;[2] (3) answer calls from users on a first-come, first-served basis;[3] and (4) answer 80 percent of all calls within 120 seconds, measured on a monthly basis.[4] Sorenson requested waiver of these rules in two recently filed petitions.[5] We find good cause to

[1] 47 CFR § 64.631(f)(1). This 30-days advance notice requirement is part of a streamlined procedure whereby users may be ported to a new default VRS provider, pursuant to a sale or transfer, without obtaining each user's authorization and verification. *See id.* § 64.631(f).

[2] *Id.* §§ 64.611(a)(4), 64.615(a)(6)(i)-(vi).

[3] *See id.* § 64.604(b)(2); *see also FCC Clarifies That Telecommunications Relay Services (TRS) Marketing And Call Handling Practices Are Improper*, Public Notice, CC Docket No. 98-67, CG Docket No. 03-123, 20 FCC Rcd 1471, 1473 (CGB 2005) (*2005 Call Handling PN*) ("[TRS] providers must handle incoming calls in the order that they are received.").

[4] 47 CFR § 64.604(b)(2)(iii).

[5] Sorenson Communications, LLC Petition for Expedited Waiver, CG Docket Nos. 03-123, 10-51 (filed July 24, 2023) (July Petition), https://www.fcc.gov/ecfs/document/10724052107965/1; Sorenson Communications, LLC Second Petition for Waiver, CG Docket Nos. 03-123, 10-51 (filed Aug. 8, 2023) (August Petition), https://www.fcc.gov/ecfs/document/108080022406561/1. Sorenson also provided additional information in response to questions from Commission staff. Letter from John T. Nakahata, Counsel to Sorenson Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123, 10-51 (filed Sept. 19, 2023) (Sorenson *Ex Parte*), https://www.fcc.gov/ecfs/search/search-filings/filing/1091926935548.

grant these limited waivers because adherence to these rules could prevent Sorenson from quickly establishing a fully functioning, robust VRS service for consumers who are deafblind. Granting these waivers will ensure the continuous availability of service to consumers who are deafblind during a transition period after their current provider, ASL Services Holdings LLC d/b/a GlobalVRS (GlobalVRS), exits the VRS market.

II. BACKGROUND

2. VRS is a relay service,[6] supported by the TRS Fund, that "allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment."[7] In a typical VRS call, a deaf or hard of hearing person communicates in American Sign Language (ASL), by video over a broadband link, to a communications assistant (CA), who then voices the message to a hearing person using ordinary telephone service. The same process then occurs in reverse: the CA receives the hearing party's voice response over the telephone and signs that response, by video, to the ASL user.[8]

3. *Video-Text Service.* Some VRS users, who are deafblind, are able to sign *to* a CA but are unable to see the signs received *from* the CA well enough to understand them. For such users, since 2016, GlobalVRS has provided a special variant of VRS (referred to in this Order as Video-Text Service), which has been available only from GlobalVRS. In this service, the ASL user continues to use a video link to sign to the CA. However, the other party's contributions to the conversation are converted to text (instead of ASL video), which the deafblind party can read using a refreshable braille display.[9] For persons who are deafblind and whose primary language is ASL, this Video-Text Service offers an alternative to text-to-voice relay services, such as Internet Protocol Relay Service, allowing such users the opportunity to send messages in their first language, ASL, while receiving a text response.

4. On April 28, 2023, GlobalVRS filed a letter with the Commission notifying it of a "potential service interruption on or about June 30, 2023," absent affirmative Commission action on a petition filed by GlobalVRS requesting additional compensation.[10] One month later, in a notice dated May 26, 2023, GlobalVRS informed its users that absent such action, GlobalVRS "will have no choice but to cease operations effective June 30, 2023," and suggested that its users begin registering for service with other VRS providers.[11] On June 8, GlobalVRS sent a more definitive notice of its intention to cease providing VRS after June 30, 2023. GlobalVRS suggested that Video-Text Service users register for a text-based service until their "MyMMX-db software has a new [VRS] provider connected to it."[12] On June 30, 2023, GlobalVRS sent a third notice to its users. In this notice, GlobalVRS informed users that

[6] Section 225 of the Communications Act of 1934, as amended (the Act), requires the Commission to ensure the availability of TRS to persons who are deaf, hard of hearing, or deafblind or have speech disabilities, "to the extent possible and in the most efficient manner." 47 U.S.C. § 225(b)(1). TRS are defined as "telephone transmission services" enabling such persons to communicate by wire or radio "in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services." *Id*. § 225(a)(3).

[7] 47 CFR § 64.601(a)(51).

[8] *See Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5548-49, para. 2 (2011).

[9] Users of GlobalVRS's service may use MyMMX-db software, an application for smartphones developed by nWise AB to allow users to read Real-Time Text (RTT) messages on Braille displays. *See* nWise, Our Products, https://mymmx.com/our-products/ (last visited Aug. 1, 2023).

[10] Letter from Gabrielle Joseph, GlobalVRS, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Apr. 28, 2023) (April 28 Termination Notice).

[11] *See* July Petition, Attach. A.

[12] *See id.*, Attach, B; *see also supra* note 9 (describing MyMMX software).

it was continuing to provide VRS temporarily while it works with the Commission and Sorenson to develop a "seamless transition" for their service.[13] On August 3, 2023, GlobalVRS filed a letter with the Commission confirming its plan to continue providing Video-Text Service pending its availability from a new provider, and seeking reimbursement of expenses incurred to maintain the service after June 30, 2023.[14] On August 17, 2023, the Bureau adopted an order authorizing an accelerated schedule for reimbursement of exogenous costs incurred by GlobalVRS in providing Video-Text Service after June 30, 2023, and granting conditional waivers of certain Commission rules.[15]

5. In a petition filed July 24, 2023, Sorenson explained that it is currently preparing to offer a form of Video-Text service, which it expects to make available in the near future, and that it is negotiating with GlobalVRS for the transfer to Sorenson of GlobalVRS's deafblind users and any other remaining GlobalVRS users.[16] In the July 24, 2023, petition and a second petition filed August 8, 2023, Sorenson requests limited waivers of several Commission rules to facilitate a smooth and prompt transition of GlobalVRS's remaining users and prevent interruption or degradation of service to those users.[17] Further, with respect to its second petition, Sorenson explains that it needs time to train CAs to handle Video-Text calls in order to provide a better experience for deafblind users as Sorenson introduces this service for the first time and ramps up its capabilities to provide the Video-Text Service.[18]

6. Sorenson maintains that GlobalVRS has provided notices to users that meet certain key elements of the Commission's sale or transfer notice requirements, and that providing another 30 days' notice at this point could cause a delay in the transition or potentially a gap in service for users of GlobalVRS's services – and could deprive ASL users who are deafblind of a vital means of communication.[19] In light of the potential harm to GlobalVRS's remaining users, Sorenson requests a waiver of the requirement to provide its own 30-days' notice to users of the upcoming transfer.[20]

7. Sorenson also asserts that the process of re-registering GlobalVRS's remaining users could cause additional delay in the transition. Sorenson contends that users "routinely fail the URD Administrator's identity verification" for a variety of reasons, and as a result their re-registration can be delayed for some period of time.[21] Ordinarily, in such situations, these users would revert to their porting-out provider. In this situation, however, porting back would be impractical since GlobalVRS would no longer be available, and these users would be unable to register with any VRS provider pending resolution of the identity verification.[22] Sorenson notes that this again could delay the transition or lead to a gap in service for the remaining users. Sorenson requests a waiver of this rule, asserting that GlobalVRS's users are already registered in the User Database, their identities have already been verified,

[13] *See* July Petition, Attach. C.

[14] Letter from Gabrielle Joseph, GlobalVRS, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Aug. 3, 2023), https://www.fcc.gov/ecfs/document/10803170679210/1.

[15] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, DA 23-718 (CGB Aug. 17, 2023) (*GlobalVRS Reimbursement Order*).

[16] *See* July Petition at 4.

[17] *See id.* at 4; August Petition at 2-3; Sorenson *Ex Parte* at 2.

[18] *See* August Petition at 4-5.

[19] July Petition at 4-6; 47 CFR § 64.631(f)(1). Sorenson states that additional information required by the rule could be provided at a later time, either in response to a specific inquiry by a user or in a subsequent notice to all the GlobalVRS users acquired by Sorenson. July Petition at 5; Sorenson *Ex Parte* at 2.

[20] July Petition at 4-5.

[21] *Id.* at 7-8.

[22] *Id.* at 8.

and they have already been determined to be eligible for VRS.[23]

8. In its August Petition and *Ex Parte*, Sorenson explains that a separate queue for Video-Text Service calls may be necessary so that these calls can be routed to CAs who are trained and experienced in providing this unique service.[24] Otherwise, it would be "very inefficient" for Sorenson to train and equip all of its CAs to handle deafblind calls because "[d]eaf[b]lind minutes will make up a fraction of a percent of Sorenson's overall VRS minutes."[25] In addition, Sorenson states that a separate queue for deafblind VRS users could potentially provide a much better experience for deafblind users.[26] Consequently, Sorenson requests a waiver of the first-come, first-served rule to permit routing of Video-Text Service calls to the next available CA who is specially trained in both interpreting from ASL to English and transcribing from voice to text.[27]

9. Sorenson further explains that it expects a period of adjustment while developing its version of Video-Text Service and onboarding, training, and equipping CAs to provide the service.[28] Sorenson states it is moving as quickly as possible and expects to comply with the "speed of answer" rule requiring it to answer at least 80 percent of all calls within 120 seconds, as measured on a monthly basis.[29] Yet, Sorenson also recognizes that it is in the early stages of developing the service and that the transfer of users is on a short timeframe.[30] Under these circumstances, if it determines to implement a separate queue for deafblind users, Sorenson requests a temporary waiver of the speed of answer rule for the deafblind users' queue for a period of four months after the transfer of GlobalVRS's deafblind users to Sorenson.[31]

III. DISCUSSION

10. *Waiver Standard.* A Commission rule may be waived for "good cause shown."[32] In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.[33] In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[34] Good cause for a waiver may be found if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.[35]

11. *Waiver of Porting Notice*. We find good cause to grant limited waiver of section 64.631(f)(1) of the Commission's rules, which requires Sorenson to provide 30 days' notice to GlobalVRS's registered users before acquiring them from GlobalVRS through a sale or transfer.

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[23] *Id.* at 7.

[24] August Petition at 3-5; Sorenson *Ex Parte* at 2-3.

[25] August Petition at 4.

[26] Sorenson *Ex Parte* at 2.

[27] August Petition at 4; Sorenson *Ex Parte* at 2.

[28] August Petition at 5-6; Sorenson *Ex Parte* at 3.

[29] 47 CFR § 64.604(b)(2)(iii); August Petition at 5.

[30] August Petition at 6; Sorenson *Ex Parte* at 3.

[31] August Petition at 6; Sorenson *Ex Parte* at 3.

[32] 47 CFR § 1.3.

[33] *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[34] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

[35] *Northeast Cellular*, 897 F.2d at 1166.

Sorenson and GlobalVRS are currently negotiating an agreement for the transfer of GlobalVRS's remaining registered users, from GlobalVRS to Sorenson.[36]

12. We agree with Sorenson that GlobalVRS's notices to its users of its plans to terminate the provision of VRS[37] and to transfer its remaining VRS users to Sorenson[38] have already provided users with key information required by the notice rule. As Sorenson explains, GlobalVRS's customers have received three notices of the upcoming change in service and have had several months to select a new provider.[39] It is likely that those users still receiving service from GlobalVRS are remaining with GlobalVRS because they need a service (i.e., Video-Text Service) that is not yet available from Sorenson, the only other provider preparing to offer it. We also agree that requiring another, more detailed 30 days' notice before a transfer agreement is implemented could delay or interrupt the provision of service to GlobalVRS's users—and potentially deprive ASL users who are deafblind of a vital means of communication.[40] For these reasons, we find that a partial waiver of the notice requirement is justified.

13. However, GlobalVRS's users have not received certain information required by section 64.631(f), i.e.: (1) the date on which Sorenson will become the users' new default provider;[41] (2) whether Sorenson will be responsible for handling any complaints filed, or otherwise raised, against GlobalVRS prior to or during the transfer;[42] and (3) Sorenson's toll-free customer service telephone number.[43] Sorenson states that, once a transfer agreement is executed, it can provide a supplemental notice prior to the transfer which would include this information.[44] Therefore, we condition grant of this limited waiver on (i) Sorenson filing with the Commission a copy of the transfer agreement between Sorenson and Global no later than five business days after the agreement is executed; and (ii) Sorenson providing notice to GlobalVRS's users of the information referenced above as soon as practicable after the agreement is executed, and in any event, no later than the date of transfer. This notice shall also be provided as a pre-recorded video message in ASL.[45]

14. *Waiver of User Re-Registration and Verification.* We also find good cause to grant a limited waiver of sections 64.611(a)(4) and 64.615(a)(6)(i)-(vi) of the Commission's rules. Under these rules, when a registered VRS user changes its default provider, the new default VRS provider must resubmit the user's information (such as name, address, date of birth, and the last four digits of the user's social security number) to the User Database for reverification of the user's identity before initiating service to the porting customer.[46]

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[36] Sorenson *Ex Parte* at 1. As explained earlier, GlobalVRS is terminating its provision of VRS. Under an agreement to transfer GlobalVRS's remaining registered users to Sorenson, Sorenson would become the "default" provider to which VRS calls to and from such users are routed unless the user affirmative chooses to use a different provider. *See* 47 CFR § 64.611(a)(1), (2).

[37] *See* July Petition, Attachs. B, C.

[38] *See id.*, Attach. C.

[39] *Id.* at 4-6.

[40] *Id.* at 4-6.

[41] 47 CFR § 631(f)(1)(i).

[42] *Id.* § 631(f)(1)(iii).

[43] *Id.* § 631(f)(1)(iv).

[44] Sorenson *Ex Parte* at 2.

[45] 47 CFR § 64.631(f)(1)(i).

[46] *Id.* §§ 64.611(a)(4), 64.615(a)(6)(i)-(vi). In 2022, the Commission adopted changes to this rule that allow the user to receive service for two weeks while identity verification is completed. The user must be ported back to the

(continued….)

15. In the unusual circumstances present here, requiring compliance with re-registration and verification requirements during the transition period could result in interruption of service to the affected users.[47] As Sorenson explains, VRS users "routinely fail the URD Administrator's identity verification" for a variety of reasons, and the provider must then submit additional documentation to establish the user's identity.[48] This can be a challenging and time-consuming process, as it involves individually contacting each customer and working with them to securely upload their documentation to Sorenson, which must then submit that documentation for the URD Administrator's review and approval.[49] It is likely to be especially challenging for users who are deafblind.[50] Further, additional delays are possible if there are discrepancies in the information provided, or if the required documentation is not immediately available.[51]

16. It is especially significant that, unlike the typical case where a user is porting from one default provider to another, the users involved here have no alternative to porting. As GlobalVRS's notices to its users make clear, it needs to terminate the provision of VRS as soon as possible, for economic reasons.[52] Having initially planned to terminate service June 30, GlobalVRS has extended its termination date for a brief period, as an accommodation to its customers who are deafblind, solely because no service alternative for its Video-Text Service customers was immediately available.[53] Thus, for any users whose identities cannot be reverified quickly, the service they need will no longer be available from their current provider.[54] Without waivers of these registration rules, GlobalVRS's remaining users may suffer harm, face unnecessary hurdles or delays, and potentially lose access to vital communication services during this transition. Further, the identities of these users have been verified previously, when their registration data was submitted to the Database by GlobalVRS. In these unusual circumstances, to avoid inflicting such hardship and to maintain uninterrupted service to a small group of customers for whom an alternative service provider is not yet available, and for whom a service cutoff could have especially harmful effects, we find good cause to waive the requirement to reregister and reverify GlobalVRS's users.[55]

17. To implement this waiver, we direct the TRS Fund administrator to reclassify all current registered users of GlobalVRS as registered users of Sorenson. To the extent that any GlobalVRS users are involved in a Database registration appeal process, such appeal process shall now be treated as an

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original VRS provider if verification is not completed within two weeks. This rule change is not effective until approved by the Office of Management and Budget under the Paperwork Reduction Act. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Services 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, 37 FCC Rcd 8107 (2022); Sorenson Communications, LLC, Petition for Partial Reconsideration, CG Docket Nos. 03-123, 10-51, & 13-24 (filed Oct. 21, 2022).

[47] *See* July Petition at 7-8.

[48] *Id.* at 7.

[49] *Id.* at 7-8.

[50] *Id.* at 8.

[51] *Id.* at 8.

[52] *Id.* at 6.

[53] *See GlobalVRS Reimbursement Order*, para. 13. As noted earlier, GlobalVRS's customers have received three notices of the upcoming change in service and have had five months to select a new provider. Thus, those who remain are likely Video-Text Service customers, for whom a service alternative has not yet been available.

[54] *See* July Petition at 8.

[55] *See id.* at 8.

appeal relating to registration with Sorenson. However, we emphasize that these users, like all VRS users, are free to register with a different VRS provider at any time.

18. *Waiver of First-Come First-Serve and Speed-of-Answer*. Part 64 of the Commission's rules does not include a codified rule providing that VRS calls must be answered in the order in which they are received. However, a public notice stating such a requirement was issued by CGB in 2005, and a Commission-level Report and Order refers to the first-come, first-served principle as a binding obligation of VRS providers.[56] Thus, absent a waiver, Sorenson may be prohibited from using a separate call "queue" to handle Video-Text Service calls. Sorenson has stated that a separate queue for Video-Text calls may be needed so that it can efficiently and timely route those calls to specially trained and equipped CAs.[57]

19. To the extent that VRS providers are required to use a single queue to handle all calls, so that they are answered in the order in which they are received,[58] we find good cause to grant a limited waiver of that requirement in the current circumstances. Video-Text Service requires that CAs have more advanced typing skills than those needed to handle ordinary VRS calls. Although Sorenson is preparing to offer Video-Text Service for the first time, and has yet to decide all the details of how it will be configured,[59] it is likely that a provider of Sorenson's size may need to place Video-Text calls in a separate queue, at least until a sufficient number of CAs are trained to handle such calls. Otherwise, when a Video-Text call is received, the limited number of CAs initially able to handle Video-Text calls could all be busy handling other calls, resulting in unnecessary and undue delay for the Video-Text user. Further, service to Sorenson's other customers is unlikely to be affected by the use of a separate queue for the very limited number of Video-Text customers.[60] The grant of this waiver is contingent on Sorenson's compliance with the first-come, first-served rule within each of the two separate queues.[61]

20. We also find good cause to grant a temporary waiver of the speed-of-answer rule, section 64.604(b)(2)(iii) of the Commission's rules, for a period of four months, beginning on the effective date of the transfer of the GlobalVRS deafblind users, if Sorenson implements a separate queue for deafblind users.[62] Sorenson states it is taking over the Video-Text Service on an accelerated timeline due to GlobalVRS exiting the market and that it has not previously offered a similar service.[63] We agree that a four-month waiver will allow Sorenson time to equip and train CAs specifically to work with deafblind

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[56] *2005 Call Handling PN,* 20 FCC Rcd at 1473 (stating that the practice of "selectively answer[ing] calls from preferred consumers or locations, rather than answer[ing] the calls in the order they are received . . . is inconsistent with the notion of functional equivalency"); *see also Structure and Practices of the Video Relay Service Program et al.*, Report & Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8691, para. 180 n.470 (2013) (declining to authorize the routing of calls to interpreters with particular skills and "remind[ing] providers that they must handle incoming calls in the order that they are received, with the exception of 911 calls").

[57] *See* August Petition at 3-5; Sorenson *Ex Parte* at 2-3.

[58] Emergency calls are not included in such a requirement and must be given priority over all other calls. *See* 47 CFR §§ 9.14(b)(2)(ii) (requiring Internet-based TRS providers to "implement a system that ensures that the provider answers an incoming emergency call before other non-emergency calls (*i.e.,* prioritize emergency calls and move them to the top of the queue)").

[59] Sorenson *Ex Parte* at 2.

[60] According to GlobalVRS, there are 112 active users of Video-Text Service. *GlobalVRS Reimbursement Order*, para. 9 n.26.

[61] *See* Sorenson *Ex Parte* at 3 (stating that company will comply with the first-come, first-served rule within each service queue, except for 911 calls).

[62] Sorenson states it will coordinate the specific date of transfer with the Commission and GlobalVRS. July Petition at 8.

[63] *See* Sorenson *Ex Parte* at 3.

users, assess Video-Text Service traffic, and make any necessary long-term adjustments as it takes over this service from GlobalVRS.[64] Accordingly, a temporary waiver of the VRS speed of answer rules is necessary to allow Sorenson a reasonable time to train and equip its CAs and determine the optimal configuration of this new service.

21. The waiver of the speed of answer requirement is applicable to calls handled by a separate Video-Text Service queue, if Sorenson determines to implement a separate queue that service. The VRS speed of answer requirement shall continue to apply to calls to and from Sorenson's other VRS users who are not within the affected population of deafblind users.[65]

IV. PROCEDURAL MATTERS

22. *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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

23. *Additional Information.* For further information regarding this item, please contact Joshua Mendelsohn, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-559-7304 (voice or videophone) or by email to Joshua.Mendelsohn@fcc.gov.

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 225, and sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, and 1.3, this Order IS ADOPTED.

25. IT IS FURTHER ORDERED that the petitions for limited waiver of Sorenson Communications. LLC, filed July 24, 2023, and August 8, 2023, are GRANTED to the extent described and subject to the conditions stated herein.

26. IT IS FURTHER ORDERED that sections 9.14(b)(2)(ii), 64.604(b)(2)(iii), 64.615(a)(6)(i)-(iv), and 64.631(f)(1) of the Commission's rules, 47 CFR §§ 9.14(b)(2)(ii), 64.604(b)(2)(iii), 64.615(a)(6)(i)-(iv), 47 CFR § 64.631(f)(1), are WAIVED to the extent described and subject to the conditions stated herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark, Chief
Consumer and Governmental Affairs Bureau

[64] *See* August Petition at 5-6; Sorenson *Ex Parte* at 3.

[65] Sorenson emphasizes that it will continue to meet the first-come, first-served and speed-of-answer requirements for users of its standard VRS offering. *See* Sorenson *Ex Parte* at 3.

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 23-916
September 29, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 21 (MICHIGAN) REGIONAL PLANNING COMMITTEES TO HOLD 700 MHZ AND 800 MHZ MEETINGS

PR Docket No. 90-221 and WT Docket No. 02-378

The Region 21 (Michigan)[1] 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two consecutive planning meetings on Thursday, October 26, 2023. Beginning at 10:00 a.m., the Region 21 800 MHz RPC meeting will convene at Zehnder's of Frankenmuth, 730 S Main St., Frankenmuth, MI 48734.

The agenda for the 800 MHz RPC meeting includes:

- Call to Order/Roll Call
- Approval of Agenda
- Approval of Minutes – September 14, 2023 meeting
- Correspondence
- Review of Applications
  - Old Applications
  - New Applications
- 800 MHz Subcommittee Reports
  - Interoperable Communication Subcommittee
  - Engineering/Technical Subcommittee
  - Ongoing Plan Revision Standing Committee
- Old Business
  - Web Site
  - 4.9 GHz
  - Mid-band Non-NPSPAC 800 channels
- New Business
  - 2024 Meeting Dates
  - Reminder – election of officers at January meeting
- Next meeting: TBD
- Adjourn

Immediately following the 800 MHz RPC meeting, the 700 MHz RPC meeting will convene.

The agenda for the 700 MHz meeting includes:

- Call to Order/Roll Call
- Approval of Agenda

[1] The Region 21 (Michigan) 700 MHz regional planning area includes all eighty-three counties in the Upper and Lower Peninsulas in the state of Michigan. The Region 21 800 MHz regional planning area consists of all the Upper Peninsula and all counties in the Lower Peninsula except the counties of Allegan, Barrien, Barry, Cass, Kalamazoo, Ottawa, St. Joseph, and Van Buren, which are part of Region 54 (Great Lakes Area).

- Approval of Minutes – September 14, 2023 meeting
- Correspondence
- Review of Applications
  - Old Applications
  - New Applications
- 700 MHz Subcommittee Reports
  - Interoperable Communications Subcommittee
  - Engineering/Technical Subcommittee
  - Ongoing Plan Revision Standing Subcommittee
- Old Business
- New Business
- Next meeting: TBD
- Adjourn

The Region 21 RPC meetings are open to the public. All public safety providers in Region 21 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 planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 21 should plan to attend. For more information, please contact:

Keith M. Bradshaw
Chair, Region 21 700 MHz and 800 MHz RPCs
Oakland County Radio Communications Supervisor
1200 N. telegraph Rd, building 16E
Pontiac, MI 48341
Ph: 248-452-9769
bradshawkm@oakgov.com

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DA 23-918
Released: September 29, 2023

WIRELINE COMPETITION BUREAU ANNOUNCES ADDITIONAL MEASURES TO STRENGTHEN PROGRAM INTEGRITY FOR ACP

WC Docket No. 21-450

In this Public Notice, the Wireline Competition Bureau (Bureau) announces additional measures to ensure that providers are receiving reimbursement from the Affordable Connectivity Program (ACP) for fully subsidized service only for households using their service, as required by the Commission's rules. The Commission takes seriously its obligation to protect the success and integrity of the ACP, and continues to revise and refine its rules, processes, and procedures to safeguard limited ACP funds. Consistent with the ACP rules for fully subsidized service, these measures strengthen program integrity and remind providers of their obligations to submit claims for fully subsidized ACP service only for households that are actually using their service.

The measures we are taking use the full range of the Commission's authority and available tools to address potential provider non-compliance with the ACP usage rules. In particular, the Bureau: (1) has referred the matter to the Enforcement Bureau for further investigation; (2) has directed the Universal Service Administrative Company (USAC) to revise its methodology for proactively monitoring provider claims and de-enrollment data; and (3) has directed USAC to expand its program reviews to help ensure compliance with the non-usage rules.

The Commission's non-usage rules are designed to ensure that ACP funding is targeted to households that are actually using their ACP service. Where a provider does not assess or collect a monthly fee from the enrolled household for the supported service, the household must use that service at least once every 30 days.[1] If the household does not use its service during a 30-day period, the provider is required to notify the household that they will be de-enrolled if the household does not use the service within the next 15 days.[2] Households that do not contribute to the cost of their supported service and that fail to use the service within 45 days must be de-enrolled by the provider.[3] Commission rules make clear that providers cannot claim support for a household that has not used their service in the last 30 consecutive days unless the subscriber cures their non-usage within the 15-day cure period.[4]

On September 28, 2023, the FCC's Office of Inspector General (OIG) issued an advisory about potential provider non-compliance with the ACP usage and de-enrollment rules among certain providers.[5]

[1] 47 CFR § 54.1809(c).

[2] *Id*.

[3] *Id.*

[4] 47 CFR §54.1808(c)(1) and (2).

[5] *See generally FCC-OIG Advisory Regarding ACP Provider Noncompliance with Program Usage & De-Enrollment Rules*, (FCC OIG Sept. 28, 2023), https://docs.fcc.gov/public/attachments/DOC-397337A1.pdf.

The OIG's advisory states that OIG has ongoing investigations concerning this issue and acknowledges repayment of ACP funds by one provider.

The Bureau is committed to protecting the success and integrity of the ACP and uses the full range of the Commission's authority and available tools to address non-compliance, including audit and investigatory procedures, and in cooperation with the FCC OIG and law enforcement agencies. Accordingly, the Bureau is taking immediate steps to address the issues in the OIG advisory, including strengthening ongoing proactive monitoring, audits, and reviews of processes surrounding fully subsidized ACP service.

First, the Bureau has referred to the Enforcement Bureau for further investigation the provider described in the advisory that voluntarily repaid funds to the program. Staff will review all relevant evidence and will pursue appropriate enforcement actions.

Second, the Bureau has directed the USAC to take additional measures to strengthen the proactive monitoring of claims and de-enrollment rates of ACP providers. At the Commission's direction, USAC currently reviews provider compliance with non-usage rules and uses claims data to identify potential non-compliance issues. The Bureau directed USAC to expeditiously revisit and revise its ongoing analysis of provider claims and de-enrollment activity, using OIG's methodology as a framework, to strengthen USAC's proactive monitoring to swiftly identify and address potential non-compliance with the usage rules.

Third, the Bureau has directed USAC to increase the frequency and scope of its ongoing non-usage reviews to help ensure that providers are only receiving payment for fully supported service actually used by subscribers. USAC, at the Bureau's direction, has conducted non-usage reviews since the beginning of the ACP, and these reviews are an effective tool for identifying and addressing provider non-compliance. Non-compliance discovered as a result of these reviews will be subject to recovery of support and enforcement referrals as appropriate.

The Commission is committed to ensuring the integrity of the program and addressing potential non-compliance using the full range of the Commission's authority and available tools, including audit and investigatory procedures and in cooperation with the FCC OIG and law enforcement agencies. We remind participating service providers offering fully subsidized service of their obligation to implement robust policies and procedures for ensuring that they are monitoring usage as required by the Commission's rules and de-enrolling subscribers for non-usage as appropriate. As noted above, the Commission will use the full range of its authority and available tools to address non-compliance with the ACP non-usage rules.

For further information, please contact Ashley Tyson of the Wireline Competition Bureau's Telecommunication Access Policy Division at 202-418-1137 or Ashley.Tyson@fcc.gov.

- FCC -

PUBLIC NOTICE

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DA 23-919
Released: September 29, 2023

ESTIMATE OF SYSTEMS OF COMPETITIVE BIDDING FOR FISCAL YEAR 2024

Section 309(j)(18) of the Communications Act of 1934, as amended, requires the Commission to make publicly available an estimate of what systems of competitive bidding may be initiated during the upcoming 12-month period.[1] With two specified exceptions, the Commission's authority to grant licenses or permits through systems of competitive bidding expired on March 9, 2023.[2] As discussed below, the Office of Economics and Analytics (OEA) does not estimate that a system of competitive bidding would be initiated pursuant to either exception in Fiscal Year (FY) 2024. Absent Congressional action, the Commission does not have authority to initiate any other systems of competitive bidding for spectrum in FY 2024.

One specified exception to the expiration of the Commission's authority applies to the 3.1–3.45 GHz Band, which was identified under section 90008(b)(2)(A)(ii) of the Infrastructure Investment and Jobs Act for potential licensing through a system of competitive bidding to begin no earlier than November 30, 2024. Congress directed the Department of Defense (DoD) to study the 3.1–3.45 GHz band in order to identify spectrum for reallocation for shared use and auction.[3] Based on the DoD's study, the Secretary of Commerce, in coordination with the Secretary of Defense, the Director of the Office of the Science and Technology Policy, and relevant congressional committees will submit a report to the President and the Commission identifying the spectrum in the band that could be made available on a shared basis between Federal and non-Federal commercial users.[4] After the report is received, and no earlier than November 30, 2024, the Commission, in consultation with the Assistant Secretary of Commerce for Communications and Information, will begin a system of competitive bidding to grant licenses for the spectrum identified in the report.[5] As such, OEA estimates that a system of competitive bidding for this spectrum would not be initiated within FY 2024. The other specified exception applies to 30 megahertz of spectrum to be identified by the Secretary of Commerce not later than January 1, 2022, for reallocation from Federal to non-Federal use or shared Federal and non-Federal use, or a combination thereof, pursuant to the Spectrum Pipeline Act.[6] Because this spectrum has not yet been identified, OEA

[1] 47 U.S.C. § 309(j)(18).

[2] 47 U.S.C. § 309(j)(11) ("The authority of the Commission to grant a license or permit under this subsection shall expire March 9, 2023, except that, with respect to the electromagnetic spectrum identified under section 1004(a) of the Spectrum Pipeline Act of 2015, such authority shall expire on September 30, 2025, and with respect to the electromagnetic spectrum identified under section 90008(b)(2)(A)(ii) of the Infrastructure Investment and Jobs Act, such authority shall expire on the date that is 7 years after November 15, 2021."); Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 5232, § 901 (2022).

[3] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 90008(b)(1)(A) (2021) (codified at 47 U.S.C. § 921 note).

[4] *Id.* § 90008(b)(2)(A).

[5] *Id.* § 90008(b)(3).

[6] Spectrum Pipeline Act of 2015, Pub. L. No. 114-74, § 1004(a) (2015) (codified at 47 U.S.C. § 921 note).

estimates that a system of competitive bidding would not be initiated by the statutory deadline of July 1, 2024.[7]

The Commission has several active proceedings in which it is considering whether and how to enable sharing or repurposing of bands, potentially creating opportunities for spectrum auctions beyond FY 2024. For example, in May 2023 the Commission adopted a notice of proposed rulemaking in which it sought comment on services rules for flexible use licenses in the 550 megahertz of the 12.7–13.25 MHz band.[8] Additionally, the Commission will examine for potential re-auction, subject to any limits currently imposed by the lapse in its statutory spectrum auction authority, its inventory of licenses in services well-suited for 5G that were previously offered at auction, such as 600 MHz and AWS-3.

– FCC –

[7] *Id*.

[8] *Expanding Flexible Use of the 12.2-12.7 GHz Band; Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, WT Docket No. 20-443, GN Docket No. 22-352, Order, Report and Order, Further Notice of Proposed Rulemaking and Notice of Proposed Rulemaking, FCC 23-36, at 34-68, paras. 58-142 (May 19, 2023).

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

In the Matter of	)	
	)	
Stage 2 Networks, LLC	)	File No.: EB-IHD-22-00033173
	)	NAL/Acct. No.: 202332080034
	)	FRN: 0012559290

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: September 13, 2023 **Released: September 14, 2023**

By the Commission:

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I. INTRODUCTION

1. We propose in this Notice of Apparent Liability for Forfeiture and Order (NAL) a penalty of $308,451 for Stage 2 Networks, LLC's (Stage 2 or Company) failures to file Annual and Quarterly Telecommunications Reporting Worksheets (Worksheets), to respond to the Enforcement Bureau's (Bureau) Letter of Inquiry (LOI) fully and on time, to file annual customer proprietary network information (CPNI) certifications, and to maintain current information in the Federal Communications Commission's (FCC or Commission) Registration System (CORES), in apparent violation of sections

1.8002(b)(2), 52.17(b), 52.32(b), 54.711(a), 64.2009(e) and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders to file Worksheets and to respond to the Bureau's LOI.[1]

2. Under the rules and orders of the Commission, telecommunications service providers and certain telecommunications providers (collectively, service providers) are periodically required to file Worksheets with the Universal Service Administrative Company (USAC) in furtherance of the Commission's universal service and other federal payment requirements implemented under the Communications Act of 1934, as amended (Act). USAC and the administrators of the 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 fairly and accurately, as prescribed in Commission rules, each service provider's payment responsibilities for the Universal Service Fund (USF) and these other federal funding requirements. Likewise, the Commission relies on the information filed in Worksheets to assess fair and accurate federal regulatory fees owed by each service provider. Failure to file Worksheets therefore undermines the Commission's efforts to maintain the USF and these other federal payment requirements arising under the Act effectively.

3. In this case, Stage 2 failed to file any of its four Annual Worksheets and 15 Quarterly Worksheets required between February 1, 2020, and August 1, 2023. Stage 2 also failed to respond fully and timely to a Bureau LOI regarding compliance with filing and contribution requirements arising under the Act and the Commission's rules. Stage 2 further failed to file its annual CPNI certifications and maintain current information in CORES.

II. BACKGROUND

A. Legal Framework

4. The Act codifies Congress's historical commitment to promoting 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 by the Commission to preserve and advance universal service."[2] In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services to contribute to the USF based on their interstate and international end-user telecommunications revenues.[3] The Commission also requires certain providers of interstate telecommunications to contribute to the USF.[4] Pursuant to the Act, the Commission has likewise

[1] 47 CFR §§ 1.8002(b)(2), 52.17(b), 52.32(b), 54.711(a), 64.2009(e), 64.604(c)(5)(iii)(B); *Wireline Competition Bureau Releases the 2023 Telecommunications Reporting Worksheets and Accompanying Instructions*, WC Docket No. 06-12, Public Notice, DA 22-1094, 2022 WL 10379829, Att. B, Tbl. 3 (WCB Oct. 14, 2022) (*2023 Annual Worksheet Instructions*); Letter of Inquiry from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Joseph Gillette, Chief Executive Officer and George Panagiotou, Senior Vice President and General Manager, Stage 2 Networks, LLC (Feb. 10, 2022) (on file in EB-IHD-22-00033173) (LOI); *Wireline Competition Bureau Releases the 2022 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 36 FCC Rcd 14176, Att. B, Tbl. 3 (WCB 2021) (*2022 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2021 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 13671, Att. B, Tbl. 3 (WCB 2020) (*2021 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2020 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 1350, 1362 (WCB 2020) (*2020 Annual Worksheet Instructions*).

[2] 47 U.S.C. § 254(d).

[3] 47 CFR § 54.706(b).

[4] *See* 47 U.S.C. § 254(d) ("Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."). *See also* 47 CFR § 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

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established cost recovery rules for the TRS Fund, LNP, NANP and federal regulatory fees,[5] and requires service providers to file Annual and Quarterly Worksheets, and annual CPNI certifications.[6] The Commission is authorized to issue LOIs to investigate service providers' compliance with these payment and filing requirements.[7]

1. Annual and Quarterly Worksheet Filing Requirements

5. The Commission has established specific procedures to administer the USF. Each service provider, with certain exceptions, is required to contribute to the USF, file annually an FCC Form 499-A, also known as the Annual Worksheet,[8] and file quarterly an FCC Form 499-Q, also known as the Quarterly Worksheet.[9] USAC uses the revenue projections submitted in Quarterly Worksheets to determine each service provider's monthly universal service contribution amount.[10] The monthly USF contributions that were invoiced based on projected revenues reported in a service provider's Quarterly Worksheets are then subject to an annual true-up based on actual revenues reported in the service provider's Annual Worksheet.[11] A service provider's Annual Worksheets in the four years from 2019 through 2022 were each due by April 1 of the subsequent calendar year.[12] In addition, a service provider's Quarterly Worksheets were due by February 1, May 1, August 1 and November 1 of each year.[13] The Commission's rules explicitly warn service providers that failure to file timely and accurate Worksheets or submit timely USF payments potentially subjects them to enforcement action.[14] The

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telecommunications services and must contribute to the universal service support mechanisms."). According to its 2018 Annual Worksheet filing, which is the Company's last Annual Worksheet filing approved by USAC, Stage 2 provides interconnected Voice over Internet Protocol (VoIP) service, and is therefore subject to the Worksheet filing and contribution requirements established under the FCC's rules. *See* 47 CFR § 54.706(a); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (extending section 254(d) permissive authority to require interconnected VoIP providers to contribute to the USF), *petition for review denied, and vacated in part on other grounds*, *Vonage Holding Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007); Universal Service Administrative Company, *E-File Portal*, https://efile.universalservice.org/EFileContributor/CompanyForms/SearchCompanyForms?filerId=825872 (last visited Aug. 10, 2023).

[5] *See* 47 U.S.C. § 251(e)(2); 47 CFR. §§ 1.1154, 1.1157(b)(1), 52.17(a), 52.32(a), 64.604(c)(5)(iii)(A).

[6] *See* 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.2009(e), 64.604(c)(5)(iii)(B).

[7] *See, e.g.*, 47 U.S.C. § 403.

[8] *See, e.g.*, 47 CFR § 54.711; *2020 Annual Worksheet Instructions*, *supra* note 1, at 1372; *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6637, para. 2 (2012) (*Telseven NAL*), Forfeiture Order, 31 FCC Rcd 1629 (2016) (*Telseven Forfeiture Order*). Within 30 days of beginning to provide service, new service providers must register with the Commission by obtaining an FCC registration number (FRN) from CORES and obtaining a Filer ID from USAC's E-File system. *E.g.*, *2020 Annual Worksheet Instructions*, *supra* note 1, at 1372.

[9] *See, e.g.*, 47 CFR § 54.711; *2020 Annual Worksheet Instructions*, *supra* note 1, at 1373; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

[10] *See, e.g.*, 47 CFR § 54.711; *2020 Annual Worksheet Instructions*, *supra* note 1, at 1409; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

[11] *See* 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).

[12] *See 2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14176, Att. B, Tbl. 3; *2021 Annual Worksheet Instructions*, *supra* note 1, at 13671, Att. B, Tbl. 3; *2020 Annual Worksheet Instructions*, *supra* note 1, at 1373.

[13] *See 2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14176, Att. B, Tbl. 3; *2021 Annual Worksheet Instructions*, *supra* note 1, at 13671, Att. B, Tbl. 3; *2020 Annual Worksheet Instructions*, *supra* note 1, at 1373.

[14] 47 CFR § 54.713.

Commission's rules also require that both the information submitted in the Worksheets, and required federal regulatory payments based on those Worksheets, are accurate.[15]

6. Section 225(b)(1) of the Act, which codifies Title IV of the Americans with Disabilities Act of 1990, directs the Commission to "ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."[16] To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate TRS.[17] The Commission implemented TRS capability rules to enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users.[18] Such services provide telephone access to a significant number of Americans who, without it, might not be able to make calls to or receive calls from voice-telephone users.[19] Pursuant to section 64.604(c)(5)(iii)(A) of the Commission's rules, service providers such as Stage 2[20] must contribute to the TRS Fund based on their interstate end-user revenues.[21] Under the Commission's rules, the TRS Fund administrator, RolkaLoube, LLC (RolkaLoube), uses Annual Worksheet filings to determine each service provider's annual or monthly TRS Fund contribution amounts.[22]

7. Section 251(e)(1) of the Act directs the Commission to oversee the administration of telecommunications numbering to ensure the availability of telephone numbers on an equitable basis.[23] Section 251(e)(2) of the Act requires that "[t]he cost of establishing telecommunications numbering administration arrangements and numbering portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[24] In carrying out these statutory

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[15] *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." *See, e.g.*, 2020 FCC Form 499-A, Line 606. While the Commission requires revisions to Worksheets when errors are discovered, *see, e.g.*, *2020 Annual Worksheet Instructions*, *supra* note 1, at 1373-74, the requirement 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, e.g.*, 2020 FCC Form 499-A, Line 606.

[16] 47 U.S.C. § 225(b)(1).

[17] *See Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301, para. 7 (1993).

[18] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5143 para. 5 (2000).

[19] *Id*.

[20] Every carrier providing interstate or intrastate telecommunications services, including interconnected VoIP service providers pursuant to 47 CFR § 64.601(b) and every provider of non-interconnected VoIP service, must contribute to the TRS Fund. *See* 47 CFR § 64.604(c)(5)(iii)(A).

[21] *Id*. Under the Commission's rules, service providers must contribute at least $25 per year, and service providers whose annual contributions are less than $1,200 must pay the entire amount at the beginning of the contribution period. Otherwise, if their account is in good standing, service providers are permitted to divide their contributions into 12 equal monthly payments. *See id*. § 64.604(c)(5)(iii)(B).

[22] *Id*. Rolka Loube replaced the National Exchange Carrier Association as the TRS Fund administrator effective July 1, 2011. *See Interstate Telecommuns. Relay Serv. (TRS) Fund Adm'r Transition*, Public Notice, 26 FCC Rcd 8436 (2011).

[23] 47 U.S.C. § 251(e)(1).

[24] *Id*. § 251(e)(2). "Number Portability" means "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." *Id*. § 153(37). The inability of customers to

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directives, the Commission adopted sections 52.17 and 52.32 of the Commission's rules.[25] Under the Commission's rules, service providers[26] must contribute to the costs of numbering administration and LNP on the basis of their end-user telecommunications revenues.[27] The NANP administrator's billing and collection agent, Welch LLP (Welch),[28] and the LNP administrator, Telcordia Technologies, Inc. d/b/a iconectiv (iconectiv),[29] respectively use Annual Worksheet filings to determine service providers' required payments for NANP and LNP administration.[30]

8. The Act directs the Commission to "assess and collect regulatory fees to recover the costs of carrying out" the functions of the Commission,[31] including "enforcement activities, policy and rulemaking activities, user information services, and international activities."[32] Consistent with this directive, the Commission has implemented rules for annual regulatory fees for entities regulated by the Commission.[33] Service providers[34] must pay regulatory fees based on interstate and international end-user revenues as reported in Annual Worksheets.[35]

9. Because USAC, RolkaLoube, iconectiv, Welch, and the Commission rely on Worksheets to determine respective payment requirements for administration of the USF, TRS Fund, LNP, NANP,

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retain their telephone numbers when changing local service providers would hamper the development of local competition. *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702, para. 3 (1998), *aff'd*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002).

[25] 47 CFR §§ 52.17, 52.32.

[26] All telecommunications carriers and interconnected VoIP providers (such as Stage 2) in the United States shall contribute to meet the costs of establishing numbering administration and LNP. *See* 47 CFR §§ 52.17, 52.32.

[27] *See id*. § 52.17(a) ("Contributions to support numbering administration shall be the product of the contributors' end-user telecommunications revenues for the prior calendar year and a contribution factor determined annually . . . such contributions to be no less than twenty-five dollars ($25).")); *id*. § 52.32(a) (service providers that have no intrastate, interstate, or international end-user telecommunications revenues derived from providing telecommunications service in areas a regional database serves must pay $100 contributions for LNP, and if service providers derive intrastate, interstate, or international end-user telecommunications revenues in areas a regional database serves, the service providers must pay a charge that recovers the remaining shared costs of long-term number portability attributable to each service provider on a proportional basis).

[28] In 2004, the Commission selected Welch & Company, LLP as the billing and collection agent for the NANP. New Release, Fed. Commc'ns Comm'n, Federal Communications Commission Selects Welch & Co., LLP as the Next North American Numbering Plan Billing & Collection Agent (WCB Apr. 12, 2004), https://www.fcc.gov/document/federal-communications-commission-selects-welch-company-llp-next. In 2007, the billing and collection agent changed its name to Welch LLP. *See* Welch LLP, https://welchllp.com (last visited Aug. 10, 2023); Ottawa Business Journal, *Welch LLP celebrates 100th anniversary in Ottawa* (Feb. 8, 2018), https://obj.ca/welch-llp-celebrates-100th-anniversary-in-ottawa.

[29] *See Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration*, Order, 31 FCC Rcd 8406 (2016) (approving the recommendation of the North American Numbering Council (NANC) that Telcordia Technologies, Inc. d/b/a iconectiv serve as the next LNP administrator).

[30] 47 CFR §§ 52.17(b), 52.32(b).

[31] 47 U.S.C. § 159(a); *see also id.* § 156(a).

[32] *2020 Annual Worksheet Instructions*, *supra* note 1, at 1365.

[33] *See* 47 CFR §§ 1.1152–1.1156, 1.1157(b)(1).

[34] *See* Fed. Commc'ns Comm'n, *Regulatory Fees*, https://www.fcc.gov/licensing-databases/fees/regulatory-fees (identifying Commission licensees and regulatees who must pay federal regulatory fees) (last visited May 11, 2023).

[35] *See* 47 CFR § 1.1154.

and federal regulatory fees, the accuracy and timeliness of Worksheet filings are vital. 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 its federal payment obligations implemented under the Act.[36] A service provider's failure to comply with the reporting requirements can impede the very purpose for which Congress enacted section 254(d)—to ensure that every required contributor to the USF "contribute[s], on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[37] The effects on the administration of TRS, LNP, NANP, and federal regulatory fees are similar. Indeed, a service provider that fails to file Worksheets when the filings are due can evade its federal obligations to contribute fully toward the vital programs linked to the reporting obligations.[38] As a consequence of this evasion, other service providers carry an unfair burden of funding the USF and other federal regulatory programs arising under the Act.[39] Delinquent service providers obtain an unfair competitive advantage over service providers that comply with the reporting and contribution provisions of the Act and the Commission's rules.[40]

2. LOI Response Requirements

10. Section 403 of the Act grants the Commission broad authority to conduct investigations and to compel entities to provide information and documents sought during investigations.[41] Section 0.111(a)(17) of the Commission's rules delegates authority to the Bureau to "conduct investigations . . . on its own initiative" of potential violations of the Act and of the Commission's rules.[42] An LOI issued to an entity under investigation by the Bureau constitutes a Commission order, and a failure to respond to a Bureau LOI fully and on time constitutes a violation of a Commission order.[43] This violation can give rise to a forfeiture penalty under section 503 of the Act.[44] An investigation target's failure to provide a complete and timely response to an LOI threatens to compromise the Commission's ability to adequately

[36] *See id.* § 54.711(a); *Telseven NAL*, *supra* note 8, at 6643-44, 6646-48, paras. 15, 23-25, *Telseven Forfeiture Order*, *supra* note 8, 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).

[37] 47 U.S.C. § 254(d).

[38] *See, e.g.*, *Telseven NAL*, *supra* note 8, 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*), Order of Forfeiture, 23 FCC Rcd 8952 (2008).

[39] *See Telseven NAL*, *supra* note 8, at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12; *LPSI NAL*, 21 FCC Rcd at 9977-78, para. 9.

[40] *See Telseven NAL*, *supra* note 8, at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12; *LPSI NAL*, 21 FCC Rcd at 9977-78, para. 9.

[41] 47 U.S.C. § 403 ("The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, or concerning which any question may arise under any provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter."); *see also* LOI at 2 (citing 47 U.S.C. §§ 154(i)-(j), 403).

[42] 47 CFR § 0.111(a)(17). In addition, Section 4(i) of the Act authorizes the Commission to "issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." *See* 47 U.S.C. § 154(i).

[43] *See, e.g*., 47 U.S.C. § 155(c)(3); *Aura Holdings of Wis., Inc.*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 3688, 3696, para. 21 (2018) (*Aura Holdings NAL*), Forfeiture Order, 34 FCC Rcd 2540 (2019).

[44] 47 U.S.C. § 503(b)(1)(B) (any person who is found, in accordance with procedures set forth in section 503, to have willfully or repeatedly failed to comply with provisions of the Act or "any rule, regulation, or order issued by the Commission" shall be liable for a forfeiture penalty).

investigate violations of the Act and the Commission's rules.[45] Given the critical importance of LOIs to the Commission's investigatory and regulatory functions, it is imperative that investigation targets respond fully and on a timely basis. An incomplete or untimely LOI response results in the Commission wasting limited resources and time pursuing information that the Commission needs to complete its investigation.

3. CPNI Certification Requirements

11. Section 222 of the Act imposes the general duty on all service providers[46] to protect the confidentiality of their subscribers' customer proprietary network information.[47] CPNI includes sensitive personal information that service providers collect about their customers during the course of their business relationship, such as numbers of telephone calls made and received; the frequency, duration, and timing of such calls; and any services purchased by the consumer, such as call waiting and voicemail.[48] The Commission's rules seek to ensure that CPNI is adequately protected from unauthorized access, use, or disclosure.[49] The rules require, among other things, that service providers establish and maintain systems designed to ensure that they adequately protect their subscribers' CPNI and file with the Commission annually, on or before March 1 of each year, a certification of their compliance with the CPNI rules.[50]

4. CORES Update Requirements

12. Maintaining current contact information in CORES is a similarly important responsibility for persons and companies subject to the Commission's rules and the Act. Companies doing business with the Commission are each assigned a unique 10-digit FCC Registration Number (FRN).[51] The FRN is obtained through CORES over the Internet at the CORES link at *www.fcc.gov* or by filing FCC Form 160.[52] The Commission's rules provide that anyone doing business with the Commission must obtain an FRN, and an FRN must be provided by contributors to the USF.[53] When registering for an FRN, an entity's name, entity type, contact name and title, address, and taxpayer identification number (TIN) must be provided.[54] Information provided when registering for an FRN must be kept current by registrants, either by updating the information online at the CORES link at *www.fcc.gov* or by filing FCC Form 161 (CORES Update/Change Form).[55] Accurate information in CORES allows Commission staff to contact regulated companies quickly instead of wasting limited Commission resources to locate a company.

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[45] *See Neon Phone Serv., Inc.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 7964, 7974, para. 24 (2017) (*Neon Phone NAL*).

[46] Telecommunications carriers and interconnected VoIP service providers must comply with the Commission's CPNI rules. *See* 47 CFR § 64.2003(o) (defining "telecommunications carriers" that are subject to section 222 of the Act to include interconnected VoIP service providers).

[47] *See* 47 U.S.C § 222.

[48] *See, e.g.*, *FCC Enforcement Advisory, Telecommunications Carriers and Interconnected VoIP Providers Must File Annual Reports Certifying Compliance with Commission Rules Protecting Customer Proprietary Network Information*, Public Notice, 36 FCC Rcd 1333 (EB 2021); *see also* 47 U.S.C § 222(h)(1).

[49] *See* 47 CFR §§ 64.2001-2011.

[50] *See* 47 CFR § 64.2009(e).

[51] *Id.* § 1.8001(a).

[52] *Id.* § 1.8001(b).

[53] *Id.* §§ 1.8002(a), 1.8003.

[54] *Id.* § 1.8002(b)(1).

[55] *Id.* § 1.8002(b)(2).

B. Factual Background

13. Stage 2 is a limited liability company incorporated in New York,[56] but the Company has not maintained a physical corporate address since January of 2021.[57] Stage 2 first registered with the Commission in 2005.[58] Stage 2 provides interconnected VoIP services.[59] The Commission granted the Company's application for authority to provide international facilities-based service and international resale service on February 11, 2005.[60]

14. Stage 2 has not filed an Annual Worksheet since August 6, 2019, when it filed its 2019 Annual Worksheet more than four months after the filing deadline.[61] Stage 2 failed to file Annual Worksheets that were due by April 1 on four occasions between 2020 and 2023.[62] In addition, Stage 2 failed to file all 15 Quarterly Worksheets due between February 1, 2020, and August 1, 2023.[63] Although USAC repeatedly contacted Stage 2 concerning the Company's missing Worksheets by e-mail and voice mail, the Company still failed to comply with these important filing requirements.[64] Thus, on September 13, 2021, USAC referred Stage 2 to the Bureau for investigation into the Company's apparent and repeated failures to comply with section 54.711 of the Commission's rules, which requires service providers to file timely and accurate Worksheets.[65]

15. Following USAC's referral, the Bureau issued an LOI to Stage 2 on February 10, 2022, concerning the Company's compliance with filing and contribution requirements arising under the Act and the Commission's rules.[66] The Company's response to the LOI was initially due by March 14, 2022.[67] After the Bureau granted Stage 2's February 16 and May 13, 2022 requests for extensions, Stage 2's deadline to respond to the LOI was adjusted to May 27, 2022; however, despite the grants of

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[56] *See* New York State, *Department of State, Division of Corporations*, https://apps.dos.ny.gov/publicInquiry/EntityDisplay (last visited Aug. 10, 2023).

[57] Response to Letter of Inquiry, from Jeffrey A. Mitchell, Esq., to Kalun Lee, Esq., Deputy Chief, Investigations & Hearings Division, FCC Enforcement Bureau at 1-2, Response to Question 3 (June 21, 2022) (June 21, 2022 LOI Response) (on file in EB-IHD-22-00033173).

[58] *See* Fed. Commc'ns Comm'n, *Commission Registration System (CORES)*, https://apps.fcc.gov/cores/searchDetail.do?frn=0012559290&csfrToken= (last visited Aug. 10, 2023).

[59] *See* Letter from Fred Theobald, Director of Contributor Operations, Universal Services Administrative Company, to Pam Slipakoff, Attorney-Advisor, Investigations & Hearings Division, FCC Enforcement Bureau at 1 (August 10, 2023) (on file in EB-IHD-22-00033173) (USAC Letter). *See also* Response to Letter of Inquiry, from Jeffrey A. Mitchell, Esq., to Kalun Lee, Esq., Deputy Chief, Investigations & Hearings Division, FCC Enforcement Bureau at 1, Response to Question 15(b) (July 11, 2022) (July 11, 2022 LOI Response) (on file in EB-IHD-22-00033173). The Company provides VoIP service through Session Initiation Protocol (SIP) and Internet access to end-user customers. *See* June 21, 2022 LOI Response at 5.

[60] *See International Authorizations Granted*, Public Notice, 20 FCC Rcd 3667, 3668 (IB 2005).

[61] *See* USAC Letter at 1-2.

[62] *See id*. at 2.

[63] *See id*.

[64] *See id*.

[65] *See id*; *see, e.g.*, 47 CFR § 54.711; *2020 Annual Worksheet Instructions*, *supra* note 1, at 1372*; Telseven NAL*, *supra* note 8, at 6637, para. 2.

[66] *See* LOI (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, 54.713, 64.604, 64.2009(e), 64.2115).

[67] *See id*.

extensions, the Company failed to respond by the deadline.[68] On June 3, 2022, Stage 2 submitted an LOI response that was both incomplete and late.[69] On June 16, 2022, Bureau staff spoke by telephone with the Stage 2's principals, George Panagiotou and Eleni Toumazatos, and the Company's attorney, Jeffrey Mitchell, and informed Stage 2 that the June 3, 2022 Letter was not fully responsive to the LOI. Bureau staff directed the Company to provide a complete response to the LOI by June 21, 2022, yet Stage 2 proceeded to provide only a partial response to the LOI by the Bureau's adjusted deadline.[70]

16. On July 11, 2022, Stage 2 provided additional, late, and incomplete responses to the LOI, a declaration from Mr. Panagiotou, and "certain of the documents requested."[71] The Company failed to respond to Inquiries 14, 15(c), 16-18, 20, 22, 24, 26, 28, 30-35, 37, 39-44, and stated that "Mr. Panagiotou asserts his rights pursuant to the Fifth Amendment to the United States Constitution and respectfully declines to provide a response."[72] The Company stated that it planned to submit the financial data in response to Document Requests 61-63 on July 12, 2022.[73] Finally, the Company failed to submit documents responsive to Document Requests 51-56 and 58.[74]

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[68] On February 25, 2022, the Bureau and Stage 2 entered into an agreement to toll the applicable statutes of limitation for 120 days. *See* Tolling Agreement executed by Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, and Joseph Gillette, Chief Executive Officer and George Panagiotou, Non-Managing Member, Stage 2 Networks, LLC (Feb. 25, 2022) (Tolling Agreement) (on file in EB-IHD-22-00033173). Bureau staff also granted Stage 2 an extension until May 13, 2022, to respond to the LOI. On May 13, 2022, the date the LOI response was due, Stage 2 requested another extension. On May 16, 2022, the Bureau granted Stage 2 a second extension until May 27, 2022, and on May 18, 2022, the Company and the Bureau agreed to toll the applicable statutes of limitation for an additional 90 days. *See* Second Tolling Agreement executed by Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, and Joseph Gillette, Chief Executive Officer and George Panagiotou, Non-Managing Member, Stage 2 Networks, LLC (May 18, 2022) (Second Tolling Agreement) (on file in EB-IHD-22-00033173). Thus, the Bureau and Stage 2 agreed to toll the applicable statutes of limitations for a total of 210 days.

[69] *See* Letter from, Jeffrey A. Mitchell, Esq., to Pam Slipakoff, Esq., Investigations & Hearings Division, FCC Enforcement Bureau (June 3, 2022) (June 3, 2022 Letter) (on file in EB-IHD-22-00033173). Mr. Mitchell stated that he is "not currently representing the company in connection with the LOI, however the company retained me to provide general advice regarding federal universal service fund ('USF') contribution obligations." *Id*. at 1. Mr. Mitchell also stated that George Panagiotou "is willing to submit a declaration under penalty of perjury affirming the facts set forth herein and the authenticity of the attached documents." *Id*. However, the Company did not submit the required affidavit with the June 3, 2022 Letter, as required by 47 CFR § 1.16. Rather than respond to any of the Bureau's Inquiries in the LOI, Stage 2 stated that since the spring of 2020, "the company has been under extreme financial pressures due principally to the improper activities of [a] former Chief Executive Officer and Managing Director." *See* June 3, 2022 Letter at 1.

[70] E-mail from, Kalun Lee, Esq., Deputy Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to George Panagiotou, Non-Managing Member, Stage 2 Networks, LLC and Jeffrey A. Mitchell, Esq. (June 16, 2022) (on file in EB-IHD-22-00033173); E-mail from, Jeffrey A. Mitchell, Esq., to Kalun Lee, Esq., Deputy Chief, Investigations & Hearings Division, FCC Enforcement Bureau (June 21, 2022) (June 21, 2022 E-mail) (on file in EB-IHD-22-00033173); June 21, 2022 LOI Response. On June 24, 2022, Stage 2 submitted a request for an additional 10 business days to provide the remaining responses. Letter from, Jeffrey A. Mitchell, Esq., to Kalun Lee, Esq., Deputy Chief, Investigations & Hearings Division, FCC Enforcement Bureau (June 24, 2022) (on file in EB-IHD-22-00033173). The Bureau did not respond to this request.

[71] *See* E-mail from, Jeffrey A. Mitchell, Esq., to Kalun Lee, Esq., Deputy Chief, Investigations & Hearings Division, FCC Enforcement Bureau (July 11, 2022) (on file in EB-IHD-22-00033173) (July 11, 2022 E-mail).

[72] *See generally*, July 11, 2022 LOI Response, *supra* note 59, at 1.

[73] July 11, 2022 E-mail. The Company submitted financial documentation in response to these Document Requests on July 12, 2022, more than six weeks after the May 27, 2022 LOI response deadline. *See* E-mail from, Jeffrey A. Mitchell, Esq., to Kalun Lee, Esq., Deputy Chief, Investigations & Hearings Division, FCC Enforcement Bureau (July 12, 2022) (on file in EB-IHD-22-00033173).

III. DISCUSSION

A. Stage 2 Apparently Violated Commission Rules by Failing to File Annual and Quarterly Worksheets by the Filing Deadlines

17. When a service provider fails to file accurate Annual and Quarterly Worksheets when the filings are due, the service provider can fail to pay fully its share of cost recovery obligations to the USF, TRS Fund, LNP, NANP, and federal regulatory fees.[75] Stage 2 failed to file four Annual Worksheets due by April 1 of 2020 through 2023, and 15 Quarterly Worksheets due between February 1, 2020, and August 1, 2023.[76] We consider each individual failure to file a Worksheet a separate violation of the Commission's rules. We thus find that the Company apparently violated sections 52.17(b), 52.32(b), 54.711 and 64.604(c)(5)(iii)(B) of the Commission's rules by willfully and repeatedly failing to file its Annual and Quarterly Worksheets.[77] Notably, even though Stage 2 has been under the Commission's investigation regarding compliance with these filing requirements since February 10, 2022, the Company nonetheless did not file its Annual Worksheets that were due by April 1 of 2022 and 2023, or its Quarterly Worksheets that were due by May 1, August 1, November 1, 2022, February 1, May 1, and August 1, 2023.

B. Stage 2 Apparently Violated a Commission Order by Failing to Respond to a Bureau LOI Fully and by the Response Deadlines

18. Sections 4(i) and 403 of the Act give the Commission broad power to compel service providers such as Stage 2 to provide information and documents as directed by a Bureau LOI.[78] The Commission has delegated to the Bureau authority to "conduct investigations . . . on its own initiative" of

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[74] *See* July 11, 2022 LOI Response, *supra* note 59, at 11-12, Response to Questions 51-56, 58 (claiming that "[c]urrent management is unable to locate" requested documents).

[75] *See Telseven NAL*, *supra* note 8, at 6638-39, para. 6; *Globalcom NAL*, *supra* note 35, at 3484, para. 12; *LPSI NAL*, *supra* note 35, at 9977-78, para. 9. The Company has not made any USF payments to USAC since 2015 and USAC has transferred a total of over $4,000,000 in USF delinquencies to the United States Department of the Treasury (Treasury Department) for collection under the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996), codified in part at 31 U.S.C. §§ 3711, 3716, 3717, 3720B. *See* USAC Letter, *supra* note 59, at 2; 47 CFR § 1.1917 (debts owed to the Commission that have been delinquent for a period of 120 days shall be transferred to the Treasury Department, and debts which are less than 120 days delinquent may also be referred to the Treasury Department); Universal Service Administrative Company, *Late Payments, DCIA, Red Light*, https://www.usac.org/service-providers/making-payments/late-payments-dcia-red-light/ (last visited Aug. 10, 2023). A service provider remains obligated to pay fully all unpaid assessments whether an administrator or a collection agent is collecting USF, TRS, LNP, NANP, or federal regulatory fee debt, and thus in either case, payment violations continue until the debt is fully paid. As of August 10, 2023, Stage 2's balance under collection by the Treasury Department was $3,781,405.41, exclusive of penalties, interest, and collection fees, and the Company has not made a payment to the Treasury Department since September 12, 2019. Additionally, the balance for USF contributions currently owed to USAC was an additional $327,539.59. After the Company files its missing Worksheets, and after USAC is able to approve the missing Worksheets, USAC will be able to assess fully the status of Stage 2's payment compliance. USAC Letter, *supra* note 59, at 2. The Commission reserves the right to take further enforcement action against Stage 2 for any violations of the Commission's USF, TRS Fund, LNP, NANP, and federal regulatory fee payment requirements.

[76] *See* USAC Letter, *supra* note 59, at 2; *see 2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14176, Att. B, Tbl. 3; *2021 Annual Worksheet Instructions*, *supra* note 1, at 13671, Att. B, Tbl. 3; *2020 Annual Worksheet Instructions*, *supra* note 1, at 1373.

[77] 47 CFR §§ 52.17(b), 52.32(b), 54.711, 64.604(c)(5)(iii)(B).

[78] 47 U.S.C. §§ 154(i), 403.

potential violations of the Act or the Commission's rules.[79] When an entity subject to Commission jurisdiction fails to respond to a Bureau LOI, the entity violates a Commission order.[80]

19. The Bureau directed Stage 2 to provide information and documents related to the Company's compliance with the Act and Commission rules establishing filing and contributions requirements.[81] After receiving two deadline extensions lasting a combined period of over two months, and after multiple discussions with Bureau staff, Stage 2 did not respond to the LOI fully by the Bureau's May 27 and June 21, 2022 response deadlines. On July 11, 2022, Stage 2 provided late and incomplete responses to the LOI. Stage 2 has still not provided all of the information and documentation required by the LOI.[82]

20. Stage 2 claims incorrectly that the Fifth Amendment to the U.S. Constitution enables the Company to refuse to comply fully with the Bureau's LOI.[83] The Company provides no basis and cites no applicable legal authority to support this claim. The Fifth Amendment to the U.S. Constitution provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself."[84] It is well established that corporations and other collective entities are not protected by the Fifth Amendment privilege against self-incrimination.[85] Furthermore, an individual in possession of the records of a collective entity cannot assert a Fifth Amendment privilege against producing the records, even if production might tend to incriminate the individual personally.[86] We therefore reject Stage 2's assertion "pursuant to the Fifth Amendment of the United States Constitution [to] decline to provide a response" with regards to Inquiries 14, 15(c), 16-18, 20, 22, 24, 26, 28, 30-35, 37, and 39-44 in the LOI.[87]

21. The Commission's authority to conduct investigations and to compel entities to provide information and documents sought during investigations is well-established.[88] Stage 2 has failed to

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[79] 47 CFR § 0.111(a)(17); *see* 47 U.S.C. § 155(c)(3) ("Any order . . . or action made or taken pursuant to any [ ] delegation . . . shall have the same force and effect . . . and [be] enforced in the same manner, as orders . . . of the Commission.").

[80] *See, e.g.*, 47 U.S.C. § 155(c)(3); *GPSPS, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2522, 2530, para. 20 (2015) (*GPSPS NAL*), Forfeiture Order, 30 FCC Rcd 7814, 7814, para. 2 (2015).

[81] *See* LOI at 1-2 (citing 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, 54.713, 64.604, 64.2009(e), 64.2115).

[82] Stage 2 has not provided responses to Inquiries 14, 15(c), 16-18, 20, 22, 24, 26, 28, 30-35, 37, 39-44, and Document Requests 51-56 and 58.

[83] *See* July 11, 2022 LOI Response, *supra* note 59, at 1.

[84] U.S. Const. amend. V.

[85] *See, e.g.*, *ABC Fulfillment Servs. LLC*, 35 FCC Rcd 7441, 7450-51, paras. 24-26 (2020) (*HobbyKing Forfeiture Order*), *reconsideration denied*, Memorandum Opinion and Order, 36 FCC Rcd 10688 (2021); *LPFM Mx Group 37*, Memorandum Opinion and Order, 31 FCC Rcd 7512, 7516, para. 11 & n.33 (2016); *Braswell v. United States*, 487 U.S. 99, 104-10 (1988) (citing *Hale v. Henkel*, 201 U.S. 43 (1906)); *United States v. White*, 322 U.S. 694, 699 (1944).

[86] *See, e.g.*, *HobbyKing Forfeiture Order*, 36 FCC Rcd at 7450-51, paras. 24-26; *Braswell*, 487 U.S. at 106-07 (discussing *Wilson v. United States*, 221 U.S. 361 (1911), and *Dreier v. United States*, 221 U.S. 394 (1911)).

[87] *See* July 11, 2022 LOI Response, *supra* note 59, at 1.

[88] Section 403 of the Act grants the Commission both the authority to institute inquiries and "the power to make and enforce any order or orders" relating to its inquiries into compliance with the Act. 47 U.S.C. § 403. Section 0.111(a)(17) of the Commission's rules delegates this authority to the Bureau. 47 CFR § 0.111(a)(17) (granting the Enforcement Bureau the authority to "[i]dentify and analyze complaint information, conduct investigations, conduct external audits and collect information, including pursuant to sections 218, 220, 308(b), 403 and 409(e) through (k) of the Communications Act, in connection with complaints, on its own initiative or upon request of another Bureau or Office."). Additionally, section 4(i) of the Act authorizes the Commission to "issue such orders, not inconsistent

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provide a full response to the LOI. In particular, Stage 2 has not provided responses to Inquiries 14, 15(c), 16-18, 20, 22, 24, 26, 28, 30-35, 37, 39-44, and Document Requests 51-56 and 58. We thus find that the Company apparently willfully and repeatedly violated a Commission order by failing to respond fully to the LOI by the May 27 and June 21, 2022 deadlines.

C. Stage 2 Apparently Violated a Commission Rule by Failing to File Annual CPNI Certifications

22. The protection of CPNI is of paramount importance, and the Commission's rules direct service providers to ensure that CPNI is adequately protected from unauthorized access, use, or disclosure.[89] Service providers must file an annual CPNI certification, documenting compliance with the Commission's CPNI rules, by March 1 of each year.[90] The failure to file a CPNI certification calls into question whether the service provider has complied with rules implemented to protect the privacy and security of its customers' sensitive information.[91] The Bureau has provided notice that failure to submit CPNI certifications may lead to enforcement action.[92]

23. According to the Commission's records, Stage 2 last filed an annual CPNI certification in 2013 for the 2012 calendar year and has not filed its annual CPNI certifications, which are due annually by March 1, for the period from 2014 through 2023.[93] Although the Bureau inquired about the Company's CPNI certifications in the LOI,[94] Stage 2 has provided no explanation for not filing the required certifications. We conclude that Stage 2 apparently willfully and repeatedly violated section 64.2009(e) of the Commission's rules by failing to file required CPNI certifications due between March 2014 and March 2023.[95]

D. Stage 2 Failed to Maintain Current Contact Information in CORES

24. Based on the evidence developed through the Bureau's investigation, we find that the Company apparently willfully and repeatedly violated section 1.8002(b)(2) of the Commission's rules by

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with this Act as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). Section 4(j) of the Act states that "[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 47 U.S.C. § 154(j).

[89] *See, e.g.*, 47 CFR §§ 64.2001-11; *FCC Enforcement Advisory, Telecommunications Carriers and Interconnected VoIP Providers Must File Annual Reports Certifying Compliance with Commission Rules Protecting Customer Proprietary Network Information*, Public Notice, DA 22-117, 2022 WL 395182, at 1 (EB Feb. 7, 2022) (*2022 CPNI Enforcement Advisory*); *FCC Enforcement Advisory, Telecommunications Carriers and Interconnected VoIP Providers Must File Annual Reports Certifying Compliance with Commission Rules Protecting Customer Proprietary Network Information*, Public Notice, 36 FCC Rcd 1333, 1333 (EB 2021) (*2021 CPNI Enforcement Advisory*); *FCC Enforcement Advisory, Telecommunications Carriers and Interconnected VoIP Providers Must File Annual Reports Certifying Compliance with Commission Rules Protecting Customer Proprietary Network Information*, Public Notice, 35 FCC Rcd 1201, 1201 (EB 2020) (*2020 CPNI Enforcement Advisory*).

[90] *See* 47 CFR § 64.2009(e).

[91] *See, e.g.*, *2022 CPNI Enforcement Advisory* at *1; *2021 CPNI Enforcement Advisory*, 36 FCC Rcd at 1333; *2020 CPNI Enforcement Advisory*, 35 FCC Rcd at 1201.

[92] *See, e.g.*, *2022 CPNI Enforcement Advisory* at *1-2; *2021 CPNI Enforcement Advisory*, 36 FCC Rcd at 1333-34; *2020 CPNI Enforcement Advisory*, 35 FCC Rcd at 1201-02.

[93] *See* Fed. Commc'ns Comm'n, *CPNI Template Submission*, https://apps.fcc.gov/eb/CPNI/fccCPNI_display.cfm (last visited Aug. 10, 2023).

[94] See LOI at 12-14, (directing Stage 2 to identify CPNI certification dates, provide an explanation for any missed filings, and "provide a copy of each certification regarding protection of subscribers' customer proprietary network information filed by the Company from 2019 to the present").

[95] *See* 47 CFR § 64.2009(e).

failing to update its contact information in CORES on a timely basis.[96] In its June 21, 2022 LOI Response, Stage 2 acknowledged that its point of contact and address were not current in CORES on February 10, 2022, the date of the LOI.[97] Although Stage 2 acknowledged that the Company's contact information has changed, the Company has still not updated its contact information in CORES.[98] Stage 2 claimed in its June 21, 2022 LOI Response that "management is working to obtain the login passwords needed to update the information in CORES."[99] Stage 2 made this claim approximately 15 months ago, and the Company has still not complied with the important obligation to keep its information current in CORES. The Commission makes available multiple resources to provide assistance for using CORES, including a telephone number and online portal to submit requests for assistance, video tutorials, instructions for using the system, and answers to frequently asked questions.[100] We find no merit in Stage 2's claim that it has been unable to update CORES because the Company does not have the passwords.

IV. PROPOSED FORFEITURE

25. 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[.]"[101] Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Stage 2 of up to $23,727 for each violation or each day of a continuing violation, up to a statutory maximum of $177,951 for a single act or failure to act.[102] 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."[103] In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[104] 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."[105]

26. The Commission may adopt upward or downward adjustments to forfeitures when

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[96] *See id.* § 1.8002(b)(2).

[97] June 21, 2022 LOI Response, *supra* note 57, at 3, Response to Question 7.

[98] *See* Fed. Commc'ns Comm'n, *Commission Registration System (CORES),* https://apps.fcc.gov/cores/searchDetail.do?frn=0012559290&csfrToken= (last visited Aug. 10, 2023).

[99] June 21, 2022 LOI Response, *supra* note 57, at 3, Response to Question 7.

[100] *See* Fed. Commc'ns Comm'n, *Commission Registration System (CORES),* https://apps.fcc.gov/cores/userLogin.do?csfrToken= (last visited Aug. 10, 2023).

[101] 47 U.S.C. § 503(b).

[102] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(D) of the Act ($10,000 per violation or per day of a continuing violation and a statutory maximum of $75,000 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 5, 2023, as the effective date for the increases).

[103] 47 U.S.C. § 503(b)(2)(E).

[104] 47 CFR § 1.80(b)(10), Tbl. 1 to Para. (b)(10).

[105] *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, 17109-10, para. 53 (1997) (citing 47 U.S.C. § 503(b)(2)(E)) (*1997 Forfeiture Guidelines Order*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

appropriate.[106] 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.[107] 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.[108]

27. Section 503(b)(6)(B) of the Act provides that no forfeiture penalty shall be imposed if "the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability."[109] In this case, we propose forfeitures for the Company's apparent violations stemming from its failures to: (1) file two Annual Worksheets by April 1, 2022, and April 1, 2023, and six Quarterly Worksheets due by May 1, August 1, and November 1, 2022, and February 1, May 1, and August 1, 2023; (2) submit timely and complete responses the Bureau's LOI by May 27 and June 21, 2022; (3) file two annual CPNI certifications by March 1, 2022, and March 1, 2023; and (4) provide updated contact information in CORES.[110]

A. Proposed Forfeiture for Apparent Failure to File Worksheets

28. Section 1.80 of the Commission's rules lists a base forfeiture of $3,000 for the failure to file required forms or information.[111] Given the importance of the Worksheet filing requirements, however, the Commission has consistently applied an upward adjustment and proposed a forfeiture of $50,000 for each failure of a service provider to file Worksheets.[112] However, the maximum forfeiture permitted under section 503(b)(2)(D) of the Act against the Company is $23,727 per violation.[113] We therefore propose the maximum permitted forfeiture for each failure to file Worksheets due by: (1) April 1, 2022 (Annual Worksheet); (2) May 1, 2022 (Quarterly Worksheet); (3) August 1, 2022 (Quarterly Worksheet); (4) November 1, 2022 (Quarterly Worksheet); (5) February 1, 2023 (Quarterly Worksheet); (6) April 1, 2023 (Annual Worksheet); (7) May 1, 2023 (Quarterly Worksheet); and (8) August 1, 2023 (Quarterly Worksheet), for a total of $189,816, which represents $23,727 for each of the eight apparent violations.

29. 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.[114] The Commission and the

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[106] *See 1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17110, para. 53 (citing 47 U.S.C. § 503(b)(2)(E)).

[107] 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10). *See also 1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17098-99, para. 22 (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").

[108] 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

[109] 47 U.S.C. § 503(b)(6)(B).

[110] The statute of limitations for the earliest of these apparent violations, which occurred on March 1, 2022, expires September 27, 2023. *See id.*; Tolling Agreement, *supra* note 68; Second Tolling Agreement, *supra* note 68.

[111] 47 CFR § 1.80(b)(10), Tbl. 1 to Para. (b)(10).

[112] *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*). The Commission has applied a further upward adjustment to the forfeiture amount when Worksheet filing violations were repeated, and assessed a $100,000 forfeiture for each failure to file a Worksheet. *See, e.g.*, *Westel, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 23-55, 2023 WL 4682651, at *11 (Jul. 20, 2023); *Pacific Data Sys.*, Notice of Apparent Liability for Forfeiture, DA 23-68, 2023 WL 1067981, at *5 (EB Jan. 25, 2023).

[113] *See* 47 U.S.C. § 503(b)(2)(D).

[114] *See* 47 U.S.C. § 503(b)(2)(E).

administrators of the USF, TRS Fund, LNP, and NANP rely on the data reported in Worksheets to determine accurate amounts that service providers owe for important funding mechanisms implemented under the Act.[115] Stage 2 failed to file 19 Worksheets due between February 1, 2020, and August 1, 2023.[116] The ability to assess accurate payment requirements for the USF, TRS Fund, LNP, NANP, and federal regulatory fees depends on every service provider's compliance with the obligations to file accurate Worksheets by each filing deadline. A service provider's repeated failure to file Worksheets impedes the Congressional mandate that each service provider contribute on an equitable and nondiscriminatory basis to the USF,[117] 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.[118] The Company has an important obligation to file Worksheets by each filing deadline every year. However, Stage 2 has only consistently filed Worksheets between April 2009 and May 2013.[119] Outside of this period, the Company has consistently failed to file or to file on time all required Worksheets every year the Company has provided service subject to the filing and payment requirements.[120] Additionally, since receiving the Bureau's February 10, 2022 LOI concerning compliance with the Worksheet filing requirements, Stage 2 has apparently continued to violate the requirements by failing to file Annual Worksheets due by April 1, 2022 and 2023, and Quarterly Worksheets due by May 1, August 1, November 1, 2022, February 1, May 1, and August 1, 2023. The Company is thus culpable for its repeated filing failures.

B. Proposed Forfeiture for Failure to Respond Fully and Timely to a Bureau LOI

30. Section 503(b)(1)(B) of the Act, in part, provides that a person who willfully or repeatedly fails to comply with a Commission rule or order shall be liable for a forfeiture penalty.[121] As noted above, a letter of inquiry is an order of the Commission, and recipients that fail to provide a complete response on a timely basis can be subjected to a forfeiture penalty.[122] It is imperative that service providers provide timely, accurate, and complete responses to investigative inquiries to demonstrate their full compliance with the requirements of the Act and the Commission's rules. The Company's failure to provide a timely and complete response to the LOI threatens to compromise the Commission's ability to adequately investigate violations of important regulatory requirements.[123]

31. Section 1.80 of the Commission's rules specifies a base forfeiture of $4,000 for a party's failure to respond to Commission communications.[124] We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.[125] The Bureau has proposed a

[115] *See* 47 CFR §§ 1.1154, 1.1157, 52.17(a), 52.32, 54.711, 64.604(c)(5)(iii).

[116] *See* USAC Letter, *supra* note 59; *2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14176, Att. B, Tbl. 3; *2021 Annual Worksheet Instructions*, *supra* note 1, at 13671, Att. B, Tbl. 3; *2020 Annual Worksheet Instructions*, *supra* note 1, at 1373.

[117] *See* 47 U.S.C. § 254(d).

[118] *See id.* § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

[119] *See* USAC Letter, *supra* note 59, at 1.

[120] *See id*. at 1-2.

[121] 47 U.S.C. § 503(b)(1)(B).

[122] *See supra* para. 10.

[123] *See Neon Phone NAL*, *supra* note 45, at 7974, para. 24.

[124] 47 CFR § 1.80, Tbl. 1 to Para. (b)(10).

[125] *1997 Forfeiture Guidelines Order*, *supra* note 105, 12 FCC Rcd at 17098–99, para. 22 (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").

$100,000 forfeiture for the intentional and egregious failure of a company to respond to an LOI.[126] Although we find that Stage 2's failures to respond to the LOI in this case were intentional and egregious, the maximum forfeiture permitted under section 503(b)(2)(D) of the Act against the Company is $23,727 per violation.[127] We therefore propose the maximum permitted forfeiture for each failure to respond to the LOI by the (1) May 27, 2022 and (2) June 21, 2022 response deadlines, for a total of $47,454, which represents $23,727 for each of the two apparent violations.

32. In assessing a forfeiture amount we consider the nature, extent and gravity of the failure to respond completely to the Bureau's LOI.[128] Stage 2's response failures have serious implications on the Commission's ability to investigate the Company and ensure compliance with the Commission's filing and payment requirements. The Company has an important obligation to respond to a Bureau LOI and is thus culpable for its failure to comply. Furthermore, in this instance, the Company requested and received extensions of time to respond to the LOI and still did not fully respond. The Company's sustained failure to provide complete responses needlessly increased the difficulty of the Bureau's investigation, hindered the Bureau's efforts to assess the Company's compliance with the Commission's filing and payment requirements, and caused the expenditure of additional Commission resources.

C. Proposed Forfeiture for Failure to File CPNI Certifications

33. As discussed above, every service providers' compliance with the Commission's requirements to protect CPNI and file annual CPNI certifications is of the utmost importance. Section 1.80(b) of the Commission's rules establishes a base forfeiture of $3,000 for the failure to file a required form or information.[129] We have the discretion to depart from these guidelines, taking into account the particular facts of each individual case.[130] Section 1.80 of the Commission's rules also provides for an upward adjustment to forfeiture amounts for prior violations of any FCC requirements, and for repeated or continuous violations.[131] An upward adjustment to the base forfeiture for Stage 2's repeated failures to file its CPNI certifications is appropriate.[132] Although each of Stage 2's 10 certification filing failures for 2014 through 2023 is an apparent violation of the Commission's rules, we only propose forfeitures for the two filing failures that occurred within the statute of limitations. We propose the maximum forfeiture permitted under section 503(b)(2)(D) of the Act against the Company for each failure to file CPNI certifications by the (1) March 1, 2022 and (2) March 1, 2023 filing deadlines, for a total of $47,454, which represents $23,727 for each of the two apparent violations.

34. In assessing a forfeiture amount, we consider the nature, extent, and gravity of the failure to comply with the CPNI certification requirements, the degree of Stage 2's culpability, and its history of violations.[133] Section 222 of the Act and the Commission's rules require Stage 2 to protect the

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[126] *See Quadrant Holdings, LLC*, Notice of Apparent Liability for Forfeiture, DA 22-825, 2022 WL 3339390, *5, paras. 16-17 (EB Aug. 5, 2022) ("The egregiousness and intentional nature of [the] misconduct, as well as [the company's] ability to pay, considered in conjunction with the deterrent effect of the proposed forfeiture, dictate that [the company] be held liable for an amount significantly higher than the base forfeiture set for the relevant misconduct.").

[127] *See* 47 U.S.C. § 503(b)(2)(D).

[128] *See id*. § 503(b)(2)(E).

[129] 47 CFR § 1.80(b)(10), Tbl. 1 to Para. (b)(10).

[130] *See 1997 Forfeiture Guidelines Order*, *supra* note 105, at 17098-99, para. 22.

[131] 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

[132] The Bureau has proposed $25,000 forfeitures against companies for failing to file CPNI certifications when service providers repeatedly failed to file the certifications. *See Annual CPNI Certification*, Omnibus Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 2160, 2162, para. 8 (EB 2011); *Annual CPNI Certification*, Omnibus Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 1790, 1792, para. 6 (EB 2010).

[133] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

confidentiality of its subscribers' CPNI.[134] The Commission's rules further require that Stage 2 file annual certifications confirming that the Company has protected its customers' private and sensitive personal data.[135] To ensure protection of customers' data, strict compliance with the Commission's CPNI rules is critically important. According to the Commission's records, however, Stage 2 has not filed a CPNI certification since 2013.[136] Stage 2's record of repeated noncompliance demonstrates a blatant disregard for the Commission's CPNI protection requirements. In this case, we propose a forfeiture of $47,454 against Stage 2 for the Company's failures to file CPNI certifications due by March 1 of 2022 and 2023.

35. Given the accumulating record of investigation targets' non-compliance with the Commission's CPNI certification rule, service providers contemplating failures to file certifications on time are on notice that we are prepared to impose substantially higher upward adjustments in future enforcement actions. Future enforcement items for the failure to file CPNI certifications could include proposed forfeitures of $50,000 or higher per violation, consistent with the application of the factors in section 503(b)(2)(E) of the Act, our *1997 Forfeiture Guidelines Order*, and section 1.80 of the Commission's rules.[137]

D. Proposed Forfeiture for Failure to Update CORES

36. While section 1.80(b) of the Commission's rules establishes a base forfeiture of $3,000 for the failure to file a required form or information,[138] we have the discretion to depart from these guidelines, taking into account the particular facts of each individual case.[139] Section 1.80 of the Commission's rules also provides for an upward adjustment to forfeiture amounts for prior violations of any FCC requirements, and for repeated or continuous violations.[140] We find an upward adjustment for Stage 2's continuous failures to update its CORES information is warranted. The Commission has previously found that a forfeiture of $30,000 is appropriate to deter noncompliance with the Commission's CORES requirements.[141] In this case, we propose a forfeiture of $23,727, the maximum forfeiture permitted under section 503(b)(2)(D) of the Act,[142] for Stage 2's failure to update its CORES

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[134] *See* 47 U.S.C. § 222; *see also* 47 CFR §§ 64.2001-2011.

[135] *See* 47 CFR § 64.2009(e).

[136] *See* Fed. Commc'ns Comm'n, *CPNI Template Submission*, https://apps.fcc.gov/eb/CPNI/fccCPNI_display.cfm (last visited Aug. 10, 2023).

[137] *See* 47 U.S.C. § 503(b)(2)(e); 47 CFR §1.80; *1997 Forfeiture Guidelines*, *supra* note 105. In addition, the Commission's forfeiture assessments are subject to the statutory maximum forfeiture amounts established in 47 U.S.C. § 503(b), as adjusted for inflation. Maximum forfeiture amounts are adjusted annually for inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Adjustment Act). Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015). The 2015 Inflation Adjustment Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, which is codified, as amended, at 28 U.S.C. § 2461 note (1990 Inflation Adjustment Act). Federal agencies must annually adjust civil monetary penalties, and publish each annual adjustment by January 15. 1990 Inflation Adjustment Act § 4(a). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, "including [penalties] whose associated violation predated such increase." 1990 Inflation Adjustment Act § 6.

[138] 47 CFR § 1.80(b)(10), Tbl. 1 to Para. (b)(10).

[139] *See 1997 Forfeiture Guidelines*, *supra* note 105, at 17098-99, para. 22.

[140] 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

[141] *See PayG, LLC*, Notice of Apparent Liability for Forfeiture, FCC 22-69, 2022 WL 4245060, *13 (Sept. 14, 2022).

[142] *See* 47 U.S.C. § 503(b)(2)(D).

information on a timely basis in apparent violation of section 1.8002(b)(2) of the Commission's rules.[143]

37. In assessing a forfeiture amount, we consider the nature, extent and gravity of the failure to comply with the CORES requirements, and the degree of Stage 2's culpability and its history of non-compliance.[144] The requirements are administrative but important functions. The public interest is best served when the Commission is able to use resources efficiently. Commission staff should not need to expend significant resources to locate an investigation target. Although Stage 2 acknowledged in response to the Bureau's LOI that the Company's contact information changed, 16 months later, Stage 2 has still not updated CORES. This record of continuous noncompliance demonstrates a blatant disregard for the Commission's CORES requirements.

E. Total Proposed Forfeiture

38. Consistent with the Act and the Commission's rules,[145] we have exercised our discretion and considered the specific circumstances related to the Company and the violations it apparently committed, and we find the Company apparently liable for a forfeiture of $308,451. The total proposed forfeiture includes a proposed forfeiture of (a) $189,816 for the Company's failures to file Worksheets; (b) $47,454 for the Company's failures to respond fully to an LOI by the response deadlines; (c) $47,454 for the Company's failures to file annual CPNI certifications; and (d) $23,727 for the Company's failure to update CORES.[146]

V. CONCLUSION

39. We have determined that Stage 2 apparently willfully and repeatedly violated sections 1.8002(b)(2), 52.17(b), 52.32(b), 54.711(a), 64.2009(e), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders by failing to file Worksheets, failing to respond to the Bureau's LOI fully and on time, failing to file annual CPNI certifications, and failing to update CORES.[147] As such, Stage 2 is apparently liable for a forfeiture of $308,451.

VI. ORDERING CLAUSES

40. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, Stage 2 Networks, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of three hundred and eight thousand four hundred and fifty-one dollars ($308,451) for apparent violations of sections 1.8002(b)(2), 52.17(b), 52.32(b), 54.711(a), 64.2009(e) and 64.604(c)(5)(iii)(B) of the Commission's rules, 47 CFR §§ 1.8002(b)(2), 52.17(b), 52.32(b), 54.711(a), 64.2009(e), and 64.604(c)(5)(iii)(B), and Commission orders.[148]

41. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,

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[143] *See* 47 CFR § 1.8002(b)(2).

[144] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

[145] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

[146] 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.

[147] 47 CFR §§ 1.8002(b)(2), 52.17(b), 52.32(b), 54.711(a), 64.2009(e), and 64.604(c)(5)(iii)(B); *2023 Annual Worksheet Instructions*, *supra* note 1, at 2022 WL 10379829, Att. B, Tbl. 3; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14176, Att. B, Tbl. 3; *2021 Annual Worksheet Instructions*, *supra* note 1, at 13671, Att. B, Tbl. 3; *2020 Annual Worksheet Instructions*, *supra* note 1, at 1373.

[148] *See 2023 Annual Worksheet Instructions*, *supra* note 1, at 2022 WL 10379829, Att. B, Tbl. 3; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14176, Att. B, Tbl. 3; *2021 Annual Worksheet Instructions*, *supra* note 1, at 13671, Att. B, Tbl. 3; *2020 Annual Worksheet Instructions*, *supra* note 1, at 1373.

47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Stage 2 Networks, 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 44 below.

42. In order for Stage 2 Networks, LLC to pay the proposed forfeiture, Stage 2 Networks, LLC shall notify Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, David Janas at David.Janas@fcc.gov, and Pam Slipakoff at Pam.Slipakoff@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, Stage 2 Networks, LLC shall send electronic notification of payment to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, David Janas at David.Janas@fcc.gov, and Pam Slipakoff at Pam.Slipakoff@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:[149]

- 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[150] or printed CORES form[151] must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to 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).[152] 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

[149] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

[150] FCC Form 159 is accessible at https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159

[151] 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.

[152] Instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

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.

43. 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.[153] 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.

44. 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, 47 CFR §§ 1.16, 1.80(f)(3). 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 – Investigation and Hearing Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Patrick.McGrath@fcc.gov, Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, David.Janas@fcc.gov, Pam.Slipakoff@fcc.gov, and EnforcementBureauIHD@fcc.gov.

45. 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.[154] 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.[155]

46. **IT IS FURTHER ORDERED** that, pursuant to sections 1.8002(b)(2), 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B), 64.2009(e) of the Commission's rules, 47 CFR §§ 1.8002(b)(2), 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B), 64.2009(e), and the Commission's orders,[156] within 30 days, Stage 2 Networks, LLC **SHALL FILE** (1) the Company's 2020 through 2023 Annual Worksheets and all Quarterly Worksheets that were due within the last 45 days; (2) the Company's 2014 through 2023

[153] *See* 47 CFR § 1.1914.

[154] 47 U.S.C. § 503(b)(2)(E).

[155] *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, 778, 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 Abramovitch Forfeiture Order*33 FCC Rcd at 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).

[156] *See 2023 Annual Worksheet Instructions*, *supra* note 1, at 2022 WL 10379829, Att. B, Tbl. 3; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14176, Att. B, Tbl. 3; *2021 Annual Worksheet Instructions*, *supra* note 1, at 13671, Att. B, Tbl. 3; *2020 Annual Worksheet Instructions*, *supra* note 1, at 1373; *see also* Universal Service Administrative Company, *When to File*, https://www.usac.org/service-providers/contributing-to-the-usf/when-to-file/ (last visited Aug. 10, 2023).

CPNI certifications, and (3) current contact information in CORES. The failure of Stage 2 Networks, LLC to comply with these directives shall constitute a violation of a Commission order, entitling the Commission to exercise any and all rights and remedies authorized by law for the enforcement of a Commission order, including a forfeiture of up to the maximum forfeiture permitted under the Act, as adjusted for inflation, which is currently $23,727 for each violation.[157]

47. **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 George Panagiotou, Non-Managing Member, Stage 2 Networks, LLC, P.O. Box 398, Berkeley Heights, NJ, 07922 and to Jeffrey A. Mitchell, Esq., Mitchell Law, PLLC, 2917 39th Street NW, Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[157] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(2); *Amendment of Section 1.80(b) of the Comm'n's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356, 2022 WL 18023008 (EB Dec. 23, 2022).

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

In the Matter of	)	
	)	
Resilient Networks	)	PS Docket No. 21-346
	)	
Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications	)	PS Docket No. 15-80
	)	
New Part 4 of the Commission's Rules Concerning Disruptions to Communications	)	ET Docket No. 04-35

ORDER ON RECONSIDERATION

Adopted: September 14, 2023 **Released: September 15, 2023**

By the Commission:

I. INTRODUCTION

1. In this *Order on Reconsideration*, we address the issues raised by CTIA and the Competitive Carriers Association (CCA) (collectively, Petitioners) in response to the Commission's *2022 Resilient Networks Report and Order* (*Report and Order*) adopting the Mandatory Disaster Response Initiative (MDRI).[1] In considering CTIA and CCA's request for "clarification and/or reconsideration of . . . discrete aspects of implementation to streamline compliance with the new MDRI obligations and to promote consistency with other Commission rules, processes, and definitions,"[2] we extend the date for compliance of implementation of all provisions of the MDRI under section 4.17 by setting a date certain of May 1, 2024, for all subject providers to achieve compliance. In doing so, we render it no longer necessary to resolve Petitioners' request to amend or clarify the definitions of "small" or "non-small" providers utilized by the *Report and Order*, nor to address their request that we clarify the appropriate compliance timeframe when parties to a negotiation include one small and one non-small provider. We also decline to shift the obligations from providers to the Commission to publish and maintain a list of providers subject to the MDRI, and further decline to implement direct, individual contact by the Commission to providers when the MDRI is activated, relying instead on the routine public notices that the Commission may otherwise release. Finally, we reconsider the routine treatment of Roaming under Disaster arrangements (RuDs), and concur with Petitioners' request to presume such agreements to be confidential when filed with the Commission.

[1] *See Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerns Disruptions to Communications*, PS Docket Nos. 21-346 and 15-80; ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-50, at 2, para. 3 (July 6, 2022) (*Report and Order*).

[2] CTIA and Competitive Carriers Association Petition for Clarification and Partial Reconsideration, PS Docket Nos. 21-346 and 15-80; ET Docket No. 04-35 (filed Oct. 31, 2022) (CTIA and CCA Petition), https://www.fcc.gov/ecfs/document/1031860723484/1.

II. BACKGROUND

A. Resilient Networks Report and Order

2. The *Report and Order* adopted the MDRI to enhance the resiliency of the nation's networks during and in the aftermath of disasters.[3] The Commission's *Report and Order* leveraged the industry-developed Wireless Network Resiliency Cooperative Framework as its basis for the development of the MDRI, utilized by signatory providers since 2016.[4] The MDRI, which consists of five mandatory provisions for all facilities-based mobile wireless providers, specified the criteria that trigger activation of the MDRI and required providers to test roaming capabilities of their networks and report on the performance of their MDRI implementation to the Commission following disaster events. Like the Framework, the MDRI generally requires providers to: (1) provide for reasonable Roaming under Disaster arrangements (RuDs) when technically feasible;[5] (2) establish mutual aid arrangements with other facilities-based mobile wireless providers; (3) take reasonable measures to enhance municipal preparedness and restoration; (4) take reasonable measures to increase consumer readiness and preparation; and (5) take reasonable measures to improve public awareness and stakeholder communications on service and restoration status.

3. In this regard, the *Report and Order* requires that each facilities-based mobile wireless provider enter into bilateral roaming agreements with all other facilities-based mobile wireless providers from which it may foreseeably request roaming privileges, or that may foreseeably request roaming privileges from it, when the MDRI is active.[6] The Commission clarified that roaming is foreseeable, without limitation, when two providers' geographic coverage areas overlap.[7] The Commission set a compliance date for the rules at the later of (i) 30 days after OMB review of any new information collection requirements associated with the *Report and Order* or PSHSB determines that such review is not required, or (ii) March 30, 2023, for non-small providers and June 30, 2023, for small providers.[8]

B. The Petition for Clarification and Reconsideration

4. On October 31, 2022, Petitioners jointly filed a Petition for Clarification and Partial Reconsideration (CTIA and CCA Petition or Petition) of the Commission's *Report and Order*.[9] Petitioners seek several clarifications or amendments to the 2022 rules. Specifically, Petitioners request the following:

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[3] *See Report and Order*, PS Docket Nos. 21-346 and 15-80; ET Docket No. 04-35.

[4] *See* Federal Communications Commission (FCC), *Wireless Network Resiliency During Disasters*, (Nov. 17, 2022), https://www.fcc.gov/wireless-network-resiliency-during-disasters. (Signatories of the voluntary Framework include: AT&T Mobility, CTIA, GCI, Southern Linc, Spring (prior to its merger with T-Mobile), T-Mobile, U.S. Cellular and Verizon Wireless). *See also* CTIA, *Wireless Network Resiliency Cooperative Framework: Best Practices for Enhancing Emergency and Disaster Preparedness and Restoration*, https://www.ctia.org/the-wireless-industry/industry-commitments/wireless-network-resiliency-cooperative-framework (last visited July 13, 2023).

[5] In the *Report and Order*, the Commission specifically decided not to provide a one-size-fits-all standard for what constitutes something as "technically feasible." *See Report and Order* at 9, para. 20 (stating that "what constitutes . . . technically feasib[ility] . . . will typically depend on facts and realities that cannot be determined universally in advance of a situation that gives rise to a particular MDRI activation").

[6] *Report and Order* at 8.

[7] *Id*.

[8] *Id.* at Appx. A (codified at 47 CFR § 4.17(e)(1)).

[9] *See Report and Order*, 87 FCC Rcd 59329 (2022); CTIA and Competitive Carriers Association (CCA) Petition for Clarification and Partial Reconsideration, PS Docket Nos. 21-346 and 15-80; ET Docket No. 04-35 (filed Oct. 31, 2022) (CTIA and CCA Petition) https://www.fcc.gov/ecfs/document/1031860723484/1.

- Provide a list of potential facilities-based mobile wireless providers to which the MDRI may apply, so that providers can determine with more certainty the scope of their obligation to execute Roaming under Disaster ('RuD') arrangements with all 'foreseeable' wireless providers.
- Provide sufficient time for wireless providers—at least 12 months for non-small facilities-based mobile wireless providers and 18 months for small facilities-based mobile wireless providers—to achieve compliance with the new obligations.
- Align the definitions of 'non-small facilities-based' and 'small facilities-based' wireless providers with the FCC's existing definitions of 'nationwide' and 'non-nationwide' wireless providers applied in the 9-1-1 context.
- Establish the process that the Public Safety and Homeland Security Bureau ('Bureau') will use to inform facilities-based wireless providers that MDRI is active, including by providing notice via email to facilities-based wireless providers.
- Affirm that Office of Management and Budget ('OMB') review is required for all information collection obligations and that the Commission will treat RuD arrangements provided under Section 4.17(d) as presumptively confidential.[10]

C. Comments

5. The Commission provided the opportunity for oppositions to the Petition and replies to oppositions, the pleading cycle for which closed on January 10, 2023.[11] The Commission has received oppositions, replies, and *Ex Partes* from CTIA and CCA jointly and separately, Blooston Rural Carriers (Blooston), Southern Communications Services, Inc. (Southern Linc), NTCA—The Rural Broadband Association (NTCA), The Rural Wireless Association, Inc. (RWA), The Edison Electric Institute (EEI), NCTA – The Internet and Television Association (NCTA), and USTelecom—The Broadband Association (USTelecom). All filings were made by providers or trade associations whose responses were generally supportive of the requests in the Petition. Overall, the commenters largely reiterate that there is confusion regarding the effective timelines for implementation of the MDRI and the related components of such. Providers suggest that the Commission's *Report and Order* does not appreciate the complexity of negotiating agreements under the MDRI, and assert that a longer implementation period is necessary in order to comply with the Commission's *Report and Order*. Additionally, commenters are also supportive of the request for means by which the Commission would notify subject providers when the MDRI is active. Finally, some commenters ask the Commission to affirm compliance timing in relation to the Office of Management and Budget's (OMB) Paperwork Reduction Act (PRA) review and support Petitioners' argument that RuDs should be presumed confidential.

III. DISCUSSION

A. Modification of Compliance Implementation Timeline

6. The CTIA and CCA Petition requests that the Commission "[p]rovide sufficient time for wireless providers—at least 12 months for non-small facilities-based mobile wireless providers and 18 months for small facilities-based mobile wireless providers—to achieve compliance with the new obligations."[12] They further ask that those dates be calculated from the date of OMB approval of the rule

[10] CTIA and CCA Petition at 3.

[11] *Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerns Disruptions to Communications*, Order Granting Extension of Time, DA 22-1343, at 1, para. 1 (Dec. 19, 2022).

[12] CTIA and CCA Petition at 3; *accord id.* at 6.

for PRA purposes.[13] As described below, we establish a single date certain for compliance by all providers that affords a reasonable extension by providing approximately 20 months for all providers from publication in the Federal Register to achieve compliance. This will extend reasonable relief to providers, while preserving the benefits of the underlying rules for consumers relying on Petitioners' networks for connectivity and emergency communications access during disasters in advance of the 2024 hurricane and wildfire seasons. In doing so, we also eliminate the need to continue to distinguish between small and non-small providers.

7. *Background.* In requesting an extended implementation timeframe, Petitioners argue that the Commission's estimate of 200 hours per provider for compliance is "not aligned with the amount of work and resources that will be required to enter the multiple bilateral RuD and mutual aid arrangements and to complete roaming testing as required by the MDRI rules."[14] They further argue that providers will need more time to (1) negotiate agreements and (2) complete an initial round of roaming testing.[15] In addition, Petitioners indicate that "[i]n some cases" providers may not have existing agreements to leverage, raising the potential for unanticipated complexities, and may need to include "terms unique to the disaster context in which they will be invoked."[16] In instituting a deadline for providers to enter into RuDs, they further assert that the Commission has "effectively reverse[d] course on a decade of precedent regarding the timeframes for negotiating roaming arrangements."[17] Petitioners also claim that the time allowed is insufficient for providers to enter into both RuDs and mutual aid agreements and to complete the technical and operational tasks necessary to support roaming testing.[18] Finally, Petitioners argue that providers would need to negotiate agreements and conduct testing serially, rather than simultaneously, due to resource constraints for smaller providers.[19]

8. Relatedly, the Petition seeks clarification on three other issues impacting timeframes for compliance. First, the Petition recites that "[t]he Commission should affirm that, like the *Resilient Networks Order*'s approach to mutual aid arrangements, the small provider compliance date applies to both parties to a RuD arrangement, as well as roaming testing, when at least one party to an arrangement is a small provider."[20] Second, the Petition requests that the Commission "[a]lign the definitions of 'non-small facilities-based' and 'small facilities-based' wireless providers with the FCC's existing definitions of 'nationwide' and 'non-nationwide' wireless providers applied in the 9-1-1 context."[21] Third, the Petition asks the Commission to "[a]ffirm that [OMB] review is required for all information collection obligations."[22] Petitioners further argue that "giving providers a mere 30 days after OMB approval to comply with Sections 4.17(a)-(b) is unworkable given the complexity of executing RuD and mutual aid agreements, as well as roaming testing.[23]

9. *Comments.* In support of the Petition, the Blooston Rural Carriers cite the "limited personnel and financial resources" of small carriers as justification for providing at least an 18-month

[13] CTIA and CCA Petition at 12-13.

[14] CTIA and CCA Petition at 6-7.

[15] CTIA and CCA Petition at 7.

[16] CTIA and CCA Petition at 7-8.

[17] CTIA and CCA Petition at 8.

[18] *Id.* .

[19] CTIA and CCA Petition at 9.

[20] Id.

[21] CTIA and CCA Petition at 3; *accord id.* at 10.

[22] CTIA and CCA Petition at 3; *accord id.* at 12.

[23] *Id.* at 13.

timeframe for compliance, suggesting that negotiating RuDs and mutual aid agreements with multiple parties and conducting testing of their roaming capabilities "is likely to take longer than the 200 hour estimate," and argue that a longer timeframe would put smaller carriers on "a more equal footing" for negotiations.[24] NTCA, RWA, and Southern Linc similarly assert that the Commission's compliance estimates for small providers is unrealistic and support an extended compliance timeframe of at least 18 months.[25] NTCA also argues that small providers are less likely to have existing agreements to leverage, and echo the Blooston's argument that truncated negotiations may negatively impact their ability to obtain reasonable terms and conditions.[26] RWA also suggests that "small rural wireless carriers will receive a lower priority from large carriers in conducting negotiations," and Blooston similarly avers that "small, rural carriers will receive a lower priority than negotiations with larger providers" impacting their ability to timely comply.[27]

10. RWA in particular also emphasized the monetary impact on rural providers of the current compliance timeline, and argues extending the timeline for implementation would allow for more cost-effective compliance.[28] Southern Linc states many of the same concerns, and asserts that its own ongoing experience has yielded negotiation efforts that "significantly exceed[] the Commission's . . . estimate" and that implementation and testing "requires tens of dozens of hours or more of dedicated network engineer time for each and every potential RuD partner."[29] Southern Linc also expresses concern that timely compliance may be a challenge, and perhaps contrary to national security considerations, where a provider with whom an RuD is to be negotiated is subject to "Rip and Replace" obligations due to the presence of Chinese-manufactured network equipment.[30]

11. As to the *Report and Order*'s use of "small" and "non-small" designations to assign differing compliance timeframes, Southern Linc supports the Petition's request to replace these designations with "the long-standing and well-understood definitions of 'nationwide' and 'non-nationwide' wireless providers in the context of wireless 9-1-1 accuracy."[31] CTIA, CCA, and Southern Linc call the Commission's non-small and small distinctions of providers too "narrow" and do not find that the definitions can "recognize the extent of the burden the new rules will place on small and regional providers that may have 1,500 or more employees . . . but [will still] be challenged to achieve compliance within the deadlines imposed by the [*Report and Order*]."[32] Southern Linc also asserts that companies like itself that have large employee counts across affiliated businesses may in reality only have small resources attached to their telecommunications-specific enterprises.[33]

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[24] Blooston Comments at 2.

[25] NTCA Reply at 4 (at least 18 months); RWA Reply at 2 (minimum of 18 months); Southern Linc Reply at 7 (at least 18 months); *see also* Southern Linc *Ex Parte* at 1-2 (stating that "based on the experience of its own implementation efforts, the Commission significantly underestimated the amount of work that is required and that, from a purely practical and logistical standpoint, the current implementation deadlines are not realistically achievable").

[26] NTCA Reply at 3.

[27] *See* Blooston Rural Carriers Comments (Blooston Comments) at 3 and RWA Reply at 2.

[28] RWA Comments at 2.

[29] Southern Linc *Ex Parte* at 2; *see also* Southern Linc Comments at 4-7.

[30] Southern Linc *Ex Parte* at 2.

[31] Southern Linc Reply at 7; *see also* CTIA and CCA Petition at 10.

[32] Southern Linc Reply at 7; CTIA and CCA Petition at 10.

[33] *See* Letter from David D. Rines, Counsel to Southern Linc, Lerman Senter PLLC, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 21-346 and 15-80, ET Docket No. 04-35, at 3 (filed Feb. 27, 2023) (Southern Linc PSHSB Feb. *Ex Parte*).

12. *Decision.* We agree with Petitioners and commenters that an extension of time is warranted in order for providers to timely implement elements of the MDRI. For the reasons discussed below, we establish a single, date certain of May 1, 2024 for compliance with all elements of the MDRI regardless of the size of the provider.[34]

13. As the record reflects, some providers will likely need additional time to coordinate with other providers, conduct testing, and establish new mutual aid relationships. As Petitioners and commenters also note, certain elements of the MDRI require expenditure of more time and effort initially compared to later on when these agreements and arrangements will be more established and routine. As such, while we are persuaded that a reasonable extension is appropriate to accommodate the concerns expressed by providers, we do not believe that the lengthy extension requested is justified or necessary, and may unreasonably delay the benefits of the MDRI. We find that a May 1, 2024 compliance date should afford providers more flexibility to allocate their resources to meet the MDRI's requirements while still supporting the need for prompt execution of these agreements and responsibilities in support of disaster response and preparedness.

14. In particular, we find that the Petitioners' full requested timeframes would unreasonably delay the benefits of the MDRI, and would likely result in a compliance date more than two and a half years from the adoption of the *Report and Order* for most providers, eclipsing not only the 2023 hurricane season (defined as from June 1 to November 30)[35] *and* the 2023 wildfire season (generally during the summer months, or later in Western states)[36] but the entirety of hurricane and wildfire seasons in 2024 as well. This would place wireless consumers impacted by these disaster scenarios at greater risk for being unable to reach 911, call for help, or receive emergency information and assistance. While we recognize, as the *Report and Order* did, that there are costs associated with these obligations both in terms of monetary and other resource commitments for subject providers, we continue to find that the benefits outweigh these costs.[37] The timeframe requested by Petitioners, moreover, unreasonably dilutes those benefits in a context in which prompt action is likely to save lives and property.

15. In setting a single deadline, we further find the distinction between small and non-small providers is no longer necessary to perpetuate for two reasons. First, whereas non-small providers were originally afforded 6 months (March 30, 2023) and small providers were afforded 9 months (June 30, 2023) initially providing different compliance dates based on provider size, the *Report and Order* contemplated a singular date if OMB review were delayed beyond these timeframes. As OMB has not yet completed its review, the singular date contingency has materialized. Second, we find this outcome largely consistent with the ultimate outcome advocated by Petitioners when their requests are taken as a whole. That is, if we accepted Petitioners' request to use nationwide/non-nationwide[38] distinctions for purposes of the MDRI, and clarified that in all instances where a nationwide and non-nationwide provider were parties to a negotiation warranted a longer compliance timeframe, this would result in virtually all negotiations being subject to the longer timeframe except in those very few instances when a nationwide

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[34] In the unlikely event that PRA review remains pending on May 1, 2024, we set the compliance date for all elements of the MDRI at 30 days following publication of an announcement that OMB review is completed.

[35] National Oceanic and Atmospheric Administration (NOAA), *NOAA predicts a near-normal 2023 Atlantic hurricane season,* (May 25, 2023) https://www.noaa.gov/news-release/2023-atlantic-hurricane-season-outlook.

[36] National Interagency Fire Center, *National Significant Wildland Fire Potential Outlook: Predictive Services,* (June 1, 2023) https://www.nifc.gov/sites/default/files/document-media/monthly_seasonal_outlook.pdf; *see also* The Western Fire Chiefs Association, *The Changing California Fire Season* (July 5, 2022) https://wfca.com/articles/california-fire-season-in-depth-guide/.

[37] *Report and Order* at 14-17, paras. 39-46 (Cost-Benefit Summary).

[38] 47 C.F.R. Sec 9.10(i)(iv-v) (defining nationwide and non-nationwide CMRS providers for purposes of 911 location accuracy obligations).

provider is negotiating with another nationwide provider. It is far simpler, and equally equitable, to provide a common timeframe across all scenarios.

16. The Blooston commenters further note that additional time has been afforded to small providers for compliance in other contexts, *e.g.,* with respect to certain E911 and Wireless Emergency Alert (WEA) obligations.[39] We find those examples inapposite here. In the E911 and WEA context mentioned by Blooston, newly required obligations involved the potential for network modifications and upgrades or equipment availability in a way that is not present or relevant here.

17. The Petition and related comments further argue that the 200-hour estimate provided by the Commission did not properly account for the amount of time and resources necessary for entering into multiple bilateral RuD and mutual aid arrangements and to complete roaming testing.[40] In particular, Petitioners and commenters claim that the estimate does not properly account for the complexity of negotiating and executing the required arrangements for many regional and local providers, e.g., providers may have to negotiate arrangements and complete roaming testing with a large number of providers, some providers do not have existing agreements with other providers and may need to address unanticipated complexities or include terms unique to certain disaster contexts, and some providers lack the resources to negotiate agreements and conduct testing with multiple providers at the same time.[41]

18. We disagree with Petitioners' view that the Commission did not appropriately account for the level of likely burden on providers in the *Report and Order*.[42] In reaching its conclusion, the *Report and Order* specifically took into account assertions by small and regional entities regarding actions already undertaken to engage in storm preparation, information and asset sharing as well as their assertions that many "already abide" by the principles on which the MDRI is based, concluding that setup costs would be limited, and otherwise noting examples in the record around existing efforts, time and resources expended in support of the activities codified in the MDRI.[43] As such, it was reasonable to assume that providers existing engagements could be levied in support of these obligations, and accordingly providing a reasoned estimate associated with the actions required by regional and local providers to update or revise their existing administrative and technical processes to conform to processes required the MDRI.[44] Further, the *Report and Order* noted the lack of record comment regarding recurring costs.[45] As such, we do not believe the *Report and Order* erred in its conclusion.

19. However, even taking as true Petitioners assertion that we miscalculated the burden, and considering the additional arguments presented regarding complexity and limited resources and the

[39] *See* Blooston Comments at 3 (noting that the Commission established longer compliance periods for small and rural providers in comparable situations, such as for WEA embedded reference capability and E911 z-axis location accuracy benchmarks).

[40] CTIA and CCA Petition at 6-9; *see also* Blooston Comments at 2-4, NTCA Reply at 2-4, RWA Reply at 1-2, Southern Linc Reply at 4-7, and Southern Linc *Ex Parte* at 2.

[41] *See, e.g.,* Petition at 7-9; Blooston Comments at 3-4; NTCA Reply at 3-4; RWA Reply at 2; Southern Linc Reply at 5-6; Southern Linc *Ex Parte* at 2.

[42] *See, e.g.,* Petition at 6-9; Blooston Comments at 2-4; NTCA Reply at 2-4; RWA Reply at 1-2; Southern Linc Reply at 4-7; Southern Linc *Ex Parte* at 2.

[43] *Report and Order* at 15-16, para. 41-42.

[44] *Id.* at 16, para. 43.

[45] *Id.* At 16-17, para. 44.

possible need to negotiate serially, we find the extension we grant today accounts for the additional burdens that Petitioner and commenters have asserted.[46]

20. Petitioners also argue that the Commission has departed from its own precedent by establishing a compliance deadline for entering into roaming agreements.[47] We disagree and find that there is a compelling public interest in ensuring the availability of networks during a disaster justifies the need for an established deadline.[48] An open ended timeframe in this regard also fails to take into account the need to enhance and improve disaster and recovery efforts on the ground in preparation for, during, and in the aftermath of disaster events, including by increasing predictability and streamlining coordination in recovery efforts among providers.[49]

21. *Additional Small Provider Considerations.* We also find that the bargaining inequity posited by smaller providers in their comments with respect to the roaming arrangements and mutual aid agreements is also mitigated by the extension granted. Moreover, RuDs and mutual aid agreements in this context are required to adhere to a reasonableness standard, with negotiations conducted in good faith, with disputes and enforcement provided for before the Commission.[50] We find that these safeguards adequately address these concerns. With respect to the argument that small providers in particular may need to conduct negotiations serially rather than simultaneously due to resource constraints, we do not find that this circumstance alone prevents timely compliance, and Petitioners and commenters do not provide sufficient evidence that sequential negotiations for some subset of providers requires industry-wide revisions of compliance timeframes. Moreover, the extension of time should accommodate the need for smaller providers to serially negotiate if necessary.

22. *Rip and Replace.* As to the possibility that a provider's need to complete "Rip and Replace" activities prior to implementing or completing initial testing of RuD or mutual aid arrangements under the MDRI could delay timely compliance, we expect that these instances are specific enough to be addressed in a petition for waiver, in response to which the Bureau could consider whether special circumstances justify an appropriate delay.

23. *Related Requests for Clarification.* Finally, in establishing the singular compliance date adopted today for all facilities-based mobile wireless providers, it is unnecessary to address Petitioners' other requests. In particular, the Petitioners' request the Commission reconsider its use of "small" versus "non-small" delineations preferring the use of "nationwide" and "non-nationwide" as used in the 911 context instead. However, the adoption of a unified implementation timeline for all providers makes differentiating between providers irrelevant. Similarly, their request for clarification as to the applicable timeframes when parties to an RuD arrangement or roaming testing include one small and one non-small provider is also unnecessary, as all providers are subject to the same revised compliance date. While we also disagree that the compliance timeframes adopted in the *Report and Order* are in any way unclear, and therefore that the Commission should "reaffirm" the applicability of the PRA timeframes to particular provisions of the rule, we grant dispensation to all parties by extending the May 1, 2024 compliance date to all provisions of section 4.17.[51] It should be noted that section 4.17(e) previously set forth a separate

[46] The date extension for implementation of the MDRI should address concerns surrounding small providers and the 200-hour estimated burden. *See, e.g.,* Petition at 7-9; Blooston Comments at 3-4; NTCA Reply at 3-4; RWA Reply at 2; Southern Linc Reply at 5-6; Southern Linc *Ex Parte* at 2.

[47] CTIA and CCA Petition at 7-8; *see also* NTCA Reply at 4.

[48] *See, e.g., Report and Order* at 8, para. 18.

[49] *See, e.g. Report and Order* at 6, para. 13.

[50] *Report and Order* at 7-8, para. 16.

[51] To the extent providers have professed disagreement or confusion as to the applicability of the PRA to a particular element of § 4.17, we forbear from enforcement action for any violations that may have occurred during the pendency of the Petition and until the new compliance date occurs.

compliance date for the requirement to enter into mutual aid arrangements, but in modifying the implementation timing and to provide clarity, we find it most logical for all elements of the MDRI to have the same timing.[52] In doing so, we provide a clear date to eliminate confusion, give providers extra time for implementation and provide certainty not only to Petitioners and commenters as to the scope and timing of their obligations, but to the public safety and related incident planning and response organizations that support communities during disasters, and the public that relies on these networks. Petitioners' other argument that the entire rule implicates PRA shall be resolved through the PRA process.

B. List of Providers Subject to the MDRI

24. The Petitioners ask that the Commission "[p]rovide a list of potential facilities-based mobile wireless providers to which the MDRI may apply, so that providers can determine with more certainty the scope of their obligation to execute Roaming under Disaster ('RuD') arrangements with all 'foreseeable' wireless providers."[53] Further, Petitioners ask the Commission to "publish the list on the FCC's website" and request that they "update the list on a regular basis."[54] As detailed below, the existing public information published by the Commission in connection with its Form 477 information collections and available to Petitioners and other providers adequately identify those potentially subject to the MDRI. This resource coupled with other public information available to Petitioners, as well as the additional clarification we offer below on when roaming may be "foreseeable" for MDRI purposes, provides adequate clarity in the Commission's view for Petitioners to execute their obligations.

25. *Background.* CTIA and CCA argue that providers need a Commission-generated list to ensure they are engaging with all other providers for required RuDs, mutual aid agreements, and testing of roaming under section 4.17.[55] The Petition states that a failure to do so frustrates both providers and the Commission's goals of the *Report and Order* and creates a challenge to determining whether providers have reached compliance with the MDRI.[56] In particular, they assert that they have spent resources on determining foreseeable roaming partners using the Commission's estimated number of applicable providers as specified in the *Report and Order*, but were only able to identify fewer than half of the 63 providers referenced.[57]

26. *Comments.* In support of CCA and CTIA's Petition, Blooston Rural Carriers and NTCA contend that while roaming is foreseeable "when two providers' geographic coverage areas overlap," there is an issue with small carriers who may know the "identity of competing service providers in their territory, [but] may not have an existing business relationship with them, and . . . may not know the appropriate legal and/or technical personnel who are responsible for implementing roaming and mutual aid discussions."[58] Blooston agrees that the list is necessary to "avoid ambiguity when implementing the MDRI, streamline the initial contact process, [and] clarify regulatory obligations for large and small

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[52] 47 CFR § 4.17(e); *Report and Order* at 10, para. 25 ("Providers must have mutual aid arrangements in place within 30 days of the compliance date of the MDRI."). In this *Order on Reconsideration*, the Commission eliminates the distinction between the mutual aid arrangement requirement and the other requirements under the MDRI to provide clarity and simplicity for implementation.

[53] CTIA and CCA Petition at 3; *accord id.* at 4-5. Petitioners specifically request a list of all providers that are subject to the MDRI requirements. *Id.* at 3, 4-5.

[54] CTIA and CCA Petition at 5.

[55] CTIA and CCA Petition at 4-5.

[56] *Id.*

[57] CTIA and CCA Petition at 5; *see also Report and Order* at 16, para 43; *id.* at 29, para. 12; *id.* at 32, para. 21; *id.* at 39, para. 10.

[58] *See* Blooston Comment at 4; *accord* NTCA Reply at 4; *see also Report and Order* at 8, para. 17.

carriers alike."[59] Blooston recommends that the Commission compile the initial list and allow providers to identify appropriate points of contact and to update the list if providers implement new technology, merge with or are acquired by another service provider, or stop offering mobile wireless service.[60] Blooston further suggests that the Commission's Disaster Information Reporting System (DIRS) might serve as a model for collecting and maintaining contact information.[61] NTCA similarly concludes that an "official and continually updated resource of contact information would streamline the process and clarify obligations for all providers."[62]

27. *Discussion.* We are not persuaded that a Commission-maintained list specifically for this purpose is the most efficient and effective means for providers to identify those other facilities-based mobile wireless providers subject to the MDRI. Petitioners assert that they were unable to identify a full roster of facilities-based mobile providers based on the Commission's estimate that 63 facilities-based mobile wireless providers that are not signatories to the Wireless Resiliency Cooperative Framework would be required to undertake certain activities to comply with the new rule.[63] Specifically, they assert that "several of the Petitioners' members have worked in good faith, and expended resources and time, through Petitioners and the companies' established business channels, to compile information on the relevant points of contact and subject matter experts for their respective companies and identify contact information for all providers subject to these new requirements" but that they "have been able to identify fewer than half of the 63 facilities-based providers that the *Resilient Networks Order* identifies as subject to the MDRI rules."[64] Because they were unable to do so, they argue this should obligate the Commission to take on the responsibility of identifying and maintaining a list of providers subject to the MDRI. However, the information used to provide this estimate in the *Report and Order* is readily available to providers.

28. In estimating the number of providers subject to the MDRI, the *Report and Order* relied on data on the number of entities derived from 2022 Voice Telephone Services Report (VTSR).[65] The information from the VTSR is derived from Form 477 filings made with Commission. The Commission already publishes the underlying list of Form 477 "Filers by State" and periodically updates this information.[66] This pre-existing tool identifies, on a state-by-state basis, those filers subject to Form 477 filing obligations; those marked as "mobile voice" providers make up the total utilized by the Commission to estimate those subject to the MDRI. We believe a simple sorting of this information,

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[59] Blooston Comments at 4.

[60] *Id.* at 4-5.

[61] *See* Blooston Comments at 5. (The Disaster Information Reporting System (DIRS) was established in September 2007 by the Commission as a response to the aftermath of Hurricane Katrina. DIRS is a voluntary, web-based system through which the Commission collects operational status and restoration information from communications providers during major disasters and subsequent recovery efforts. It provides communications providers with a single, coordinated, consistent process to report their communications infrastructure status information during disasters and collects this information from wireline, wireless, broadcast, cable, interconnected VoIP and broadband service providers.) *See also* FCC, *Disaster Information Reporting System (DIRS)*(May 22, 203) https://www.fcc.gov/general/disaster-information-reporting-system-dirs-0 *and see* FEMA, *FCC Disaster Information Reporting System (DIRS)* (June 13, 2023) https://www.fema.gov/emergency-managers/practitioners/recovery-resilience-resource-library/fcc-disaster-information.

[62] NTCA Reply at 4.

[63] CTIA and CCA Petition at 4-5; *Report and Order* at 16, para. 43.

[64] CTIA and CCA Petition at 5.

[65] *Report and Order* at 16, para. 43, FN 102, *citing* FCC, Office of Economics and Analytics, Industry Analysis Division, Voice Telephone Services Status as of December 31, 2019 at 10 (March 2022), https://docs.fcc.gov/public/attachments/DOC-381123A1.pdf.

[66] *See* FCC, *Form 477 Filers by State* (June 21, 2022) https://www.fcc.gov/form-477-filers-state.

coupled with a provider's own knowledge of its particular service area, provides sufficient basis for a provider to (1) identify the providers subject to the MDRI; and (2) identify the relevant providers within this set with whom they should engage under the MDRI for establishing RuDs and mutual aid agreements. For example, the *Report and Order* makes clear that "each facilities-based mobile wireless provider [shall] enter into mutual aid arrangements with all other facilities-based mobile wireless providers from which it may request, or receive a request for aid during emergencies."[67] Utilizing the "Filers by State" tool, as well as their geographic knowledge of their own service area, past emergencies, and business relationships, it should be similarly clear to providers which other providers they could potentially receive or request aid from during an emergency.

29. *Foreseeability.* To provide additional guidance, we also delineate additional context for considering when it may be "foreseeable" for a provider to need to roam onto another provider's network under an RuD. In terms of foreseeability for RuD purposes, we continue to find that a particular provider is in the best position to know with which other providers its coverage area overlaps. In identifying foreseeable roaming partners, a provider should be able to leverage the information about its own coverage to reasonably predict which other providers may wish to enter into bilateral roaming arrangements or mutual aid agreements from publicly available service area maps, information in the Commission's Universal Licensing System (ULS), utilizing an internet search or other research sources to identify local providers. Indeed, we believe providers have clear competitive incentives to familiarize themselves with competing providers who cater to their geographic area and consumers. In this respect, providers subject to the MDRI could, by way of example, reach out to all providers who are within their geographic service area to help satisfy this obligation. Blooston and NTCA even themselves appear to concede that geographic overlap is sufficient to understand what constitutes "foreseeable" roaming, only citing as an impediment to MDRI implementation that providers may not already have an existing relationship with each other.

30. *Contact information.* With respect to the need to identify contacts and establish relationships, nothing in the *Report and Order* prevents providers from making such information available of their own accord on a website or other such resource. In this respect, the bi-lateral nature of the roaming and mutual aid obligations also dictates that providers will be reaching out to each other, providing multiple avenues for mutual identification. As such, we do not find that the Commission is in a better position than the individual providers to accumulate, collect, or maintain this information.

31. Moreover, as the Blooston Rural Carriers acknowledge, instituting a process for Commission collection and dissemination of this data may have PRA or other privacy implications.[68] We find that this effort could unreasonably delay the MDRI's implementation, particularly when the alternative is achievable with little burden. It is simpler, more efficient and more logical that providers use existing knowledge of their geographic coverage area, geographic competitors, and existing business relationships to begin implementation immediately without the need for undue delay by waiting for the Commission to re-organize information on an industry-wide basis that already exists with the providers themselves.

32. We continue to find that the *Report and Order* requirement for each facilities-based mobile wireless provider to enter into bilateral roaming agreements with all other facilities-based mobile wireless providers from which it may foreseeably request roaming privileges, or that may foreseeably request roaming privileges from it, when the MDRI is active, to be a reasonable basis by which providers can identify potential RuD partners.[69] And while the *Report and Order* is clear that roaming is foreseeable, without limitation, when two providers' geographic coverage areas overlap, we refine this explanation to acknowledge that radio frequency propagation may result in some variables as to coverage

[67] *Report and Order* at 10, para. 25.

[68] Blooston Comments at 5.

[69] *Report and Order* at 8, para. 17.

area contours. In this respect, coverage areas in this context overlap where a provider "knows or reasonably should have known" that its "as-designed" network service area overlaps with the service area of another provider.[70]

C. Notification of MDRI Activation

33. The Petition requests that the Commission "[e]stablish the process that [the Bureau] will use to inform facilities-based wireless providers that [the] MDRI is active, including by providing notice via email to facilities-based wireless providers."[71] Petitioners argue that "it is critical that all facilities-based wireless providers are immediately aware of such an activation through automatic electronic notifications."[72] They further state that the Commission already uses a similar process to notify providers of the activation of its Disaster Information Reporting System (DIRS).[73] As described below, we decline to establish a specific mechanism to provide direct alerts for MDRI activation. Rather, we find the existing widely utilized and public notification mechanisms sufficient to afford prompt notice of MDRI activation.

34. *Background*. The MDRI is activated when (i) any entity authorized to declare Emergency Support Function 2 (ESF-2) activates ESF-2 for a given emergency or disaster, (ii) the Commission activates the Disaster Information Reporting System (DIRS), or (iii) the Commission's Chief of the Public Safety and Homeland Security Bureau issues a Public Notice activating the Mandatory Disaster Response Initiative (MDRI) in response to a state request to do so, where the state has also either activated its Emergency Operations Center, activated mutual aid or proclaimed a local state of emergency.[74] The *Report and Order* delegated authority to the Bureau to issue a Public Notice effectuating the MDRI under these circumstances but did not provide a specific manner in which the Commission might otherwise notify providers.[75]

35. *Comments.* NTCA and Blooston Rural Carriers agree with CTIA and CCA's request for the Commission to base its notice procedures for the MDRI's activation "on the practice currently used for activating the Disaster Information Reporting System [(DIRS)] . . . [citing the importance] that all facilities-based wireless providers are made aware of such an activation."[76] NTCA further opines that small providers would have the flexibility to "designate multiple points of contact to receive such notices," which would ensure that providers are aware of activation and could act accordingly.[77] The Rural Wireless Association is also in agreement, explaining that "the FCC should . . . provide notice of activation . . . directly by email from [PSHSB] staff to designated carrier points of contact."[78]

36. *Discussion.* CTIA and CCA claim that automatic electronic notification is necessary to (1) make sure that all facilities-based wireless providers are immediately aware of the MDRI activation

[70] For instance, a provider should be able to reasonably predict which other providers may wish to enter into bilateral roaming agreements or mutual aid agreements from publicly available service area maps, information in the Commission's Universal Licensing System (ULS), utilizing an internet search or other research sources to identify local providers, being aware of competing providers who cater to their geographic area and consumers, or other similar engagements.

[71] CTIA and CCA Petition at 3; *accord id.* at 11.

[72] CTIA and CCA Petition at 12.

[73] *Id.* at 11. *See also* Blooston Comments at 5.

[74] 47 CFR § 4.17(a)(1)-(3).

[75] *Report and Order* at 13, para. 36.

[76] NTCA Reply at 5; *see* Blooston Comments at 5.

[77] NTCA Reply at 5.

[78] RWA Comments at 3; *see* Blooston Comments at 5.

and to (2) provide small wireless providers with the flexibility to designate multiple points of contact to receive notice of the MDRI activation, which will ensure the effectiveness of the system.[79] We are not persuaded that obligating the Commission to notify providers subject to the MDRI directly of its activation through electronic notification is necessary, and decline to modify the *Report and Order* in this regard.

37. In so deciding, we note that the Petition's comparison to DIRS operating procedures is not applicable in this instance. Unlike MDRI activations, DIRS is a voluntary reporting system where the responsibility and decision to report information sits with the providers themselves and not the Commission. While the Bureau similarly issues a Public Notice when DIRS is activated, sharing DIRS activation status, like the email notification provided to DIRS registrants, is merely a courtesy incidental to the purpose of the system. The primary mechanism remains the Public Notice, and the various routine publication and distribution venues employed for all Commission documents such as the Daily Digest and the Commission website. While we decline to require it here, we fully anticipate that the Bureau would similarly employ additional methods when available and appropriate to the circumstance to widely disseminate information regarding MDRI activation.

38. While we agree that it is in the public interest to broadly publicize MDRI activation, existing pathways are sufficient as they are now and providers hold the primary responsibility to be aware of their obligations. As such, we decline to revise our determination that a Public Notice issued by the Bureau is appropriate legal notice triggering MDRI obligations. However, to the extent that DIRS or NORS may be able to provide a relevant vehicle for the Bureau to provide courtesy MDRI activation notice, we direct the Bureau to consider its feasibility.

A. Confidential Treatment of RuDs

39. *Background.* The Petitioners ask the Commission to affirm that it "will treat RuD arrangements provided under Section 4.17(d) as presumptively confidential."[80] In particular, Petitioners claim that presumptive confidentiality for RuDs is appropriate because (1) the RuDs contain commercially sensitive and proprietary information that providers customarily treat as confidential; (2) the Commission treats roaming agreements as presumptively confidential under the existing data-roaming rules; and (3) the Commission treats analogous information submissions as presumptively confidential.[81] Blooston Rural Carriers also favor a presumption of confidentiality.[82] We agree, and clarify that such submissions will be treated as presumptively confidential.

40. *Discussion.* Under the *Report and Order*, RuDs are not routinely submitted and are provided to the Commission only on request.[83] As such, the Commission found it sufficient to consider confidentiality of such submissions on an *ad hoc* basis when requested by a submitting party. Petitioners correctly point out, however, that submissions to the Commission of data roaming agreements are afforded presumptively confidential treatment, and they further argue that RuDs may be incorporated into broader roaming arrangements.[84] They also assert that such treatment for both RuDs and mutual aid

[79] CTIA and CCA Petition at 11-12; *see also* NTCA Reply at 5; Blooston Comments at 5.

[80] CTIA and CCA Petition at 3; *accord id.* at 14.

[81] CTIA and CCA Petition at 14-15.

[82] Blooston Comments at 6.

[83] *Report and Order* at 10, para. 24, Appdx. A (47 CFR § 4.17(d)) (requiring providers to "supply copies of [RuDs] to the Commission promptly upon Commission request").

[84] CTIA and CCA Petition at 14-15; *see Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, 5450, para. 79 (2011) ("[I]f negotiations fail to produce a mutually acceptable set of terms and conditions, including rates, the Commission staff may require parties to submit on a confidential basis their final offers, including price, in the form of a proposed data roaming contract.").

agreements would be consistent with the treatment for outage information supplied under other provisions of the Commission's part 4 rules.[85] We concur that RuD submissions are likely to contain the same types of sensitive trade secret or commercial and financial information we have found in other contexts to merit such a presumption.[86] As such, we reconsider our prior *ad hoc* approach, and we will afford a presumption of confidentiality to RuDs filed with the Commission.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act

41. This document does not contain new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), 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). This document may contain a non-substantive and non-material modification of information collection requirements that are currently pending review by the Office of Management and Budget (OMB). Any such modifications will be submitted to OMB for review pursuant to OMB's non-substantive modification process.

B. Supplemental Final Regulatory Flexibility Analysis

42. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[87] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*Resilient Networks Notice*) released in October 2021.[88] The Commission sought public comment on the proposals in these dockets in the *Resilient Networks Notice.* No comments were filed addressing the IRFA. In the *Resilient Networks Report and Order and Further Notice of Proposed* released in July 2022 (*Report and Order*) the Commission prepared a Final Regulatory Flexibility Analysis (FRFA) and sought written comments on the FRFA.[89] No comments were filed addressing the FRFA. In October 2022, the Cellular Telecommunications and Internet Association (CTIA) and the Competitive Carriers Association (CCA) (collectively, Petitioners) filed a Petition for Clarification and Partial Reconsideration (Petition) of the *Report and Order* which included issues impacting small entities.[90] Several parties filed comments in response to the Petition.[91] A summary of the relevant issues impacting small entities in the Petition, comments and addressed in the *Order on Reconsideration* are detailed below. This Supplemental Final

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[85] CTIA and CCA Petition at 14-15; *see* 47 CFR § 4.2(a).

[86] *See also* 5 U.S.C. § 552(b)(4).

[87] 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, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[88] *Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket Nos. 21-346, 15-80, ET Docket No. 04-35, Notice of Proposed Rulemaking, FCC 21-99 (2021) (*Resilient Networks Notice*).

[89] *Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket Nos. 21-346, 15-80, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-50 (2022) (*2022 Resilient Networks Order*).

[90] CTIA and Competitive Carriers Association Petition for Clarification and Partial Reconsideration, PS Docket Nos. 21-346 and 15-80; ET Docket No. 04-35 (filed Oct. 31, 2022) (CTIA and CCA Petition, CTIA & CCA collectively Petitioners) https://www.fcc.gov/ecfs/document/1031860723484/1.

[91] During the pleading cycle which ended January 10, 2023, filings were made by Blooston Rural Carriers (Blooston), Southern Communications Services, Inc. (Southern Linc), NTCA—The Rural Broadband Association (NTCA), The Rural Wireless Association, Inc. (RWA), The Edison Electric Institute (EEI), and USTelecom—The Broadband Association (USTelecom).

Regulatory Flexibility Analysis (Supplemental FRFA) reflects actions taken in the *Order on Reconsideration*, supplements the FRFA included with the *Report and Order,* and conforms to the RFA.[92]

C. Need for, and Objectives of, the Order on Reconsideration

43. In the *Report and Order*, the Commission adopted rules that require all facilities-based mobile wireless providers to comply with the Mandatory Disaster Response Initiative (MDRI), which codified the Wireless Network Resiliency Cooperative Framework (Framework) agreement developed by the wireless industry in 2016 to provide mutual aid in the event of a disaster, and expand the events that trigger its activation.[93] The *Report and Order* also implemented new requirements for testing of roaming capabilities and MDRI performance reporting to the Commission. These actions were taken to improve the reliability, resiliency, and continuity of communications networks during emergencies. Further, the requirements uniformized the nation's response efforts among facilities-based mobile wireless providers who prior to the *Report and Order*, implemented the Framework on a voluntary basis. Recent weather events and other natural disasters such as Hurricane Ida, hurricanes and earthquakes in Puerto Rico, severe winter storms in Texas, and hurricane and wildfire seasons generally, continue to demonstrate the continued susceptibility of the United States' communications infrastructure to disruption during such events. Accordingly, the Commission's adoption of the MDRI requirements in the *Report and Order* sought to implement the appropriate tools to promote public safety, improve reliability of the telecommunications infrastructure during emergency events, improve provider accountability as well as increase Commission awareness.

44. In today's *Order on Reconsideration*, in response to Petitioners' and commenters' request for an extension of time for implementing roaming arrangements and mutual aid agreements,[94] we provided an extension for all providers, regardless of size, and implement a single, uniform compliance date of May 1, 2024 for all providers to comply with Section 4.17. With this extension the Commission eliminates the distinction between small and non-small providers as previously distinguished in the *Report and Order*. Whereas small providers had originally been granted a longer timeline of nine months for implementation in comparison to the six months granted for non-small providers in the *Report and Order*, on reconsideration the extension we grant will result in all providers having almost two years from the date of publication of *Report and Order* in the Federal Register to comply with the relevant MDRI requirements.[95] Further, the extension should allow small providers the additional time to manage resources and take the other necessary steps to meet these requirements. Additionally, the Commission has and continues to encourage large providers to assist small providers with the implementation process, and believes the rules as clarified in the *Order on Reconsideration* continue to take into account the unique interests of small entities as required by the RFA.

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[92] 5 U.S.C. § 604.

[93] The Framework commits its signatories to compliance with the following five prongs: (1) providing for reasonable roaming arrangements during disasters when technically feasible; (2) fostering mutual aid during emergencies; (3) enhancing municipal preparedness and restoration; (4) increasing consumer readiness and preparation, and (5) improving public awareness and stakeholder communications on service and restoration status.[93] Under the Report and Order's amended rules, the Mandatory Disaster Response Initiative incorporates these elements, the new testing and reporting requirements and will be activated when any entity authorized to declare Emergency Support Function 2 (ESF-2) activates ESF-2 for a given emergency or disaster, the Commission activates the Disaster Information Reporting System (DIRS), or the Commission's Chief of Public Safety and Homeland Security issues a Public Notice activating the MDRI in response to a state request to do so, where the state has also either activated its Emergency Operations Center, activated mutual aid or proclaimed a local state of emergency.

[94] CTIA and CCA Petition at 3; Blooston Comments at 2; NTCA Reply at 4; RWA Reply at 2; Southern Linc Reply at 7; *see also* Southern Linc *Ex Parte* at 1-2.

[95] 87 Fed. Reg. 59,329 (Sept. 30. 2023).

45. The *Order on Reconsideration* also furthers the Commission's efforts to address the findings of the Government Accountability Office (GAO) concerning wireless network resiliency. As we discussed in the *Report and Order,* in 2017, the GAO, in conjunction with its review of federal efforts to improve the resiliency of wireless networks during natural disasters and other physical incidents, released a report recommending that the Commission should improve its monitoring of industry efforts to strengthen wireless network resiliency.[96] The GAO's conclusion that more robust measures and a better plan to monitor the Framework would help the FCC collect information on the Framework and evaluate its effectiveness resulted in several inquiries[97] and investigations[98] by the Bureau to better understand and track the output and effectiveness of the Framework, and other voluntary coordination efforts that promote wireless network resiliency and situational awareness during and after weather events and other emergencies. Our actions on reconsideration to move forward with the MDRI requirements adopted the *Report and Order* continue to further the Commission's monitoring, oversight and efforts to improve wireless network resiliency by the industry.

D. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

46. There were no comments filed that specifically address the proposed rules and policies in the IRFA. However, as we mention above, in response to the final rules adopted in the *Report and Order,* the CTIA and CCA Petition and comments were filed involving issues impacting small entities. Specifically, the Petitioners requested that the Commission align the definitions of 'non-small facilities-based' and 'small facilities-based' mobile wireless providers with the Commission's existing definitions of 'nationwide' and 'non-nationwide' wireless providers applied in the 9-1-1 context, clarify the small provider compliance date applies when parties to a negotiation include one small and one non-small provider, and extend the deadline for implementing the new MDRI requirements for small and other wireless providers.[99] Regarding these requests, the compliance deadline extension we adopt in the *Order*

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[96] Government Accountability Office, *FCC Should Improve Monitoring of Industry Efforts to Strengthen Wireless Network Resiliency* at 36 (2017), https://www.gao.gov/assets/gao-18-198.pdf (GAO Report). The report recommended that the Commission develop specific and measurable objectives for the Framework and a plan to monitor and document the outputs and outcomes of the Framework to evaluate its effectiveness.

[97] *See Public Safety and Homeland Security Bureau Seeks Comment on the Effectiveness of the Wireless Network Resiliency Cooperative Framework and for the Study on Public Access to 911 Services during Emergencies,* PS Docket No. 11-60, Public Notice, 33 FCC Rcd 5997 (PSHSB 2018) (*Framework Effectiveness Public Notice*); News Release, FCC, FCC Launches Re-Examination of Wireless Resiliency Framework in Light of Recent Hurricanes, *Agency Sends Letters to Framework Signatories Asking Them to Provide Post-Disaster Action Reports* (Nov. 6, 2018), https://docs.fcc.gov/public/attachments/DOC-354963A1.pdf. The Bureau also issued three Public Notices seeking comment on improvements to the Framework. *See Public Safety and Homeland Security Bureau Seeks Comment on Improving Wireless Network Resiliency to Promote Coordination through Backhaul Providers*, PS Docket No. 11-60, Public Notice, DA 18-1238 (PSHSB Dec. 10, 2018) (*Backhaul Public Notice*); *Public Safety and Homeland Security Bureau Seeks Comment on Improving Wireless Network Resiliency Through Encouraging Coordination with Power Companies*, PS Docket No. 11-60, Public Notice, DA 19-13 (PSHSB Jan. 03, 2019) (*Power Public Notice*); *Public Safety and Homeland Security Bureau Seeks Comment on Improving the Wireless Network Resiliency Cooperative Framework*, PS Docket No. 11-60, Public Notice, DA 19-242 (PSHSB Apr. 1, 2019) (*Effectiveness Public Notice*). In February 2020, following a series of PSHSB staff coordination meetings with wireless, backhaul and electric service providers to discuss the gaps identified in the above record, CTIA and the Edison Electric Institute formed the Cross-Sector Resiliency Forum on February 27, 2020 and released a 12-step action plan to improving wireless resiliency.

[98] Following Hurricane Michael, for example, the Bureau issued a report on the preparation and response of communications providers finding three key reasons for prolonged outages during that event: insufficiently resilient backhaul connectivity; inadequate reciprocal roaming arrangements; and lack of coordination between wireless service providers, power crews, and municipalities. *See Hurricane Michael Report* at 4, para. 6.

[99] CTIA and CCA Petition at 3; *see also* Blooston Comments at 2; NTCA Reply at 4; RWA Reply at 2; Southern Linc Reply at 7; Southern Linc *Ex Parte* at 1-2.

on Reconsideration negated the need for the Commission to rule on the other two requests.

47. Petitioners also requested that the Commission publish and maintain a list of providers subject to the MDRI,[100] provide direct, individual notification to providers when the MDRI is activated,[101] and treat as confidential on a presumptive basis provider Roaming under Disaster arrangements (RuDs).[102] In the *Order on Reconsideration,* we determined that only confidential treatment on a presumptive basis for provider RuDs is warranted and decline to adopt further revisions. Specifically, we declined to adopt the Petitioners' and commenters' other requests first finding that having the Commission maintain and publish a list is neither an efficient or effective way for providers to identify other facilities-based wireless providers who are subject to the MDRI. Second, we continue to maintain the view that awareness of MDRI activation is the responsibility of providers, and having the Bureau issue notice via a Public Notice is sufficient.

E. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

48. 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.[103]

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

F. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

50. 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.[104] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[105] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[106] 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.[107]

51. As noted above, a FRFA was incorporated in the *Report and Order*. In the FRFA, the Commission described in detail the small entities that might be significantly affected by the *Report and Order*.[108] Accordingly, in this Supplemental FRFA, we hereby incorporate by reference from the *Report*

[100] CTIA and CCA Petition at 3; *see also* Blooston Comments at 4-5.

[101] CTIA and CCA Petition at 3; *see also* Blooston Comments at 5, NTCA Reply at 5.

[102] CTIA and CCA Petition at 3; *see also* Blooston Comments at 6.

[103] 5 U.S.C. § 604(a)(3).

[104] 5 U.S.C. § 604(a)(4).

[105] 5 U.S.C. § 601(6).

[106] 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."

[107] 15 U.S.C. § 632.

[108] *Report and Order,* Appdx. B at 28-30, paras. 8-17.

and Order the descriptions and estimates of the number of small entities that might be impacted by the *Order on Reconsideration*.

G. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

52. The requirements from the *Report and Order* we uphold on reconsideration in today's *Order on Reconsideration* will impose new or modified reporting, recordkeeping and/or other compliance obligations on small entities. The rules require all facilities-based mobile wireless providers to make adjustments to their restoration and recovery processes, including contractual arrangements and public outreach processes, to account for MDRI. The mutual aid, roaming, municipal preparedness and restoration, consumer readiness and preparation, and public awareness and stakeholder communications provisions codified and implement the flexible standard in voluntary Framework developed by the industry. In accordance with the Safe Harbor provision we adopted in the *Report and Order*, pursuant to section 1.16 of the Commission's rules providers maintain the ability to file a letter in the any of dockets associated with this proceeding asserting that they are in compliance with the Framework's existing provisions, and have implemented internal procedures to ensure that it remains in compliance with the provisions.[109] Further, small and other providers remain obligated to comply with the provision from the *Report and Order* that expands the events that trigger its activation and that require providers test and report on their roaming capabilities to ensure that the MDRI is implemented effectively and in accordance with the Commission's rules.

53. On reconsideration, the modifications we make in the *Order on Reconsideration* did not impact or change the cost of compliance analysis and estimates for small and other providers made in the *Report and Order* and therefore, we do not repeat them here.[110] We maintain our conclusion that the benefits of participation by small and other providers likely will exceed the costs for affected providers to comply with the rules adopted in the *Report and Order*. As recommended in the *Report and* Order, the Commission encourages non-small providers to assist smaller providers who may not have present aid and roaming arrangements. The Commission also acknowledges concerns from Southern Linc, RWA and NTCA that smaller and more rural providers may not have the same resources or time to commit to implementation of the MDRI and the Petition's concern that smaller providers might need to hire additional staff or spend limited resources on external support to execute these arrangements and manage them in an ongoing manner, but we believe granting an extension of time for compliance allows providers of all sizes the necessary timeline for achieving implementation, even on an individualized basis for each agreement that needs to be arranged.[111] We also maintain that the substantial benefits attributable to improving resiliency in emergency situations and the significant impact that is likely to result in the health and safety of the public during times of natural disasters, or other unanticipated events that could impair the telecommunications infrastructure and networks, cannot be overstated.

H. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

54. 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,

[109] *Report and Order*, Appdx. B at 32, para. 20.

[110] *Report and Order,* Appdx. B at 32-33, paras. 21-24. As we discussed in the initial FRFA in this proceeding, the MDRI rules only apply to facilities-based mobile wireless providers, which included small entities as well as larger entities. The Commission has not developed a small business size standard directed specifically toward these entities. However, in our cost estimate discussion in the *Report and Order*, we estimated costs based on Commission data that there are approximately 63 small facilities-based mobile wireless providers and these entities fit into larger industry categories that provide these facilities or services for which the SBA has developed small business size standards.

[111] CTIA and CCA Petition at 9.

policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[112]

55. The Commission took several steps in the *Order on Reconsideration* that should minimize the economic impact of compliance with the *Report and Order* for small entities. On reconsideration we granted an extension of time for small entities to comply with all of the provisions of the MDRI. We adopted a uniform compliance date for all providers which results in approximately twenty months (almost two full years) from the Federal Register publication to implement the requirements. This extension accounts for the resource concerns expressed by Petitioners, while maintaining the important role the MDRI requirements play in facilitating the ability of the American public to call for help, and receive emergency information and/or assistance during natural disasters, and other emergency situations. We also grant a presumption of confidentiality for filed RuDs which eliminates the additional step for small entities of having to submit a request for confidential treatment under section 0.459 of the Commission's rules when filing an RuD with the Commission when requested. As we discussed above, in the *Order on Reconsideration* we considered the other alternatives in the Petitioners' request for clarification and/reconsideration and we declined to adopt any of those approaches. We were not persuaded that the increased Commission involvement, expenditure of Commission resources, and the undue delay in implementing the MDRI which would have occurred had we adopted the alternatives requested by Petitioners and commenters was in the public interest, or outweighed the benefits of moving forward with the MDRI requirements as adopted in the *Report and Order*.

I. Report to Congress

56. 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 *Order on Reconsideration*, including the Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act.[113] In addition, the Commission will send a copy of the *Order on Reconsideration*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will also be published in the *Federal Register*.[114]

V. ORDERING CLAUSES

52. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 4(n), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 405, 615a-1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j) & (n), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 405, 615a-1, and 615c, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, that this Order on Reconsideration IS ADOPTED.

53. IT IS FURTHER ORDERED that Part 4 of the Commission's rules, 47 CFR pt. 4, IS AMENDED as set forth in the Appendix, and that such rule amendments SHALL BE EFFECTIVE 30 days after publication in the Federal Register.

54. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of this Order on Reconsideration 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).

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[112] 5 U.S.C. § 604(a)(6).

[113] 5 U.S.C. § 801(a)(1)(A).

[114] 5 U.S.C. § 604(b).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Final Rules

For the reasons set forth above, 47 CFR part 4 is amended as follows:

PART 4 – DISRUPTIONS TO COMMUNICATIONS

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

Authority: 47 U.S.C. 34-39, 151, 154, 155, 157, 201, 251, 307, 316, 615a-1, 1302(a), and 1302(b); 5 U.S.C. 301, and Executive Order no. 10530.

2. Amend § 4.17 by revising paragraph (e) to read as follows:

§ 4.17 Mandatory Disaster Response Initiative.

(*****)

(e) Compliance with the provisions of this section is required beginning May 1, 2024, or 30 days following publication of an announcement that OMB review is completed, whichever occurs later. The Commission directs the Public Safety and Homeland Security Bureau to announce the compliance date for this section by subsequent Public Notice and notification in the Federal Register and to cause this section to be revised accordingly.

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

In the Matter of	)	
	)	
Amendment of Part 73 of the Commission's Rules	)	MB Docket No. 22-227
to Update Television and Class A Television	)	
Broadcast Station Rules, and Rules Applicable to	)	
All Broadcast Stations		

REPORT AND ORDER

Adopted: September 18, 2023 **Released: September 19, 2023**

By the Commission:

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I. INTRODUCTION

1. In this Report and Order (*Report and Order*), we comprehensively update the Commission's rules for full power and Class A stations to reflect the current operating environment,

including the transition from analog to digital-only operations and the post-incentive auction transition to a smaller television band with fewer channels. We also restructure a portion of the Commission's rules (rules), largely consisting of the technical licensing, operating, and interference rules for full power television. These updates reflect the Commission's continued effort to ensure our rules clearly reflect the Commission's requirements and are understandable for our licensees and the public.

II. BACKGROUND

2. The Notice of Proposed Rulemaking (*NPRM*) in this proceeding[1] described the Commission's ongoing effort to ensure that our television rules are up to date, and reflect the Commission's actions taken over the past several years.[2] Full power stations largely completed a transition from analog to digital operations by June 12, 2009,[3] and Class A television stations did the same by September 1, 2015.[4] Further, on October 25, 2021, in connection with the completion of the incentive auction and broadcast television spectrum repacking authorized by the Middle Class Tax Relief and Job Creation Act,[5] the Commission adopted a new Table of TV Allotments for full power stations. The action amended parts 1, 73, and 74 to remove references to channels and frequency bands that are no longer in-core television spectrum and references to analog TV operations which are no longer permitted.[6] As the *NPRM* stated, since these transitions were completed in phases over an extended period of time, the Commission was unable to simply replace pre-transition rules with post-transition requirements.[7] Therefore, the new digital rules remained interspersed with existing analog requirements.

3. The September 2022 *NPRM*[8] proposed to comprehensively delete, update, or otherwise revise Commission rules for full power and Class A television stations that no longer have any practical effect given the transition from analog to digital-only operations, and the post-incentive auction transition to a smaller television band with fewer channels.[9] To make the part 73 rules easier to find and thus more practical for users, the *NPRM* also proposed to reorganize, clarify, and amend some of the rules.[10]

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[1] *See Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Notice of Proposed Rulemaking, FCC 22-73 (Sept. 29, 2022) (*NPRM*).

[2] *NPRM* at paras. 2-4.

[3] *See* DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009); Digital Television Transition and Public Safety Act of 2005, which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)).

[4] *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Second Report and Order, 26 FCC Rcd 10732, 10735, para. 7 (2011).

[5] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012) §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452) (Spectrum Act). The incentive auction, repacking process, and post-auction transition process are described in the Background section of the *October 2021 Order* at paras. 3-7. *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, GN Docket No. 12-268, Order, 36 FCC Rcd 15891, 15892-4, paras. 3-7 (2021) (*October 2021 Order*).

[6] *See October 2021 Order*, 36 FCC Rcd at 15897, para. 14 and n.48. The Table of TV Allotments, 47 CFR § 73.622(j), is found in part 73, subpart E – Television Broadcast Television Stations. The part 74 rules amended in the *October 2021 Order* are found in part 74, subpart G – Low Power TV and TV Translator Stations.

[7] *NPRM* at para. 2.

[8] *See* supra n.1.

[9] *NPRM* at para 1.

[10] *Id.* at paras. 23-30.

4. In response to the *NPRM*, we received comments and replies from broadcast industry stakeholders, including associations, licensees, and engineering firms.[11] The parties were generally supportive of the Commission's efforts to update its rules.[12] As discussed more fully below, some parties offered additional comments, such as clarification regarding the geographic coordinates for land mobile protection, calculations related to height above average terrain (HAAT), or technical or other proposals. In addition, a few parties proposed additional rule changes.

III. REPORT AND ORDER

5. This *Report and Order* largely adopts the rules proposed in the *NPRM*, with certain limited exceptions or modifications, in order to delete, update, or otherwise revise Commission rules for full power and Class A stations that no longer have any practical effect. First, we adopt revisions to reflect the end of television analog operations. Second, we delete outdated rules that are no longer valid given changes in Commission-adopted policy, such as the elimination of the comparative hearing process to award and renew broadcast licenses. Third, we reorganize a portion of the part 73 rules to make them easier to find and more practical for users. Fourth, we adopt other non-substantive, technical revisions, for example, to delete obsolete rules governing the post-incentive auction transition period. Fifth, we update our rules to reference our current licensing database, Licensing and Management System (LMS), and corresponding form numbers. Sixth, we make corrections or non-substantive updates involving section headings, spelling, contact information, and rule cross-references, or to language inadvertently omitted from a rule. Seventh, we consider requests and comments on subjects not included in the *NPRM* proposals.

A. Deletion of Obsolete Rules and Language Recognizing the Full Power and Class A Digital Transition

6. As stated in the *NPRM*, full power television stations were required to terminate all analog operations no later than June 12, 2009 and Class A stations by September 1, 2015.[13] Accordingly,

[11] *See* Letter from Robin J. Cohen, President/CEO, Enterprise Wireless Alliance, to Mark Colombo, Media Bureau, FCC, MB Docket No. 22-227 (filed Apr. 11, 2023) (EWA Letter); Comments of Linley Gumm, Greg Best and Gary Sgrignoli, MB Docket No. 22-227 (filed Nov. 19, 2022) (GBS Comments); Comments of Maranatha Broadcasting Company, Inc., MB Docket No. 22-227 (filed Apr. 10, 2023) (Maranatha Comments); Comments of the National Association of Broadcasters, MB Docket No. 22-227 (filed Apr. 10, 2023) (NAB Comments); Letter from Patrick McFadden, Deputy General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-227 (filed June 22, 2023) (NAB *Ex Parte*); and Comments of One Ministries, Inc., MB Docket No. 22-227 (filed Mar. 21, 2023) (OMI Comments). In addition, Cohen, Dippell and Everist, P.C. filed three sets of comments. *See* Comments of Cohen, Dippell and Everist, P.C., MB Docket No. 22-227 (filed Nov. 29, 2022) (CDE Comments); Supplemental Comments of Cohen, Dippell and Everist, P.C., MB Docket No. 22-227 (filed Apr. 10, 2023) (CDE Supplemental Comments 1); Supplemental Comments 2 (Late Filed) of Cohen, Dippell and Everist, P.C., MB Docket No. 22-227 (filed May 18, 2023) (CDE Supplemental Comments 2). *See also* Reply Comments of Cohen, Dippell and Everist, P.C., MB Docket No. 22-227 (filed Apr. 25, 2023) (CDE Reply Comments). As a group, the CDE comments generally support the proposals in the *NPRM* with the simple word "agreed." Because the CDE individual comments often address the same subject, this *Report and Order* refers to the most comprehensive set of comments, CDE Supplemental Comments 2, where applicable, and to the other specific comments to the extent material differences exist. Given the large number of instances in which CDE simply states "agreed" or notes it has no opinion, we do not explicitly cite to CDE's support for proposals in this *Report and Order*, and instead identify only points of disagreement.

[12] GBS offers broad support for the Commission's proposals in the *NPRM* ("The Commission's move to update the television rules is very welcome. It will clarify many issues that have become clouded with the changes in technology."). *See* GBS Comments at 1. Similarly, NAB states that it "appreciates the Commission's efforts to streamline its rules by removing regulatory underbrush and by proposing to adopt rules for digital Television and Class A Television operations that were previously applicable to analog television operations. NAB generally supports the proposals set forth in the NPRM with few exceptions." *See* NAB Comments at 1. In addition, as noted above, there are a number of instances in which CDE placed the word "Agreed" next to a description of our proposals in the *NPRM*. *See* CDE Supplemental Comments 2.

the *NPRM* proposed to amend our rules to reflect those transitions. With the exception of two of our proposals discussed at the end of this section, the comments we received were generally supportive of the effort to update our rules,[14] and therefore, for the reasons discussed in the *NPRM*, and described below, we adopt those proposals as detailed below.

7. We eliminate entire rules, and portions of rules, that provide for analog-to-analog and analog-to-digital interference protection requirements and other analog operating requirements from subpart E (Television Broadcast Stations), subpart H (Rules Applicable to All Broadcast Stations), subpart I (Procedures for Competitive Bidding and for Applications for Noncommercial Educational Broadcast Stations on Non-Reserved Channels), and subpart J (Class A Television Broadcast Stations).[15] The rules we amend[16] are related to analog operations (i.e., rules that reference "NTSC"[17] or "analog,"[18]) and we eliminate references to Grade A, Grade B, city grade contours, or F(50,50) curves[19] or replace them with the corresponding digital contours defined in sections 73.625(a), 73.622(e), 73.6010, and/or 74.792.[20]

8. We also amend or eliminate rules that reference peak power, visual or aural carriers, or carrier frequencies because these are technical engineering terms related to analog television operations,[21]

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[13] *See supra* para. 2; *NPRM* at para. 6.

[14] *See supra* para. 4, n.12.

[15] *NPRM* at para. 6.

[16] *Id*. As part of our reorganization of subpart E, we note that we relocate 47 CFR §§ 73.623(d) (Minimum geographic spacing requirements for new TV allotments), 73.625(a) (Transmitter location), and 73.622(e) (DTV Service Areas) to new 47 CFR §§ 73.622(k), 73.618, and 73.619(c), respectively.

[17] NTSC is an abbreviation for the National Television Standards Committee, an association of engineers and scientists interested in the development of television in the analog era, which developed the black and white and subsequently color television systems used in the United States. *See generally Amendment of the Commission's Rules Governing Color Television Transmissions*, Docket No. 10637, Report and Order, 41 F.C.C. 658 (1953).

[18] *See* 47 CFR §§ 73.622(d)(1) (Digital television table of allotments) (removing text of this rule that refers to analog stations); 73.623(d) and (h) (removing analog technical references); 73.624(b) and (c)(3) (Digital television broadcast stations) (removing text of this rule that refers to analog stations); 73.683(d) (Field strength contours and presumptive determination of field strength at individual locations) (removing text of this rule that refers to analog stations); and 73.686(d) (Field strength measurements) (removing text of this rule that refers to analog stations). In addition, regarding 47 CFR § 73.5000(a) (Services subject to competitive bidding), we delete the word "analog" where it appears in the rule because there is no need to differentiate between analog and digital television services.

[19] *See* 47 CFR §§ 73.683(a)-(b) (Field strength contours and presumptive determination of field strength at individual locations); 73.6000 (Definitions); and 73.6010(b) (Class A TV station protected contour). The one exception is 47 CFR § 73.626(f)(2)(i) (DTV distributed transmission systems), which states that the F(50,50) service contour of a DTS transmitter shall not extend beyond that of its reference facility, which will be retained. We separately add text in 47 CFR § 73.683(a) (Field strength contours and presumptive determination of field strength at individual locations) to provide guidance for those reviewing the cross-reference to this section found in 47 CFR § 90.307(b) (Protection criteria).

[20] *See* 47 CFR §§ 73.1675(a)(1)(iii) (Auxiliary antennas) (deleting analog contour and replacing with digital noise limited contour); and 73.5007(b)(2)(iii) and (b)(3)(iv) (Designated entity provisions).

[21] *See* 47 CFR §§ 73.653 (Operation of TV aural and visual transmitters); 73.664(a)-(c) (Determining operating power); 73.665 (Use of TV aural baseband subcarriers); 73.667 (TV subsidiary communications services); 73.669 (TV stereophonic aural and multiplex subcarrier operation); 73.681 (Definitions) (we delete the following definitions relating to analog operations: "Aural center frequency;" "Aural transmitter;" "Baseband;" "Frequency departure;" "Frequency deviation;" "Frequency swing;" "Main channel;" "Multiplex Transmission (Aural);" "Peak power;" "Visual transmitter power"); 73.682(c) (TV transmission standards); 73.687(a), (b), (c) introductory text, (c)(1), and (e)(2) (Transmission system requirements); 73.688(a) (Indicating instruments); 73.691 (Visual

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as digital TV signals do not have specific visual or aural carriers.[22] We similarly amend or eliminate rules and figures which reference the vertical blanking interval, stereophonic sound transmission, modulation, subcarriers of any kind, components of the picture such as chrominance or color, or the sound or picture itself beyond the lines of resolution.[23] As noted in the *NPRM*, these references are technical engineering terms associated with analog television operations since they are related to the picture derived from an analog visual carrier or the sound derived from an analog aural carrier.[24]

9. To the extent such analog rules are superseded by related requirements for digital operations, the digital rules are found in the digital broadcast television standard documents incorporated by reference in section 73.682(d).[25] In addition, a number of rules we amend have a digital equivalent elsewhere in the rules, and for all of these cases, we either modify the analog reference to specify a digital equivalent,[26] or delete the analog-related rule entirely.[27]

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modulation monitoring); 73.699 (TV engineering charts), Figure 12 (Figure 12 is referenced only by 73.687(b), which we delete); 73.1350(f)(3) (Transmission system operation); 73.1540(a) (Carrier frequency measurements); 73.1545(c), (e), and Note to (e) (Carrier frequency departure tolerances); 73.1560(c)(1)-(2) (Operating power and mode tolerances); 73.1570 (updating section heading) and (b)(3) (Modulation levels: AM, FM, TV and Class A TV aural); 73.1635(a)(5) (Special temporary authorizations (STA)); and 73.6024(c) (Transmission standards and system requirements).

[22] *See NPRM* at para. 6. *See generally* 47 CFR § 73.682(d) (Digital broadcast television transmission standard); *see also* 47 CFR § 73.8000 (Incorporation by reference) (each of the several standards listed in the rule relate to DTV).

[23] *NPRM* at para. 6.

[24] *NPRM* at para. 6. *See* 47 CFR §§ 73.621(g) (Noncommercial educational TV stations – referencing Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal); 73.646 (Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal); 73.681 (Definitions) (deleting definitions and the Note for: "Amplitude modulation (AM);" "BTSC;" "Blanking level;" "Chrominance;" "Chrominance subcarrier;" "Color transmission;" "Field;" "Frame;" "Frequency modulation (FM);" "IRE standard scale;" "Luminance;" "Monochrome transmission;" "Multichannel Television Sound (MTS);" "Negative transmission;" "Percentage modulation;" "Pilot subcarrier;" "Program related data signal;" "Reference black level;" "Reference white level of the luminance signal;" "Scanning;" "Scanning line;" "Visual carrier frequency;" and "Visual transmitter"); 73.699 (TV engineering charts) (Figures 5, 5(a), 6, 7, 8, 16, and 17); 73.1207(b)(2) (Rebroadcasts – referencing multiplex subcarrier or telecommunications service on the vertical blanking interval); and 73.1590(a)(5) ("TV stereophonic or subcarrier transmission equipment"), (c)(1), and (c)(3) (Equipment performance measurements). Section 73.699, Figure 11 (Assumed Ideal Detector Output) is no longer referenced anywhere else in the rules, and appears to have been inadvertently overlooked during a 1984 rule modification, which deleted the sole reference to it from section 73.687(a) (*see* 49 Fed. Reg. 48305, 48312 (Dec. 12, 1984)), and we thus delete it. While 47 CFR § 73.621(h) (Noncommercial educational TV stations), which refers to the transmission of non-program related data service on "Line 21," does not specifically use the term "visual blanking interval," "Line 21" refers to part of the vertical blanking interval, and thus we delete it.

[25] 47 CFR § 73.682(d).

[26] *NPRM* at para. 6. Sections 73.682(a)(2)-(13) and (15)-(24) (TV transmission standards) are replaced by section 73.682(d). The digital equivalent of section 73.687(e)(1) (Transmission system requirements) is replaced by section 73.622(h), which we are moving to section 73.611 *infra* in Section F. Section 73.3550(b) (Requests for new or modified call sign assignments) has a reference to section 74.783(d), but section 74.791(a) is the equivalent digital rule. Accordingly, we are replacing the reference to 74.783(d) with 74.791(a). The digital equivalent of section 73.3572(a)(4) (Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications) is section 74.787(a)(4).

[27] *NPRM* at para. 6. Section 73.613 (Protection of Class A TV stations) relates to analog because Class A protections for digital stations are in section 73.616(e), which we are moving to section 73.620(d) *infra* in Section F. Section 73.684 (Prediction of coverage) is in section 73.625 (DTV coverage of principal community and antenna system), some of which we are moving into other rule parts in the reorganization of our rules; the reference in section 73.681 is removed *infra* in Section H. The digital equivalent of Section 73.685(a)-(c) (Transmitter location
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10. We also amend rule section headings and rules in subpart E,[28] subpart H,[29] and subpart J[30] to remove references to digital television (DTV) and digital television service since all television services have transitioned from analog to digital operations and thus, there is no further need to differentiate between two separate kinds of service.[31] We also eliminate provisions of rules and amend section headings and language that are obsolete due to the conversion from analog to digital television technology, including references to the analog television booster service in subpart E[32] and subpart H,[33]

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and antenna system) is found in section 73.625(a)(1)-(3), which we are moving to section 73.618 *infra* in Section F. The digital equivalent of section 73.685(f) (Transmitter location and antenna system) is contained in 73.625(c)(3), which also applies to sections 73.1690(b)(3) and (c)(3) (Modification of transmission systems). The digital equivalent of section 73.698 (Tables) is replaced by section 73.623(d)(2), which we are moving to section 73.622(k) *infra* in Section F. The digital equivalent of section 73.6012 (Protection of Class A TV, low power TV and TV translator stations) is found in sections 73.6017 and 73.6019. The digital equivalent of section 73.6013 (Protection of DTV stations) is found in section 73.6018 (Digital Class A TV station protection of DTV stations). The digital equivalent of section 73.6014 (Protection of digital Class A TV stations) is found in section 73.6017.

[28] 47 CFR §§ 73.616 (section heading), (a)-(e), and (g) (Post-transition DTV station interference protection); 73.621(j) (Noncommercial educational TV stations); 73.622(a) introductory text and (a)(2) (also deleting reference to out-of-core-channels), (c)(1), (e)(1), (f)(6), (f)(7), (f)(8) (also deleting references to out-of-core channels) (Digital television table of allotments); 73.623 (updating section heading), (a)-(f) and (h) (DTV applications and changes to DTV allotments); 73.624 (updating section heading), (a)-(c) and (g) (Digital television broadcast stations); 73.625 (updating section heading), (a)(1), (b)(1), (b)(3), (c)(4)(i)-(ii) (DTV coverage of principle community and antenna system); 73.626 (updating section heading), (a), (c)(1), (e), (f)(2), (f)(6) (DTV distributed transmission systems); 73.686(e) (Field strength measurements).

[29] 47 CFR § 73.1201(b)(1) (Station identification).

[30] 47 CFR §§ 73.6010(c) and (d) (Class A TV station protection contour); 73.6017 (Digital Class A TV station protection of Class A TV and digital Class A TV stations); 73.6018 (Digital Class A TV station protection of DTV stations); 73.6019 (Digital Class A TV station protection of low power TV, TV translator, digital low power TV and digital TV translator stations); 73.6020 (Protection of stations in the land mobile radio service); 73.6022(a) (Negotiated interference and relocations agreements); 73.6023 (Distributed transmission systems); and 73.6024(d) (Transmission standards and system requirements). We also amend section 73.6024(d) (Transmission standards and system requirements) to require stations in the Mexican border zone to specify a full-service emission mask in any modification applications requiring coordination. *See infra* para. 71. We also adopt a non-substantive, technical revision to section 73.6023(b) and (c) to remove "DTV" and "digital" to be consistent with the changes we adopt herein.

[31] *NPRM* at para. 7. We remove from certain part 74 rules inadvertent references to DTV and digital television service, overlooked in a prior part 74 rulemaking, since, with rare exception, all part 74 television services have transitioned from analog to digital operations and thus, there is no further need to differentiate between two separate kinds of service. *See Amendment 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,* MB Docket Nos. 22-261 and 03-185, Order and Sixth Notice of Proposed Rulemaking, FCC 22-58 (July 13, 2022) ("*2022 Part 74 Order*" or "*Part 74 NPRM*"); Erratum, FCC 22-58 (Sept. 9, 2022); Report and Order, FCC 23-25 (Apr. 17, 2023) (*2023 Part 74 Report and Order*). *See* 47 CFR §§ 74.792(b) (Low power TV and TV translator station protected contour); 74.793(e), (g)-(h) (Low power TV and TV translator station protection of broadcast stations); and 74.794 (section heading, paragraph (b) introductory text, (b)(1), and (b)(2) (Digital emissions). We also delete the second sentence in 47 CFR § 74.793(b) (Low power TV and TV translator station protection of broadcast stations), given the fact that we delete the analog threshold interference levels in 47 CFR § 73.623(c)(2) (DTV applications and changes to DTV allotments) and therefore there is no need to distinguish digital operations. In the *NPRM*, we noted that a small number of translator stations in Alaska were still operating in analog. *See NPRM* at n.20. All of those stations have now either converted to digital or canceled the licenses, and, as such, that matter is moot.

[32] 47 CFR §§ 73.622(d)(1)-(2), Note to (e)(2), (e)(3), (f)(5), (f)(6), (f)(7), and (f)(8) (Digital television table of allotments); 73.623(a)-(b), (c)(2), (c)(3), (c)(5), (d), and (h) (DTV applications and changes to DTV allotments); 73.624(a), (b)(1)-(2), (d)-(f) (refer to pre-DTV transition procedures) (Digital television broadcast stations); and
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since these services were not carried over into digital operations.[34] Finally, we amend section 73.6026 (Broadcast regulations applicable to Class A television stations) to remove references to analog-only rules applicable to Class A television stations, consistent with the rule changes above.[35]

11. We also adopt our proposal to remove references to an element of the Table of Allotments that has been previously updated.[36] As we explained in the *NPRM*, to accommodate the analog to digital television transition, the Commission adopted section 73.622(b) (DTV Table of Allotments) to allot a paired DTV channel to each analog television licensee and permittee.[37] The Commission later deleted section 73.622(b), leaving behind successor section 73.622(i) (Post-Transition Table of Allotment).[38] The rules, however, continue to refer to "Appendix B," which specified the technical parameters and service area that must be protected for each channel allotted in section 73.622(b) during most of the transition period. We therefore remove references to "Appendix B"[39] in our rules as obsolete.[40]

12. We amend section 73.612 to remove references to distance separations, which, outside of

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73.626(c)(2) (DTV distributed transmission systems). Section 73.622(c)(2) states that an application may be filed for a channel or community not specified in the DTV Table of Allotments (formerly section 73.622(b)) if it is consistent with the rules and policies established in *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules,* WT Docket No. 99-168, Third Report and Order, 16 FCC Rcd 2703, 2717-18, paras. 34-36 (2001) (stating that the Commission would allow stations on channels 59 through 69 to enter into voluntary agreements to temporarily relocate to channels 52 through 58). Because section 73.622(b) has been deleted and channels 52 through 58 reallocated for non-broadcast use, we delete this section of the rule. Similarly, we delete the last five sentences of section 73.622(c)(1), which discuss procedures for filing applications for channel changes made in the deleted subsection (b), DTV Table of Allotments, citing the *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418 (1998) (*MO&O on Reconsideration of the Sixth R&O*), and analog channel swaps.

[33] 47 CFR §§ 73.1001(c) (Scope); 73.3521 (Mutually exclusive applications for low power television, television translators and television booster stations); 73.3525 (Note) (Agreements for removing application conflicts); 73.3533(a)(5) (Application for construction permit or modification of construction permit); 73.3572 (section heading, (a)(2), (c) and (f)-(g)) (Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications); 73.3584(a), (c) (Procedure for filing petitions to deny); and 73.3598(a) introductory text (Period of construction).

[34] *NPRM* at para. 7. *See 2022 Part 74 Order* at para. 6 and n.24.

[35] *NPRM* at para. 7. 47 CFR §§ 73.6026 (deleting reference to § 73.635 (Use of common antenna site); 73.646 (Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal); 73.653 (Operation of TV aural and visual transmitters); 73.665 (Use of TV aural baseband subcarriers); 73.667 (TV subsidiary communications services); 73.669 (TV stereophonic aural and multiplex subcarrier operation); and 73.691 (Visual modulation monitoring)). As discussed *infra*, we delete the rules related to the Subscription Television Service as unnecessary and no longer in use, and amend 47 CFR § 73.664 (Determining operating power).

[36] *NPRM* at para. 8.

[37] 47 CFR § 73.622(b) (2021) (DTV Table of Allotments); *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Sixth Report and Order, 12 FCC Rcd 14588 (1997) (*Sixth Report and Order*); *MO&O on Reconsideration of the Sixth R&O*.

[38] 47 CFR § 73.622(i); *see also October 2021 Order* at Appendix (removing section 73.622(b)).

[39] Appendix B, and a description of its use and contents, is in the *Sixth Report and Order*, 12 FCC Rcd at 14693-754. Corrections were made to Table 2 of Appendix B in the *MO&O on Reconsideration of the Sixth R&O*. We note that section 73.622(f)(3)(i) and (ii) both refer to policies specific to Appendix B, and thus, we delete them.

[40] *NPRM* at para. 8.

new allotment proceedings, are not used in digital TV.[41] Consistent with the tentative conclusions in the *NPRM, w*e find that this rule is obsolete, as TV stations are now protected using OET Bulletin No. 69.[42] We delete section 73.622(g)(2), which pertains to protection of analog TV signals by an upper-adjacent digital signal.[43] We also eliminate section 73.1620(f) (Program tests) since it refers to a policy of allowing 1000 watt ultra-high frequency (UHF) translators[44] on vacant allotments, a policy which was ended prior to 1984,[45] and eliminate from section 73.6024(b) (Transmission standards and system requirements) a reference to section 74.736, as that section was recently eliminated in the *2022 Part 74 Order*.[46] We also eliminate sections 73.685(g) (Transmitter location and antenna system) and 73.6025(b) (Antenna system and station location) because those rules were adopted many decades ago for the analog era and are not relevant to or used in the digital environment.[47]

13. *Minor Modifications to Proposed Amendments to Section 73.614(b) and Analog Technical Rules*. We next turn to evaluating the comments we received with two changes proposed in the *NPRM.* First, the National Association of Broadcasters (NAB) notes that the *NPRM* "correctly states that 'digital TV signals do not have specific visual or aural carriers.'"[48] Yet, as proposed in the *NPRM,* section 73.614(a) would have retained the term "visual effective radiated power." NAB argues that "[s]ince DTV operations are fundamentally data streams that may carry video, audio, or other data the word 'visual' has no meaning and should be eliminated."[49] We agree. We therefore adopt our proposal in the *NPRM* to amend this rule with a minor modification to delete the word "visual," as reflected in section 73.614(a) in Appendix A of this *Report and Order*.

14. Second, we decline to make another modification requested by NAB. The *NPRM* proposed to eliminate section 73.615 because the Commission staff's current practice in evaluating technical proposals and issuing authorizations provides additional precision beyond what the text of the current rule requires, since authorizations are now based on the more precise kilowatt (kW) value as opposed to dBk and do not round HAAT values as described in this rule.[50] For the same reason, the *NPRM* proposed to remove the dBk reference in section 73.614(a).[51]

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[41] *Id.* at para. 9. 47 CFR § 73.612(a)-(b) and Note (Protection from interference).

[42] *NPRM* at para. 9. 47 CFR § 73.616(d) (Post-transition DTV station interference protection). *See* https://transition.fcc.gov/oet/info/documents/bulletins/oet69/oet69.pdf (OET Bulletin No. 69).

[43] *NPRM* at para. 9. *See MO&O on Reconsideration of the Sixth R&O*, 13 FCC Rcd at 7467, para. 120.

[44] UHF refers to a frequency band allocated for broadcast television service on TV channels 14-36. By comparison, "VHF," or very high frequency, refers to a spectrum band allocated for broadcast television on TV channels 2-13. The VHF channels are further broken up into "low-VHF" (channels 2-6) and "high-VHF" (channels 7-13). *See, e.g.*, Spectrum Act at 6001.

[45] *NPRM* at para. 9. *See also Low Power Television and Television Translator Service,* MM Docket No. 83-1350, Report and Order, 102 F.C.C.2d 295, 311 (1984) (indicating that section 73.3516(c) should have been modified when LPTV rules were adopted, which is the rule part that 73.1620(f) refers to).

[46] *NPRM* at para. 9. *See 2022 Part 74 Order* at para. 5, n.20.

[47] *NPRM* at para. 9. *See* 28 Fed. Reg. 13572, 13678-79 (Dec. 14, 1963) (47 CFR § 73.685 (1963)).

[48] *See* NAB Comments at 8 (internal footnotes omitted), citing *NPRM* at para. 6.

[49] NAB Comments at 8.

[50] *NPRM* at para. 9. 47 CFR § 73.615 (Administrative changes in authorizations). As explained in the *NPRM*, for example, a station authorized at 30 dBk (decibels above 1 kW) would operate at 1000 kW, while a station at 29.9 dBk consistent with the current rule would operate at approximately 977 kW. The Bureau, however, authorizes stations today based on kilowatts, allowing a station to be authorized at an intermediate value such as 990 kW. The Bureau's current practice therefore provides more precision. *See NPRM* at para. 9, n.31.

[51] *NPRM* at para. 9. 47 CFR § 73.614(a) (Power and antenna height requirements).

15. NAB comments that the current and proposed rules specify formulas for determining effective radiated power (ERP) as a function of HAAT with the results in logarithmic units of dBk, and claims that the proposed change fails to define the significant figures[52] to use and will lead to confusion.[53] NAB also argues that since section 73.615 currently describes how to convert power in dBk to power in kilowatts and specifies the number of significant figures and the rules for rounding the results, the proposed deletion of section 73.615 makes the determination of ERP in kilowatts ambiguous.[54] NAB further argues the revised rule should define the algorithm that produces that result and "computer software used by FCC staff" should be modified to match the formulas in the rules.[55] NAB also maintains that it "is troubled by the apparent acknowledgement in the NPRM that the staff's practice has been inconsistent with the plain language of the rules for years,"[56] and that if the Commission now wishes to amend its rules to bring them into alignment with the staff's preferences and practices, the Commission should grandfather existing operating parameters for current stations so that no broadcaster is penalized for that choice.[57]

16. We disagree with NAB's assessment of this issue. First, while NAB claims that the Commission staff has applied a standard that is inconsistent with the rules in processing applications, the fact is that the Commission rule (47 CFR § 73.615) stating how to specify power in TV broadcast authorizations applies to analog operations only. The Commission proposed a digital full power Table of Allotments in 1996 by specifying ERP in kilowatts,[58] and all tables adopted by the Commission since then use similar ERP values in kilowatts.[59] The use of kilowatt ERP values has continued through the

[52] We note that significant figures, or significant digits, refers to "any of the digits of a number beginning with the digit farthest to the left that is not zero and ending with the last digit farthest to the right that is either not zero or that is a zero but is considered to be exact." *See* "Significant digit," Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/significant%20digit (last visited Aug. 1, 2023).

[53] NAB Comments at 6. NAB cites to proposed sections 73.614(b)(1)(ii) and (iii), sections 73.614(b)(2)(ii) and (iii), and section 73.614(b)(3)(ii). *Id*. at n.19.

[54] *Id*. at 6.

[55] *Id*. at 6-7. NAB believes that the "staff's current practice" will inevitably result in inconsistent results between the staff's practice and the rules, and gives an example of a UHF station where it believes the allowable ERP (to the nearest 0.1 dBk) of 20.4 dBk converts to 110 kW when rounded to three significant figures as presently specified in the rules. NAB believes that when calculated using the staff's "arbitrary precision," the same station would be allowed just 108.4 kW (to four significant figures) or 108 kW (to three significant figures) absent the administrative rounding provisions of section 73.615. NAB states that this can cause confusion when applying the largest station in the market rule (currently section 73.622(f)(5) and proposed 73.614(b)(6)) and potentially require modification of longstanding authorizations to reflect a changed calculation methodology. *Id*. at 7. NAB further added that the "language of present rule Section 73.615 concerning administrative changes in authorizations is an essential complement to the formulas in Section 73.614, which specify station radiated power levels in decibels above on [sic] kilowatt (dBk)." *See* NAB *Ex Parte*.

[56] NAB Comments at 7.

[57] NAB Comments at 7-8.

[58] *See Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service,* MM Docket No. 87-268, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968 (1996), at Appendix B, which shows power in kilowatts for each station. Many of these values do not conform neatly to dBk to three significant figures. As an example, see the proposed channel 30 allotment at Birmingham, Alabama, which is given as 127.6 kW (which is approximately 21.06 dBk), or the proposed channel 17 allotment at Roanoke, Virginia, which is given as 108.9 kW (which is approximately 20.37 dBk).

[59] *See Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Sixth Report and Order, 12 FCC Rcd 14588 (1997) (*1997 Order*). *See also MO&O on Reconsideration of the Sixth R&O*; *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, 14 FCC Rcd 1348 (1998); Appendix B, and a description of its use and contents, in the *Sixth Report and*
(continued….)

present time, including use in the "*tv_process*" software the Media Bureau used for application processing in the past, and the *TVStudy* software the Media Bureau currently uses for application processing.[60] Second, given the Commission's implementation of a system using ERP in kilowatts for digital stations in the *1997 Order*, the ERP in the digital television broadcast station license and modification authorizations issued by the Media Bureau have since been issued in kilowatts.[61] NAB is therefore incorrect to suggest that there is any conversion or algorithm being applied. Current section 73.615 is an analog-era rule that was never applied to digital authorizations so no such conversion or algorithm is applied. Moreover, all full power and Class A television stations have a digital authorization given in kilowatts, so there is no need to modify outstanding digital authorizations, and no confusion should occur as a station's ERP would be given as 110 kW, 108.4 kW, or 108 kW, as appropriate, on its existing authorization.[62] Third, evaluation of the largest station in the market under section 73.622(f)(5) has been conducted using the more precise kilowatt values found in the Commission's LMS database rather than the dBk values to three significant figures.[63] For these reasons, with respect to NAB's request that the Commission grandfather existing operating parameters, we find that since all full power and Class A television stations are operating with digital only facilities and are all operating with authorizations issued based on kilowatts, it is unnecessary to grant NAB's request. Finally, in response to NAB's contention that removal of this rule will lead to confusion, we disagree. Since section 73.615 is an analog rule, it has not applied to digital operation and we are unaware of any actual instance where a station's power level would be impacted by removal of the analog rule. Further, requiring such rounding for power limits would reduce flexibility for stations attempting to conduct a largest station in the market analysis or a loss analysis by artificially preventing them from choosing a more precise power level which may allow stations to more closely match the service they are attempting to replicate. We therefore adopt the changes to section 73.615 as proposed in the *NPRM*.

(Continued from previous page)
Order, 12 FCC Rcd at 14693-754; *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*, GN Docket No. 12-268, Public Notice, 32 FCC Rcd 2786, 2804, para. 56 (WTB/MB/IATF 2017) (*Channel Reassignment Public Notice*).

[60] *TVStudy* was released for notice and comment prior to being used by the Commission in the Incentive Auction. *See, e.g., TVStudy Interference Analysis Software*, https://www.fcc.gov/oet/tvstudy. *Office of Engineering and Technology Releases and Seeks Comment on Updated OET-69 Software*, ET Docket No. 13-26, Public Notice, 28 FCC Rcd 950 (OET 2013). The Media Bureau, in a Public Notice issued with the Office of Engineering and Technology, subsequently announced it would use *TVStudy* during the post-auction period. *See Office of Engineering and Technology Announces Release of Version 2.1 of TVStudy for Processing Construction Permit Applications Filed with the Media Bureau Implementing the Results of the Repacking Process*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 998 (OET/MB 2017). The Bureau continues to use *TVStudy* today to maintain consistency with the protections afforded to stations during the Incentive Auction and repack. Additionally, *tv_process* was designed for use with the older Consolidated Database System (CDBS) database which, as noted *infra*, has been phased out, and the computers necessary to run the older *tv_process* software are now obsolete and have been retired.

[61] For example, the prior license authorization of WXLV-TV, BLCDT-20050624ABB, authorized 990 kW even though that value does not align with either 29.9 or 30.0 dBk. As an additional example, the prior license authorization of WCBS-TV, BLCDT-19981026KG, authorized 349 kW even though that value does not align with either 25.4 or 25.5 dBk. As a general matter, we also note that ERP values are stored in kilowatts, rather than dBk, in the FCC's LMS database.

[62] While a dBk figure is also given on the authorization, it is clearly a conversion from the kilowatt value, and is given to four significant figures rather than the three specified in the analog-era section 73.615.

[63] For example, in the 2022 KTVH-DT rulemaking, the area was calculated using the kilowatt value at 530 kW rather than the values of 525 kW (27.2 dBk) or 537 kW (27.3 dBk). *See* Engineering Statement Amendment at 3, LMS File No. 0000177547.

B. Updates and Corrections to the Full Power and Class A Rules

17. The *NPRM* proposed to make several updates and corrections to the full power and Class A rules.[64] The comments received were generally supportive of the effort to update our rules,[65] and we received no specific objection to these proposals. Thus, for the reasons discussed in the *NPRM,* and described below, we adopt the proposals as detailed below.

18. We update the reference to the 2000 census population data found in section 73.616(d)(1) to reflect a reference to the most recent official decennial U.S. Census population data, which conforms paragraph (d)(1) to the language in section 73.616(e)(1).[66] We also amend references to the "Table of Allotments" in section 73.622(j) to the "Table of TV Allotments" in all places where it is referenced in subpart E[67] and in subpart H, for continuity.[68] We amend section 73.622(j) to reflect a channel substitution previously adopted upon a notice and comment rulemaking that was adopted shortly before the current version of the Table of TV Allotments was adopted, but was not incorporated into the new Table of TV Allotments for procedural reasons.[69] We amend certain rules in subpart E to add common

[64] *NPRM* at para. 10.

[65] *See supra* para. 4, n.12.

[66] *NPRM* at para 10. 47 CFR § 73.616(d)(1) (Post-transition DTV station interference protection). This language was inadvertently not included in subsection (d)(1). *See Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Notice of Proposed Rulemaking, 32 FCC Rcd 1670, 1696-7, para. 59 (2017) (in proposing to adopt section 73.616(e)(1), the Commission stated that "[w]e propose to update the Commission's rules regarding acceptable levels of interference resulting from a broadcaster's application for new or modified facilities"); *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930, 9986-7, para. 114 (2017) (in adopting the rule, the Commission stated that "after the repacking process is complete, any broadcast television service or interference calculations will be based on the 2010 U.S. Census statistics, until after 2020, when the next U.S. Census statistics are scheduled to become available and the Media Bureau subsequently announces the date of application of such data"). We also make a similar revision in 47 CFR § 73.686(c)(1)(i) to conform the rule to 47 CFR § 73.616.

[67] 47 CFR §§ 73.622 (section heading and (a)) (Digital television table of allotments); 73.623(d), (f), and (h) (DTV applications and changes to DTV allotments).

[68] *NPRM* at para. 10. 47 CFR § 73.1015 (Truthful written statements and responses to Commission inquiries and correspondence). We also update the reference to FM Table of Allotments to "Table of FM Allotments" in 47 CFR § 73.1015 to reflect the name of the table in 47 CFR § 73.202(b).

[69] *NPRM* at para. 10. On January 12, 2021, the Media Bureau issued a Notice of Proposed Rulemaking in response to a petition filed by KTUL Licensee, LLC, the licensee of KTUL, Tulsa, Oklahoma, requesting the substitution of channel 14 for channel 10 at Tulsa in section 73.622(i), the DTV Table of Allotments. *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Tulsa, Oklahoma)*, MB Docket No. 21-9, Notice of Proposed Rulemaking, 36 FCC Rcd 157 (Vid. Div. 2021) (*Tulsa NPRM*). In the *Tulsa NPRM*, the Bureau noted that the Commission had completed the incentive auction and broadcast television spectrum repacking authorized by the Spectrum Act and that the Bureau would amend the rules to reflect all new full power channel assignments in a revised Table of Allotments. Because the Table had not yet been amended, however, the Bureau continued to refer to section 73.622(i) for the purpose of the Tulsa proceeding. *Id*., 36 FCC Rcd at 157, n.1. The Bureau adopted a Report and Order amending section 73.622(i) to substitute channel 14 at Tulsa, *see Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Tulsa, Oklahoma)*, MB Docket No. 21-9, Report and Order, 36 FCC Rcd 13620 (Vid. Div. 2021), and shortly thereafter the Commission adopted the Table of TV Allotments, which superseded section 73.622(i). *October 2021 Order*, 36 FCC Rcd at 15894-5, para. 8. The amendment to section 73.622(j) reflects this channel substitution, which did not become effective until after the new Table of TV Allotments was adopted.

abbreviations used elsewhere in the Commission's rules and forms.[70] We amend certain rules in subpart H and subpart I to provide full power and Class A licensees and permittees with accurate information about current Commission forms and filing procedures, including the removal of obsolete forms.[71] We update section 73.1030 to reflect updated contact information for the National Radio Astronomy Observatory site and the Radio Frequency Management Coordinator.[72] We delete section 73.682(a)(1) as duplicative of section 73.624(a) and thus, unnecessary.[73]

19. We also make amendments to correct typographical errors in words and cross-references that contain incorrect rule citations.[74] We delete repetitive language within a rule.[75] We revise section

[70] *NPRM* at para. 10. *See, e.g.*, 47 CFR §§ 73.614(a) (adding abbreviations for "ERP" and "HAAT") (Power and antenna height requirements); and 73.625(a)(1) (adding abbreviations for "ERP" and "HAAT") (DTV coverage of principal community and antenna system).

[71] *See NPRM* at para. 10. 47 CFR §§ 73.1250(e) (Broadcasting emergency information); 73.1350(h) (Transmission system operation); 73.1560(a)(1) and (d) (Operating power and mode tolerances); 73.1615(c) (Operation during modification of facilities); 73.1620(a)(1)-(3) (Program tests); 73.1635(a)(2)-(3) (Special temporary authorizations (STA)); 73.1675(b) (Auxiliary antennas); 73.1690(b) and (c)(3) (Modification of transmission systems); 73.1740(a)(4) (Minimum operating schedule); 73.1750 (Discontinuance of operation); 73.2080(c)(6) and (f) (deleting the references to obsolete Form 397 and updating the names of forms) (Equal employment opportunities (EEO)); 73.3500 (Application and report forms); 73.3533(a)(1) and (a)(4)-(a)(8) (Application for construction permit or modification of construction permit); 73.3536(b)-(c) (Application for license to cover construction permit); 73.3540(c)-(f) (Application for voluntary assignment or transfer of control); 73.3541(b) (Application for involuntary assignment of license or transfer of control); 73.3544(b)-(c) (Application to obtain a modified station license); 73.3549 (Requests for extension of time to operate without required monitors, indicating instruments, and EAS encoders and decoders); 73.3550(a) and (j) (also adding "-DT" suffix in (a), (f), (k), and (m) (Requests for new or modified call sign assignments). The Commission has acknowledged the use of the "-DT" suffix in prior rulemakings. In 2004, the Commission permitted stations simulcasting their analog programming on their digital channel to make station identification announcements simultaneously for both stations as long as the identification included both call signs "(*e.g.*, "WXXX-TV and WXXX-DT")." *See Second Periodic Review of the Commission's Rules and Polices Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Report and Order, 19 FCC Rcd 18279, 18355, para. 173 (2004) (subsequent citations omitted) (*Second Periodic Review*); *see also Digital Transition Call Sign Procedures*, Public Notice, 24 FCC Rcd 7617 (MB 2009). We also update 47 CFR §§ 73.3578(b) (Amendments to applications for renewal, assignment or transfer of control); 73.3587 (Procedure for filing informal objections); 73.3598(c) (Period of construction); 73.5005(a) (Filing of long-form applications); and 73.5006(b) (Filing of petitions to deny against long-form applications). We note that the numbering of the broadcast application and report forms has changed with the transition of the Commission's broadcast licensing database from CDBS to LMS, and certain form numbers have changed since the release of the *NPRM*, which we update in this *Report and Order*. *See Media Bureau Announces Transition of Additional Filings to Licensing and Management System*, Public Notice, DA 23-600 (MB 2023). For example, Form 301 for AM stations is now Form 2100 Schedule 301-AM.

[72] *NPRM* at para. 10. 47 CFR § 73.1030(a)(1) and (b)(2) (Notifications concerning interference to radio astronomy, research and receiving installations).

[73] *NPRM* at para. 10. 47 CFR § 73.682(a)(1) (TV transmission standards) and 47 CFR § 73.624(a) (Digital television broadcast stations) (both noting the width of a television channel is 6 MHz).

[74] *NPRM* at para. 11. 47 CFR §§ 73.622(c)(1) (Digital television table of allotments); 73.623(d)(1), (d)(4) (DTV applications and changes to DTV allotments); 73.624(g) (Digital television broadcast stations); 73.625(c)(5) (cites to 73.622(f)(4), which is irrelevant to electrical beam tilt) (DTV coverage of principal community and antenna system); 73.626(c)(2) (DTV distributed transmission systems); 73.682(d) (TV transmission standards); 73.683(c)(3) (Field strength contours and presumptive determination of field strength at individual locations); 73.1217 (Broadcast hoaxes); 73.1250 (Broadcasting emergency information); 73.1615(b)(3) (Operation during modification of facilities); 73.1690(b)(3) and (c)(3) (Modification of transmission systems); 73.3550(b) and (i) (Requests for new or modified call sign assignments); 73.5007(b)(3)(v) (Designated entity provisions); 73.3578(b) (Amendments to applications for renewal, assignment or transfer of control); 73.6018 (Digital Class A TV station protection of DTV

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73.682(d) to break the existing paragraph into subsections, without altering its content, in order to make the paragraph more accessible to licensees and the public.[76] In addition, we eliminate notes to rules and shift the language into the text of the relevant rule to conform to the publishing conventions of the National Archives and Records Administration's (NARA) Office of the Federal Register.[77]

20. We next delete section 73.685(e) (Transmitter location and antenna system) because it is redundant with section 73.625(c)(2) (antenna system), and contains certain requirements regarding directional antennas which are no longer in use.[78] We delete section 73.622(f)(2) as obsolete, since all applications are now evaluated for interference using OET Bulletin No. 69.[79] We also delete section 73.6027 as duplicative and unnecessary as it is a cross-reference to a rule already applicable to Class A stations.[80] We also place a reference to section 73.1030 in section 73.6026 (Broadcast regulations applicable to Class A television stations), which lists rules that apply to Class A by reference.[81] We similarly delete the last sentence of 73.6020 (Protection of stations in the land mobile radio service) with respect to land mobile radio service (LMRS) operations on channel 16 in New York, as it is duplicative of the reference to section 74.709 in the first sentence of 73.6020, since section 74.709 requires protection of channel 16 in New York.[82] We also streamline section 73.6000 by amending the rule, after deleting the analog references, to simplify and shorten the language without further altering the meaning or content.[83]

21. Finally, we add an explanatory note to section 73.623 to reference and explain the existence of a granted waiver with respect to the community of Los Angeles, California.[84] As explained in the *NPRM*, section 73.623 requires television stations to protect certain channels for use by LMRS in

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stations); 73.4060(a) (Citizen agreements); and 74.793(g) (Low power TV and TV translator station protection of broadcast stations).

[75] *NPRM* at para. 11. 47 CFR § 73.623(e) (DTV applications and changes to DTV allotments).

[76] *NPRM* at para. 11. *See* new section 73.682(d)(1)-(3) (TV transmission standards). We also remove citations to sections of the Communications Act in new section 73.682(d)(3)(ii) relating to the organization and functions of the Commission that we believe were inadvertently included in the rule, as well as add a cross-reference to section 73.8000 to find contact information for the availability of the ATSC standards. We also update the contact information for information on the availability of the ATSC standards in 47 CFR § 73.8000 (Incorporation by reference). We also note that NARA's Office of Federal Register made editorial revisions to sections 73.682, 73.683(d), and 73.8000 in line with its publishing conventions.

[77] *NPRM* at para. 11. *See* 47 CFR §§ 73.682 (TV transmission standards); 73.1216 (Licensee-conducted contests); 73.1217 (Broadcast hoaxes); and 73.3525 (Agreements for removing application conflicts).

[78] *NPRM* at para. 12.

[79] *NPRM* at para. 12. 47 CFR § 73.622(f)(2) (Digital television table of allotments). *See also* 47 CFR § 73.616(d) (Post-transition DTV station interference protection), which requires applications to pass an analysis with OET Bulletin No. 69.

[80] *NPRM* at para. 12. 47 CFR § 73.1030 (Notifications concerning interference to radio astronomy, research and receiving installations). Class A licensees are required to comply with all part 73 regulations except for those that cannot apply for technical or other reasons. *Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6365, para. 23 (2000) (*Class A Report and Order*).

[81] *NPRM* at para. 12.

[82] *Id*.

[83] *Id*. 47 CFR § 73.6000 (Definitions – because we delete subsection (1) in *supra* n.19, we delete the number (2), but retain the text).

[84] *NPRM* at para. 13. 47 CFR § 73.623 (DTV applications and changes to DTV allotments). A similar explanatory note was added to section 74.709 in the Commission's *2022 Part 74 Order* at para. 8.

thirteen U.S. cities listed in the rule.[85] In 2008, the Commission's Public Safety and Homeland Security Bureau (PSHSB) granted a waiver pursuant to section 337(c) of the Communications Act of 1934, as amended,[86] allowing the County of Los Angeles to use channel 15 in Los Angeles for public safety communications.[87] Because this channel is adjacent to two channels contained in section 73.623, we find, consistent with the tentative conclusion in the *NPRM*, that the public interest is served by including a note explaining the existence of the 2008 waiver.[88]

C. Post-Incentive Auction Licensing and Operation (Section 73.3700)

22. The *NPRM* proposed removal of outdated rules relating to the post-incentive auction transition period. The comments received were generally supportive of the effort to update our rules,[89] and we received no specific objection to these proposals. Therefore, for the reasons discussed in the *NPRM,* and described below, we adopt the proposals as detailed below.

23. As explained in the *NPRM*, section 73.3700(a)(2) includes licensing and procedural rules for television stations during the post-incentive auction transition.[90] The incentive auction closed on April 13, 2017,[91] and thus, we amend section 73.3700(a)(2) to add the citation to the *Channel Reassignment Public Notice* that was released by the Commission's Media and Wireless Telecommunications Bureaus and Incentive Auction Task Force announcing the completion of the auction and deadlines for stations assigned new channels through the repacking process to terminate operations on pre-auction channels.[92] We also delete as obsolete certain definitions that relate to the bid options that were available to full power and Class A television broadcasters eligible to participate in the incentive auction that closed on April 13, 2017.[93] We also delete as obsolete procedural rules that governed the post-incentive auction period for stations to transition off their pre-auction channel, which ended on July 13, 2020. This includes portions of the rule pertaining to the special post-incentive auction displacement filing window which closed on June 1, 2018 and applied to low power television (LPTV) and television translator stations displaced by the auction.[94]

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[85] *NPRM* at para. 13.

[86] 47 U.S.C. § 337(c).

[87] *NPRM* at para. 13. *See Request for Waiver of the Commission's Rules to Authorize Public Safety Communications in the 476-482 MHz Band (County of Los Angeles, California)*, Order, 23 FCC Rcd 18389 (PSHSB 2008).

[88] *NPRM* at para. 13.

[89] *See supra* para. 4, n.12.

[90] *NPRM* at para. 14.

[91] *Channel Reassignment Public Notice*.

[92] *NPRM* at para. 14. 47 CFR § 73.3700(a) (Definitions), and (a)(2) (Channel reassignment public notice).

[93] *NPRM* at para. 14. 47 CFR §§ 73.3700(a) (Definitions), (6) (High-VHF-to-Low-VHF station), (7) (License relinquishment station), and (17) (UHF-to-VHF station).

[94] *See NPRM* at para. 14. 47 CFR §§ 73.3700(b) (Post-auction licensing), (c) (Consumer education for transitioning stations), (d) (Notice to MVPDs), and (g) (Low Power TV and TV translator stations). Consistent with the proposals in the *NPRM*, we retain those portions of the rule pertaining to the small number of stations that are still engaged in constructing final facilities on their post-auction channel assignments and to the TV Broadcaster Relocation Fund. *NPRM* at para. 14. *See* 47 U.S.C. § 1452(j)(1)(A)-(B); *see also Incentive Auction Task Force and Media Bureau Report on the Status of the Post-Incentive Auction Transition and Reimbursement Program; Announce a Further Allocation from the Relocation Fund; and Announce Procedures for Eligible Entities to Close Out Accounts in the Fund*, MB Docket No. 16-306, GN Docket No. 12-268, Public Notice, 34 FCC Rcd 304, 312, para. 26 (IATF/MB 2019); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6825-26, paras. 632-36 (2014).

D. Updates to Listing of FCC Policies

24. The *NPRM* proposed to update the Commission's policy rules in section 73.4000 *et seq*., which provide certain FCC policies and citations related to all broadcast stations for the purpose of reference and convenience.[95] Section 73.4000 addresses the fact that the present listing of FCC policies and citations contained in 73.4000 *et seq*. may not be an all-inclusive list.[96] The comments received were generally supportive of the effort to update our rules,[97] and we received no specific objection to this proposal. Therefore, for the reasons discussed in the *NPRM,* and described below, we adopt the proposal as detailed below.

25. We include cautionary language in the rule to note that subsequent decisions or actions may exist.[98] We also amend a number of rules in section 73.4000 *et seq*. that are now obsolete or otherwise require updates.[99] For instance, the Commission no longer uses comparative hearings to award commercial broadcast licenses so section 73.4082 related to such proceedings is obsolete.[100] We remove or update rules that implicate audio services that are obsolete or require updates.[101] And we update rules to reflect the availability of newer versions of procedures and Commission orders.[102] We also update certain rules to reflect the subsequent passage of legislation and the later Commission revision of the

[95] *NPRM* at para. 15.

[96] *Id*. 47 CFR § 73.4000 (Listing of FCC policies).

[97] *See supra* para. 4, n.12.

[98] *NPRM* at para. 15.

[99] *Id.*

[100] *Id*. *See* 47 CFR § 73.4082 (Comparative broadcast hearings – specialized programming formats). The Commission no longer resolves mutually exclusive broadcast applications through comparative hearings but rather now uses competitive bidding procedures. *See* 47 CFR § 73.5000 *et seq.* (procedures for competitive bidding); *Implementation of Section 309(j) of the Communications Act; Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, MM Docket No. 97-234, First Report and Order, 13 FCC Rcd 15920 (1998) (subsequent citations omitted) (*Competitive Bidding First R&O*).

[101] *NPRM* at para. 15. Section 73.4017 is revised because these policies have been replaced by competitive bidding procedures in sections 73.5000-73.5009. *See* 47 CFR § 73.4017 (Application processing: Commercial FM stations); 47 CFR §§ 73.5000-73.5009; *Competitive Bidding First R&O*, 13 FCC Rcd at 15972, para. 137 (1998). Section 73.4100 and Section 73.4101 are retained and amended to add a more recent policy pronouncement from 1981 and 1987. *See* 47 CFR §§ 73.4100 (Financial qualifications; new AM and FM stations) and 73.4101 (Financial qualifications, TV stations); *Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301)*, Memorandum Opinion and Order, 50 R.R.2d 381, para. 6 (1981) and *Certification of Financial Qualification by Applicants for Broadcast Station Construction Permits*, Public Notice, 2 FCC Rcd 2122 (1987). Section 73.4107 is eliminated as the cited documents refer to a completed proceeding. All of the cited documents concern the rollout and implementation of Docket 80-90 and the 689 FM allotments adopted therein. The allotments have been established, the proceeding is terminated, and we believe there is no public interest served by listing the cited documents in the policy statement. *See* 47 CFR § 73.4107 (FM broadcast assignments, increasing availability of). We also eliminate section 73.4108 because this requirement was eliminated for FM stations. *See* 47 CFR § 73.4108 (FM transmitter site map submissions); *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, MM Docket Nos. 98-43 and 94-149, Report and Order, 13 FCC Rcd 23056, 23082, para. 60 (1998) (rejecting the suggestion that the Commission continue to require the filing of site maps, finding it to be an "unnecessary expense for applicants" "in most instances").

[102] *NPRM* at para. 15. *See* 47 CFR §§ 73.4210 (Procedure Manual: "The Public and Broadcasting") (The rule is updated to reflect a newer version of the procedure manual, which is available at: https://www.fcc.gov/media/radio/public-and-broadcasting); 73.4267 (Time brokerage) (The revisions to the rule remove outdated citations and add citations to reflect current policy). *See Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, MM Docket Nos. 94-150, 92-51, 87-154, Report and Order, 14 FCC Rcd 12559 (1999). *See also* 47 CFR § 73.3555, Note 2(j).

relevant policy.[103]

E. Deletion of Obsolete Language Due to Passage of Time and Changes in Commission Policy

26. The *NPRM* proposed to delete language that has become obsolete due to the passage of time or changes in Commission policy. The comments received were generally supportive of the effort to update our rules,[104] and we received no specific objection to these proposals. Therefore, for the reasons discussed in the *NPRM,* and described below, we adopt the proposals as detailed below.

27. We amend or delete a number of rules that apply exclusively to the Class A television service, which was authorized by the passage of the Community Broadcasters Protection Act of 1999 (CBPA).[105] Given that nearly twenty-five years have elapsed since passage of the CBPA and deadlines related to its implementation have elapsed, and all operating TV stations are now digital, we delete a number of rule sections that are now obsolete.[106] Additionally, since a number of rules relating to the post-incentive auction transition have deadlines that have passed, we delete these as obsolete.[107]

28. We amend section 73.1020(a) to delete dates in the past and include the applicable dates for future license renewal cycles.[108] We amend the dates in section 73.1020(a) from the default time of expiration for initial and renewal broadcast licenses by state to the license expiration dates for the next renewal cycle.[109] In addition, we remove as obsolete language from section 73.1020(b) that refers to the cutoff date for the filing of applications mutually exclusive with renewal applications that are filed on or before May 1, 1995, as no such applications are on file.[110]

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[103] *NPRM* at para. 15. *See* 47 CFR § 73.4055 (Cigarette advertising) (updated to reflect that in 1986, Congress extended the ban to include advertisements for smokeless tobacco products. *See* 15 U.S.C. § 4402(c)).

[104] *See supra* para. 4, n.12.

[105] Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), codified at 47 U.S.C. § 336(f) (CBPA).

[106] *NPRM* at paras. 16 and 18 (proposing to remove 47 CFR § 73.613 (Note to 73.613(a)) (Protection of Class A TV Stations) and portions of 47 CFR § 73.6018 (Digital Class A TV protection of DTV stations). We also delete references to digital and DTV. We also delete the last sentence of 47 CFR § 73.623(c)(5) (DTV applications and changes to DTV allotments). We believe this deletion is further supported by the fact that this change was also reflected in the Federal Register publication, 86 Fed. Reg. 66193 (Nov. 22, 2021), which states "Section 73.623 is amended by revising paragraph (a) and *by removing and reserving paragraphs (c)* and (g)." (emphasis added). 86 Fed. Reg. 66193, 66209 (Nov. 22, 2021). While references to the section were deleted, the subsection remains in the rules. Additionally, consistent with the *NPRM,* we amend the section heading of 47 CFR § 73.6022 (Negotiated interference and relocation agreements)) and delete 47 CFR § 73.6022(b) as a pre-DTV transition rule because Class A stations are no longer subject to displacement by full-power station modification applications and channel substitutions. *NPRM* at para. 18.

[107] See the final sentence of 47 CFR § 73.6019 (Digital Class A TV station protection of low power TV, TV translator, digital low power TV and digital TV translator stations), citing § 73.3700(b)(1). *See NPRM* at para 17.

[108] *NPRM* at para. 19. Given the timing of the release of this *Report and Order* and the pendency of the current television license renewal cycle, we update the dates in section 73.1020 with all future license renewal deadlines.

[109] 47 CFR § 73.1020(a) (Station license period). The default time of expiration refers to those expiration dates set forth in section 73.1020(a) for a station receiving an ordinary 8-year renewal.

[110] 47 CFR § 73.1020(b) (Station license period). *See also Reading Broadcasting, Inc., for Renewal of License of Station WTVE(TV), Channel 51 Reading, Pennsylvania and Adams Communications Corporation, for Construction Permit for a New Television Station to Operate on Channel 51, Reading, Pennsylvania*, MM Docket No. 99-153, 17 FCC Rcd 14001, 14002, para. 1 (2002) (In this decision, the Commission explained that it was "dispos[ing] of the last remaining 'comparative renewal' proceeding, in which an incumbent licensee faces a comparative challenge from a construction permit applicant for the same facilities. Congress, by Act of February 8, 1996, Pub. Law 104-

(continued….)

29. Similarly, we remove as obsolete due to the passage of time section 73.3598(b)(3), which provides that the period of construction for an original construction permit will toll for certain reasons of international coordination during the DTV transition, which is now complete.[111] We delete language in new section 73.682(d)(1) specifying that digital standards incorporated by reference into the Commission's rules became effective October 11, 2011, as the specific start date has long since passed.[112] We also remove as obsolete the portion of section 73.3572(a)(3) providing a window that expired October 1, 2000 for certain minor change applications.[113] We also delete provisions that reference the comparative hearing process, which no longer exists.[114] We delete section 73.3523,[115] the first sentence of section 73.3516(e),[116] and the second sentence of section 73.3516(e)(1),[117] which deal with obsolete procedures regarding mutually exclusive proceedings for renewal applications filed prior to May 1, 1995. In addition, we delete the second sentence of section 73.3533(b), which discusses an obsolete procedure for filing construction permit extension applications.[118] Specifically, that rule refers to section 73.3534, which specified three factors that could justify an extension of a construction permit.[119] The referenced section, however, was deleted in 2004.[120]

30. We also delete obsolete language in section 73.664(c)(3)(iii) concerning the certification of equipment. In its comments, CDE states that it does not agree with our proposal to delete obsolete language in section 73.664, but does not provide a reason why it disagrees and thus, there is no basis for us to depart from the proposal in the *NPRM*.[121] Accordingly, for the reasons described in the *NPRM*, we adopt our proposal to delete the language as obsolete. As explained in the *NPRM*, the FCC no longer "type accepts" equipment, having overhauled the process to allow private parties to verify such equipment meets FCC requirements, and the results of such verifications do not need to be submitted to the FCC.[122] We modify text throughout section 73.664 in order to remove references to analog operations

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104, 110 Stat. 56, codified as 47 C.F.R. § 309(k)(4), prohibited the comparative consideration of renewal applicants filed after May 1, 1995.").

[111] *NPRM* at para. 20. 47 CFR § 73.3598(b)(3) (Period of construction).

[112] *NPRM* at para. 20. *See* new section 73.682(d)(1) (TV transmission standards). We also delete references to DTV and digital.

[113] *NPRM* at para. 20. 47 CFR § 73.3572(a)(3) (Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications).

[114] *See NPRM* at para. 20. 47 CFR §§ 73.1620 (Program tests) (g)(1)-(3) (Reports required); 73.3519(a) (Repetitious applications) (the last sentence of subsection (a) that applicants whose applications have been denied in a comparative hearing may apply immediately for another available facility); and 73.4082 (Comparative broadcast hearings – specialized programming formats).

[115] *NPRM* at para. 20. 47 CFR § 73.3523 (Dismissal of applications in renewal proceedings). We also delete the first clause of 47 CFR § 73.3525(a) (Agreements for removing application conflicts), which cross-references section 73.3523.

[116] *NPRM* at para. 20. 47 CFR § 73.3516(e) (Specification of facilities).

[117] *NPRM* at para. 20. 47 CFR § 73.3516(e)(1) (Specification of facilities).

[118] *NPRM* at para. 20. 47 CFR § 73.3533(b) (Application for construction permit or modification of construction permit).

[119] 47 CFR § 73.3534. *See also Application of Mansfield Christian School*, 10 FCC Rcd 12589, 12590, para. 5 (1995).

[120] 69 Fed. Reg. 72020, 72043 (Dec. 10, 2004).

[121] *See* CDE Supplemental Comments 2 at 9 (regarding the Commission's proposal to delete obsolete language in section 73.664(c)(3)(iii) concerning the certification of equipment, CDE notes that its response is "Not Agreed.").

such as references to the visual transmitter and to peak power.[123] We remove similar references to the visual transmitter in section 73.688.[124]

31. We delete sections 27.60 (TV/DTV interference protection criteria) and 27.1310 (Protection of Broadcast Television Service in the 600 MHz band from wireless operations), which concern the protection of TV stations on certain channels by wireless services.[125] As explained in the *NPRM*, all of these protections are for channels above channel 37, and thus are no longer relevant because the completion of the digital TV transition and the incentive auction and repacking process reassigned channels in that range for wireless use.[126]

F. Reorganization of Subpart E – Television Broadcast Stations

32. The *NPRM* proposed to reorganize subpart E of our part 73 rules. We received no objection to many of these changes and the comments received were generally supportive of the effort to update our rules.[127] Therefore, for the reasons discussed in the *NPRM,* and described below, we adopt the proposals as detailed below.

33. As described in the *NPRM*, full power television began to transition to digital with the passage of the Telecommunications Act of 1996,[128] and ended on June 12, 2009, when full power television stations commenced digital-only operations.[129] Many of these rules adopted during the digital transition were temporary and meant to be effective only during the DTV transition. Others, however, had more long term application to digital-only operations. Because the more long term rules were adopted at the same time as temporary rules, the *NPRM* noted that the long term rules are currently not

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[122] *NPRM* at para. 21. 47 CFR § 73.664(c)(3)(iii) (Determining operating power). As explained in the *NPRM* at n.89, currently, there are two procedures used for RF device equipment authorization: SDoC and Certification. *See* 47 CFR §§ 2.906 (Supplier's Declaration of Conformity) and 2.907 (Certification); *see also Office of Engineering & Technology (OET), Equipment Authorization*, https://www.fcc.gov/engineering-technology/laboratory-division/general/equipment-authorization (last visited Aug. 1, 2023). On July 14, 2017, the Commission amended its radiofrequency equipment authorization rules. *Amendment of Parts 0, 1, 2, 15, and 18 of the Commission's Rules Regarding Authorization of Radiofrequency Equipment*, ET Docket No. 15-170, First Report and Order, 32 FCC Rcd 8746 (2017). The adopted rules phased out the Verification and Declaration of Conformity equipment authorization procedures and replaced them with a new equipment authorization procedure, the SDoC. Federal Communications Commission, Authorization of Radiofrequency Equipment, 82 Fed. Reg. 50820 (Nov. 2, 2017). A device authorized under previously accepted procedures remains authorized and may be marketed or used if it continues to meet the requirements attendant to that authorization. To the extent CDE is seeking reconsideration of the Commission's 2017 decision, that request is untimely under 47 U.S.C. § 405(a). As reflected in the *NPRM*, our proposal did not seek to change the rule substantively, only to update FCC rules to accurately reflect the current operating environment. Arguments for substantive changes to the rules that were not the subject of notice and comment in the *NPRM* are beyond the scope of this proceeding.

[123] *See supra* n.21. We retain the remainder of section 73.664 that continues to provide important information for measuring transmitter operating power even in the post-transition context. *See NPRM* at para. 21.

[124] We retain other portions of section 73.688. *See supra* para. 8, n.21.

[125] *NPRM* at para. 22. 47 CFR §§ 27.60 (TV/DTV interference protection criteria) and 27.1310 (Protection of Broadcast Television Service in the 600 MHz band from wireless operations).

[126] *NPRM* at para. 22.

[127] *See supra* para. 4, n.12.

[128] *See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 12 FCC Rcd 12809 (1997) (implementing television broadcast portions of the Telecommunications Act of 1996) (subsequent citations omitted); *see* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 *et seq*.) (1996 Act)).

[129] *NPRM* at para. 23.

organized in a straight forward or user-friendly manner.[130] In addition, there are instances where the rules are duplicative.[131]

34. To make the organization of the rules more practical and the rules easier to find, we largely reorganize subpart E as proposed in the *NPRM*, while also adopting some minor clarifications and amendments to some of the rules.[132] First, we create a new section 73.611 (Emission levels and mask filters) which relocates, verbatim, the language from section 73.622(h)(1) and (2), which is currently part of the Table of TV Allotments section. This change will improve the organization of the rules because this technical rule has little direct relationship to the Table of TV Allotments.[133]

35. We next remove the analog power limits from section 73.614(b) (Power and antenna height requirements) and replace them with the digital power limits currently found in section 73.622(f)(5)-(8) (Digital television table of allotments), and clarify in section 73.614(b) that all applications for new full power television stations, applications for changes in authorized full power television stations, and petitions for changes to the Table of TV Allotments must comply with these requirements.[134] We also delete section 73.614(b)(7) (Power and antenna height requirements) as duplicative of section 73.625(c)(1) (DTV coverage of principal community and antenna system).[135] For stations requesting DTS operation pursuant to section 73.626 (DTV distributed transmission systems), we clarify that the 100 watt minimum ERP requirement applies to at least one site in the DTS.[136]

36. We also amend the rules to collect provisions on related matters that are currently spread over various rules and group them together. First, we create a new section 73.617 (Interference protection of other services) which collects provisions from sections 73.623(e) (Protection of land mobile operations on channels 14-20),[137] 73.687(e)(3)-(4),[138] 73.623(f),[139] and 73.685(d).[140] Most of these rules are used for

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[130] *Id*.

[131] For example, 47 CFR §§ 73.616(d) and (e) (Post-transition DTV station interference protection) and 73.623(c)(2)-(5) (DTV applications and changes to DTV allotments) both require the use of OET Bulletin No. 69. Some of the specific parameters in section 73.623(c) are outdated (such as those that refer to the 2 percent and 10 percent aggregate pre-transition interference standard), but most of the remaining rule text is directly duplicative of section 73.616(d) and (e) (for example, both discuss how to determine DTV to DTV interference using OET Bulletin No. 69, that the minimum adjacent channel technical criteria does not apply to channels 4 and 5, 6 and 7, and 13 and 14, because of unique spacing between these channel, and how to determine interference to Class A television stations). Thus, as stated above, we have deleted subsection 73.623(c)(2)-(5). In addition, there are cases where an analog rule and a digital rule are both found in the rules with similar text, such as sections 73.625 (DTV coverage of principal community and antenna system) and 73.685 (Transmitter location and antenna system).

[132] *NPRM* at para. 24.

[133] *Id*. We note, however, that one commenter requested that we change the language of section 73.611 to incorporate a clarification issued by the FCC's Office of Engineering and Technology (OET). *See* GBS Comments at 1-2. Because we find this request to be outside the scope of the proceeding, we address it *infra* in Section III.M.

[134] *NPRM* at para. 25. 47 CFR § 73.614(b) (Power and antenna height requirements). This would make section 73.622(f)(4) redundant, as section 73.622(f)(8) also contains a 1000 kW limit for UHF stations, and, as proposed, we delete section 73.622(f)(4).

[135] *NPRM* at para. 25. 47 CFR §§ 73.614(b)(7) and 73.625(c)(1). Consistent with the proposal in the *NPRM*, we retain for digital operations a requirement that existed for analog operations that applications will not be accepted for filing if they specify less than a minimum ERP of 100 watts because the Media Bureau staff already applies this minimum level in routine processing and we do not believe it is in the public interest for full power television stations to operate with what is essentially a low power facility. *NPRM* at para. 25.

[136] *NPRM* at para. 25. 47 CFR § 73.614(a) (Minimum requirements).

[137] 47 CFR § 73.623(e). The *NPRM* also proposed to amend the rule to add a note to reference and explain the existence of a granted waiver with respect to the community of Los Angeles, California allowing the County of Los Angeles to use channel 15 in Los Angeles for public safety communications, and proposed to update the city center

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both licensing and allotments and we believe they will be easier to identify and use if gathered into one section rather than scattered among various rules. We also include a new paragraph 73.617(e) to codify a long standing Commission practice to place a condition on all television broadcast station authorizations that result in a change in coverage area, including all authorizations for new stations, which requires TV broadcasters to identify and notify hospital and other health care facilities within the station's coverage area to avoid interference to medical telemetry devices.[141]

37. We create a new section 73.618 (Antenna location and principal community coverage), which relocates, verbatim, the language from 73.625(a) (DTV coverage of principal community and antenna system).[142] We also centralize multiple existing rules into one rule that includes instructions on how to determine the protected facilities of a television allotment,[143] the noise-limited contour level of a television station,[144] how the noise-limited contour is determined,[145] and the purposes for which field strength contours are used.[146] We include these existing requirements in a new section 73.619 (Contour and service areas), and update the section heading of section 73.683 to "Presumptive determination of field strength at individual locations," in order to remove reference to portions of the rule that are relocated to the new section 73.619.[147] Similarly, we create a new section 73.620 (Interference calculation and protection of TV broadcast services) that includes the requirements currently spread throughout multiple rules in section 73.623(c)[148] and sections 73.616(d) and (e) (merged into a new

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coordinates at *NPRM*, n.102. Having received no objections to these proposals, we adopt these amendments in *supra* para. 21.

[138] 47 CFR § 73.687(e)(3)-(4) (Transmission system requirements). This section requires stations operating on channel 14 to take special precautions to avoid adjacent LMRS facilities and sets forth various steps stations should take to identify and resolve potential interference. *See also Resolution of Interference Between UHF Channels 14 and 69 and Adjacent-Channel Land Mobile Operations*, MM Docket No. 87-465, Report and Order, 6 FCC Rcd 5148 (1991).

[139] 47 CFR § 73.623(f) (DTV applications and changes to DTV allotments) ("Parties requesting new allotments on channel 6 be added to DTV Table must submit an engineering study demonstrating that no interference would be caused to existing FM radio stations on FM channels 200-220.").

[140] 47 CFR § 73.685(d) (Transmitter location and antenna system). We also adopt our proposal to substitute "blanket area" with "blanketing," which reflects the updated term now used by stakeholders.

[141] *See NPRM* at para. 26. This condition reflects our current practice, which had been agreed to between the Commission and the Food and Drug Administration in 1998, and we believe codifying this practice in our rules will ensure that all licensees are aware of this requirement to avoid interference to medical telemetry devices. *See Joint Statement of the Federal Communications Commission and the Food and Drug Administration Regarding Avoidance of Interference Between Digital Television and Medical Telemetry Devices* (Mar. 25, 1998), https://transition.fcc.gov/Bureaus/Engineering_Technology/News_Releases/1998/nret8003.html.

[142] *NPRM* at para. 27.

[143] *Id*. 47 CFR § 73.616(c) (Post-transition DTV station interference protection), as amended.

[144] *NPRM* at para. 27. 47 CFR § 73.622(e) (Digital television table of allotments), as amended *supra* para. 10 and nn.28 and 32.

[145] *NPRM* at para. 27. 47 CFR § 73.625(b) (DTV coverage of principal community and antenna system), as amended *infra* paras. 51-59.

[146] *NPRM* at para. 27. 47 CFR § 73.683(c) (Field strength contours and presumptive determination of field strength at individual locations).

[147] *NPRM* at para. 27.

[148] *Id*. 47 CFR § 73.623(c) (describes the minimum technical criteria for modification of DTV allotments included in the initial DTV Table of Allotments and for applications filed pursuant to this section), as amended *supra*.

section 73.620(a)-(d)).[149] Additionally, we move the rule from section 73.616(g) to a new section 73.620(f).[150]

38. We modify sections 73.622 (Digital television table of allotments) and 73.623 (DTV applications and changes to DTV allotments) to separate out rules specific to the Table of TV Allotments and application processing procedures.[151] In section 73.622(a), we modify the language to clarify the rule sections specific to petitions to modify the Table of TV Allotments.[152] We also remove (a)(1) and (a)(2) as redundant with the content of section 73.603 (Numerical designation of television channels).[153] We redesignate the language in section 73.622(d)(2) as section 73.622(d), clarify the rule text to indicate this subsection applies to all allotments, and clarify that the "reference coordinates" for each allotment are those of the authorized facility (or for new allotments, the coordinates given in the order amending the Table of TV Allotments).[154] We relocate the text from section 73.623(d), relating to the minimum distance separations for new TV allotments, to a new section 73.622(k).[155] In section 73.623(a), we modify the language to clarify the rule sections specific to application processing and remove discussion of modifications to the Table of TV Allotments.[156] We relocate the text from section 73.622(c), regarding the availability of channels for application, into section 73.623(b).[157] Finally, we update cross-references found in section 73.623(h) and update the section heading to "TV application processing priorities" in order to clarify its purpose.[158]

39. We reorganize section 73.624(b) (Digital television broadcast stations) for clarity by splitting some of the text in subpart (b) into a new subpart (b)(1) (requiring stations broadcasting in ATSC 1.0 to transmit an over the air signal at no direct charge to viewers).[159] We relocate section 73.685(h) (Transmitter location and antenna system), pertaining to AM stations, to become new section 73.625(c)(4)(iii) (DTV coverage of principal community and antenna system).[160] We also relocate section 73.682(a)(14) (TV transmission standards), regarding the use of elliptically- and circularly-polarized antennas, to become a new section 73.625(d) (TV coverage of principal community and antenna system).[161]

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[149] *NPRM* at para. 27. 47 CFR § 73.616 (Post-transition DTV station interference protection), as amended *supra* para. 18. We further amend this language *infra* at para. 75.

[150] *NPRM* at para. 27. *See* 47 CFR § 73.616(g) (relating to interference protection of ATSC 3.0 stations).

[151] *NPRM* at para. 28.

[152] Due to this change, section 73.616(a) (Post-transition DTV station interference protection) becomes largely duplicative of this revised section 73.622(a) and we thus delete section 73.616(a). *See NPRM* at n.115.

[153] 47 CFR §§ 73.622(a)(1)-(2) (Digital television table of allotments) and 73.603 (Numerical designation of television channels).

[154] *NPRM* at para. 28. Section 73.616(b) is duplicative of this revised section 73.622(d) and we thus delete section 73.616(b). We also make editorial changes for clarity in section 73.622(d).

[155] We also reformatted the table previously found in section 73.623(d)(2) into new sections 73.622(k)(2)(i) through (iv). *See NPRM* at n.9.

[156] *NPRM* at para. 28.

[157] *Id*.

[158] *Id*.

[159] *Id.* at para. 29. We note that nothing in this rule change alters the application of this rule to ATSC 3.0.

[160] *Id*.

[161] *See* new 73.625(d) (TV antenna system). While the rest of section 73.682(a) related specifically to analog station operations, we believe this specific subpart of (a)(14) applies to all stations and, as noted in the *NPRM*, its content is consistent with the functions in LMS applicable to applications.

40. While the current rule structure has become disjointed over the years, and is only exacerbated by the deletion of obsolete portions of the rules, the *NPRM* acknowledged that the structure is also familiar to many users, including licensees and counsel, and, therefore, users of our rules may have concerns about a reorganization to our rules that have been in the same location or under the same section number for many years.[162] While the *NPRM* proposed to mitigate that concern by including cross-references to the new location of a rule in the rule location where it was previously found,[163] due to publishing conventions of NARA's Office of the Federal Register, we instead adopt "Table 1: Cross-references" as reflected below, and included herein as Appendix D, to cross-reference to the old and new location of rules. We find that providing cross-references in this manner will make it easier for users to become accustomed to the new structure.

Table 1: Cross-references	
Instead of referencing…	**Reference…**
§ 73.614(b)(7) . . .	. . . § 73.625(c)(1).
§ 73.616(a) . . .	. . . § 73.622(a).
§ 73.616(b) . . .	. . . § 73.622(d).
§ 73.616(c) . . .	. . . § 73.619(d).
§ 73.616(d) . . .	. . . § 73.620(c).
§ 73.616(d)(2) . . .	. . . § 73.620(a).
§ 73.616(e) . . .	. . . § 73.620(d).
§ 73.616(g) . . .	. . . § 73.620(f).
§ 73.622(b) . . .	. . . § 73.622(j).
§ 73.622(c) . . .	. . . § 73.623(b).
§ 73.622(e) . . .	. . . § 73.619(c).
§ 73.622(f)(5) . . .	. . . § 73.614(b)(6).
§ 73.622(f)(6) . . .	. . . § 73.614(b)(1).
§ 73.622(f)(7) . . .	. . . § 73.614(b)(2).
§ 73.622(f)(8) . . .	. . . § 73.614(b)(3).
§ 73.622(h) . . .	. . . § 73.611.
§ 73.622(i) . . .	. . . § 73.622(j).
§ 73.623(c)(1) . . .	. . . § 73.618(a).
§ 73.623(c)(2) . . .	. . . § 73.620.
§ 73.623(c)(3) . . .	. . . § 73.620(b).
§ 73.623(c)(4) . . .	. . . § 73.620(a).
§ 73.623(c)(5) . . .	. . . § 73.620(d).

[162] *NPRM* at para. 30.

[163] *Id.*

§ 73.623(d) . . .	. . . § 73.622(k).
§ 73.623(e) . . .	. . . § 73.617(a).
§ 73.623(f) . . .	. . . § 73.617(c).
§ 73.623(g) . . .	. . . § 73.620(e).
§ 73.625(a) . . .	. . . § 73.618.
§ 73.625(b) . . .	. . . § 73.619(b).
§ 73.683(c) . . .	. . . § 73.619(a).
§ 73.685(b) . . .	. . . § 73.618(b).
§ 73.685(d) . . .	. . . § 73.617(d).
§ 73.685(f) . . .	. . . § 73.625(c).
§ 73.687(e) . . .	. . . § 73.617(b).

41. Although we did not receive comment on our proposal to relocate section 73.616(d)(1) to new section 73.620(b), upon further consideration, we decline to make this change. On reflection, we do not believe that the reorganization of this section is necessary and could result in possible confusion for regulatees in the short term. Therefore, we will maintain the existing placement in our rules and we do not adopt the location change proposed in the *NPRM*.[164]

42. Although we did receive comment objecting to a modification proposed in the *NPRM* to section 73.622, for the reasons set forth below, we decline to modify the proposal and adopt the rule as proposed in the *NPRM*. The portions of the rule in section 73.622(f)(5)-(8) focused on power and antenna height requirements[165] are sometimes referred to in Table of TV Allotment proceedings, but they are also frequently considered in processing applications, and so the *NPRM* proposed to include these provisions in a separate subsection to make them easier to reference regardless of whether an allotment or an application is being considered.[166] The *NPRM* also proposed to clarify in the newly placed section 73.614(b)(6), that the largest station in the market provision only allows a station to exceed the maximum height for a given channel and zone, and not the maximum power for that channel and zone.[167] The *NPRM* suggested this addition to the rule is consistent with a clarification adopted by the Commission in 2001.[168]

43. Maranatha Broadcasting Company, Inc. (Maranatha), the licensee of WDPN-TV, channel

[164] The NARA publishing conventions would require approval for a new Incorporation by Reference (IBR) authority for OET Bulletin No. 69. *See* 1 CFR § 51.1 *et seq*.

[165] Sections 73.622(f)(6)-(8) set forth the digital power limits and (f)(5) sets forth an exception which is commonly referred to as the "largest station in the market rule."

[166] *NPRM* at para. 25.

[167] *Id.* at para. 25, n.99, citing *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television,* MM Docket No. 00-39, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 5946 (2001) (subsequent history omitted). Specifically, the Commission clarified that under section 73.622(f)(5), "the maximum ERP limits . . . may not be exceeded." *Id.*, 16 FCC Rcd at 5973, para. 74. Instead, "[t]he 'largest station' provision applies only where the rules normally require a reduction in the maximum power because a specified antenna HAAT is exceeded. That is, it does not allow power higher than the maximum ERP to compensate for an antenna HAAT that is lower than the value specified in the rule." *Id.*

[168] *NPRM* at para. 25.

2, Wilmington, Delaware objects to our proposed codification of the Commission's 2001 clarification that a station may not exceed the ERP power level assigned in the station's zone and asserts that the Commission should retain the "largest station" rule or "make clear that any change that [the Commission] is making to its rules do[es] [sic] not preclude power increases above zone maximums by low-VHF stations necessary to overcome the shortcomings of their digital signals and impulse noise inference."[169] Maranatha acknowledges that the Commission's 2001 decision clarifies that low-VHF stations in Zone I, like WDPN-TV, are limited to an ERP of 10 kW under the rules.[170] The Commission has recognized, however, that significant over-the-air reception problems may exist within the service area of VHF stations, due to the propagation characteristics of digital VHF signals and the deleterious effects of manmade noise on the reception of these signals.[171] Thus, since the end of the DTV transition in June 2009, Commission staff has waived the power limits in sections 73.622(f)(5) or (6) of the rules a number of times to increase the power levels of stations operating on low VHF channels above the 10 kW limit set forth in the rules.[172] Indeed, WDPN-TV, on RF channel 2 in Zone I, currently operates with an ERP of 34 kW, pursuant to a waiver of section 73.622(f)(6).[173] We do not believe that codifying the 2001 clarification limits our ability to grant such waivers upon an appropriate showing,[174] as we have for WDPN-TV, and thus we believe it is unnecessary to depart from the *NPRM's* proposal to revise section 73.622 as Maranatha requests, and we adopt the *NPRM's* proposal.

44. The *NPRM* proposed to move section 73.625(b)(2) to new section 73.619(b)(2), which describes the equation for determining the "depression angle between the transmitting antenna center of radiation and the radio horizon" as A = 0.0277 square root of H.[175] In that description, there is no mathematical operator (a multiplication sign) between the coefficient (0.0277) and the variable (√H). NAB responded in its comments that it believes that the equation, if written out, should correctly be A = 0.0277 times the square root of H, or preferably expressed in standard mathematical form as:[176]

$$A = 0.0277 \times \sqrt{H}$$

We agree with this clarification because it will make the formula clearer, and amend the adopted section 73.619(b)(2) accordingly.[177]

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[169] Maranatha Comments at 2-5 (arguing that "restricting a DTV station's ability to maximize height and power will be detrimental to the continued viability of low-VHF stations, arbitrary and capricious, and contrary to the public interest."). *See also* CDE Reply Comments at 2 (noting that the "FCC should consider special exception to permit 'largest in the market' filings. However they should be permitted within a time constraint.").

[170] Maranatha Comments at 3-4.

[171] *See 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).

[172] For example, see Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to ABC, Inc., et al., LMS File Nos. BPCDT-20090617ADQ and BPCDT-20090622ABV (filed Mar. 16, 2011).

[173] *See* LMS File No. 0000035792, Revision 2 to Engineering Amendment, in which the station requests a waiver of section 73.622(f)(6). The application was granted, thus granting the waiver request.

[174] To the extent Maranatha is seeking reconsideration of the Commission's 2001 decision clarifying that a station may not exceed the ERP power level assigned in the station's zone, such a request is untimely under section 405(a) of the Communications Act. As reflected in the *NPRM*, our proposal did not seek to change the rule substantively, only to update FCC rules to accurately reflect the current operating environment. Arguments for substantive changes to the rules that were not the subject of notice and comment in the *NPRM* are beyond the scope of this proceeding.

[175] *See NPRM* at Appendix A. This calculation is used for contour projection.

[176] NAB Comments at 8-9.

[177] We find good cause to make this revision without notice and comment. *See* 5 U.S.C. § 553(b)(3)(B) (providing that notice and comment are not required "when the agency for good cause finds . . . that notice and public

(continued….)

G. Protection of Land Mobile Radio Service

45. We adopt the proposals set forth in the *NPRM* relating to full power television protection of LMRS with some clarifications.[178] Section 73.623(e) of the rules[179] requires full power television stations to protect certain channels for use by LMRS in thirteen U.S. cities. The set of coordinates for the city centers were calculated based on the 1927 North American Datum (NAD 27). As a result of improvements in technology and measuring capabilities, NAD 27 has been superseded by the 1983 North American Datum (NAD 83).[180] The Commission's Office of Engineering and Technology and Office of the Managing Director have previously explained that "[g]eodetic datum is a set of constants specifying the coordinate system used for calculating the coordinates of points on the Earth. NAD 83 was developed based on satellite and remote-sensing measurement techniques, and provides greater accuracy than the older NAD 27."[181] Because it provides greater accuracy and the older NAD 27 is outdated, the Commission previously amended Commission rules to use NAD 83 for purposes of specifying these coordinates.[182]

46. The *NPRM* tentatively concluded that updating the coordinates in section 73.623(e) to NAD 83 would serve the public interest by conforming the values with the coordinate system used in the Commission's LMS database and with those found in section 90.303(b) of the rules, which define the service that section 73.623(e) protects.[183] As such, the *NPRM* tentatively concluded that conforming the values in these rules helps to ensure that land mobile operations are more appropriately considered and protected from full power operations.[184] The Enterprise Wireless Alliance (EWA) agrees that sections 73.623(e) and 90.303(b) should be synced to avoid future issues as to whether protections afforded land mobile operations are in compliance with FCC requirements.[185]

47. NAB prefers a different result than matching sections 73.623(e) and 90.303(b). NAB states that the National Geodetic Survey had developed an algorithm known as the North American Datum Conversion program (NADCON) to convert from NAD 27 to NAD 83 coordinates, which has been superseded by the NGS Coordinate Conversion and Transformation Tool (NCAT) and is now the "authoritative source for coordinate conversions."[186] NAB argues that we have ignored the use of NCAT

(Continued from previous page)
procedure thereon are . . . unnecessary . . ."). This revision is a non-substantive change and merely more accurately sets forth the equation in section 73.619(b)(2) of the rules to make the formula clearer.

[178] The *NPRM* inadvertently stated that section 73.623(e) applied to Class A stations, but this was incorrect. Class A stations are required to protect LMRS operations using the criteria found in section 73.6020.

[179] 47 CFR § 73.623(e) (Protection of land mobile operations on channels 14-20). In the reorganization, this is moved to new section 73.617(a). *See supra* para. 36.

[180] *NPRM* at para. 31.

[181] *Amendment of Parts 1, 2, 25, 73, 74, 90, and 97 of the Commission's Rules to Make Non-Substantive Editorial Revisions to the Table of Frequency Allocations and to Various Service Rules*, Memorandum Opinion and Order, 23 FCC Rcd 3775, 3796, para. 61, n.101 (OET/OMD 2008).

[182] *See id*.

[183] *NPRM* at para. 31. *See also* section 90.303(b) (Availability of frequencies), which defines the specific center points used to permit land mobile operations. These center points represent the specific locations that section 73.623(e) is designed to protect. *See* 47 CFR § 90.303(a) (stating that "coordinates are referenced to the North American Datum 1983 (NAD83)") and (b).

[184] The Commission adopted a similar proposal in the *2023 Part 74 Report and Order* at para. 11.

[185] EWA Letter at 1. The EWA Letter separately recommended correcting the coordinates for the Miami, Florida market to match those of section 90.303(b). *See* EWA Letter at 1-2. Those coordinates were stated correctly in the *NPRM* (*see NPRM* at para. 31 and Appendix A) so no further action is necessary here.

[186] NAB Comments at 2-3.

in favor of simply matching a part 90 rule, which NAB alleges "can result in errors that may conflict with FAA tower locations, distances from international borders, county boundaries, and other critical determinations."[187] NAB also requests that any updates to the coordinates not result in stations having to relocate.[188]

48. NAB's approach is not consistent with existing Commission rules or the Commission's prior actions. In the *2023 Part 74 Report and Order,*[189] the Commission amended section 74.709, which defines the same land mobile station protection requirement for LPTV/translator stations, to conform with the longitude in section 90.303(b).[190] In that proceeding, NAB and another commenter agreed that a few of the proposed coordinates were different from those derived if the existing coordinates were converted to NAD 83 via the update to NADCON. The *NPRM* noted, and NAB acknowledges in its comments in this proceeding,[191] that the coordinates we proposed found in part 90 of the Commission's rules differed by 25 meters at most (approximately 82 feet). Given that the values in the table are designed to protect the part 90 service, the most consistent approach was to make the values in section 74.709 match those in section 90.303.[192] NAB provides no explanation and we are aware of no reason to believe that this issue is different for full power and Class A stations than it is for LPTV/translator stations. We do not believe that conforming the rules to part 90 will result in errors as NAB suggests. Therefore, we believe the same approach adopted in the *2023 Part 74 Report and Order* and proposed in the *NPRM* is appropriate with respect to full power and Class A television stations and we adopt the proposal in the *NPRM*.[193] Given the small differences involved, we believe it is unlikely that these minor corrections would result in any stations suddenly finding themselves no longer compliant with land mobile protection requirements. But in response to NAB's concern, we clarify that we will not require existing full power television stations to make changes due to these coordinate updates.

49. NAB also urges the Commission to delete from proposed section 73.617(a) the requirement that full power and Class A television stations protect the channels assigned to Cleveland, Ohio and Detroit, Michigan, as well as to delete references to those cities from section 90.303(b), where a footnote already states that those channels "are not available [] until further order from the Commission."[194] In the *2023 Part 74 Report and Order*, the Commission noted that a pending petition for rulemaking submitted by the Land Mobile Communications Council (LMCC) also proposes removing the Cleveland and Detroit rows from the relevant rule section in part 90.[195] Due to the pendency of that petition, the Commission declined to add a note to section 74.709(a), and stated its belief that the decision

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[187] *Id*. at 3.

[188] NAB Comments at 3-4.

[189] *2023 Part 74 Report and Order* at para. 11.

[190] *Id*. at para. 12.

[191] NAB Comments at 3.

[192] *2023 Part 74 Report and Order* at para. 12.

[193] NAB points out that the Federal Geodetic Control Committee first recommended the use of NADCON (now NCAT) in 1990, and the FCC recommends its use in some cases, citing to "North American Datum of 1983 Coordinates," https://www.fcc.gov/wireless/systems-utilities/north-american-datum-1983-coordinates. NAB Comments at 3 and n.7.

[194] NAB Comments at 4-5.

[195] *See Consumer & Governmental Affairs Bureau Reference Information Center, Petition for Rulemakings Filed, Land Mobile Communications Counsel (LMCC), Petition for Rulemaking in the Matter of Subpart L of Part 90 of FCC Rules: Updated Method to Determine Potential Interference Between Land Mobile Stations and Digital Television Stations Operating in the 470-512 MHz Band ("T-Band")*, Public Notice, Report No. 3186 (CGB Jan. 12, 2022); Petition for Rulemaking of Land Mobile Communications Council, RM-11915 (filed June 24, 2021).

would not create confusion as the note in part 90 already indicated that the Cleveland and Detroit channels are not available and thus, those areas do not require protection.[196] Consistent with that finding, we decline to add a note to section 73.617(a) or to make additional deletions in this section of the full power television rules for the same reasons.[197]

50. Having received no specific objections, and because the comments received were generally supportive of the effort to update our rules,[198] consistent with our proposal in the *NPRM*, we also amend section 73.1620(a)(1) (Program tests) to remind full power and Class A television stations on channel 14 of the requirement found in section 73.687(e)(4)(iii) that they request Program Test Authority (PTA) prior to commencing operation of new or modified facilities.[199] We also include a new sentence codifying the practice of requiring LPTV and TV translator stations on channel 14 to request PTA prior to beginning operation with new or modified facilities. We believe that adding rule text reflecting this practice consistently across all television services will better reflect the purpose of the requirement to protect existing land mobile operations.

H. Coverage Area – Determining Coverage

51. The *NPRM* proposed amendments relating to the calculation of HAAT and determination of coverage. The *NPRM* noted that section 73.625(b) of the Commission's rules[200] describes how coverage and HAAT are to be calculated or determined.[201] The Commission proposed to make changes to certain procedures contained in section 73.625(b), which we believe are obsolete, unnecessary, and are otherwise superseded by the software based tools that the FCC and industry use to prepare and process applications.[202] We received some specific comments suggesting modifications of the proposals in the *NPRM*. As discussed below, we are not persuaded by those comments, and, because the other comments received were generally supportive of the effort to update our rules,[203] we thus adopt the proposals as stated in the *NPRM*, with a clarification offered in light of NAB's comments.

52. We remove the second sentence of paragraph (b)(2), which indicates that when the

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[196] *2023 Part 74 Report and Order* at para. 13.

[197] NAB also asks that we "reiterate the policy expressed in Docket 87-465. Namely, '[t]he TV station will not be responsible for bringing a poor quality land mobile station up to the industry's normal performance level or for protecting a facility attempting service well beyond a normal distance'" and that "… [i]t is not the policy of the Commission to always provide interference protection to the worst … performing receivers." (internal footnotes omitted). NAB Comments at 5-6, citing *Resolution of Interference between UHF Channels 14 and 69 and Adjacent-channel Land Mobile Operations*, MM Docket 87-465, Report and Order, 6 FCC Rcd 5148, 5153-4 at para. 29 (1991). NAB also cites to Land Mobile Communications Council, "Request for Relief from Interference from Digital Television Stations," (Aug. 28, 2020), *available at*: https://wirelesscouncil.org/wp-content/uploads/2020/08/LMCC-Ltr-Re-DTV-Interference-082820.pdf. NAB Comments at 5. We see no reason to do so. The Commission's policy is still accepted and in use. *See, e.g., Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Tulsa, Oklahoma)*, MB Docket No. 21-9, Report and Order, 36 FCC Rcd 13620 (Vid. Div. 2021). In response to NAB's request that we reiterate the policy expressed in Docket 87-465, we find that this is outside the scope of our proceeding, but we note that the minor adjustments to the coordinates we are making here do not change any existing Commission policy.

[198] *See supra* para. 4, n.12.

[199] *NPRM* at para. 32. We further move 47 CFR §§ 73.687(e)(3)-(4) to 73.617(b). *See supra* para. 36.

[200] 47 CFR § 73.625(b) (DTV coverage of principal community and antenna system – Determining coverage). In the reorganization, this is moved to section 73.619(b) (Contours and service areas – Determining coverage).

[201] *NPRM* at para. 33.

[202] *Id.*

[203] *See supra* para. 4, n.12.

relative field strength at a depression angle is 90% or greater, the 100% value should be used.[204] This wording would create a discontinuity in the contour, and is inconsistent with how application processing software functions.[205] Having received no objections to this proposal, we adopt it.

53. As noted in the *NPRM*, section 73.625(b)(5) specifies a number of paper maps which should be used to prepare the profile graphs described in paragraph (b)(4), and to determine the location and height above sea level of the antenna height.[206] Multiple references to various sources of paper maps contained in the rule are outdated methods to make these types of calculations.[207] We therefore remove those references to outmoded paper maps and replace them with a reference to the National Elevation Dataset and other similar bald earth terrain datasets which are used by modern automated software currently used by the Commission and industry.[208] In paragraph (b)(6), we clarify that we generally expect these calculations to be done via computer, versus the preference for paper calculations that was specified previously, and then indicate that to the extent a submission to the Commission uses sources different from those officially reflected in our rules, those sources should be clearly identified in the submission.[209]

54. As discussed below, commenters expressed concern about certain proposals in the *NPRM* to eliminate the requirement to produce and submit profile graphs and to streamline the section in order to bring it into line with modern software-based tools used to determine contours and HAAT today.[210] Upon consideration of those comments, we adopt the proposals in the *NPRM*, including our proposal to eliminate the requirement to produce and submit profile graphs,[211] with certain clarifications as described below.

55. As explained in the *NPRM*, the fifth and sixth sentences in paragraph (b)(4) of section 73.625 discuss the creation and submission of a radial in the direction of the community of license.[212] The rule does not require the use of a radial in the direction of the community of license in any other calculations, so with the elimination of the requirement to produce and submit profile graphs of radials, a rule that requires the calculation of this radial becomes unnecessary. Moreover, the software-based tools the Commission and industry use to process and prepare applications do not produce this radial. As such, the *NPRM* proposed to delete the language. Paragraph (b)(4) also contains similar detail in the seventh and eighth sentences explaining how and when to produce and submit a profile graph for radials over water or foreign territory.[213] Again, with the elimination of the requirement to produce and submit profile graphs of radials, the *NPRM* stated that the Commission believes this calculation for radials over water or foreign territory is unnecessary. The rule itself does not require the radials to be used in any other calculations and automated software used by the Commission and industry does not do this. As such, the

[204] *NPRM* at para. 34.

[205] *Id.*

[206] *Id.* at para. 38. 47 CFR § 73.625(b)(5). This rule is largely derived from 47 CFR § 73.684(g) (1963).

[207] *NPRM* at para. 38.

[208] *Id*.

[209] *Id*. For example, community coverage is demonstrated by providing a map, which applicants sometimes produce using software like V-Soft Probe. Applicants should clearly identify the software being used to produce their engineering showings.

[210] *Id*. at para. 35.

[211] *See NPRM* at para. 35.

[212] *Id*. *See* 47 CFR § 73.684(d) (1963) (Section 73.625(b)(4) was largely adapted from section 73.684(d), and section 73.684(d) itself had been condensed since the 1963 version of the rule. The 1963 version more clearly details the purpose and execution of the rule than the current text.).

[213] *NPRM* at para. 35.

NPRM proposed to delete this language.[214] Paragraph (b)(4) also describes how to plot the radials on a graph and provides a range of options for the number of points of elevation to use in each radial. The *NPRM* proposed to conform the requirement to reference the *TVStudy* software currently used for preparing and processing applications, and specify the use of 10 points per kilometer in all circumstances consistent with present practice found in the *TVStudy* software used by the Commission and licensees to process and prepare applications.[215]

56. CDE indicates in its comments that it disagrees with this proposal to the extent it would eliminate those parts of section 73.625 that discuss the creation and submission of a radial in the direction of the community of license and explains how and when to produce and submit a profile graph for radials over water or foreign territory. But CDE does not provide an explanation for its position except to say that "Not Agreed Reason - certain terrain situations require greater detail and study."[216] As a result, CDE did not provide any explanation of how the change would undermine detail available in the prior version of the rule. Therefore, CDE's comment provides no basis upon which we would amend the proposal included in the *NPRM,* and we therefore adopt it. Furthermore, to the extent that there are terrain differences in the direction of a station's community license, water, or foreign territory, the software based tools that the Commission and industry use to prepare and process applications account for and visualize those differences and so we give no weight to CDE's objection.[217]

57. NAB expresses concern that deleting parts of section 73.625(b)(4) describing the HAAT calculation, as well as the related words "less than 8 directions may be used" in section 73.681, could require some stations to make changes in their current licensed facilities.[218] NAB suggests the proposed change could alter HAAT and power calculations for many existing stations. As examples, NAB cites three instances where application of the proposed rule could potentially require stations to reduce power for transmitting sites involving fewer than eight radials or using radials other than the "eight cardinal radials," and suggests there could be other instances in which this situation arises.[219] NAB does not request that the referenced words be kept in the rule, but instead seeks assurance that stations presently operating or proposed to operate from sites having an average terrain value determined by means other than the proposed uniform eight-radial method can continue to use the present average terrain elevation and, by extension, determine their HAAT and ERP values using the historic values.[220]

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[214] *Id*. We also adopt our proposal to delete the companion language in section 73.681 in the definition of "antenna height above average terrain." *See id.* at n.131.

[215] *Id.* at para. 36. *See* Federal Communications Commission, Office of Engineering and Technology, *TVStudy Interference Analysis Software*, https://www.fcc.gov/oet/tvstudy (last visited Aug. 1, 2023) (the "FCC Contours" screen in the "Parameters" tab of TVStudy provides a default value of 10 points per kilometer using the default Interference Check template).

[216] CDE Supplemental Comments 2 at 15.

[217] We note that to the extent additional detail may be needed, per CDE Supplemental Comments 2, nothing prevents a station from providing that additional detail when submitting applications to the Media Bureau, but it is not needed in many cases and we do not believe it is practical for the rules to continue to require all stations to provide documentation that the vast majority do not need to provide.

[218] NAB Comments at 9.

[219] NAB Comments at 10. The examples NAB refers to are stations located at the antenna farms located at Mt. Sutro, San Francisco, California; the Willis Tower, Chicago, Illinois; and One World Trade Center, New York, New York. *Id*. at 10.

[220] *See* NAB Comments at 10-11; NAB *Ex Parte* at 1 (stating that while NAB "had no objection to changing the definition for antenna height above average terrain (HAAT), the Commission should clarify that proposed rule changes do not adversely affect the operation of existing stations or prevent new stations from using historical average terrain or HAAT values.").

58. We note that all full power and Class A television stations have been operating with digital authorizations issued using the then-most recent version of the Commission's application processing software, and that the software-based tools the Commission and industry use to process and prepare applications do not produce these modified radials. Therefore, we do not foresee, nor do we intend, that the rule change would require a station to reduce power. In response to NAB's concern, however, we clarify we do not expect full power television stations will need to make changes solely due to this amendment to section 73.625(b)(4), and we will allow stations to continue to use a historic HAAT calculation for a given location if one was previously used to comply with the rules regarding power limits. We adopt the rule change as proposed in the *NPRM*.

59. The *NPRM* also proposed to delete unnecessary references in the rule. There are several sentences in paragraph (b)(4) which describe how profile graphs should be formatted for submission to the FCC.[221] Because we eliminate the requirement to submit profile graphs, we also proposed to delete the formatting requirements. The rule also provides multiple options on how to obtain elevation points. The software currently used by the Commission and industry, however, simply averages the points as provided in the first option. The *NPRM* proposed to delete the text on options to obtain elevation points and clarify the use of the average of points elsewhere in the paragraph.[222] Finally, the *NPRM* proposed to add a sentence clarifying that actual calculated values are used to determine the HAAT, and to eliminate the final two sentences of paragraph (b)(4) which are no longer used with the conversion from analog to digital.[223] Although CDE stated it disagreed, noting that "certain terrain situations and obstacles require greater detail and study," it did not provide any explanation of that position of how the change would undermine detail available in the prior version of the rule.[224] Without such rationale, we find no basis to reject the proposed changes and thus we adopt the proposals.

I. Antenna Patterns

60. With some clarifying changes, we adopt all but one of the proposals set forth in the *NPRM* relating to antenna patterns. The *NPRM* proposed to clarify, in section 73.625(c)(3)(ii) of the rules,[225] that the horizontal power is to be higher than or equal to the vertical power in all directions, and require documentation that the antenna meets this requirement.[226] The Commission stated in the *NPRM* that this clarification is consistent with the requirements contained in section 73.682(a)(14).[227] No commenter objects to this proposal, but NAB does offer an observation. Specifically, NAB notes that over the years, the meaning of the phrase "horizontal plane pattern" in proposed section 73.625(c)(3)(ii) and (v) no longer means the same as the "azimuth plane pattern," which is the pattern supplied by antenna manufacturers. Therefore, NAB suggests that it would be more accurate to refer simply to the "azimuth

[221] *NPRM* at para. 37. For example, the rule specifies that the graphs may be plotted on "rectangular coordinate paper" or on "special paper which shows the curvature of the earth." *See also* 47 CFR § 73.684(d) (1963).

[222] *NPRM* at para. 37.

[223] *Id*. Specifically, this language is no longer necessary due to the change from the requirements of providing a city grade strength signal of 74-80 dBu, depending on channel, to a principal community strength signal of 35-48 dBu depending on channel. With the conversion from analog to digital, the use of the city grade contour to determine community coverage was replaced with the use of the minimum service level contour, which tends to be significantly larger, making the issue of an inability to reach the community of license that this rule was designed to capture significantly less likely. *See NPRM* at n.134.

[224] CDE Supplemental Comments 2 at 16.

[225] 47 CFR § 73.625(c)(3)(ii) (Antenna system).

[226] *NPRM* at para. 39. This requirement is consistent with stations being primarily horizontal, with a possible vertical component less than or equal to the horizontal component. Most stations already submit this documentation in their applications.

[227] *Id*. *See* 47 CFR § 73.682(a)(14) (TV transmission standards) ("It shall be standard to employ horizontal polarization."). *See also* 47 CFR § 73.316(a) (FM antenna systems).

plane pattern" of the antenna in an application.[228] NAB also notes that the horizontal plane pattern of the antenna may be required for certain calculations, such as those relating to bilateral agreements between the United States and Mexico, and when required, has no objection to providing both the azimuth plane and horizontal plane patterns.[229] We agree with NAB and adopt the proposed changes to the rule with the adjustments NAB suggests, including the addition of text to the adopted rule clarifying that Media Bureau staff can ask a station for additional documentation for the purpose of coordination with Mexico or Canada should it be requested.[230]

61. The *NPRM* also proposed to update section 73.625(c)(3)(ii) to reflect that the LMS filing system permits two methods of specifying mechanically beam tilted facilities.[231] While we received no opposition to this proposal, on further reflection, we note that this type of specific reference to our filing system procedure is not typically contained in our rules, but rather is contained in the instructions of the application form, and thus we decline to adopt it.

62. In the *NPRM*,[232] the Commission noted that section 73.625(c)(3)(v) is outdated, as it requires that horizontal plane patterns be plotted "to the largest scale possible on unglazed letter-size polar coordinate paper."[233] The *NPRM* proposed instead to require licensees to submit patterns in the form of a .pdf attachment to an application filed in LMS, and clarified that similar plots are required for elevation or matrix patterns submitted in the LMS form.[234] The *NPRM* stated that this approach provides flexibility to applicants and conforms to modern practices.

63. CDE indicates in its comments that it disagrees with this proposal, but merely states "Not Agreed For ATSC 3.0 SFN."[235] Because CDE did not provide any further explanation of the basis or perceived negative impact of the proposal, CDE provides no basis upon which we would amend the proposal included in the *NPRM*. Moreover, we believe the software driven approach provides more detailed information than the plane patterns manually plotted on paper and CDE's comment offered nothing to refute our conclusion based on several years of experience processing applications filed in LMS.

64. NAB states that with respect to the matrix antenna patterns described in proposed section

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[228] NAB Comments at 11.

[229] *Id.*

[230] We note that one goal here is to ensure that undistorted and complete antenna patterns are available for review. For example, when a station with mechanical beam tilt files a distorted horizontal plane pattern in LMS to reflect what the antenna looks like in terms of interference to other stations, it can be difficult or impossible to determine the undistorted azimuth pattern absent additional documentation. A station with mechanical beam tilt should instead submit in LMS an undistorted azimuth and elevation pattern and provide the amount and azimuth of the mechanical tilt, or may submit a matrix pattern, but such stations are not required to do so.

[231] *NPRM* at para. 39. Antenna mechanical beam tilt is the intentional installation of a transmitting antenna so that its axis is not vertical. *See* 47 CFR § 73.681.

[232] *Id.* at para. 40.

[233] 47 CFR § 73.625(c)(3)(v).

[234] *NPRM* at para. 40. *See* revised section 73.625(c)(3)(vi) and new section 73.625(c)(3)(vii).

[235] CDE Supplemental Comments 2 at 18; *cf.* CDE Supplemental Comments 1 at 18 (indicating "Not Agreed"). ATSC 3.0 is the new TV transmission standard developed by the Advanced Television Systems Committee as the first Internet Protocol (IP)-based broadcast transmission platform, which merges the capabilities of over-the-air (OTA) broadcasting with the broadband viewing and information delivery methods of the Internet, using the same 6 MHz channels presently allocated for DTV service. *See Authorizing Permissive Use of the 'Next Generation' Broadcast Television Standard*, GN Docket No. 16-142, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930 (2017). For a discussion of Single Frequency Networks, or SFNs, *see id*. at 9987-89, paras. 115-20.

73.625(c)(3)(viii), for which a single azimuth and elevation pattern is not sufficient to specify the overall radiation characteristics of the antenna, it believes that a spreadsheet tabulation of relative field values is far more useful than .pdf attachments.[236] NAB further states that because of the varying nature of a matrix antenna pattern, hundreds of .pdf representations may be needed to accurately convey the complete pattern. NAB therefore suggests that the Commission require only one or two representative azimuth and elevation patterns be supplied in a .pdf attachment and if additional visualizations are needed, the tabular spreadsheet data can be used in spreadsheet software to produce them.[237] We agree with NAB's approach and revise the rule accordingly.[238]

J. Subscription TV (STV) Rules

65. The *NPRM* proposed to eliminate certain obsolete STV rules. The comments received were generally supportive of the effort to update our rules,[239] and we received no specific objection to these proposals. Therefore, for the reasons discussed in the *NPRM,* and described below, we adopt the proposals. As stated in the *NPRM*, sections 73.641 through 73.644, 73.4247, 73.6026, and 74.732(e)[240] contain the rules that allowed analog full power, Class A, and LPTV stations to offer a subscription television service "for a fee or charge."[241] With the elimination of analog service, there are no full power television stations operating pursuant to the STV rules[242] and LMS does not permit the filing of applications or requests to operate in an STV mode. Accordingly, these STV rules and references to them in parts 73 and 74 are obsolete and we eliminate them.[243]

K. Special Criteria for Converting Vacant Commercial Channels to Reserved Status

66. The *NPRM* proposed to amend section 73.622(a) to remove a reference to a needs-based test. The comments received were generally supportive of the effort to update our rules,[244] and we received no specific objection to this proposal. Therefore, for the reasons discussed in the *NPRM,* and described below, we adopt the proposal. As stated in the *NPRM,* in 2000, the Commission adopted a

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[236] NAB Comments at 11-12.

[237] *Id*. at 12.

[238] We note that the Commission adopted the same approach in the *2023 Part 74 Report and Order* at para. 37.

[239] *See supra* para. 4, n.12.

[240] *NPRM* at para. 41. 47 CFR §§ 73.641 (Subscription TV definitions); 73.642 (Subscription TV service); 73.643 (Subscription TV operating requirements); 73.644 (Subscription TV transmission systems); 73.4247 (STV: Competing applications); 73.6026 (Broadcast regulations applicable to Class A television stations); and 74.732(e) (Eligibility and licensing requirements).

[241] *NPRM* at para. 41. 47 CFR § 73.641(b). *See generally Amendment of Part 73 of the Commission's Rules and Regulations in Regard to Section 73.642(a)(3) and other Aspects of the Subscription Television Service*, Docket No. 21502, Fourth Report and Order, 95 FCC 2d 457 (1983) and other Commission Orders and Notices in Docket No. 21502 at nn.1-3.

[242] *NPRM* at para. 42. Sections 73.642(b) (Subscription TV service) and 74.732(e) (Eligibility and licensing requirements) require that stations notify the Commission when they commence STV operations, and that full power and Class A stations notify the Commission when they discontinue STV operations or change their encoding equipment. The Bureau has not received any such filings in at least the past 25 years.

[243] *NPRM* at paras. 42-3. *See* 47 CFR §§ 73.641 (Subscription TV definitions); 73.642 (Subscription TV service); 73.643 (Subscription TV operating requirements); 73.644 (Subscription TV transmission systems); 73.4247 (STV: Competing applications); 73.1201(d) (Station identification for subscription television stations); 74.701(f) (Low power TV station); 73.682(b) (Subscription TV technical systems); 73.6026 (deleting cross-references to 73.642-73.644) (Broadcast regulations applicable to Class A television stations); and 74.732(e) (Eligibility and licensing requirements).

[244] *See supra* para. 4, n.12.

needs-based test in section 73.622(a) for future rulemakings allowing noncommercial educational (NCE) entities to request that "non-reserved channels not already in the Table of Allotments be added and reserved for NCE use."[245] Since the Commission adopted this needs based test in 2000, the Media Bureau has never been asked to apply it to television stations. Further, the television band has been reallocated and repacked from channels 2 – 69 to channels 2 – 36, significantly decreasing the number of available channels. Therefore, section 73.622(a) is amended to remove this language as we believe that it does not serve a practical purpose in the current environment.[246]

L. Other Technical and Miscellaneous Updates

67. *Special Service Authorization.* The *NPRM* proposed to remove section 73.3543 as obsolete. The comments received were generally supportive of the effort to update our rules,[247] and we received no specific objection to this proposal. Therefore, for the reasons discussed in the *NPRM,* and described below, we delete the rule. Section 73.3543 (Application for renewal or modification of special service authorization) provides that no new special service authorizations may be issued after 1958, however, renewals or modifications will be considered in certain circumstances.[248] We are unaware of any such authorizations today, and thus we conclude the rule is obsolete and delete it.[249]

68. *Broadcast Data Bases.* The *NPRM* proposed to revise the Commission's rules to update references to historical and current databases and other reference material. The comments received were generally supportive of the effort to update our rules,[250] and we received no specific objection to this proposal. Therefore, for the reasons discussed in the *NPRM*, and described below, we adopt the proposals. Section 0.434 (Data bases and lists of authorized broadcast stations and pending broadcast applications) refers to Broadcast Application Processing System (BAPS), which is a legacy database system that has not been in use at the Commission for many years.[251] The Media Bureau currently uses LMS for application processing, which replaced the prior CDBS system, which itself replaced BAPS around the year 2000. Thus, the reference to BAPS is obsolete and we delete it.[252] We additionally remove the word "periodically" since an updated LMS download is provided daily, remove the link to "ftp.fcc.gov" since LMS data is not provided there, and update the reference to "mass media services" to instead specify "Media Bureau."[253] We also delete the sentences stating that copies of lists of stations and

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[245] *NPRM* at para. 44. *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, MM Docket No. 95-31, Report and Order, 15 FCC Rcd 7386, 7434, para. 114 (2000); *Reexamination of the Comparative Standard for Noncommercial Educational Applicants*, MM Docket No. 95-31, Second Report and Order, 18 FCC Rcd 6691 (2003) (subsequent history omitted).

[246] We do not intend, however, to eliminate the ability of an NCE entity to reserve one of the few vacant television channels currently in the Table of TV Allotments. We note that an NCE entity may still file a rulemaking petition to request that the Commission reserve the channel for noncommercial educational use, without being required to rely on the special process enumerated in section 73.622(a).

[247] *See supra* para. 4, n.12.

[248] *NPRM* at para. 45. 47 CFR § 73.3543 (Application for renewal or modification of special service authorization).

[249] *NPRM* at para. 45.

[250] *See supra* para. 4, n.12.

[251] *NPRM* at para. 46. 47 CFR § 0.434 (Data bases and lists of authorized broadcast stations and pending broadcast applications).

[252] *NPRM* at para. 46.

[253] *Id*

applications are available for inspection at the Commission's Reference Information Center because this information is now made available electronically via LMS.[254]

69. *Distributed Transmission System Rule Clarification*. The *NPRM* proposed to clarify the language in our distributed transmission system (DTS) rule. The comments received were generally supportive of the effort to update our rules,[255] and we received no specific objection to these proposals. Therefore, for the reasons stated in the *NPRM,* we adopt the proposals. Since adoption of the revised section 73.626 in January 2021,[256] questions have arisen about how the rules are to be applied. For example, the rule text makes several references to the term "reference facility" without defining that term, and inaccurately conflates the reference point with the coordinates of the facility which produces the authorized service area. To make the intent and application of the rule less ambiguous, we modify language in 73.626(b) and (f)(2), as proposed in the *NPRM*.[257] We define the term "authorized facility"[258] and then replace all uses of the term "reference facility" with the term "authorized facility" in the appropriate locations.[259] We further replace the term "reference point" with "site of its authorized facility" in places where the term "reference point" is improperly used.[260] Finally, we clarify when specifically the Table of Distances values should be applied.[261] We believe this clarifying language will better reflect the method described in the *2021 DTS Order* and used in processing such applications.[262]

70. *Transport Stream ID*. The *NPRM* proposed to require that all full-power and Class A TV stations broadcast with their assigned transport stream ID (TSID) or bit stream ID (BSID) in the ATSC 3.0 context. The comments received were generally supportive of the effort to update our rules,[263] and we received no specific objection to these proposals. Therefore, for the reasons stated in the *NPRM*, we adopt them. As noted in the *NPRM*, all full-power and Class A TV stations are assigned a unique TSID, which is required to be transmitted in order to provide the Program and System Information Protocol (PSIP) data required by section 73.682(d) (Broadcast television transmission standard).[264] Consistent with that rule, we clarify that all such stations must broadcast with their assigned TSID during their hours

[254] *Id*. We note that the *NPRM* proposed removing references to paper copies, viewing paper copies on microfiche, and that the paper copies of lists can be purchased from the FCC's duplicating contractor in the *NPRM* at para. 46. However, we note, since release of the *NPRM*, the Commission revised 47 CFR § 0.434 to remove these references. *See Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket No. 23-12, FCC 23-1 (Jan. 9, 2023). Therefore, we do not adopt these changes in this *Report and Order*.

[255] *See supra* para. 4, n.12.

[256] *Rules Governing the Use of Distributed Transmission System Technologies Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, MB Docket No. 20-74 and GN Docket No. 16-142, Report and Order, 36 FCC Rcd 1227 (2021) (*2021 DTS Order*).

[257] *NPRM* at para. 47.

[258] *Id*. The revised section 73.626(b) states that "For purposes of compliance with this section, a station's 'authorized service area' is defined as the area within its predicted noise-limited service contour determined using the facilities authorized for the station in a license or construction permit for non-DTS, single-transmitter-location operation (its 'authorized facility')."

[259] *NPRM* at para. 47. *See* revised section 73.626(f)(2)(i)-(iii).

[260] *NPRM* at para. 47. *See* revised section 73.626(f)(2)(ii)-(iii).

[261] *NPRM* at para. 47. *See* revised section 73.626(f)(2)(i)-(ii).

[262] *NPRM* at para. 47. We remove language from section 73.626(f)(2) which is improperly specific to the station's authorized service area, and which incorrectly implied that the Table of Distances circle is not applicable here. *Id*. at n.161.

[263] *See supra* para. 4, n.12.

[264] *NPRM* at para. 48.

of operation.[265] In its *Second Periodic Review,* the Commission stated that "broadcasters are required to transmit the TSIDs assigned for their stations in their digital transmission."[266] We believe that it is in the public interest to move this requirement into a separate rule for ease of reference.[267] Similarly, we adopt the same requirement with respect to a station's BSID, which is the ATSC 3.0 equivalent to TSID, in order to promote consistency.

71. *Class A US-Mexico Border Zone.* The *NPRM* proposed to amend Section 73.6024(d) to require Class A stations within 275 kilometers of the US-Mexico border to specify a full-service emission mask in any modification application. The comments received were generally supportive of the effort to update our rules,[268] and we received no specific objection to this proposal. Therefore, for the reasons stated in the *NPRM*, we adopt it. As explained in the *NPRM*, full power television stations are required to use full service masks to attenuate the power level of emissions outside their authorized channel of operation in specified amounts expressed in decibels (dB).[269] Section 74.794, which allows LPTV and TV translators to specify use of a simple, stringent, or full service mask, also applies to Class A television stations.[270] The Commission's rules require coordination of applications in border regions with the neighboring countries' appropriate regulatory officials. Under the *Exchange of Coordination Letters with IFT Regarding DTV Transition and Reconfiguration of 600 MHz Spectrum,* signed between the FCC and Mexico's Instituto Federal de Telecomunicaciones (IFT) in July 2015, the use of Tables 1 and 6 were approved for television station realignment.[271] Class A stations approved by Mexico in Table 6 are grouped with full-service stations. There is no allowance for use of a simple or stringent emission mask for any operation within these Tables; however, section 73.6024(d)[272] applies to coordination of stations in proximity of the US border with Mexico. It is the Media Bureau staff's experience that IFT routinely requests that applications submitted for coordination of Class A stations specify a full-service emission mask, and if such applications do not initially specify the full-service emission mask, IFT asks for it to be included in an amendment. This two-step process increases the processing burdens on the FCC, IFT, and stations, and results in delays in granting applications. Therefore, the *NPRM* proposed to amend Section 73.6024(d) to require Class A stations within 275 kilometers of the US-Mexico border to specify a full-service emission mask in any modification application, and we adopt that proposal here.

72. *Class A Antenna System.* The *NPRM* proposed to replace the separate Class A antenna pattern documentation requirements with a reference to the analogous full-power version of the rule for consistency. The comments received were generally supportive of the effort to update our rules,[273] and we received no specific objection to this proposal. Therefore, for the reasons stated in the *NPRM*, we

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[265] *Id*. *See* revised section 73.1201 (Station identification); *see also* adopted section 74.783(c) in the *2023 Part 74 Report and Order* at para. 25.

[266] *NPRM* at 48. *Second Periodic Review*, 19 FCC Rcd at 18346-7, para. 153.

[267] *NPRM* at 48.

[268] *See supra* para. 4, n.12.

[269] *NPRM* at para. 49. *See* 47 CFR § 73.622(h) (describing required attenuated power limits of emissions of frequencies outside the authorized channel of operation for full power television stations).

[270] *NPRM* at para. 49. *See* 47 CFR §§ 73.6024(d) and 74.794(a)(2). Section 74.794(a)(2)(i)-(iii) defines the required attenuated power limits of emissions outside the authorized channel of operation for each type of mask.

[271] *NPRM* at para. 49. *See* Letter to Ricardo Castañeda Álvarez, Director General de Ingeniería y Estudios Técnicos, IFT, from Mindel De La Torre, Chief, International Bureau, FCC (July 15, 2015) and Letter to Mindel De La Torre, Chief, International Bureau, FCC, from Alejandro Navarrete Torres, IFT (July 15, 2015) (collectively, "Exchange of Coordination Letters with IFT Regarding DTV Transition and Reconfiguration of 600 MHz Spectrum"). *See International Agreements*, https://www.fcc.gov/general/international-agreements (last visited Aug. 1, 2023).

[272] *NPRM* at para. 49. 47 CFR § 73.6024(d).

[273] *See supra* para. 4, n.12.

adopt it. We delete language in section 73.6025(a) nearly identical to that in section 73.625(c)(3).[274] These rule sections provide similar requirements regarding how applicants should describe and document antenna patterns submitted in their applications. Some sections are identical,[275] but in others, there are a few minor differences.[276] We conclude that the very minor distinctions between the language in the two sections are insignificant and that no purpose is served by having two essentially duplicative rules in part 73.[277] We will cross-reference section 73.625(c)(3) in section 73.6025(a), eliminating the duplication but making clear that the requirements in section 73.625(c)(3) continue to apply to Class A television stations.[278]

73. *Minimum Video Program Requirements.* The *NPRM* proposed to update a Class A television rule in order to conform the rule with an update made elsewhere in the *NPRM*. The comments received were generally supportive of the effort to update our rules,[279] and we received no specific objection to this proposal. Therefore, for the reasons stated in the *NPRM*, we adopt it. As noted above, we delete much of section 73.624(b).[280] Section 73.6026 (Broadcast regulations applicable to Class A television stations) lists section 73.624 as a rule applicable to Class A stations and includes a note stating that "Section 73.624(b) will apply only to the extent that such stations must also transmit at least one over-the-air video program signal at no direct charge to viewers of the digital Class A station."[281] We remove that text in section 73.6026 because it duplicates language also included in 73.624(b).[282] We also clarify that this change mandates the use of a minimum 480i video resolution by Class A stations. This requirement is consistent with full-power and LPTV/translator stations (as adopted in the *2023 Part 74 Report and Order*),[283] and we believe it is reasonable to also apply it consistently to Class A stations for regulatory parity between the television services.

74. *Transmitting Antenna Site.* The *NPRM* proposed to replace the term "transmitter site" in our rules with "transmitting antenna site." The comments received were generally supportive of the effort to update our rules,[284] and we received no specific objection to this proposal. Therefore for the reasons stated in the *NPRM,* we adopt it. Section 73.619(a)(1)[285] refers to the estimation of a station's coverage

[274] *NPRM* at para. 50. 47 CFR §§ 73.6025(a) (Antenna system and station location) (setting forth required showing when proposing to use a directional antenna system) and 73.625(c)(3) (DTV coverage of principal community and antenna system).

[275] *NPRM* at para. 50. Specifically, section 73.625(c)(3)(iii) is identical to section 73.6025(a)(3), section 73.625(c)(3)(iv) is identical to section 73.6025(a)(4), and section 73.625(c)(3)(vi) is identical to section 73.6025(a)(5).

[276] For full discussion of the differences between the rule sections, see *NPRM* at para. 50.

[277] *NPRM* at para. 50. Class A licensees are required to comply with all part 73 regulations except for those that cannot apply for technical or other reasons. *Class A Report and Order*, 15 FCC Rcd at 6365, para. 23. Section 73.625(c)(3), which requires applicants to submit documentation regarding the antenna they are proposing to install, is clearly a rule with which they can comply.

[278] We also modified sections 73.625(c)(3)(ii) and 73.625(c)(3)(v). *See supra* paras. 60-64. We also added new sections 73.625(c)(3)(vii) and (viii) to account for stations submitting elevation or matrix patterns. *See supra* paras. 60-64.

[279] *See supra* para. 4, n.12.

[280] *See supra* paras. 7 and 10, nn. 18, 28, and 32.

[281] 47 CFR § 73.6026 (Broadcast regulations applicable to Class A television stations).

[282] *NPRM* at para. 51.

[283] *Id*. *See also* 2023 *Part 74 Report and Order* at para. 43.

[284] *See supra* para. 4, n.12.

[285] We moved this rule from section 73.683(c)(1). *See supra* para. 37.

area based on a "particular transmitter site." We note that our application forms do not request information about the location of a station transmitter but about the location of its antenna instead. We modify the language in the rule to refer to a "particular transmitting antenna site."[286] This is consistent with language that has been used in other parts of the rules,[287] and with a proposal the Commission adopted in the *2023 Part 74 Report and Order*.[288]

75. *Corrections to Inadvertent Oversights from Prior Rulemakings.* The *NPRM* proposed to make various corrections to the rules as a result of inadvertent oversights from prior rulemakings.[289] The comments received were generally supportive of the effort to update our rules,[290] and we received no specific objection to this proposal. Therefore, for the reasons stated in the *NPRM*, we adopt it. Because the requirements of the previous section 73.616(e)[291] pertaining to interference protection with respect to Class A stations were difficult to decipher,[292] we remove paragraphs (1), (2), and (3) entirely and streamline the remaining paragraph from section 73.616(e) in the new section 73.620(d). In doing so, we replace the description of the OET Bulletin No. 69 in paragraph (1) with a cross-reference to paragraphs (a) and (b) of the new section 73.620, which specifies the same method.

76. As described in the *NPRM,* the Commission previously deleted section 73.623(g) as obsolete because it addressed the digital transition.[293] Deletion of the section, however, inadvertently eliminated from the rules the allowance for negotiated agreements on interference among applicants and licensees. The *NPRM* proposed to restore the allowance that was previously contained in section 73.623(g), modify the language to delete language referring to stations operating on channels allotted in section 73.622(b), the initial DTV Table, and place it in a new section 73.620(e).[294] This would clarify in our rules that stations may continue to negotiate agreements on interference consistent with past and present practice. The comments received were generally supportive of the effort to update our rules,[295] and we received no specific objection to this proposal. Therefore, for the reasons stated in the *NPRM*, we adopt it.

77. In the *2022 Part 74 Order*, the Commission revised or removed certain paragraphs of section 74.787 to reflect the LPTV and translator transition from analog to digital operations, removed duplicate sections that were contained in both the analog and digital portions of part 74, and provided accurate information about current Commission forms.[296] The *NPRM* proposed to further amend the text of the rule by clarifying in the now first sentence of paragraph (a)(5)(v) that the pre-auction digital service area is the noise-limited contour of the full power station that was protected in the incentive auction

[286] *NPRM* at para. 52.

[287] *Id*. *See e.g*., 47 CFR § 73.622(d).

[288] *NPRM* at para. 52. *See 2023 Part 74 Report and Order* at para. 42 ("As we stated in the *NPRM*, because the antenna location, rather than the transmitter location, is the relevant consideration in determining interference, service, and loss, we proposed to delete Section 74.751(b)(6) entirely regarding the transmitter's location, as it is not relevant in this analysis.").

[289] *NPRM* at para. 53.

[290] *See supra* para. 4, n.12.

[291] 47 CFR § 73.616(e) (Post-transition DTV station interference protection). We relocated this rule to section 73.620(d). *See supra* para. 37.

[292] *NPRM* at para. 53. For a full discussion of the ways in which the rule text appears to be incomplete and contradictory, see *NPRM* at para. 53.

[293] *See October 2021 Order*, 36 FCC Rcd at 15896-7, para. 13, n.44.

[294] *NPRM* at para. 54.

[295] *See supra* para. 4, n.12.

[296] *See 2022 Part 74 Order* at paras. 6-7, nn. 22 and 25-28.

repacking process and remove reference to a 2015 public notice.[297] Because we no longer allow applications for new applications for digital-to-digital replacement television translators (DTDRTs), the *NPRM* noted that the Commission believed the reference to the public notice data is no longer necessary and the inclusion of the additional explanation of the pre-auction digital service area for stations that already hold DTDRTs provides a clearer definition.[298] The comments received were generally supportive of the effort to update our rules,[299] and we received no specific objection to this proposal. Therefore, for the reasons stated in the *NPRM*, we adopt it.

M. Additional Proposals Raised by Commenters

78. We decline to adopt several proposals raised by commenters that are outside the scope of this proceeding. We received several proposals that seek to make material changes to our rules, or changes outside the scope of this proceeding.[300] In declining to take action, we note that the *NPRM's* scope was limited to amendments to the Commission's rules primarily related to full power and Class A television service to reflect the current operating environment, including the end of the transition from analog to digital operations.[301]

N. Cost Benefit Analysis

79. After evaluating the record received in response to the *NPRM's* request for comment on the benefits and costs associated with adopting the proposals set forth in the *NPRM*, we conclude that to the extent that the revised rules impose any costs on Commission licensees and regulatees, such costs will be minimal and are outweighed by the benefits to the public of the revised rules.[302] We received no comments on the costs imposed on Commission licensees and regulatees as a result of our proposals.

O. Diversity, Equity and Inclusion Analysis

80. The *NPRM* also sought comment on how the proposals set forth in the *NPRM* can advance equity in the provision of broadcast services for all people of the United States, without

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[297] *NPRM* at para. 55. *See* 47 CFR § 74.787(a)(5)(v) (Licensing); *see also Incentive Auction Task Force Releases Revised Baseline Data and Prices for Reverse Auction; Announces Revised Filing Window Dates*, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, Public Notice, 30 FCC Rcd 12559 (IATF 2015).

[298] *NPRM* at para. 55.

[299] *See supra* para. 4, n.12.

[300] OMI Comments (asserting that the Commission should "consider the most likely azimuth that viewers will have their TV antennas aimed at when considering interference caused to a station," and that the Commission accordingly should update its *TVStudy* software program, which is used by licensees to prepare applications and Commission staff to process applications); GBS Comments at 1-2 (asking the Commission to codify OET's clarification in *OET Clarifies Emission Mask Measurements for DTV Transmitters*, Public Notice, 20 FCC Rcd 8874 (OET 2005), which clarifies the emission mask measurement rules and provides guidance regarding compliance with the DTV full service and low power masks to be demonstrated by either of two methods, in proposed section 73.611 in this proceeding or a more recent version of an industry-accepted measurement standard); NAB Comments at 9 (requesting that the Commission revise proposed section 73.625(d) to update a reference to the IEEE Standard Definition for circular polarization to the current IEEE Standard 145, "IEEE Standard Definitions of Terms for Antennas" (1993)); CDE Supplemental Comments 2 at 35-36 and Appendices A-C (apparently objecting to the use of the Commission's *TVStudy* software and suggesting that the Commission solicit input to develop a new offering).

[301] Specifically, the *NPRM* proposed and sought comment on comprehensively deleting, updating, or otherwise revising Commission rules for full power and Class A stations that no longer have any practical effect given the transition from analog to digital-only operations and the post-incentive auction transition to a smaller television band with fewer channels. The *NPRM* also proposed and sought comment on a restructuring of subpart E of the Commission's rules, which largely consists of the technical licensing, operating, and interference rules for full power television. *See NPRM* at para. 1.

[302] *NPRM* at para. 56 (seeking comment on the benefits and costs associated with adopting the proposed changes).

discrimination on the basis of race, color, religion, national origin, sex, or disability. The *NPRM* also sought comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility.[303] We received no comments on these topics and no objection to adoption of the proposed rules based on these concerns. We acknowledge the importance of these aims, and we believe that the revised rules reflect an effort to simplify, streamline, and modernize existing rules and procedures that will enable full power and Class A television stations to more easily comply with licensing requirements through familiar and low cost measures and we do not believe they will have negative implications related to diversity, equity, inclusion, or accessibility.

IV. PROCEDURAL MATTERS

81. *Paperwork Reduction Analysis*. The *Report and Order* may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[304] All such new or modified 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. The Commission will publish a separate document in the Federal Register at a later date seeking these comments. 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), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. We have described impacts that might affect small businesses in the FRFA in Appendix B.

82. 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 *Report and Order* to Congress and the Government Accountability office, pursuant to 5 U.S.C. § 801(a)(1)(A).

83. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[305] 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."[306] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of rule and/or policy changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix B.

84. *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 or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

85. *Additional Information*. For additional information on this proceeding, please contact Joyce Bernstein, Video Division, Media Bureau at Joyce.Bernstein@fcc.gov, Emily Harrison, Video Division, Media Bureau at Emily.Harrison@fcc.gov, or Mark Colombo, Video Division, Media Bureau at Mark.Colombo@fcc.gov.

V. ORDERING CLAUSES

86. Accordingly, **IT IS ORDERED**, pursuant to the authority contained in sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 336 of the Communications Act of 1934, as amended, 47 U.S.C.

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[303] *Id.* at para. 57.

[304] Pub. L. No. 104-13.

[305] *See* 5 U.S.C. § 603.

[306] *See id.* § 605(b).

§§ 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, and 336, this Report and Order **IS ADOPTED**.

87. **IT IS FURTHER ORDERED,** that the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix A and such amendments shall be effective 30 days after publication in the *Federal Register*, except that sections 73.619; 73.625; 73.1250; 73.1350; 73.1560; 73.1615; 73.1620; 73.1635; 73.1675; 73.1690; 73.1740; 73.1750; 73.2080; 73.3540; 73.3544; 73.3549; 73.3550; 73.3598; 73.5006; 73.6024; and 73.6025, which may contain new or modified information collection requirements, will not become effective until the Office of Management and Budget completes any required review under the Paperwork Reduction Act. The Commission directs the Media Bureau to publish a notice in the *Federal Register* announcing completion of such review and the relevant effective date.

88. **IT IS FURTHER ORDERED,** that the Office of the Secretary, Reference Information Center, **SHALL SEND** a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

89. **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 Report and Order to Congress and to the Government Accountability Office.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Regulations

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 27, 73, and 74 to read 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. Revise § 0.434 to read as follows:

§ 0.434 Data bases and lists of authorized broadcast stations and pending broadcast applications.

The FCC makes available its data bases, Consolidated Database System (CDBS) and Licensing and Management System (LMS), containing information about authorized broadcast stations, pending applications for such stations, and rulemaking proceedings involving amendments to the TV and FM Table of Allotments. CDBS and LMS contain frequencies, station locations, and other particulars. CDBS and LMS may be viewed at the Commission's web site at *www.fcc.gov* under Media Bureau.

PART 27 – MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICE

3. 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.

§ 27.60 [Removed]

4. Remove § 27.60.

§ 27.1310 [Removed]

5. Remove § 27.1310.

PART 73 – RADIO BROADCAST SERVICES

6. 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.

7. Section 73.611 is added to read as follows:

§ 73.611 Emission levels and mask filter.

(a) The power level of emissions on frequencies outside the authorized channel of operation must be attenuated no less than the following amounts below the average transmitted power within the authorized channel. In the first 500 kHz from the channel edge the emissions must be attenuated no less than 47 dB. More than 6 MHz from the channel edge, emissions must be attenuated no less than 110 dB. At any frequency between 0.5 and 6 MHz from the channel edge, emissions must be attenuated no less than the value determined by the following formula:

Formula 1 to paragraph (a)

Attenuation in dB = $-11.5(\Delta f + 3.6)$;

Where: Δf = frequency difference in MHz from the edge of the channel.

(b) This attenuation is based on a measurement bandwidth of 500 kHz. Other measurement bandwidths may be used as long as appropriate correction factors are applied. Measurements need not be made any closer to the band edge than one half of the resolution bandwidth of the measuring instrument. Emissions include sidebands, spurious emissions and radio frequency harmonics. Attenuation is to be measured at the output terminals of the transmitter (including any filters that may be employed). In the event of interference caused to any service, greater attenuation may be required.

8. Section 73.612 is revised to read as follows:

§ 73.612 Protection from interference.

(a) Permittees and licensees of TV broadcast stations are not protected from any interference which may be caused by the grant of a new station or of authority to modify the facilities of an existing station in accordance with the provisions of subpart E of this part. The nature and extent of the protection from

interference accorded to TV broadcast stations is limited solely to the protection which results from the interference protection requirements set forth in subpart E of this part.

(b) [Reserved]

§ 73.613 [Removed and Reserved]

9. Remove and reserve § 73.613.

10. Amend § 73.614 by:
a. Revising paragraphs (a), (b) introductory text, (b)(1) through (3);
b. Removing and reserving paragraph (b)(4) and (5);
c. Revising paragraph (b)(6); and
d. Removing paragraph (b)(7).
The revisions read as follows:

§ 73.614 Power and antenna height requirements.

(a) *Minimum requirements.* Applications will not be accepted for filing if they specify less than 100 watts horizontally polarized effective radiated power (ERP) in any horizontal direction. No minimum antenna height above average terrain (HAAT) is specified. For stations requesting DTS operation pursuant to § 73.626, this requirement applies to at least one site in the DTS.

(b) *Maximum power*. Applications for new full power television stations, for changes in authorized full power television stations, and petitions for changes to the Table of TV Allotments, will not be accepted for filing if they specify a power which exceeds the maximum permitted boundaries specified in the following formulas:

(1) A TV station that operates on a channel 2-6 allotment will be allowed a maximum ERP of 10 kW if its antenna HAAT is at or below 305 meters and it is located in Zone I or a maximum ERP of 45 kW if its antenna HAAT is at or below 305 meters and it is located in Zone II or Zone III.

(i) At higher HAAT levels, such TV stations will be allowed to operate with lower maximum ERP levels in accordance with the following table and formulas (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

Table 1 to paragraph (b)(1)(i)- Maximum Allowable ERP and Antenna Height for TV Stations In Zones II or III on Channels 2-6

Antenna HAAT (meters)	ERP (kW)
610	10
580	11
550	12
520	14
490	16
460	19
425	22
395	26
365	31
335	37
305	45

(ii) For TV stations located in Zone I that operate on channels 2-6 with an HAAT that exceeds 305 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 92.57\text{-}33.24*\log_{10}(HAAT)$

(iii) For TV stations located in Zone II or III that operate on channels 2-6 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 57.57\text{-}17.08*\log_{10}(HAAT)$

(2) A TV station that operates on a channel 7-13 allotment will be allowed a maximum ERP of 30 kW if its antenna HAAT is at or below 305 meters and it is located in Zone I or a maximum ERP of 160 kW if its antenna HAAT is at or below 305 meters and it is located in Zone II or Zone III.

(i) At higher HAAT levels, such TV stations will be allowed to operate with lower maximum ERP levels in accordance with the following table and formulas (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed

in the table):

Table 2 to paragraph (b)(2)(i)- Maximum Allowable ERP and Antenna Height for TV Stations In Zones II or III on Channels 7-13

Antenna HAAT (meters)	ERP (kW)
610	30
580	34
550	40
520	47
490	54
460	64
425	76
395	92
365	110
335	132
305	160

(ii) For TV stations located in Zone I that operate on channels 7-13 with an HAAT that exceeds 305 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 97.35-33.24*\log_{10}(HAAT)$

(iii) For TV stations located in Zone II or III that operate on channels 7-13 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 62.34-17.08*\log_{10}(HAAT)$

(3) A TV station that operates on a channel 14-36 allotment will be allowed a maximum ERP of 1000 kW if its antenna HAAT is at or below 365 meters.

(i) At higher HAAT levels, such TV stations will be allowed to operates with lower maximum ERP

levels in accordance with the following table and formulas (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

Table 3 to paragraph (b)(3)(i)-Maximum Allowable ERP and Antenna Height for TV Stations on Channels 14-36, All Zones

Antenna HAAT (meters)	ERP (kW)
610	316
580	350
550	400
520	460
490	540
460	630
425	750
395	900
365	1000

(ii) For TV stations located in Zone I, II or III that operate on channels 14-36 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 72.57-17.08*\log_{10}(HAAT)$

Where:

ERP_{max} = Maximum Effective Radiated Power measured in decibels above 1 kW (dBk).

HAAT = Height Above Average Terrain measured in meters.

(4) [Reserved]

(5) [Reserved]

(6) The effective radiated power in any horizontal or vertical direction may not exceed the maximum values permitted by this section, except that licensees and permittees may request an increase in either

ERP in some azimuthal direction or antenna HAAT, or both, up to the maximum permissible limits on TV power set forth in paragraph (b)(1), (2), or (3) of this section, as appropriate, up to that needed to provide the same geographic coverage area as the largest station within their market. Such requests must be accompanied by a technical showing that the increase complies with the technical criteria in § 73.620, and thereby will not result in new interference exceeding the *de minimis* standard set forth in that section, or statements agreeing to the change from any co-channel or adjacent channel stations that might be affected by potential new interference, in accordance with § 73.620(e). For the purposes of this paragraph:

(i) The maximum ERP value shall not exceed the maximum permitted at any height within the relevant zone consistent with the values permitted in paragraph (b)(1), (2), or (3) of this section. The associated maximum height for that given ERP may be exceeded.

(ii) Stations in the same Nielsen DMA are considered to be in the same market.

(iii) "Geographic coverage area" is defined as the number of square kilometers found within a station's F(50,90) contour as calculated in § 73.619. A station taking advantage of this provision need not specify coverage that is congruent with or encompassed by the largest station in the market.

(7) [Removed]

* * * * *

§ 73.615 [Removed]

11. Remove § 73.615.

12. Section 73.616 is amended by:

a. Revising the section heading;

b. Removing and reserving paragraphs (a), (b), and (c);

c. Revising the introductory text to paragraph (d) and paragraph (d)(1); and

d. Removing and reserving paragraphs (d)(2), (e) and (g).

The revisions read as follows:

§ 73.616 References to TV station interference protection methodology.

(a) through (c) [Reserved]

(d) Calculation of interference

(1) For evaluating compliance with the requirements of this paragraph, interference to populations served is to be predicted based on the most recent official decennial U.S. Census population data as identified by the Media Bureau in a Public Notice issued not less than 60 days prior to use of the data for a specific year in application processing and otherwise according to the procedure set forth in OET Bulletin No. 69: "Longley-Rice Methodology for Evaluating TV Coverage and Interference" (February 6, 2004) (incorporated by reference, see § 73.8000), including population served within service areas determined in accordance with § 73.619, consideration of whether F(50,10) undesired signals will exceed the following desired-to-undesired (D/U) signal ratios, assumed use of a directional receiving antenna, and use of the terrain dependent Longley-Rice point-to-point propagation model. Applicants may request the use of a cell size other than the default of 2.0 km per side, but only requests for cell sizes of 1.0 km per side or 0.5 km per side will be considered. The threshold levels at which interference is considered to occur are:

* * * * *

(2) [Reserved]

(e) [Reserved]

* * * * *

(g) [Reserved]

13. Section 73.617 is added to read as follows:

§ 73.617 Interference protection of other services.

(a) *Protection of land mobile operations on channels 14-20.* The Commission will not accept petitions to amend the Table of TV Allotments, applications for new TV stations, or applications to change the channel or location of authorized TV stations that would use channels 14-20 where the distance between the TV reference coordinates as defined in § 73.622(d), would be located less than 250 km

from the city center of a co-channel land mobile operation or 176 km from the city center of an adjacent channel land mobile operation. Such filings that do not meet the minimum TV-to-land mobile spacing standards will, however, be considered where all affected land mobile licensees consent to the requested action. Land mobile operations are authorized on these channels in the following markets:

Table 1 to paragraph (a)- Land mobile operations to be protected.

City	Channels	Latitude	Longitude
Boston, MA	14, 16	42° 21′ 24.4″	71° 03′ 23.2″
Chicago, IL	14, 15	41° 52′ 28.1″	87° 38′ 22.2″
Cleveland, OH	14, 15	41° 29′ 51.2″	81° 49′ 49.5″
Dallas, TX	16	32° 47′ 09.5″	96° 47′ 38.0″
Detroit, MI	15, 16	42° 19′ 48.1″	83° 02′ 56.7″
Houston, TX	17	29° 45′ 26.8″	95° 21′ 37.8″
Los Angeles, CA	14, 16, 20	34° 03′ 15.0″	118° 14′ 31.3″
Miami, FL	14	25° 46′ 38.4″	80° 11′ 31.2″
New York, NY	14, 15, 16	40° 45′ 06.4″	73° 59′ 37.5″
Philadelphia, PA	19, 20	39° 56′ 58.4″	75° 09′ 19.6″
Pittsburgh, PA	14, 18	40° 26′ 19.2″	79° 59′ 59.2″
San Francisco, CA	16, 17	37° 46′ 38.7″	122° 24′ 43.9″
Washington, DC	17, 18	38° 53′ 51.4″	77° 00′ 31.9″

Note 1 to paragraph (a). The Chief, Public Safety and Homeland Security Bureau, waived the rules to allow channel 15 to be used for land mobile operation in Los Angeles County, CA (DA 08-2823; adopted December 30, 2008). Notwithstanding the channels listed in paragraph (a) of this section, the waiver requires television stations to protect this land mobile operation.

(b) *Protection of land mobile operations below channel 14.* (1) TV broadcast stations operating on Channel 14 must take special precautions to avoid interference to adjacent spectrum land mobile radio service facilities. Where a TV station is authorized and operating prior to the authorization and

operation of the land mobile facility, a Channel 14 station must attenuate its emissions within the frequency range 467 to 470 MHz if necessary to permit reasonable use of the adjacent frequencies by land mobile licensees.

(2) The requirements listed below apply to permittees authorized to construct a new station on TV Channel 14, and to licensees authorized to change the channel of an existing station to Channel 14, to increase effective radiated power (ERP) (including any change in directional antenna characteristics that results in an increase in ERP in any direction), or to change the transmitting location of an existing station.

(i) For the purposes of this paragraph (b), a protected land mobile facility is a receiver that is intended to receive transmissions from licensed land mobile stations within the frequency band below 470 MHz, and is associated with one or more land mobile stations for which a license has been issued by the Commission, or a proper application has been received by the Commission prior to the date of the filing of the TV construction permit application. However, a land mobile facility will not be protected if it is proposed in an application that is denied or dismissed and that action is no longer subject to Commission review. Further, if the land mobile station is not operating when the TV facility commences operation and it does not commence operation within the time permitted by its authorization in accordance with part 90 of this chapter, it will not be protected.

(ii) A TV permittee must take steps before construction to identify potential interference to normal land mobile operation that could be caused by TV emissions outside the authorized channel, land mobile receiver desensitization or intermodulation. It must install filters and take other precautions as necessary, and submit evidence that no interference is being caused before it will be permitted to transmit programming on the new facilities pursuant to the provisions of § 73.1615 or § 73.1620. A TV permittee must reduce its emissions within the land mobile channel of a protected land mobile facility that is receiving interference caused by the TV emission producing a vertically polarized signal and a field strength in excess of 17 dBu at the land mobile receiver site on the land mobile frequency. The TV emission should be measured with equipment set to a 30 kHz measurement

bandwidth including the entire applicable land mobile channel. A TV permittee must correct a desensitization problem if its occurrence can be directly linked to the start of the TV operation and the land mobile station is using facilities with typical desensitization rejection characteristics. A TV permittee must identify the source of an intermodulation product that is generated when the TV operation commences. If the intermodulation source is under its control, the TV permittee must correct the problem. If the intermodulation source is beyond the TV permittee's control, it must cooperate in the resolution of the problem and should provide whatever technical assistance it can.

(c) *Channel 6 protection of FM radio stations*. Parties requesting new allotments on channel 6 be added to the Table of TV Allotments must submit an engineering study demonstrating that no interference would be caused to existing FM radio stations on FM channels 200-220.

(d) *Blanketing interference*. Present information is not sufficiently complete to establish blanketing interference areas for television broadcast stations. Blanketing interference is interference in an area adjacent to a transmitter in which the reception of other stations is subject to interference due to the strong signal from this station. The authorization of station construction in areas where blanketing interference is found to be excessive will be on the basis that the applicant will assume full responsibility for the adjustment of reasonable complaints arising from excessively strong signals of the applicant's station or take other corrective action.

(e) *Medical telemetry device notification condition*. Stations should be aware that a condition is placed on all TV broadcast station authorizations that result in a change in coverage area, including all authorizations for new stations, which requires TV broadcasters to identify and notify hospital and other health care facilities within the station’s coverage area to avoid interference to medical telemetry devices.

14. Section 73.618 is added to read as follows:

§ 73.618 Antenna location and principal community coverage.

(a) The TV antenna location shall be chosen so that, on the basis of the effective radiated power (ERP) and antenna height above average terrain (HAAT) employed, the following minimum F(50,90) field

strength in dB above one uV/m will be provided over the entire principal community to be served:

Table 1 to paragraph (a)- Minimum field strength required over principal community.

Channels 2-6	35 dBu.
Channels 7-13	43 dBu.
Channels 14-36	48 dBu.

(b) The location of the antenna must be so chosen that there is not a major obstruction in the path over the principal community to be served.

(c) For the purposes of this section, coverage is to be determined in accordance with § 73.619(b). Under actual conditions, the true coverage may vary from these estimates because the terrain over any specific path is expected to be different from the average terrain on which the field strength charts were based. Further, the actual extent of service will usually be less than indicated by these estimates due to interference from other stations. Because of these factors, the predicted field strength contours give no assurance of service to any specific percentage of receiver locations within the distances indicated.

15. Section 73.619 is added to read as follows:

§ 73.619 Contours and service areas.

(a) *Purposes of the field strength contours*. The field strength contours will be considered for the following purposes only:

(1) In the estimation of coverage resulting from the selection of a particular transmitting antenna site by an applicant for a TV station.

(2) In connection with problems of coverage arising out of application of § 73.3555.

(3) In determining compliance with § 73.618(a) concerning the minimum field strength to be provided over the principal community to be served.

(b) *Determining coverage.* (1) In predicting the distance to the field strength contours, the F (50,50) field strength charts (Figures 9, 10 and 10b of § 73.699) and the F (50,10) field strength charts (Figures 9a, 10a and 10c of § 73.699) shall be used. To use the charts to predict the distance to a given F (50,90) contour, the following procedure is used: Convert the effective radiated power in kilowatts for the appropriate

azimuth into decibel value referenced to 1 kW (dBk). Subtract the power value in dBk from the contour value in dBu. Note that for power less than 1 kW, the difference value will be greater than the contour value because the power in dBk is negative. Locate the difference value obtained on the vertical scale at the left edge of the appropriate F (50,50) chart for the TV station's channel. Follow the horizontal line for that value into the chart to the point of intersection with the vertical line above the height of the antenna above average terrain for the appropriate azimuth located on the scale at the bottom of the chart. If the point of intersection does not fall exactly on a distance curve, interpolate between the distance curves below and above the intersection point. The distance values for the curves are located along the right edge of the chart. Using the appropriate F (50,10) chart for the DTV station's channel, locate the point where the distance coincides with the vertical line above the height of the antenna above average terrain for the appropriate azimuth located on the scale at the bottom of the chart. Follow a horizontal line from that point to the left edge of the chart to determine the F (50,10) difference value. Add the power value in dBk to this difference value to determine the F (50,10) contour value in dBu. Subtract the F (50,50) contour value in dBu from this F (50,10) contour value in dBu. Subtract this difference from the F (50,50) contour value in dBu to determine the F (50,90) contour value in dBu at the pertinent distance along the pertinent radial.

(2)(i) The effective radiated power to be used is that radiated at the vertical angle corresponding to the depression angle between the transmitting antenna center of radiation and the radio horizon as determined individually for each azimuthal direction concerned. The depression angle is based on the difference in elevation of the antenna center of radiation above the average terrain and the radio horizon, assuming a smooth spherical earth with a radius of 8,495.5 kilometers (5,280 miles) and shall be determined by the following equation:

Equation 1 to paragraph (b)(2)(i)

$$A = 0.0277 \times \sqrt{H}$$

Where:

A is the depression angle in degrees.

H is the height in meters of the transmitting antenna radiation center above average terrain of the 3.2-16.1 kilometers (2-10 miles) sector of the pertinent radial.

(ii) This equation is empirically derived for the limited purpose specified here of determining distance to filed strength contours for coverage. Its use for any other purpose may be inappropriate.

(3) Applicants for new TV stations or changes in the facilities of existing TV stations must submit to the FCC a showing as to the location of their stations' or proposed stations' contour. This showing is to include a map showing this contour, except where applicants have previously submitted material to the FCC containing such information and it is found upon careful examination that the contour locations indicated therein would not change, on any radial, when the locations are determined under this section. In the latter cases, a statement by a qualified engineer to this effect will satisfy this requirement and no contour maps need be submitted.

(4) The antenna height to be used with these charts is the height of the radiation center of the antenna above the average terrain along the radial in question. In determining the average elevation of the terrain, the elevations between 3.2-16.1 kilometers (2-10 miles) from the antenna site are employed. Path profiles shall be determined for 8 radials beginning at the antenna site and extending 16.1 kilometers (10 miles) therefrom. The radials should be determined for each 45 degrees of azimuth starting with True North. 10 points per kilometer of elevation (uniformly spaced) should be used for each radial. It is not necessary to take the curvature of the earth into consideration in this procedure, as this factor is taken care of in the charts showing signal strengths. The average elevation of the 12.9 kilometer (8 miles) distance between 3.2-16.1 kilometers (2-10 miles) from the antenna site should then be determined from the path profile for each radial. In directions where the terrain is such that negative antenna heights or heights below 30.5 meters (100 feet) for the 3.2 to 16.1 kilometers (2 to 10 mile) sector are obtained, an assumed height of 30.5 meters (100 feet) shall be used for the prediction of coverage. Actual calculated values should be used for computation of height above average terrain.

(5) In the preparation of the path profiles previously described, and in determining the location and

height above sea level of the antenna site, the elevation or contour intervals shall be taken from a high quality bald earth terrain map or dataset such as the United States Geological Survey Topographic Quadrangle Maps or the National Elevation Dataset. If a dataset is used, the data must be processed for intermediate points along each radial using linear interpolation techniques.

(6) It is anticipated that many of these calculations may be done using computer software and with computerized datasets. If software or datasets besides those officially adopted by the FCC are utilized, the alternate software or data must be identified.

(c) *TV Service Areas.* (1) The service area of a TV station is the geographic area within the station's noise-limited F(50,90) contour where its signal strength is predicted to exceed the noise-limited service level. The noise-limited contour is the area in which the predicted F(50,90) field strength of the station's signal, in dB above 1 microvolt per meter (dBu) as determined using the method in § 73.619(b) exceeds the following levels (these are the levels at which reception of TV service is limited by noise):

Table 1 to paragraph (c)(1)- Noise limited service levels.

	dBu
Channels 2-6	28
Channels 7-13	36
Channels 14-36	41

(2) Within this contour, service is considered available at locations where the station's signal strength, as predicted using the terrain dependent Longley-Rice point-to-point propagation model, exceeds the levels above. Guidance for evaluating coverage areas using the Longley-Rice methodology is provided in *OET Bulletin No. 69.* For availability of OET Bulletin No. 69 (which is incorporated by reference elsewhere in this part), contact FCC (see § 73.8000 for contact information).

(d) *Protected facilities of an allotment*. The protected facilities of a TV allotment shall be the facilities (effective radiated power, antenna height and antenna directional radiation pattern, if any) authorized by a construction permit or license, or, where such an authorization is not available for establishing reference facilities, the facilities designated in the FCC order creating or modifying the Table of TV

Allotments.

16. Section 73.620 is added to read as follows:

§ 73.620 Interference calculation and protection of TV broadcast services.

(a) Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum adjacent channel technical criteria specified in this section shall not be applicable to these pairs of channels (see § 73.603(a)).

(b) Interference is to be predicted based on the procedures found in § 73.616(d)(1).

(c) An application will not be accepted if it is predicted to cause interference to more than an additional 0.5 percent of the population served by another TV station. For this purpose, the population served by the station receiving additional interference does not include portions of the population within the noise-limited service contour of that station that are predicted to receive interference from the TV allotment facilities of the applicant or portions of that population receiving masking interference from any other station.

(d) A petition to add a new channel to the TV Table or any application to modify an existing TV station or allotment will not be accepted if it is predicted to cause more than 0.5 percent new interference, consistent with paragraphs (a) and (b) of this section, to a Class A TV station authorized pursuant to subpart J of this part, within the protected contour defined in § 73.6010.

(e) Negotiated agreements on interference. TV stations may operate with increased effective radiated power (ERP) and/or antenna height above average terrain (HAAT) that would result in more than 0.5 percent additional interference to another TV station if that station agrees, in writing, to accept the additional interference. Such agreements must be submitted with the application for authority to construct or modify the affected TV station. Negotiated agreements under this paragraph can include the exchange of money or other considerations from one station to another, including payments to and from noncommercial television stations assigned to reserved channels. Applications submitted pursuant to the provisions of this paragraph will be granted only if the Commission finds that such action is consistent with the public interest.

(f) The interference protection requirements contained in this section apply to television station operations under both the TV transmission standard in § 73.682(d) and the Next Gen TV transmission standard in § 73.682(f).

17. Section 73.621 is amended by removing and reserving paragraphs (g) and (h) and revising paragraph (j).

§ 73.621 Noncommercial educational TV stations.

* * * * *

(g) [Reserved]

(h) [Reserved]

* * * * *

(j) The requirements of this section apply to the entire digital bitstream of noncommercial educational television stations, including the provision of ancillary or supplementary services.

18. Revise § 73.622 to read as follows:

§ 73.622 Table of TV allotments.

(a) *General.* The following table of TV allotments contains the television channel allotments designated for the listed communities in the United States, its Territories, and possessions. Requests for addition of new TV allotments, or requests to change the channels allotted to a community, must be made in a petition for rule making to amend the Table of TV Allotments. A request to amend the Table of TV Allotments to add an allotment or change the channel of an allotment in the Table will be evaluated for technical acceptability using engineering criteria set forth in §§ 73.617, 73.618, and 73.620. A request to amend the TV table to add a new allotment will be evaluated for technical acceptability using the geographic spacing criteria set forth in § 73.622(k) and the engineering criteria set forth in §§ 73.614, 73.617, 73.618, and 73.620(a) and (d). TV allotments designated with an asterisk are assigned for use by non-commercial educational broadcast stations only. Rules governing noncommercial educational TV stations are contained in § 73.621.

(b) [Reserved]

(c) [Reserved]

(d) *Reference points and distance computations*. The reference coordinates of a TV allotment shall be the coordinates of the authorized facility. Where such a transmitter site is not available for use as reference coordinates, such as a new allotment, the coordinates shall be those designated in the FCC order modifying the Table of TV Allotments.

(e) [Reserved]

(f) [Reserved]

(g) [Reserved]

(h) [Reserved]

(i) [Reserved]

(j) *Table of TV Allotments.*

Community	***Channel No.***
* * * * *	
Tulsa	***8, *11, 12, 14, 16, 22, 26, 34***
* * * * *	

(k) *Minimum geographic spacing requirements for new TV allotments.* No petition to add a new channel to the Table of TV Allotments will be accepted unless it shows compliance with the requirements of this paragraph.

(1) Requests filed pursuant to this paragraph must demonstrate compliance with the principal community coverage requirements of § 73.618.

(2) Requests filed pursuant to this paragraph must meet the following requirements for geographic spacing with regard to all other TV stations and allotments:

(i) For VHF channels 2-13 in Zone I, co-channel allotments must be separated by 244.6 km, and no adjacent-channel allotments are permitted between 20 km and 110 km.

(ii) For UHF channels 14-36 in Zone I, co-channel allotments must be separated by 196.3 km, and no adjacent-channel allotments are permitted between 24 km and 110 km.

(iii) For VHF channels 2-13 in Zones II and III, co-channel allotments must be separated by 273.6 km, and no adjacent-channel allotments are permitted between 23 km and 110 km.

(iv) For UHF channels 14-36 in Zones II and III, co-channel allotments must be separated by 223.7 km, and no adjacent-channel allotments are permitted between 24 km and 110 km.

(3) Zones are defined in § 73.609. The minimum distance separation between a TV station in one zone and TV station in another zone shall be that of the zone requiring the lower separation.

(4) Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum geographic spacing requirements specified in paragraph (k)(2) of this section shall not be applicable to these pairs of channels (§ 73.603(a)).

19. Revise § 73.623 to read as follows:

§ 73.623 TV application processing.

(a) *General.* Applications for new TV broadcast stations or for changes in authorized TV stations filed pursuant to this section will not be accepted for filing if they fail to comply with the requirements of this section and §§ 73.614, 73.617, 73.618, and 73.620.

(b) *Availability of channels.* Applications may be filed to construct TV broadcast stations only on the channels designated in the Table of TV Allotments set forth in § 73.622(j), and only in the communities listed therein. Applications that fail to comply with this requirement, whether or not accompanied by a petition to amend the TV Table, will not be accepted for filing.

(c) through (g) [Reserved]

(h) *TV application processing priorities.*

(1) [Reserved]

(2) TV applications for a construction permit or a modified construction permit:

(i) Shall be afforded the interference protection set forth in § 73.620:

(A) through (C) [Reserved]

(D) By later-filed TV applications; and

(E) By later-filed rulemaking petitions to amend the Table of TV Allotments;

(ii) Must demonstrate the requisite interference protection set forth in § 73.620 to:

(A) TV licensed stations;

(B) TV construction permits;

(C) Earlier-filed TV applications;

(D) Existing TV allotments;

(E) Rulemaking petitions to amend the Table of TV Allotments for which a Notice of Proposed Rule Making has been released and the comment deadline specified therein has passed prior to the filing date of the TV application;

(F) through (J) [Reserved]

(iii) That do not provide the requisite interference protection set forth § 73.620 to the following applications and petitions will be deemed mutually exclusive with those applications and petitions:

(A) Other TV applications filed the same day;

(B) Rulemaking petitions to amend the Table of TV Allotments for which a Notice of Proposed Rule Making had been released and the comment deadline specified therein had not passed prior to the filing date of the TV application; and

(C) Earlier-filed rulemaking petitions to amend the Table of TV Allotments for which a Notice of Proposed Rule Making had not been released.

(3) TV applicants and TV rulemaking petitioners that are mutually exclusive pursuant to this section will be notified by Public Notice and provided with a 90-day period of time to resolve their mutual exclusivity via engineering amendment or settlement. Those applications and petitions that remain mutually exclusive upon conclusion of the 90-day settlement period will be dismissed.

20. Revise § 73.624 to read as follows:

§ 73.624 Television broadcast stations.

(a) Television broadcast stations are assigned channels 6 MHz wide.

(b) Minimum programming requirements. The TV service that is provided pursuant to this paragraph (b) must have a resolution of at least 480i (vertical resolution of 480 lines, interlaced).

(1) TV licensees or permittees that broadcast in ATSC 1.0 (using the transmission standard in 73.682(d)) shall transmit at least one free over the air video program signal at no direct charge to viewers.

(2) [Reserved]

(3) TV licensees or permittees that choose to broadcast an ATSC 3.0 signal (using the Next Gen TV transmission standard in § 73.682(f)) shall transmit at least one free over the air video programming stream on that signal that requires at most the signal threshold of a comparable received TV signal. TV licensees or permittees that choose to broadcast an ATSC 3.0 signal (using the Next Gen TV transmission standard in § 73.682(f)) shall also simulcast the primary video programming stream on its ATSC 3.0 signal by broadcasting an ATSC 1.0 signal (using the TV transmission standard in § 73.682(d)) from another broadcast television facility within its local market in accordance with the local simulcasting requirement in § 73.3801 and § 73.6029 and § 74.782 of this chapter.

(c) Provided that TV broadcast stations comply with paragraph (b) of this section, TV broadcast stations are permitted to offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis. The kinds of services that may be provided include, but are not limited to computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate TV broadcast stations' obligations under paragraph (b) of this section. Such services may be provided on a broadcast, point-to-point or point-to-multipoint basis, provided, however, that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary.

(1) TV licensees that provide ancillary or supplementary services that are analogous to other services subject to regulation by the Commission must comply with the Commission regulations that apply to those services, provided, however, that no ancillary or supplementary service shall have any rights to

carriage under §§ 614 or 615 of the Communications Act of 1934, as amended, or be deemed a multichannel video programming distributor for purposes of section 628 of the Communications Act of 1934, as amended.

(2) In all arrangements entered into with outside parties affecting service operation, the TV licensee or permittee must retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material in the sole judgement of the permittee or licensee. The license or permittee is also responsible for all aspects of technical operation involving such telecommunications services.

(3) In any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, a licensee shall establish that all of its program services are in the public interest. Any violation of the Commission's rules applicable to ancillary or supplementary services will reflect on the licensee's qualifications for renewal of its license.

(d) through (f) [Reserved]

(g) Commercial TV licensees and permittees, and low power television, TV translator, and Class A licensees and permittees, must annually remit a fee of 5 percent of the gross revenues derived from all ancillary and supplementary services, as defined by paragraph (c) of this section, which are feeable, as defined in paragraphs (g)(1)(i) and (ii) of this section. Noncommercial TV licensees and permittees must annually remit a fee of 5 percent of the gross revenues derived from all ancillary and supplementary services, as defined by paragraph (c) of this section, which are feeable, as defined in paragraphs (g)(1)(i) and (ii) of this section, except that such licensees and permittees must annually remit a fee of 2.5 percent of the gross revenues from such ancillary or supplementary services which are nonprofit, noncommercial, and educational.

(1) (i) All ancillary or supplementary services for which payment of a subscription fee or charge is required in order to receive the service are feeable. The fee required by this provision shall be imposed on any and all revenues from such services, including revenues derived from subscription fees and from any commercial advertisements transmitted on the service.

(ii) Any ancillary or supplementary service for which no payment is required from consumers in order to receive the service is feeable if the TV licensee directly or indirectly receives compensation from a third party in return for the transmission of material provided by that third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required). The fee required by this provision shall be imposed on any and all revenues from such services, other than revenues received from a third party in return for the transmission of commercial advertisements used to support broadcasting for which a subscription fee is not required.

(2) *Payment of fees*.

(i) Each December 1, all commercial and noncommercial TV licensees and permittees that provided feeable ancillary or supplementary services as defined in this section at any point during the 12-month period ending on the preceding September 30 will electronically report, for the applicable period:

(A) A brief description of the feeable ancillary or supplementary services provided;

(B) Gross revenues received from all feeable ancillary and supplementary services provided during the applicable period; and

(C) The amount of bitstream used to provide feeable ancillary or supplementary services during the applicable period. Licensees and permittees will certify under penalty of perjury the accuracy of the information reported. Failure to file information required by this section may result in appropriate sanctions.

(ii) A commercial or noncommercial TV licensee or permittee that has provided feeable ancillary or supplementary services at any point during a 12-month period ending on September 30 must additionally file the FCC's standard remittance form (Form 159) on the subsequent December 1. Licensees and permittees will certify the amount of gross revenues received from feeable ancillary or supplementary services for the applicable 12-month period and will remit the payment of the required fee.

(iii) The Commission reserves the right to audit each licensee's or permittee's records which support the calculation of the amount specified on line 23A of Form 159. Each licensee or permittee, therefore, is required to retain such records for three years from the date of remittance of fees.

21. Amend § 73.625 by:

a. Revising the section heading;

b. Removing and reserving paragraphs (a) through (b);

c. Revising paragraphs (c)(3)(ii) and (v);

d. Adding paragraphs (c)(3)(vii) and (viii);

e. Revising paragraphs (c)(4)(i) and (ii);

f. Adding paragraph (c)(4)(iii);

g. Revising paragraph (c)(5); and

h. Adding paragraph (d).

The revisions and additions read as follows:

§ 73.625 TV antenna system.

(a) through (b) [Reserved]

(c) * * *

* * * * *

(3) * * *

(ii) Relative field azimuth plane pattern (patterns for both horizontal and vertical polarization should be included if elliptical or circular polarization is used consistent with paragraph (d) of this section) of the proposed directional antenna. A value of 1.0 should be used for the maximum radiation in the horizontal polarization. The plot of the pattern should be oriented so that 0 degrees corresponds to true North. Where mechanical beam tilt is intended, the amount of tilt in degrees of the antenna vertical axis and the orientation of the downward tilt with respect to true North must be specified, and a tabulation of the elevation pattern included consistent with paragraph (c)(3)(vii) of this section. A horizontal plane pattern reflecting the use of mechanical beam tilt may be requested

if required to facilitate international coordination.

* * * * *

(v) All azimuth plane patterns must be plotted in a PDF attachment to the application in a size sufficient to be easily viewed.

* * * * *

(vii) If an elevation pattern is submitted in the application form, similar tabulations and PDF attachments shall be provided for the elevation pattern.

(viii) If a matrix pattern is submitted in the application form, similar tabulations shall be provided as necessary in the form of a spreadsheet to accurately represent the pattern.

(4) * * *

(i) In cases where it is proposed to use a tower of an AM broadcast station as a supporting structure for a TV broadcast antenna, an appropriate application for changes in the radiating system of the AM broadcast station must be filed by the licensee thereof. A formal application (FCC Form 301, or FCC Form 340 for a noncommercial educational station) will be required if the proposal involves substantial change in the physical height or radiation characteristics of the AM broadcast antennas; otherwise an informal application will be acceptable. (In case of doubt, an informal application (letter) together with complete engineering data should be submitted.) An application may be required for other classes of stations when the tower is to be used in connection with a TV station.

(ii) When the proposed TV antenna is to be mounted on a tower in the vicinity of an AM station directional antenna system and it appears that the operation of the directional antenna system may be affected, an engineering study must be filed with the TV application concerning the effect of the TV antenna on the AM directional radiation pattern. Field measurements of the AM stations may be required prior to and following construction of the TV station antenna, and readjustments made as necessary.

(iii) In any case, where the TV licensee or permittee proposes to mount its antenna on or near an AM tower, as defined in § 1.30002, the TV licensee or permittee must comply with § 1.30002 or §

1.30003, as applicable.

(5) Applications proposing the use of electrical beam tilt must be accompanied by the following:

* * * * *

(d) It shall be standard to employ horizontal polarization. However, circular or elliptical polarization may be employed if desired, in which case clockwise (right hand) rotation, as defined in the IEEE Standard Definition 42A65-3E2, and transmission of the horizontal and vertical components in time and space quadrature shall be used. For either omnidirectional or directional antennas the licensed effective radiated power of the vertically polarized component may not exceed the licensed effective radiated power of the horizontally polarized component. For directional antennas, the maximum effective radiated power of the vertically polarized component shall not exceed the maximum effective radiated power of the horizontally polarized component in any specified horizontal or vertical direction.

22. Section 73.626 is amended by revising the section heading and paragraphs (a), (b), (c)(1), (2), (d), (e), (f)(2), (f)(2)(i) through (iii), (f)(4), (5), and (6) to read as follows:

§ 73.626 TV distributed transmission systems.

(a) *Distributed transmission systems.* A TV station may be authorized to operate multiple synchronized transmitters on its assigned channel to provide service consistent with the requirements of this section. Such operation is called a distributed transmission system (DTS). Except as expressly provided in this section, TV stations operating a DTS facility must comply with all rules applicable to TV single-transmitter stations.

(b) *Authorized service area*. For purposes of compliance with this section, a station's "authorized service area" is defined as the area within its predicted noise-limited service contour determined using the facilities authorized for the station in a license or construction permit for non-DTS, single-transmitter-location operation (its "authorized facility").

(c) * * *

(1) TV station zones are defined in § 73.609.

(2) *DTS reference point.* A station's DTS reference point is established in the FCC Order that created

or made final modifications to the Table of TV Allotments, § 73.622(j), and the corresponding facilities for the station's channel assignment as set forth in that FCC Order.

(d) *Determining DTS coverage.* The coverage for each DTS transmitter is determined based on the F(50,90) field strength given in the Table of Distances (in paragraph (c) of this section), calculated in accordance with § 73.619(b). The combined coverage of a DTS station is the logical union of the coverage of all DTS transmitters.

(e) *DTS protection from interference.* A DTS station must be protected from interference in accordance with the criteria specified in § 73.620. To determine compliance with the interference protection requirements of § 73.620, the population served by a DTS station shall be the population within the station's combined coverage contour, excluding the population in areas that are outside both the TV station's authorized service area and the Table of Distances area (in paragraph (c) of this section). Only population that is predicted to receive service by the method described in § 73.619**(**c)(2) from at least one individual DTS transmitter will be considered.

(f) * * *

* * * * *

(2) Each DTS transmitter's coverage is contained within either the TV station's Table of Distances area (pursuant to paragraph (c) of this section) or its authorized service area, except where such extension of coverage meets the following criteria:

(i) In no event shall the F(50,50) service contour of any DTS transmitter extend beyond that of its authorized facility and its Table of Distances F(50,50) area; and

(ii) In no event shall the F(50,10) node-interfering contour of any DTS transmitter, aside from one located at the site of its authorized facility, extend beyond the F(50,10) reference-interfering contour of its authorized facility and its Table of Distances F(50,10) reference area; and

(iii) In no event shall the F(50,10) reference-interfering contour of a facility located at the site of its authorized facility extend beyond the F(50,10) reference-interfering contour of its authorized facility;

* * * * *

(4) The coverage from one or more DTS transmitter(s) is shown to provide principal community coverage as required in § 73.618;

(5) The "combined field strength" of all the DTS transmitters in a network does not cause interference to another station in excess of the criteria specified in § 73.620, where the combined field strength level is determined by a "root-sum-square" calculation, in which the combined field strength level at a given location is equal to the square root of the sum of the squared field strengths from each transmitter in the DTS network at that location.

(6) Each DTS transmitter must be located within either the TV station's Table of Distances area or its authorized service area.

* * * * *

§ 73.641 [Removed]

23. Remove § 73.641.

§ 73.642 [Removed]

24. Remove § 73.642.

§ 73.643 [Removed]

25. Remove § 73.643.

§ 73.644 [Removed]

26. Remove § 73.644.

§ 73.646 [Removed]

27. Remove § 73.646.

§ 73.653 [Removed]

28. Remove § 73.653.

29. Revise § 73.664 to read as follows:

§ 73.664 Determining operating power.

(a) *Required method*. The operating power of each TV transmitter shall normally be determined by the

direct method.

(b) *Direct method.* The direct method of power determination for a TV transmitter uses the indications of a calibrated transmission line meter located at the RF output terminals of the transmitter. The indications of the calibrated meter are used to observe and maintain the authorized operating power of the transmitter. This meter must be calibrated whenever any component in the metering circuit is repaired or replaced and as often as necessary to ensure operation in accordance with the provisions of § 73.1560. The following calibration procedures are to be used:

(1) The transmission line meter is calibrated by measuring the average power at the output terminals of the transmitter, including any filters which may be used in normal operation. For this determination the average power output is measured while operating into a dummy load of substantially zero reactance and a resistance equal to the transmission line characteristic impedance.

(2) If electrical devices are used to determine the output power, such devices must permit determination of this power to within an accuracy of ±5% of the power indicated by the full scale reading of the electrical indicating instrument of the device. If temperature and coolant flow indicating devices are used to determine the power output, such devices must permit determination of this power to within an accuracy of ±4% of measured average power output. During this measurement the input voltage and current to the final radio frequency amplifier stage and the transmission line meter are to be read and compared with similar readings taken with the dummy load replaced by the antenna. These readings must be in substantial agreement.

(3) The meter must be calibrated with the transmitter operating at 80%, 100%, and 110% of the authorized power as often as may be necessary to maintain its accuracy and ensure correct transmitter operating power. In cases where the transmitter is incapable of operating at 110% of the authorized power output, the calibration may be made at a power output between 100% and 110% of the authorized power output. However, where this is done, the output meter must be marked at the point of calibration of maximum power output, and the station will be deemed to be in violation of this rule if that power is exceeded. The upper and lower limits of permissible power deviation as determined

by the prescribed calibration, must be shown upon the meter either by means of adjustable red markers incorporated in the meter or by red marks placed upon the meter scale or glass face. These markings must be checked and changed, if necessary, each time the meter is calibrated.

(c) *Indirect method.* The operating power is determined by the indirect method by applying an appropriate factor to the input power to the final radio-frequency amplifier stage of the transmitter using the following formula:

Formula 1 to introductory text of paragraph (c)

Transmitter output power = Ep × Ip × *F*

Where:

Ep = DC input voltage of the final radio-frequency amplifier stage.

Ip = DC input current of the final radio-frequency amplifier stage.

F = Efficiency factor.

(1) If the above formula is not appropriate for the design of the transmitter final amplifier, use a formula specified by the transmitter manufacturer with other appropriate operating parameters.

(2) The value of the efficiency factor, *F* established for the authorized transmitter output power is to be used for maintaining the operating power, even though there may be some variation in *F* over the power operating range of the transmitter.

(3) The value of *F* is to be determined and a record kept thereof by one of the following procedures listed in order of preference:

(i) Using the most recent measurement data for calibration of the transmission line meter according to the procedures described in paragraph (b) of this section or the most recent measurements made by the licensee establishing the value of F. In the case of composite transmitters or those in which the final amplifier stages have been modified pursuant to FCC approval, the licensee must furnish the FCC and also retain with the station records the measurement data used as a basis for determining the value of F.

(ii) Using measurement data shown on the transmitter manufacturer's test data supplied to the

licensee, provided that measurements were made at the authorized channel and transmitter output power.

(iii) Using the transmitter manufacturer's measurement data.

§ 73.665 [Removed]

30. Remove § 73.665.

§ 73.667 [Removed]

31. Remove § 73.667.

§ 73.669 [Removed]

32. Remove § 73.669.

33. Revise § 73.681 to read as follows:

§ 73.681 Definitions.

Antenna electrical beam tilt. The shaping of the radiation pattern in the vertical plane of a transmitting antenna by electrical means so that maximum radiation occurs at an angle below the horizontal plane.

Antenna height above average terrain. The average of the antenna heights above the terrain from approximately 3.2 (2 miles) to 16.1 kilometers (10 miles) from the antenna for the eight directions spaced evenly for each 45 degrees of azimuth starting with True North. (In general, a different antenna height will be determined in each direction from the antenna. The average of these various heights is considered the antenna height above the average terrain. Where circular or elliptical polarization is employed, the antenna height above average terrain shall be based upon the height of the radiation center of the antenna which transmits the horizontal component of radiation.

Antenna mechanical beam tilt. The intentional installation of a transmitting antenna so that its axis is not vertical, in order to change the normal angle of maximum radiation in the vertical plane.

Antenna power gain. The square of the ratio of the root-mean-square free space field strength produced at 1 kilometer in the horizontal plane, in millivolts per meter for one kW antenna input power to 221.4 mV/m. This ratio should be expressed in decibels (dB). (If specified for a particular direction, antenna power gain is based on the field strength in that direction only.)

Aspect ratio. The ratio of picture width to picture height as transmitted.

Auxiliary facility. An auxiliary facility is an antenna separate a from the main facility's antenna, permanently installed on the same tower or at a different location, from which a station may broadcast for short periods without prior Commission authorization or notice to the Commission while the main facility is not in operation (e.g., where tower work necessitates turning off the main antenna or where lightning has caused damage to the main antenna or transmission system) (*See* § 73.1675).

Effective radiated power. The product of the antenna input power and the antenna power gain. This product should be expressed in kW and in dB above 1 kW (dBk). (If specified for a particular direction, effective radiated power is based on the antenna power gain in that direction only. The licensed effective radiated power is based on the maximum antenna power gain. When a station is authorized to use a directional antenna or an antenna beam tilt, the direction of the maximum effective radiated power will be specified.) Where circular or elliptical polarization is employed, the term effective radiated power is applied separately to the horizontally and vertically polarized components of radiation. For assignment purposes, only the effective radiated power authorized for the horizontally polarized component will be considered.

Equivalent isotropically radiated power (EIRP). The term "equivalent isotropically radiated power" (also known as "effective radiated power above isotropic") means the product of the antenna input power and the antenna gain in a given direction relative to an isotropic antenna.

Free space field strength. The field strength that would exist at a point in the absence of waves reflected from the earth or other reflecting objects.

Interlaced scanning. A scanning process in which successively scanned lines are spaced an integral number of line widths, and in which the adjacent lines are scanned during successive cycles of the field frequency.

Polarization. The direction of the electric field as radiated from the transmitting antenna.

Standard television signal. A signal which conforms to the television transmission standards.

Synchronization. The maintenance of one operation in step with another.

Television broadcast band. The frequencies in the band extending from 54 to 608 megahertz which are assignable to television broadcast stations. These frequencies are 54 to 72 megahertz (channels 2 through 4), 76 to 88 megahertz (channels 5 and 6), 174 to 216 megahertz (channels 7 through 13), and 470 to 608 megahertz (channels 14 through 36).

Television broadcast station. A station in the television broadcast band transmitting simultaneous visual and aural signals intended to be received by the general public.

Television channel. A band of frequencies 6 MHz wide in the television broadcast band and designated either by number or by the extreme lower and upper frequencies.

Television transmission standards. The standards which determine the characteristics of a television signal as radiated by a television broadcast station.

Television transmitter. The radio transmitter or transmitters for the transmission of both visual and aural signals.

Vestigial sideband transmission. A system of transmission wherein one of the generated sidebands is partially attenuated at the transmitter and radiated only in part.

34. Amend § 73.682 by:

a. Removing and reserving paragraphs (a) through (c);

b. Revising paragraph (d);

c. Adding paragraph (e)(7); and

d. Removing the Note to § 73.682.

The revisions and addition read as follows:

§ 73.682 TV transmission standards.

(a) through (c) [Reserved]

(d) *Broadcast television transmission standards.*

(1) Transmission of broadcast television signals shall comply with the standards (incorporated by reference, see § 73.8000) for such transmissions set forth in:

(i) ATSC A/52;

(ii) ATSC A/53, Parts 1-4 and 6: 2007 and ATSC A/53 Part 5:2010; and

(iii) ATSC A/65C.

(2) Although not incorporated by reference, licensees may also consult**:**

(i) ATSC A/54A: "Recommended Practice: Guide to Use of the ATSC Digital Television Standard, including Corrigendum No. 1," (December 4, 2003, Corrigendum No. 1 dated December 20, 2006, and

(ii) ATSC A/69: "Recommended Practice PSIP Implementation Guidelines for Broadcasters," (June 25, 2002).

(3) For availability of this material, contact ATSC (see § 73.8000 for contact information).

(e) * * *

(7) For additional information regarding this requirement, *see* Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, FCC 11-182.

* * * * *

35. Amend § 73.683 by:

a. Revising the section heading and paragraph (a);

b. Removing and reserving paragraphs (b) and (c); and

c. Revising paragraph (d).

The revisions read as follows:

§ 73.683 Presumptive determination of field strength at individual locations.

(a) See § 73.619(c). For purposes of the cross-reference from § 90.307(b), the Grade B contour is defined as the F(50,50) contour at 64 dBu.

(b) through (c) [Reserved]

(d) For purposes of determining the eligibility of individual households for satellite retransmission of distant network signals under the copyright law provisions of 17 U.S.C. 119(d)(10)(A), field strength shall be determined by the Individual Location Longley-Rice (ILLR) propagation prediction model. Such eligibility determinations shall consider only the signals of network stations located in the

subscriber's Designated Market Area. Guidance for use of the ILLR model in predicting the field strength of television signals for such determinations is provided in OET Bulletin No. 73. For availability of OET Bulletin No. 73, contact FCC (see § 73.8000 for contact information).

* * * * *

§ 73.684 [Removed]

36. Remove § 73.684.

§ 73.685 [Removed]

37. Remove § 73.685.

38. Amend § 73.686 by:

a. Revising paragraphs (c)(1)(i);

b. Removing and reserving paragraph (d); and

c. Revising paragraph (e) introductory text.

The revisions read as follows:

§ 73.686 Field strength measurements.

* * * * *

(c) * * *

(1) * * *

(i) The population (P) of the community, and its suburbs, if any, is determined by reference to the most recent official decennial U.S. Census population data as identified by the Media Bureau in a Public Notice. (See § 73.620(b)).

* * * * *

(d) [Reserved]

(e) *Collection of field strength data to determine television signal intensity at an individual location - cluster measurements* -

* * * * *

39. Amend § 73.687 by:

a. Removing and reserving paragraphs (a) and (b);

b. Revising paragraph (c) introductory text;

c. Removing and reserving paragraph (c)(1); and

d. Removing paragraph (e).

The revisions read as follows:

§ 73.687 Transmission system requirements.

(a) through (b) [Reserved]

(c) *Requirements applicable to transmitters.*

(1) [Reserved]

* * * * *

(e) [Removed]

40. Section 73.688 is amended by revising paragraph (a) to read as follows:

§ 73.688 Indicating instruments.

(a) Each TV broadcast station shall be equipped with indicating instruments which conform with the specifications described in § 73.1215 for measuring the operating parameters of the last radio stage of the transmitter, and with such other instruments as are necessary for the proper adjustment, operation, and maintenance of the transmitting system.

* * * * *

§ 73.691 [Removed]

41. Remove § 73.691.

§ 73.698 [Removed]

42. Remove § 73.698.

§ 73.699 [Amended]

43. Section 73.699 is amended by removing Figures 5, 5(a), 6, 7, 8, 11, 12, 16, and 17.

44. Section 73.1001 is amended to revise paragraph (c) to read as follows:

§ 73.1001 Scope.

* * * * *

(c) Certain provisions of subpart H of this part apply to International Broadcast Stations (subpart F, part 73), LPFM (subpart G, part 73), and Low Power TV and TV Translator Stations (subpart G, part 74) where the rules for those services so provide.

* * * * *

45. Revise § 73.1015 to read as follows:

§ 73.1015 Truthful written statements and responses to Commission inquiries and correspondence. The Commission or its representatives may, in writing, require from any applicant, permittee, or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to any other matter within the jurisdiction of the Commission, or, in the case of a proceeding to amend the Table of FM Allotments or Table of TV Allotments, require from any person filing an expression of interest, written statements of fact relevant to that allotment proceeding. Any such statements of fact are subject to the provisions of § 1.17 of this chapter.

46. Section 73.1020 is amended by revising paragraphs (a)(1)(i) and (ii), (2)(i) and (ii), (3)(1)(i) and (ii), (4)(1)(i) and (ii), (5)(1)(i) and (ii), (6)(1)(i) and (ii), (7)(1)(i) and (ii), (8)(1)(i) and (ii), (9)(1)(i) and (ii), (10)(1)(i) and (ii), (11)(1)(i) and (ii), (12)(1)(i) and (ii), (13)(1)(i) and (ii), (14)(1)(i) and (ii), (15)(1)(i) and (ii), (16)(1)(i) and (ii), (17)(1)(i) and (ii), (18)(1)(i) and (ii) and (b) to read as follows:

§ 73.1020 Station license period.

(a) * * *

(1) * * *

(i) Radio stations, October 1, 2027.

(ii) Television stations, October 1, 2028.

(2) * * *

(i) Radio stations, December 1, 2027.

(ii) Television stations, December 1, 2028.

(3) * * *

(i) Radio stations, February 1, 2028.

(ii) Television stations, February 1, 2029.

(4) * * *

(i) Radio stations, April 1, 2028.

(ii) Television stations, April 1, 2029.

(5) * * *

(i) Radio stations, June 1, 2028.

(ii) Television stations, June 1, 2029.

(6) * * *

(i) Radio stations, August 1, 2028.

(ii) Television stations, August 1, 2029.

(7) * * *

(i) Radio stations, October 1, 2028.

(ii) Television stations, October 1, 2029.

(8) * * *

(i) Radio stations, December 1, 2028.

(ii) Television stations, December 1, 2029.

(9) * * *

(i) Radio stations, February 1, 2029.

(ii) Television stations, February 1, 2030.

(10) * * *

(i) Radio stations, April 1, 2029.

(ii) Television stations, April 1, 2030.

(11) * * *

(i) Radio stations, June 1, 2029.

(ii) Television stations, June 1, 2030.

(12) * * *

(i) Radio stations, August 1, 2029.

(ii) Television stations, August 1, 2030.

(13) * * *

(i) Radio stations, October 1, 2029.

(ii) Television stations, October 1, 2030.

(14) * * *

(i) Radio stations, December 1, 2029.

(ii) Television stations, December 1, 2030.

(15) * * *

(i) Radio stations, February 1, 2030.

(ii) Television stations, February 1, 2031.

(16) * * *

(i) Radio stations, April 1, 2030.

(ii) Television stations, April 1, 2031.

(17) * * *

(i) Radio stations, June 1, 2030.

(ii) Television stations, June 1, 2031.

(18) * * *

(i) Radio stations, August 1, 2030.

(ii) Television stations, August 1, 2031.

(b) For the deadline for filing petitions to deny renewal applications, see § 73.3516(e).

* * * * *

47. Section 73.1030 is amended by revising paragraphs (a)(1) and (b)(2) to read as follows:

§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving

installations.

(a) ***

(1) *Radio astronomy and radio research installations.* In order to minimize harmful interference at the National Radio Astronomy Observatory site located at Green, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory at Sugar Grove, Pendleton County, West Virginia, a licensee proposing to operate a short-term broadcast auxiliary station pursuant to § 74.24 of this chapter, and any applicant for authority to construct a new broadcast station, or for authority to make changes in the frequency, power, antenna height, or antenna directivity of an existing station within the area bounded by 39°15′ N on the north, 78°30′ W on the east, 37°30′ N on the south, and 80°30′ W on the west, shall notify the Interference Office, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, West Virginia 24944. Telephone: (304) 456-2011; E-mail: nrqz@nrao.edu. * * *

* * * * *

(b) * * *

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Institute for Telecommunication Sciences, 325 Broadway, Boulder, CO 80305; telephone (303) 497-4220, e-mail frequencymanager@ntia.gov, in advance of filing their applications with the Commission.

48. Amend § 73.1201 by:

a. Revising paragraph (b)(1);

b. Removing and reserving paragraph (d); and

c. Adding paragraph (e):

The revisions and additions read as follows:

§ 73.1201 Station identification.

* * * * *

(b) * * *

(1) Official station identification shall consist of the station's call letters immediately followed by the

community or communities specified in its license as the station's location; Provided, That the name of the licensee, the station's frequency, the station's channel number, as stated on the station's license, and/or the station's network affiliation may be inserted between the call letters and station location. TV stations, or DAB Stations, choosing to include the station's channel number in the station identification must use the station's major channel number and may distinguish multicast program streams. For example, a TV station with major channel number 26 may use 26.1 to identify an HDTV program service and 26.2 to identify an SDTV program service. A TV station that is devoting one of its multicast streams to transmit the programming of another television licensee must identify itself and may also identify the licensee that it is transmitting. If a TV station in this situation chooses to identify the station that is the source of the programming it is transmitting, it must use the following format: Station WYYY, community of license (call sign and community of license of the station whose multicast stream is transmitting the programming), bringing you WXXX, community of license (call sign and community of license of the licensee providing the programming). The transmitting station may insert between its call letters and its community of license the following information: the frequency of the transmitting station, the channel number of the transmitting station, the name of the licensee of the transmitting station and the licensee providing the programming, and/or the name of the network of either station. Where a multicast station is carrying the programming of another station and is identifying that station as the source of the programming, using the format described above, the identification may not include the frequency or channel number of the program source. A radio station operating in DAB hybrid mode or extended hybrid mode shall identify its digital signal, including any free multicast audio programming streams, in a manner that appropriately alerts its audience to the fact that it is listening to a digital audio broadcast. No other insertion between the station's call letters and the community or communities specified in its license is permissible.

* * * * *

(d) [Reserved]

(e) Transport Stream ID (TSID) values are identification numbers assigned to stations by the FCC and stored in the Commission's online database. Two sequential values are assigned to each station.

(1) All TV and Class A TV stations shall transmit their assigned odd-numbered TSID.

(2) In ATSC 3.0, a similar value is used called a Bit Stream ID (BSID). Stations operating in ATSC 3.0 mode shall utilize their assigned even-numbered TSID as their BSID, consistent with paragraph (e)(1) of this section.

49. Section 73.1207 is amended by revising paragraph (b)(2) to read as follows:

§ 73.1207 Rebroadcasts.

* * * * *

(b) * * *

*****

(2) Permission must be obtained from the originating station to rebroadcast any subsidiary communications transmitted by means of a multiplex subcarrier.

* * * * *

50. Section 73.1216 is amended by adding paragraphs (a)(1) through (3) and (d), and removing Notes 1, 2 and 3 to read as follows:

§ 73.1216 Licensee-conducted contests.

(a) * * *

(1) A contest is a scheme in which a prize is offered or awarded, based upon chance, diligence, knowledge or skill, to members of the public;

(2) Material terms include those factors which define the operation of the contest and which affect participation therein. Although the material terms may vary widely depending upon the exact nature of the contest, they will generally include: How to enter or participate; eligibility restrictions; entry deadline dates; whether prizes can be won; when prizes can be won; the extent, nature and value of prizes; basis for valuation of prizes; time and means of selection of winners; and/or tie-breaking procedures.

(3) In general, the time and manner of disclosure of the material terms of a contest are within the licensee's discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter.

* * * * *

(d) This section is not applicable to licensee-conducted contests not broadcast or advertised to the general public or to a substantial segment thereof, to contests in which the general public is not requested or permitted to participate, to the commercial advertisement of non-licensee-conducted contests, or to a contest conducted by a non-broadcast division of the licensee or by a non-broadcast company related to the licensee.

51. Revise § 73.1217 to read as follows:

§ 73.1217 Broadcast hoaxes.

(a) No licensee or permittee of any broadcast station shall broadcast false information concerning a crime or a catastrophe if:

(1) The licensee knows this information is false;

(2) It is foreseeable that broadcast of the information will cause substantial public harm, and

(3) Broadcast of the information does in fact directly cause substantial public harm.

(b) Any programming accompanied by a disclaimer will be presumed not to pose foreseeable harm if the disclaimer clearly characterizes the program as a fiction and is presented in a way that is reasonable under the circumstances.

(c) For purposes of this rule, "public harm" must begin immediately, and cause direct and actual damage to property or to the health or safety of the general public, or diversion of law enforcement or other public health and safety authorities from their duties. The public harm will be deemed foreseeable if the licensee could expect with a significant degree of certainty that public harm would occur. A "crime" is any act or omission that makes the offender subject to criminal punishment by law. A "catastrophe" is a disaster or imminent disaster involving violent or sudden event affecting the public.

52. Section 73.1250 is amended by revising paragraph (e) to read as follows:

§ 73.1250 Broadcasting emergency information.

* * * * *

(e) Immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages under paragraph (b) of this section, or when daytime facilities were used during nighttime hours by an AM station in accordance with paragraph (f) of this section, a report in letter form shall be forwarded to the FCC**'s** main office indicated in § 0.401(a) of this chapter setting forth the nature of the emergency, the dates and hours of the broadcasting of emergency information, and a brief description of the material carried during the emergency. A certification of compliance with the noncommercialization provision of paragraph (f) of this section must accompany the report where daytime facilities are used during nighttime hours by an AM station, together with a detailed showing, under the provisions of that paragraph, that no other broadcast service existed or was adequate.

* * * * *

53. Section 73.1350 is amended by removing and reserving paragraph (f)(3) and revising paragraph (h) to read as follows:

§ 73.1350 Transmission system operation.

* * * * *

(f) ***

(3) [Removed]

* * * * *

(h) Whenever a transmission system control point is established at a location other than the main studio or transmitter, a letter of notification of that location must be sent to the FCC via a Change of Control Point Notice in LMS within 3 days of the initial use of that point. The letter should include a list of all control points in use, for clarity. This notification is not required if responsible station personnel can be contacted at the transmitter or studio site during hours of operation.

* * * * *

54. Section 73.1540 is amended by revising paragraph (a) to read as follows:

§ 73.1540 Carrier frequency measurements.

(a) The carrier frequency of each AM and FM station shall be measured or determined as often as necessary to ensure that they are maintained within the prescribed tolerances.

* * * * *

§ 73.1545 [Amended]

55. Section 73.1545 is amended by removing and reserving paragraph (c), and removing paragraph (e) and the Note to paragraph (e).

56. Amend § 73.1560 by:

a. Revising paragraphs (a)(1) and (c)(1);

b. Removing and reserving paragraph (c)(2); and

c. Revising paragraph (d).

The revisions read as follows:

§ 73.1560 Operating power and mode tolerances.

(a) * * *

(1) Except for AM stations using modulation dependent carrier level (MDCL) control technology, or as provided for in paragraph (d) of this section, the antenna input power of an AM station, as determined by the procedures specified in § 73.51, must be maintained as near as practicable to the authorized antenna input power and may not be less than 90 percent nor greater than 105 percent of the authorized power. AM stations may, without prior Commission authority, commence MDCL control technology use, provided that within 10 days after commencing such operation, the licensee submits an electronic notification of commencement of MDCL control operation using FCC Form 2100 Schedule 338. The transmitter of an AM station operating using MDCL control technology, regardless of the MDCL control technology employed, must achieve full licensed power at some audio input level or when the MDCL control technology is disabled. MDCL control operation must be disabled before field strength measurements on the station are taken.

* * * * *

(c) * * *

(1) Except as provided in paragraph (d) of this section, the output power of a TV or Class A TV transmitter, as determined by the procedures specified in § 73.664, must be maintained as near as is practicable to the authorized transmitter output power and may not be less than 80% nor more than 110% of the authorized power.

(2) [Removed]

* * * * *

(d) *Reduced power operation.* In the event it becomes technically impossible to operate at authorized power, a broadcast station may operate at reduced power for a period of not more than 30 days without specific authority from the FCC. If operation at reduced power will exceed 10 consecutive days, notification must be made to the FCC in a Reduced Power Notification via LMS, not later than the 10th day of the lower power operation. In the event that normal power is restored within the 30 day period, the licensee must notify the FCC of the date that normal operation was restored. If causes beyond the control of the licensee prevent restoration of the authorized power within 30 days, a request for Special Temporary Authority (see § 73.1635) must be made to the FCC via LMS for additional time as may be necessary.

§ 73.1570 Modulation levels: AM and FM.

57. Section 73.1570 is amended by revising the section heading to read as follows and removing and reserving paragraph (b)(3).

§ 73.1590 [Amended]

58. Section 73.1590 is amended by removing and reserving paragraphs (a)(5), (c)(1), and (3).

59. Section 73.1615 is amended by revising paragraphs (b)(3) and (c)(1) to read as follows:

§ 73.1615 Operating during modification of facilities.

* * * * *

(b) * * *

(3) Operate in a nondirectional mode during the presently licensed hours of directional operation with power reduced to 25% or less of the nominal licensed power, or whatever higher power, not exceeding licensed power, will insure that the radiated field strength specified by the license is not exceeded at any given azimuth for the corresponding hours of directional operation, or

* * * * *

(c) * * *

(1) Should it be necessary to continue the procedures in either paragraph (a) or (b) of this section beyond 30 days, a Silent STA application or an Engineering STA application must be filed via LMS.

* * * * *

60. Section 73.1620 is amended by revising paragraphs (a)(1) through (3), and removing paragraphs (f) and (g) to read as follows:

§ 73.1620 Program tests.

(a) * * *

(1) The permittee of a nondirectional AM or FM station, or a nondirectional or directional TV or Class A TV station, may begin program tests upon notification to the FCC in a "Program Test Authority" filing via LMS provided that within 10 days thereafter, an application for a license is filed with the FCC in Washington, DC. Television, Class A, TV translator, and low power television broadcast stations authorized on channel 14 must comply with § 73.617(b)(2)(ii).

(2) The permittee of an FM station with a directional antenna system must file an application for license on FCC Form 2100 Schedule 302-FM in LMS requesting authority to commence program test operations at full power. This license application must be filed at least 10 days prior to the date on which full power operations are desired to commence. The application for license must contain any exhibits called for by conditions on the construction permit. The staff will review the license application and the request for program test authority and issue a letter notifying the applicant whether full power operation has been approved. Upon filing of the license application and related exhibits, and while awaiting approval of full power operation, the FM permittee may operate the

directional antenna at one half (50%) of the authorized effective radiated power. Alternatively, the permittee may continue operation with its existing licensed facilities pending the issuance of program test authority at the full effective radiated power by the staff.

(3) FM licensees replacing a directional antenna pursuant to § 73.1690 (c)(2) without changes which require a construction permit (*see* § 73.1690(b)) may immediately commence program test operations with the new antenna at one half (50%) of the authorized ERP upon installation. If the directional antenna replacement is an EXACT duplicate of the antenna being replaced (*i.e.*, same manufacturer, antenna model number, and measured composite pattern), program tests may commence with the new antenna at the full authorized power upon installation. The licensee must file a modification of license application on FCC Form 2100 Schedule 302-FM within 10 days of commencing operations with the newly installed antenna, and the license application must contain all of the exhibits required by § 73.1690(c)(2). After review of the modification-of-license application to cover the antenna change, the Commission will issue a letter notifying the applicant whether program test operation at the full authorized power has been approved for the replacement directional antenna.

* * * * *

(f) [Removed]

(g) [Removed]

61. Section 73.1635 is amended by revising paragraphs (a)(2), (3), and (5) to read as follows:

§ 73.1635 Special temporary authorizations (STA).

(a) * * *

(2) The request is to be filed electronically in LMS using the "Engineering STA Application" and shall fully describe the proposed operation and the necessity for the requested STA. Such letter requests shall be signed by the licensee or the licensee's representative.

(3) A request for a STA necessitated by unforeseen equipment damage or failure may be made without regard to the procedural requirements of this section (e.g. via e-mail or telephone). Any request made pursuant to this paragraph shall be followed by a written confirmation request

conforming to the requirements of paragraph (a)(2) of this section. Confirmation requests shall be submitted within 24 hours. (See also § 73.1680 Emergency Antennas).

* * * * *

(5) Certain rules specify special considerations and procedures in situations requiring an STA or permit temporary operation at variance without prior authorization from the FCC when notification is filed as prescribed in the particular rules. See § 73.62, Directional antenna system tolerances; § 73.157, Antenna testing during daytime; § 73.158, Directional antenna monitoring points; § 73.1250, Broadcasting emergency information; § 73.1350, Transmission system operation; § 73.1560, Operating power and mode tolerances; § 73.1570, Modulation levels: AM, and FM; § 73.1615, Operation during modification of facilities; § 73.1680, Emergency antennas; and § 73.1740, Minimum operating schedule.

* * * * *

62. Section 73.1675 is amended by revising paragraphs (a)(1)(iii) and (b) to read as follows:

§ 73.1675 Auxiliary antennas.

(a) ***

(1) * * *

(iii) TV stations: The noise limited contour as defined in §73.619(c).

* * * * *

(b) An application for a construction permit to install a new auxiliary antenna, or to make changes in an existing auxiliary antenna for which prior FCC authorization is required (see § 73.1690), must be filed electronically in LMS using FCC Form 2100 (see § 73.3500 for Schedules) for AM, FM, and TV stations, or on FCC Form 2100, Schedule 340 for noncommercial educational FM stations.

* * * * *

63. Section 73.1690 is amended by revising paragraphs (b) introductory text, (b)(3), and (c)(3) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(b) The following changes may be made only after the grant of a construction permit application on FCC Form 2100 (see § 73.3500 for Schedules) for AM, FM, and TV stations or Form 2100, Schedule 340 for noncommercial educational stations:

(3) Any change which would require an increase along any azimuth in the composite directional antenna pattern of an FM station from the composite directional antenna pattern authorized (see § 73.316), or any increase from the authorized directional antenna pattern for a TV broadcast (see § 73.625) or Class A TV station (see § 73.6025).

* * * * *

(c) * * *

(3) A directional TV on Channels 2 through 13 or 22 through 36 or a directional Class A TV on Channels 2 through 13 or 22 through 36, or a directional TV or Class A TV station on Channels 15 through 21 which is in excess of 341 km (212 miles) from a cochannel land mobile operation or in excess of 225 km (140 miles) from a first-adjacent channel land mobile operation (*see* § 74.709(a) and (b) of this chapter for tables of urban areas and reference coordinates of potentially affected land mobile operations), may replace a directional TV or Class A TV antenna by a license modification application, if the proposed horizontal theoretical directional antenna pattern does not exceed the licensed horizontal directional antenna pattern at any azimuth and where no change in effective radiated power will result. The modification of license application on Form 2100 (see § 73.3500 for Schedules) must contain all of the data set forth in § 73.625(c)(3) or § 73.6025(a), as applicable.

* * * * *

64. Section 73.1740 is amended by revising paragraph (a)(4) to read as follows:

§ 73.1740 Minimum operating schedule.

(a) * * *

(4) In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue

operation for a period of not more than 30 days without further authority from the FCC. A "Reduced Power" or "Suspension of Operation" Notification must be made via LMS not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

* * * * *

65. Revise § 73.1750 to read as follows:

§ 73.1750 Discontinuance of operation.

The licensee of each station shall provide notification to the FCC in a "Cancellation Application" via LMS of the permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, for cancellation. The license of any station that fails to transmit broadcast signals for any consecutive 12 month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary. If a licensee surrenders its license pursuant to an interference reduction agreement, and its surrender is contingent on the grant of another application, the licensee must identify in its notification the contingencies involved.

66. Section 73.2080 is amended by revising paragraphs (c)(6) and (f)(1) through (5) to read as follows:

§ 73.2080 Equal employment opportunities (EEO).

* * * * *

(c) * * *

(6) Annually, on the anniversary of the date a station is due to file its renewal application, the station

shall place in its public file, maintained pursuant to § 73.3526 or § 73.3527, and on its web site, if it has one, an EEO public file report containing the following information (although if any broadcast licensee acquires a station pursuant to FCC Form 2100 Schedule 314 or FCC Form 2100 Schedule 315 during the twelve months covered by the EEO public file report, its EEO public file report shall cover the period starting with the date it acquired the station):

* * * * *

(f) * * *

(1) All broadcast stations, including those that are part of an employment unit with fewer than five full-time employees, shall file a Broadcast Equal Employment Opportunity Program Report (Form 2100 Schedule 396) with their renewal application. Form 2100 Schedule 396 is filed on the date the station is due to file its application for renewal of license. If a broadcast licensee acquires a station pursuant to FCC Form 2100 Schedule 314 or FCC Form 2100 Schedule 315 during the period that is to form the basis for the Form 2100 Schedule 396, information provided on its Form 2100 Schedule 396 should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station. Stations are required to maintain a copy of their Form 2100 Schedule 396 in the station's public file in accordance with the provisions of §§ 73.3526 and 73.3527.

(2) The Commission will conduct a mid-term review of the employment practices of each broadcast television station that is part of an employment unit of five or more full-time employees and each radio station that is part of an employment unit of eleven or more full-time employees, four years following the station's most recent license expiration date as specified in § 73.1020. If a broadcast licensee acquires a station pursuant to FCC Form 2100 Schedule 314 or FCC Form 2100 Schedule 315 during the period that is to form the basis for the mid-term review, that review will cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station.

(3) If a station is subject to a time brokerage agreement, the licensee shall file Forms 2100 Schedule 396 and EEO public file reports concerning only its own recruitment activity. If a licensee is a broker of another station or stations, the licensee-broker shall include its recruitment activity for the brokered

station(s) in determining the bases of Forms 2100 Schedule 396 and the EEO public file reports for its own station. If a licensee-broker owns more than one station, it shall include its recruitment activity for the brokered station in the Forms 2100 Schedule 396 and EEO public file reports filed for its own station that is most closely affiliated with, and in the same market as, the brokered station. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include its recruitment activity for the brokered station in the Forms 2100 Schedule 396 and EEO public file reports filed for its own station that is geographically closest to the brokered station.

(4) Broadcast stations subject to this section shall maintain records of their recruitment activity necessary to demonstrate that they are in compliance with the EEO rule. Stations shall ensure that they maintain records sufficient to verify the accuracy of information provided in Form 2100 Schedule 396 and EEO public file reports. To determine compliance with the EEO rule, the Commission may conduct inquiries of licensees at random or if it has evidence of a possible violation of the EEO rule. In addition, the Commission will conduct random audits. Specifically, each year approximately five percent of all licensees in the television and radio services will be randomly selected for audit, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Upon request, stations shall make records available to the Commission for its review.

(5) The public may file complaints throughout the license term based on the contents of a station's public file. Provisions concerning filing, withdrawing, or non-filing of informal objections or petitions to deny license renewal, assignment, or transfer applications are delineated in §§ 73.3584 and 73.3587-3589 of the Commission's rules.

* * * * *

67. Section 73.3500 is amended by revising paragraphs (a) and (b) and removing paragraph (b)(1) to read as follows:

§ 73.3500 Application and report forms.

(a) Following are the FCC broadcast application and report forms, listed by number.

Form number	Title
175	Application to Participate in an FCC Auction
2100 Schedule A	Application for Authority to Construct or Make Changes in a TV Commercial Broadcast/Noncommercial Educational Broadcast Station.
2100 Schedule 301-AM	Application for AM Station Construction Permit
2100 Schedule 301-FM	Application for Commercial FM Station Construction Permit
2100 Schedule 302-AM	Application for AM Broadcast Station License.
2100 Schedule E	Application for Class A Television Broadcasting Station Construction Permit.
2100 Schedule 302-FM	Application for FM Station License.
2100 Schedule B	Application for Television Broadcast Station License.
2100 Schedule F	Application for Class A Television Broadcast Station License
2100 Schedule 303-S	Application for Renewal of License for Commercial or Noncommercial AM, FM, TV, Class A TV, FM Translator, TV Translator, LPTV, or LPFM Station
308	Application for Permit to Deliver Programs to Foreign Broadcast Stations.
309	Application for Authority to Construct or Make Changes in an International or Experimental Broadcast Station.
310	Application for an International or Experimental Broadcast Station License.
311	Application for Renewal of an International or Experimental Broadcast Station License.
2100 Schedule 314	Application for Consent to Assignment of Broadcast Station Construction Permit or License.
2100 Schedule 315	Application for Consent to Transfer of Control of Entity Holding Broadcast

Form number	Title
	Station Construction Permit or License.
2100 Schedule 316	Application for Consent to Assign Broadcast Station Construction Permit or License or Transfer Control of Entity Holding Broadcast Station Construction Permit or License.
2100 Schedule 318	Application for Low Power FM Station Construction Permit.
2100 Schedule 319	Application for Low Power FM Station License.
323	Ownership Report for Commercial Broadcast Stations.
323-E	Ownership Report for Noncommercial Educational Broadcast Stations.
2100 Schedule 340	Application for Noncommercial Educational FM Station Construction Permit.
2100 Schedule 345	Application for Consent to Assign Construction Permit or License for TV or FM Translator or Low Power TV Station, or to Transfer Control of Entity Holding TV or FM Translator or Low Power TV Station.
2100 Schedule C	Application for Authority to Construct or Make Changes in a Low Power TV or TV Translator Station.
2100 Schedule D	Application for a Low Power TV or TV Translator Station License.
2100 Schedule 349	Application for FM Translator or FM Booster Station Construction Permit.
2100 Schedule 350	Application for FM Translator or FM Booster Station License.
395-B	Annual Employment Report and instructions.
2100 Schedule 396	Broadcast Equal Employment Opportunity Program Report.
2100 Schedule 396-A	Broadcast Equal Employment Opportunity Model Program Report.
2100 Schedule H	Children’s Television Programming Report.
601	FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form number	Title
603	FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control.

(b) Any application on Form 2100 must be filed electronically.

(1) [Removed]

68. Section 73.3516 is amended by revising paragraphs (e) introductory text and (e)(1) to read as follows:

§ 73.3516 Specification of facilities.

* * * * *

(e) A petition to deny an application for renewal of license of an existing broadcast station will be considered as timely filed if it is tendered for filing by the end of the first day of the last full calendar month of the expiring license term.

(1) If the license renewal application is not timely filed as prescribed in § 73.3539, the deadline for filing petitions to deny thereto is the 90th day after the FCC gives public notice that it has accepted the late-filed renewal application for filing.

* * * * *

69. Section 73.3519 is amended by revising paragraph (a) to read as follows:

§ 73.3519 Repetitious applications.

(a) Where the FCC has denied an application for a new station or for any modification of services or facilities, or dismissed such application with prejudice, no like application involving service of the same kind for substantially the same area by substantially the same applicant, or his successor or assignee, or on behalf or for the benefit of the original parties in interest, may be filed within 12 months from the effective date of the FCC's action.

* * * * *

70. Revise § 73.3521 to read as follows:

§ 73.3521 Mutually exclusive applications for low power television, and television translator

stations.

When there is a pending application for a new low power television or television translator station, or for major changes in an existing station, no other application which would be directly mutually exclusive with the pending application may be filed by the same applicant or by any applicant in which any individual in common with the pending application has any interest, direct or indirect, except that interests or less than 1% will not be considered.

§ 73.3523 [Removed]

71. Remove § 73.3523.

72. Section 73.3525 is amended by revising paragraphs (a) introductory text and (b) and removing the Note to read as follows:

§ 73.3525 Agreements for removing application conflicts.

(a) Whenever applicants for a construction permit for a broadcast station enter into an agreement to procure the removal of a conflict between applications pending before the FCC by withdrawal or amendment of an application or by its dismissal pursuant to § 73.3568, all parties thereto shall, within 5 days after entering into the agreement, file with the FCC a joint request for approval of such agreement. The joint request shall be accompanied by a copy of the agreement, including any ancillary agreements, and an affidavit of each party to the agreement setting forth:

* * * * *

(b) Except where a joint request is filed pursuant to paragraph (a) of this section, any applicant filing an amendment pursuant to § 73.3522 (b)(1) and (c), or a request for dismissal pursuant to § 73.3568 (b)(1) and (c), which would remove a conflict with another pending application; or a petition for leave to amend pursuant to § 73.3522(b)(2) which would permit a grant of the amended application or an application previously in conflict with the amended application; or a request for dismissal pursuant to § 73.3568(b)(2), shall file with it an affidavit as to whether or not consideration (including an agreement for merger of interests) has been promised to or received by such applicant, directly or indirectly, in connection with the amendment, petition or request. Although § 74.780 of this chapter

makes this section generally applicable to low power TV and TV translators stations, paragraph (b) of this section shall not be applicable to such stations.

* * * * *

73. Amend § 73.3533 by:

a. Revising paragraphs (a)(1), (4) through (7);

b. Adding paragraph (a)(8); and

c. Revising paragraph (b).

The revisions and additions read as follows:

§ 73.3533 Application for construction permit or modification of construction permit.

(a) * * *

(1) FCC Form 2100, Schedule A (TV); FCC Form 2100, Schedule 301-FM (FM), FCC Form 2100, Schedule 301-AM (AM), "Application for Authority to Construct or Make Changes in an Existing Commercial Broadcast Station."

* * * * *

(4) FCC Form 2100, Schedule A (TV); FCC Form 2100, Schedule 340 (FM), "Application for Authority to Construct or Make Changes in a Noncommercial Educational Broadcast Station."

(5) FCC Form 2100, Schedule C, "Application for Authority to Construct or Make Changes in a Low Power TV or TV Translator Station."

(6) FCC Form 2100, Schedule 349, "Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station."

(7) FCC Form 2100, Schedule 318, "Application for Construction Permit for a Low Power FM Broadcast Station."

(8) FCC Form 2100, Schedule E, "Application for Authority to Make Changes in a Class A TV Station."

(b) The filing of an application for modification of construction permit does not extend the expiration date of the construction permit.

* * * * *

74. Section 73.3536 is amended by revising paragraphs (b)(1)(ii) and (iii), (b)(4) through (6), and (c) to read as follows:

§ 73.3536 Application for license to cover construction permit.

* * * * *

(b) * * *

(1)

(i) Form 2100, Schedule 302-AM for AM stations, "Application for AM Station License."

(ii) Form 2100, Schedule 302-FM for FM stations, "Application for FM Station License."

(iii) Form 2100, Schedule B for television stations, "Application for TV Station Broadcast License."

*****

(4) FCC Form 2100, Schedule D, "Application for a Low Power TV or TV Translator Station License."

(5) FCC Form 2100, Schedule 350, "Application for an FM Translator or FM Booster Station License."

(6) FCC Form 2100, Schedule 319, "Application for a Low Power FM Broadcast Station License."

(c) Eligible low power television stations which have been granted a certificate of eligibility may file FCC Form 2100, Schedule F, "Application for Class A Television Broadcast Station License."

75. Section 73.3540 is amended by revising paragraphs (c) through (e), and (f) introductory text to read as follows:

§ 73.3540 Application for voluntary assignment or transfer of control.

* * * * * *

(c) Application for consent to the assignment of construction permit or license must be filed on FCC Form 2100 Schedule 314 "Assignment of License or Construction Permit" or FCC Form 2100 Schedule 316 (See paragraph (f) of this section). For International Broadcast Stations, the application shall be

filed electronically in the International Bureau Filing System (IBFS).

(d) Application for consent to the transfer of control of an entity holding a construction permit or license must be filed on FCC Form 2100 Schedule 315 "Transfer of Control" or FCC Form 2100 Schedule 316 (see paragraph (f) of this section). For International Broadcast Stations, applications shall be filed electronically in IBFS.

(e) Application for consent to the assignment of construction permit or license or to the transfer of control of an entity licensee or permittee for an FM or TV translator station, a low power TV station and any associated auxiliary station, such as translator microwave relay stations and UHF translator booster stations, only must be filed on FCC Form 2100 Schedule 345 "Application for Consent to Assign Construction Permit or License for TV or FM Translator or Low Power TV Station or to Transfer Control of Entity Holding TV or FM Translator, or a Low Power TV Station."

(f) The following assignment or transfer applications may be filed on FCC Form 2100 Schedule 316:

* * * * *

76. Section 73.3541 is amended by revising paragraph (b) to read as follows:

§ 73.3541 Application for involuntary assignment of license or transfer of control.

* * * * *

(b) Within 30 days after the occurrence of such death or legal disability, an application on FCC Form 2100 Schedule 316 shall be filed requesting consent to involuntary assignment of such permit or license or for involuntary transfer of control of the entity holding such permit or license, to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved.

§ 73.3543 [Removed]

77. Remove § 73.3543.

78. Section 73.3544 is amended by revising paragraphs (b) introductory text and paragraph (c) to read as follows:

§ 73.3544 Application to obtain a modified station license.

* * * * *

(b) An electronic filing via LMS of an Administrative Update, see § 73.3511(b), may be filed with the FCC, to cover the following changes:

* * * * *

(c) A change in the name of the licensee where no change in ownership or control is involved may be accomplished by electronically filing via LMS an Administrative Update.

79. Revise § 73.3549 to read as follows:

§ 73.3549 Requests for extension of time to operate without required monitors, indicating instruments, and EAS encoders and decoders.

Requests for extension of authority to operate without required monitors, transmission system indicating instruments, or encoders and decoders for monitoring and generating the EAS codes and Attention Signal should be made to the FCC by electronically filing via LMS a STA. Such requests must contain information as to when and what steps were taken to repair or replace the defective equipment and a brief description of the alternative procedures being used while the equipment is out of service.

80. Section 73.3550 is amended by revising paragraphs (a), (b), (f), (i) through (k), and (m) to read as follows:

§ 73.3550 Requests for new or modified call sign assignments.

(a) All requests for new or modified call sign assignments for radio and television broadcast stations shall be made via LMS with the FCC. Licensees and permittees may utilize LMS to determine the availability and licensing status of any call sign; to select an initial call sign for a new station; to change a station's currently assigned call sign; to modify an existing call sign by adding or deleting an "-FM**,**" "-TV," or "-DT" suffix; to exchange call signs with another licensee or permittee in the same service; or to reserve a different call sign for a station being transferred or assigned.

(b) No request for an initial call sign assignment will be accepted from a permittee for a new radio or full-service television station until the FCC has granted a construction permit. Each such permittee shall request the assignment of its station's initial call sign expeditiously following the grant of its

construction permit. All initial construction permits for low power TV stations will be issued with a low power TV call sign in accordance with § 74.791(a) of this chapter.

* * * * *

(f) Only four-letter call signs (plus an LP, FM, TV**,** DT, or CA suffix, if used) will be assigned. The four letter call sign for LPFM stations will be followed by the suffix "-LP." However, subject to the other provisions of this section, a call sign of a station may be conformed to a commonly owned station holding a three-letter call assignment (plus FM, TV, DT, CA or LP suffixes, if used).

* * * * *

(i) The provisions of this section shall not apply to International broadcast stations or to stations authorized under part 74 of this chapter (except as provided in § 74.791 of this chapter).

(j) A change in call sign assignment will be made effective on the date specified in the Call Sign Request Authorization generated by LMS acknowledging the assignment of the requested new call sign and authorizing the change. Unless the requested change in call sign assignment is subject to a pending transfer or assignment application, the requester is required to include in its on-line call sign request a specific effective date to take place within 45 days of the submission of its electronic call sign request. Postponement of the effective date will be granted only in response to a timely request and for only the most compelling reasons.

(k) Four-letter combinations commencing with "W" or "K" which are assigned as call signs to ships or to other radio services are not available for assignment to broadcast stations, with or without the "-FM**,**" "-TV," or "-DT" suffix.

* * * * *

(m) Where a requested call sign, without the "-FM," "-TV," "-CA," "-DT," or "**-**LP" suffix, would conform to the call sign of any other non-commonly owned station(s) operating in a different service, an applicant utilizing the on-line reservation and authorization system will be required to certify that consent to use the secondary call sign has been obtained from the holder of the primary call sign.

81. Section 73.3555 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

(b) * * *

(1) * * *

(i) The digital noise limited service contours of the stations (computed in accordance with § 73.619(c)) do not overlap; or

* * * * *

82. Amend § 73.3572 by:

a. Revising the section heading, paragraphs (a)(2) through (3);

b. Removing and reserving paragraph (a)(4);

c. Revising paragraphs (c) and (f); and

d. Removing paragraphs (g) and (h).

The revisions read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, and TV translators applications.

(a) * * *

(2) In the case of Class A TV stations authorized under subpart J of this part and low power TV and TV translator stations authorized under part 74 of this chapter, a major change is any change in:

* * * * *

(3) Other changes will be considered minor**,** including changes made to implement a channel sharing arrangement, provided they comply with the other provisions of this section.

(4) [Removed]

* * * * *

(c) Amendments to Class A TV, low power TV and TV translator stations, or non-reserved television applications, which would require a new file number pursuant to paragraph (b) of this section, are subject to competitive bidding procedures and will be dismissed if filed outside a specified filing

period. See 47 CFR 73.5002(a). When an amendment to an application for a reserved television allotment would require a new file number pursuant to paragraph (b) of this section, the applicant will have the opportunity to withdraw the amendment at any time prior to designation for a hearing if applicable; and may be afforded, subject to the discretion of the Administrative Law Judge, an opportunity to withdraw the amendment after designation for a hearing.

* * * * *

(f) Applications for minor modification of Class A TV, low power TV and TV translator stations may be filed at any time, unless restricted by the FCC, and will be processed on a "first-come/first-served" basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. Provided, however, that applications for minor modifications of Class A TV and those of TV broadcast stations may become mutually exclusive until grant of a pending Class A TV or TV broadcast minor modification application.

(g) [Removed]

(h) [Removed]

83. Section 73.3578 is amended by revising paragraph (b) to read as follows:

§ 73.3578 Amendments to applications for renewal, assignment or transfer of control.

* * * * *

(b) Any amendment to an application for assignment of construction permit or license, or consent to the transfer of control of an entity holding such a construction permit or license, shall be considered to be a minor amendment, except that any amendment which seeks a change in the ownership interest of the proposed assignee or transferee which would result in a change in control, or any amendment which would require the filing of FCC Form 2100 Schedules 314, 315, or 345 (*see* § 73.3500), if the changes sought were made in an original application for assignment or transfer of control, shall be considered to be a major amendment. However, the FCC may, within 15 days after the acceptance for filing of any other amendment, advise the applicant that the amendment is considered to be a major amendment and therefore is subject to the provisions of § 73.3580.

84. Section 73.3584 is amended by revising paragraphs (a) and (c) to read as follows:

§ 73.3584 Procedure for filing petitions to deny.

(a) For mutually exclusive applications subject to selection by competitive bidding (non-reserved channels) or fair distribution/point system (reserved channels), petitions to deny may be filed only against the winning bidders or tentative selectee(s), and such petitions will be governed by §§ 73.5006 and 73.7004, respectively. For all other applications the following rules will govern. Except in the case of applications for new low power TV and TV translator stations, for major changes in the existing facilities of such stations, or for applications for a change in output channel tendered by displaced low power TV and TV translator stations pursuant to § 73.3572(a)(1), any party in interest may file with the Commission a Petition to Deny any application (whether as originally filed or if amended so as to require a new file number pursuant to § 73.3571(j), § 73.3572(b), § 73.3573(b), § 73.3574(b) or § 73.3578) for which local notice pursuant to § 73.3580 is required, provided such petitions are filed prior to the day such applications are granted or designated for hearing; but where the FCC issues a public notice pursuant to the provisions of § 73.3571(c), § 73.3572(c) or § 73.3573(d), establishing a "cut-off" date, such petitions must be filed by the date specified. In the case of applications for transfers and assignments of construction permits or station licenses, Petitions to Deny must be filed not later than 30 days after issuance of a public notice of the acceptance for filing of the applications. In the case of applications for renewal of license, Petitions to Deny may be filed at any time up to the deadline established in § 73.3516(e). Requests for extension of time to file Petitions to Deny applications for new broadcast stations or major changes in the facilities of existing stations or applications for renewal of license will not be granted unless all parties concerned, including the applicant, consent to such requests, or unless a compelling showing can be made that unusual circumstances make the filing of a timely petition impossible and the granting of an extension warranted.

* * * * *

(c) In the case of applications for new low power TV and TV translator stations, for major changes in the existing facilities of such stations, or for applications for a change in output channel tendered by

displaced low power TV and TV translator stations pursuant to § 73.3572(a)(1), any party in interest may file with the FCC a Petition to Deny any application (whether as originally filed or if amended so as to require a new file number pursuant to § 73.3572(b)) for which local notice pursuant to § 73.3580 is required, provided such petitions are filed within 30 days of the FCC Public Notice proposing the application for grant (applicants may file oppositions within 15 days after the Petition to Deny is filed); but where the FCC selects a tentative permittee pursuant to Section 1.1601 *et seq.,* Petitions to Deny shall be accepted only if directed against the tentative selectee and filed after issuance of and within 15 days of FCC Public Notice announcing the tentative selectee. The applicant may file an opposition within 15 days after the Petition to Deny is filed. In cases in which the minimum diversity preference provided for in § 1.1623(f)(1) has been applied, an "objection to diversity claim" and opposition thereto, may be filed against any applicant receiving a diversity preference, within the same time period provided herein for Petitions and Oppositions. In all pleadings, allegations of fact or denials thereof shall be supported by appropriate certification. However, the FCC may announce, by the Public Notice announcing the acceptance of the last-filed mutually exclusive application, that a notice of Petition to Deny will be required to be filed no later than 30 days after issuance of the Public Notice.

* * * * *

85. Revise § 73.3587 to read as follows:

§ 73.3587 Procedure for filing informal objections.

Before FCC action on any application for an instrument of authorization, any person may file informal objections to the grant in LMS. Such objections may be submitted in letter form (without extra copies) and shall be signed. The limitation on pleadings and time for filing pleadings provided for in § 1.45 of the rules shall not be applicable to any objections duly filed under this section.

86. Amend § 73.3598 by:

a. Revising paragraphs (a) introductory text;

b. Removing and reserving paragraph (b)(3); and

c. Revising paragraph (c).

The revisions read as follows:

§ 73.3598 Period of construction.

(a) Except as provided in the last two sentences of this paragraph (a), each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; low power FM; TV translator; FM translator; or FM booster station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. An eligible entity that acquires an issued and outstanding construction permit for a station in any of the services listed in this paragraph (a) shall have the time remaining on the construction permit or eighteen months from the consummation of the assignment or transfer of control, whichever is longer, within which to complete construction and file an application for license. For purposes of the preceding sentence, an "eligible entity" shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR parts 121 through 201, at the time the transaction is approved by the FCC, and holds:

* * * * *

(b) ***

(3) [Removed]

* * * * *

(c) A permittee must notify the Commission as promptly as possible and, in any event, within 30 days, of any pertinent event covered by paragraph (b) of this section, and provide supporting documentation. All notifications must be filed in LMS and must be placed in the station's local public file. For authorizations to construct stations in the Low Power FM service, on FM channels reserved for noncommercial educational use, and for noncommercial educational full power television stations, the Commission will identify and grant an initial period of tolling when the grant of a construction permit is encumbered by administrative or judicial review under the Commission's direct purview (e.g., petitions for reconsideration and applications for review of the grant of a construction permit pending before the

Commission and any judicial appeal of any Commission action thereon), a request for international coordination under paragraph (b)(4) of this section, or failure of a condition under paragraph (b)(5) of this section. When a permit is encumbered by administrative or judicial review outside of the Commission's direct purview (e.g., local, state, or non-FCC Federal requirements), the permittee is required to notify the Commission of such tolling events.

* * * * *

87. Section 73.3700 is amended by revising paragraphs (a)(2) and removing and reserving paragraphs (a)(6), (7), removing paragraph (a)(17), removing and reserving paragraphs (b)(1) through (4), removing paragraph (c)(6), and removing and reserving paragraphs (d), (g)(1) through (3), to read as follows:

§ 73.3700 Post-incentive auction licensing and operation.

(a) * * *

* * * * *

(2) *Channel reassignment public notice.* For purposes of this section, *Channel Reassignment Public Notice* means the public notice released upon the completion of the broadcast television spectrum incentive auction conducted under section 6403 of the *Spectrum* Act specifying the new channel assignments and technical parameters of any broadcast television stations that are reassigned to new channels. *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*, GN Docket No. 12-268, Public Notice, 32 FCC Rcd 2786 (WTB/MB 2017).

* * * * *

(a)(6) through (7) [Reserved]

* * * * *

(a)(17) [Removed]

(b)(1) through (4) [Reserved]

* * * * *

(c)(6) [Removed]

(d) [Reserved]

* * * * *

(g) ***

(1) through (3) [Reserved]

* * * * *

88. Revise § 73.4000 to read as follows:

§ 73.4000 Listing of FCC policies.

The following sections list, solely for the purpose of reference and convenience, certain Policies of the FCC. The present listing of FCC policies and citations thereto should not be relied upon as an all-inclusive list. Failure to include a policy in this list does not affect its validity. In addition, documents listed may be revised by subsequent decisions and the inclusion of a document on this list does not necessarily reflect that it is currently valid. Each section bears the title of one Policy and the citations which will direct the user to the specific document(s) pertaining to that Policy.

89. Revise § 73.4017 to read as follows:

§ 73.4017 Application processing: Commercial FM stations.

See §§ 73.5000 through 73.5009.

90. Revise § 73.4055 to read as follows:

§ 73.4055 Cigarette advertising.

See 15 U.S.C. 1335; 15 U.S.C. 4402(c).

91. Revise § 73.4060 to read as follows:

§ 73.4060 Citizens agreements.

(a) See Report and Order, Docket 20495, FCC 75-1359, adopted December 10, 1975. 57 F.C.C. 2d 42; 40 F.R. 459730, December 30, 1975.

* * * * *

§ 73.4082 [Removed and Reserved]

92. Remove and reserve § 73.4082.

93. Revise § 73.4100 to read as follows:

§ 73.4100 Financial qualifications; new AM and FM stations.

See Public Notice, FCC 78-556, dated August 2, 1978. 69 FCC 2d 407; 43 FR 34841, August 7, 1978. *See also Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301)*, Memorandum Opinion and Order, 50 R.R.2d 381, para. 6 (1981) and *Certification of Financial Qualification by Applicants for Broadcast Station Construction Permits*, Public Notice, 2 FCC Rcd 2122 (1987), 52 FR 17333 (May 7, 1987).

94. Revise § 73.4101 to read as follows:

§ 73.4101 Financial qualifications, TV stations.

See Public Notice, FCC 79-299, dated May 11, 1979. 72 F.C.C. 2d 784; 44 FR 29160, May 18, 1979. *See also Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301)*, Memorandum Opinion and Order, 50 R.R.2d 381, para. 6 (1981) and *Certification of Financial Qualification by Applicants for Broadcast Station Construction Permits*, Public Notice, 2 FCC Rcd 2122 (1987), 52 FR 17333 (May 7, 1987).

§ 73.4107 [Removed and Reserved]

95. Remove and reserve § 73.4107.

§ 73.4108 [Removed and Reserved]

96. Remove and reserve § 73.4108.

97. Revise § 73.4210 to read as follows:

§ 73.4210 Procedure Manual: "The Public and Broadcasting".

See *The Public and Broadcasting*, a copy of which is available at: https://www.fcc.gov/media/radio/public-and-broadcasting.

§ 73.4247 [Removed and Reserved]

98. Remove and reserve § 73.4247.

99. Section 73.4267 is amended by revising paragraphs (a) and (b) and removing paragraph (c) to read as follows:

§ 73.4267 Time brokerage.

(a) See Report and Order, MM Docket Nos. 94-150, 92-51, 87-154, FCC 99-207, adopted August 5, 1999, 64 FR 50622 (Sept. 17, 1999).

(b) See § 73.3555, Note 2(j).

(c) [Removed]

§ 73.4247 [Removed and Reserved]

100. Remove and reserve § 73.4247.

101. Section 73.5000 is amended by revising paragraph (a) to read as follows:

§ 73.5000 Services subject to competitive bidding.

(a) Mutually exclusive applications for new facilities and for major changes to existing facilities in the following broadcast services are subject to competitive bidding: AM; FM; FM translator; television; low-power television; television translator; and Class A television. Mutually exclusive applications for minor modifications of Class A television and television broadcast are also subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in part 73 or part 74 of this chapter.

* * * * *

102. Section 73.5005 is amended by revising paragraph (a) to read as follows:

§ 73.5005 Filing of long-form applications.

(a) Within thirty (30) days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, each winning bidder must submit an appropriate long-form application (FCC Form 2100) for each construction permit or license for which it was the high bidder. Long-form applications filed by winning bidders shall include the exhibits required by § 1.2107(d) of this chapter (concerning any bidding consortia or joint bidding arrangements); § 1.2110(j) of this chapter (concerning designated entity status, if applicable); and § 1.2112 of this chapter

(concerning disclosure of ownership and real party in interest information, and, if applicable, disclosure of gross revenue information for small business applicants).

* * * * *

103. Section 73.5006 is amended by revising paragraph (b) to read as follows:

§ 73.5006 Filing of petitions to deny against long-form applications.

* * * * *

(b) Within ten (10) days following the issuance of a public notice announcing that a long-form application for an AM, FM or television construction permit has been accepted for filing, petitions to deny that application may be filed in LMS. Within fifteen (15) days following the issuance of a public notice announcing that a long-form application for a low-power television, television translator or FM translator construction permit has been accepted for filing, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

* * * * *

104. Section 73.5007 is amended by revising paragraph (b)(2)(iii), (3)(iv), and (v) to read as follows:

§ 73.5007 Designated entity provisions.

* * * * *

(b) * * *

(2) * * *

(iii) Television broadcast station – the noise limited contour (*see* § 73.619(c));

* * * * *

(3)* * *

(iv) Television broadcast station – the noise limited contour (*see* § 73.619(c)).

(v) Low power television or television translator station - predicted, protected contour (see § 74.792(a) of this chapter).

* * * * *

105. Amend § 73.6000 by revising the definition for "Locally-produced programming" to read as follows:

§ 73.6000 Definitions.

* * *

Locally produced programming is programming produced within the predicted noise-limited contour (*see* § 73.619(c)) of a Class A station broadcasting the program or within the contiguous predicted noise-limited contours of any of the Class A stations in a commonly owned group.

* * * * *

106. Section 73.6010 is amended by removing and reserving paragraph (b), and revising paragraphs (c) and (d) to read as follows:

§ 73.6010 Class A TV station protected contour.

* * * * *

(b) [Reserved]

(c) A Class A TV station will be protected from interference within the following predicted signal contours:

(1) 43 dBu for stations on Channels 2 through 6;

(2) 48 dBu for stations on Channels 7 through 13; and

(3) 51 dBu for stations on Channels 14 through 36.

(d) The Class A TV station protected contour is calculated from the effective radiated power and antenna height above average terrain, using the F(50,90) signal propagation method specified in § 73.619(b)(1).

* * * * *

§ 73.6012 [Removed]

107. Remove § 73.6012.

§ 73.6013 [Removed]

108. Remove § 73.6013.

§ 73.6014 [Removed]

109. Remove § 73.6014.

110. Revise § 73.6017 to read as follows:

§ 73.6017 Class A TV station protection of Class A TV stations.

An application to change the facilities of a Class A TV station will not be accepted if it fails to protect authorized Class A stations in accordance with the requirements of § 74.793 (b) through (d) and § 74.793(g) of this chapter. This protection must be afforded to applications for changes in other authorized Class A stations filed prior to the date the Class A application is filed.

111. Revise § 73.6018 to read as follows:

§ 73.6018 Class A TV station protection of TV stations.

Class A TV stations must protect the TV service that would be provided by the facilities specified in the Table of TV Allotments in § 73.622(j), by authorized TV stations, and by applications that propose to expand TV stations' allotted or authorized coverage contour in any direction. Protection of these allotments, stations, and applications must be based on meeting the requirements of § 74.793 (b) through (e) of this chapter. An application to change the facilities of a Class A TV station will not be accepted if it fails to protect these TV allotments, stations, and applications in accordance with this section.

112. Revise § 73.6019 to read as follows:

§ 73.6019 Class A TV station protection of low power TV and TV translator stations.

An application to change the facilities of a Class A TV station will not be accepted if it fails to protect authorized low power TV and TV translator stations in accordance with the requirements of § 74.793(b) through (d) and (h) of this chapter. This protection must be afforded to applications for changes filed prior to the date the Class A station application is filed.

113. Revise § 73.6020 to read as follows:

§ 73.6020 Protection of stations in the land mobile radio service.

An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect stations in the land mobile radio service pursuant to the requirements specified in § 74.709 of this

chapter.

114. Section 73.6022 is revised to read as follows:

§ 73.6022 Negotiated interference.

(a) Notwithstanding the technical criteria in this subpart J of this part, subpart E of this part, and subpart G of part 74 of this chapter regarding interference protection to and from Class A TV stations, Class A TV stations may negotiate agreements with parties of authorized and proposed TV, LPTV, TV translator, Class A TV stations or other affected parties to resolve interference concerns; *provided,* however, other relevant requirements are met with respect to the parties to the agreement. A written and signed agreement must be submitted with each application or other request for action by the Commission. Negotiated agreements under this paragraph can include the exchange of money or other considerations from one entity to another. Applications submitted pursuant to the provisions of this paragraph (a) will be granted only if the Commission finds that such action is consistent with the public interest.

(b) [Reserved]

115. Revise § 73.6023(a) through (c) to read as follows:

§ 73.6023 Distributed transmission systems.

(a) Station licensees may operate a commonly owned group of Class A stations with contiguous predicted TV noise-limited contours (pursuant to § 73.619(c)) on a common television channel in a distributed transmission system.

(b) A Class A TV station may be authorized to operate multiple synchronized transmitters on its assigned channel to provide service consistent with the requirements of this section. Such operation is called a distributed transmission system (DTS). Except as expressly provided in this section, Class A stations operating a DTS facility must comply with all rules in this part applicable to Class A single-transmitter stations.

(c) For purposes of compliance with this section, a Class A station's “authorized facility” is the facility

authorized for the station in a license or construction permit for non-DTS, single-transmitter-location operation. A Class A station's "authorized service area" is defined as the area within its protected contour (described by § 73.6010(c)) as determined using the authorized facility.

* * * * *

116. Section 73.6024 is amended by revising paragraphs (b), removing and reserving paragraph (c) and revising paragraph (d) to read as follows:

§ 73.6024 Transmission standards and system requirements.

* * * * *

(b) A Class A TV station may continue to operate with the transmitter operated under its previous LPTV license, provided such operation does not cause any condition of uncorrectable interference due to radiation of radio frequency energy outside of the assigned channel. Such operation must continue to meet the requirements of § 74.750 of this chapter.

(c) [Reserved]

(d) A Class A station must meet the emission requirements of § 74.794 of this chapter. Stations within 275 kilometers of the US-Mexico border shall specify the full-service emission mask.

117. Amend § 73.6025 by:

a. Revising paragraph (a) introductory text;

b. Removing paragraphs (a)(1) through (5);

c. Removing and reserving paragraph (b); and

d. Revising paragraph (d).

The revisions read as follows:

§ 73.6025 Antenna system and station location.

(a) Applications for modified Class A TV facilities proposing the use of directional antenna systems must include all appropriate documentation specified in § 73.625(c)(3).

(1) through (5) [Removed]

(b) [Reserved]

* * * * *

(d) Class A TV stations are subject to the provisions in § 73.617(d) regarding blanketing interference.

118. Revise § 73.6026 to read as follows:

§ 73.6026 Broadcast regulations applicable to Class A television stations.

The following rules are applicable to Class A television stations:

(a) § 73.603 Numerical designation of television channels.

(b) § 73.624(b), (c) and (g) Television broadcast stations.

(c) § 73.658 Affiliation agreements and network program practice; territorial exclusivity in non-network program arrangements.

(d) § 73.664 Determining operating power.

(e) § 73.670 Commercial limits in children's programs.

(f) § 73.671 Educational and informational programming for children.

(g) § 73.673 Public information initiatives regarding educational and informational programming for children.

(h) § 73.688 Indicating instruments.

(i) § 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

(j) § 73.3615(a) and (g) Ownership reports.

§ 73.6027 [Removed]

119. Remove § 73.6027.

120. Section 73.8000 is revised to read as follows:

§ 73.8000 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. To enforce any edition other than that specified in this section, the Federal Communications Commission (FCC) must publish a document in

the Federal Register and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at the FCC and at the National Archives and Records Administration (NARA). Contact the FCC at: Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html or email fr.inspection@nara.gov. The material may be obtained from the following sources:

(a) Advanced Television Systems Committee (ATSC), 1300 I Street NW, Suite 400E, Washington, DC 20005; website: www.atsc.org/standards.html.

(1) ATSC A/52: "ATSC Standard Digital Audio Compression (AC-3)," 1995, IBR approved for § 73.682.

(2) ATSC A/53 Parts 1-4 and 6: 2007 "ATSC Digital Television Standard," (January 3, 2007) and ATSC A/53 Part 5: 2010 "ATSC Digital Television Standard: Part 5 - AC-3 Audio System Characteristic," (July 6, 2010); IBR approved for § 73.682. as listed below:

(i) A/53, Part 1:2007, "Digital Television System" (January 3, 2007),.

(ii) A/53, Part 2:2007, "RF/Transmission System Characteristics" (January 3, 2007).

(iii) A/53, Part 3:2007, "Service Multiplex and Transport Subsystem Characteristics" (January 3, 2007).

(iv) A/53, Part 4:2007, "MPEG-2 Video System Characteristics" (January 3, 2007), except for § 6.1.2 of A/53 Part 4: 2007, and the phrase "see Table 6.2" in section 6.1.1 Table 6.1 and section 6.1.3 Table 6.3.

(v) A/53, Part 5: 2010, "AC-3 Audio System Characteristics" (July 6, 2010).

(vi) A/53, Part 6:2007, "Enhanced AC-3 Audio System Characteristics" (January 3, 2007).

(3) ATSC A/65C: "ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006," (January 2, 2006), IBR approved for §§ 73.682.

(4) ATSC A/85:2013 "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television," (March 12, 2013) ("ATSC A/85 RP"), IBR approved for § 73.682.

(5) ATSC A/321:2016, "System Discovery and Signaling" (March 23, 2016), IBR approved for § 73.682.

(6) ATSC A/322:2017 "Physical Layer Protocol" (June 6, 2017), IBR approved for § 73.682.

(b) Federal Communications Commission (FCC), Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), or at the FCC's Office of Engineering and Technology (OET) website: *www.fcc.gov/oet/info/documents/bulletins/.*

(1) OET Bulletin No. 69: "Longley-Rice Methodology for Evaluating TV Coverage and Interference" (February 6, 2004), IBR approved for § 73.616.

(2) [Reserved]

PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

121. The authority for Part 74 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336, and 554.

122. Section 74.701 is amended by revising paragraph (f) to read as follows:

§ 74.701 Definitions.

* * * * *

(f) *Low power TV station.* A station authorized under the provisions of this subpart G of this part that may retransmit the programs and signals of a TV broadcast station and that may originate programming in any amount greater than 30 seconds per hour.

* * * * *

123. Section 74.732 is amended by revising paragraph (e) to read as follows:

§ 74.732 Eligibility and licensing requirements.

* * * * *

(e) A proposal to change the primary TV station being retransmitted or an application of a licensed translator station to include low power TV station operation, *i.e.*, program origination will be subject only to a notification requirement.

* * * * *

124. Section 74.787 is amended by revising paragraph (a)(5)(v) to read as follows:

§ 74.787 Licensing.

(a) * * *

(5) * * *

* * * * *

(v) *Pre-auction digital service area* is the geographic area within the full power station's noise-limited contour that was protected in the incentive auction repacking process. The service area of the digital-to-digital replacement translator shall be limited to only the demonstrated loss area within the full power station's pre-auction digital service area, provided that an applicant for a digital-to-digital replacement television translator may propose a *de minimis* expansion of its full power pre-auction digital service area upon demonstrating that the expansion is necessary to replace a loss in its pre-auction digital service area.

* * * * *

125. Section 74.792 is amended by revising paragraph (b) to read as follows:

§ 74.792 Low power TV and TV translator station protected contour.

* * * * *

(b) The low power TV or TV translator protected contour is calculated from the authorized effective radiated power and antenna height above average terrain, using the F(50,90) signal propagation method specified in § 73.619(b)(1) of this chapter.

126. Section 74.793 is amended by revising paragraphs (b), (e), (g), and (h) to read as follows:

§ 74.793 Low power TV and TV translator station protection of broadcast stations.

* * * * *

(b) Except as provided in this section, interference prediction analysis is based on the interference thresholds (D/U signal strength ratios) and other criteria and methods specified in § 73.620 of this chapter.

* * * * *

(e) Protection to the authorized facilities of TV broadcast stations shall be based on not causing predicted interference to the population within the service area defined and described in § 73.619(c) of this chapter, except that a low power TV or TV translator station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the authorized TV facilities.

* * * * *

(g) Protection to the authorized facilities of Class A TV stations shall be based on not causing predicted interference to the population within the service area defined and described in § 73.6010 of this chapter, respectively, except that a low power TV or TV translator station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the authorized Class A TV facilities.

(h) Protection to the authorized facilities of low power TV and TV translator stations shall be based on not causing predicted interference to the population within the service area defined and described in §74.792, except that a low power TV or TV translator station must not cause a loss of service to 2.0 percent or more of the population predicted to receive service from the authorized low power TV or TV translator station.

* * * * *

127. Section 74.794 is amended by revising the section heading, paragraphs (b) introductory text, (b)(1) and (2) to read as follows:

§ 74.794 Emissions.

* * * * *

(b) In addition to meeting the emission attenuation requirements of the simple or stringent mask (including attenuation of radio frequency harmonics), low power TV and TV translator stations authorized to operate on TV channels 22-24, (518-536 MHz), 32-36 (578-608 MHz), 38 (614-620

MHz), and 65-69 (776-806 MHz) must provide specific “out of band” protection to Radio Navigation Satellite Services in the bands: L5 (1164-1215 MHz); L2 (1215-1240 MHz) and L1 (1559-1610 MHz).

(1) An FCC-certificated transmitter specifically certified for use on one or more of the above channels must include filtering with an attenuation of not less than 85 dB in the GPS bands, which will have the effect of reducing harmonics in the GPS bands from what is produced by the transmitter, and this attenuation must be demonstrated as part of the certification application to the Commission.

(2) For an installation on one of the above channels with a transmitter not specifically FCC-certificated for the channel, a low pass filter or equivalent device rated by its manufacturer to have an attenuation of at least 85 dB in the GPS bands, which will have the effect of reducing harmonics in the GPS bands from what is produced by the transmitter, and must be installed in a manner that will prevent the harmonic emission content from reaching the antenna. A description of the low pass filter or equivalent device with the manufacturer's rating or a report of measurements by a qualified individual shall be retained with the station license. Field measurements of the second or third harmonic output of a transmitter so equipped are not required.

APPENDIX B

Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Act Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking* (*NPRM*) released in September 2022.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

2. The *Report and Order* reflects the Commission's efforts to update its rules for full power and Class A television stations to reflect the current operating environment following the transition from analog to digital-only operations and the post-incentive auction transition to a smaller television band with fewer channels. The *Report and Order* largely adopts the rules proposed in the *NPRM*, with certain limited exceptions or modifications, in order to delete, update, or otherwise revise Commission rules for full power and Class A stations that no longer have any practical effect. As part of this comprehensive update, we also restructure a portion of our rules primarily consisting of the technical licensing, operating, and interference rules for full power television. Our actions in the *Report and Order* further the Commission's continued efforts to ensure that our rules clearly and accurately reflect existing requirements and are understandable by licensees and the public.

3. More specifically, we adopt revisions to the Commission's rules in light of the fact that all television services have ceased analog operations. We delete outdated rules that are no longer valid given changes in Commission-adopted policy, such as the elimination of the comparative hearing process to award and renew broadcast licenses, and we reorganize a portion of the part 73 rules to make the rules easier to find and more practical for users. Other non-substantive, technical revisions we make in the *Report and Order* include updating previously-adopted station license periods, deleting obsolete rules governing the post-incentive auction transition period, and correcting or updating *inter alia*, section headings, spelling, contact information, and rule cross-references, or language inadvertently omitted from a rule. We also update our rules to reference the current designation for form numbers (e.g., FCC Form 2100) and to require electronic filing in the Commission's Licensing and Management System (LMS). Additionally, we consider requests and comments on subjects not included in the *NPRM* proposals, the costs and benefits of the rules adopted, and the potential of the rule changes to promote or inhibit advances in diversity, equity, inclusion, and accessibility. The rules we adopt, and actions we take in the *Report and Order* to simplify, streamline, and modernize existing rules and procedures should reduce compliance costs, and make compliance with our licensing requirements easier for full power and Class A television stations.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business

[1] 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).

[2] *See Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Notice of Proposed Rulemaking, FCC 22-73 (Sept. 29, 2022) (*NPRM*).

[3] 5 U.S.C. § 604.

Administration

5. Pursuant to the Small Business Jobs Act of 2010, 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.[4]

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

D. Description and Estimate of the Number of Small Entities to Which the 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 rules adopted herein.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act (SBA).[7] 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.[8]

8. The rules adopted in the *Report and Order* will directly affect small television broadcast stations. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

9. *Television Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting images together with sound."[9] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[10] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small.[11] 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.[12] Of that number, 657 firms had revenue of less than $25,000,000.[13] Based on this data we

[4] *Id.* § 604(a)(3).

[5] *Id.* § 604(a)(4).

[6] *Id.* § 601(6).

[7] *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632(a)(1)). 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." *Id.*

[8] 15 U.S.C. § 632.

[9] *See* U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,"* https://www.census.gov/naics/?input=515120&year=2017&details=515120.

[10] *Id.*

[11] *See* 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

[12] *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 515120, https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

10. As of June 30, 2023, there were 1,375 licensed commercial television stations.[14] Of this total, 1,256 stations (or 91.3%) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 17, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of June 30, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 381 Class A TV stations, 1,902 LPTV stations and 3,123 TV translator stations.[15] The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

11. In this section, we identify the reporting, recordkeeping, and/or other compliance requirements adopted in the *Report and Order*. Modified reporting requirements were adopted by the Commission replacing manual filing processes with electronic filing requirements. Television stations will now be required to make certain required notifications electronically through filings procedures using LMS as opposed to the previous manual filing process by letter. Similarly, regarding section 73.625(b)(5) which specifies a number of paper maps which should be used to prepare the profile graphs and to determine the location and height above sea level of the antenna height, the Commission clarifies that it expects small and other entities to make the required calculations by computer rather than manual paper calculations using paper maps. Accordingly, the multiple references to various sources of paper maps to make these types of calculations contained in the rules have been replaced with a reference to the National Elevation Dataset and other similar bald earth terrain datasets which are used by modern automated software currently used by the Commission and industry.

12. The removal of outdated manual processes, forms, and filing requirements in favor of using automated software, and implementation of electronic filing requirements for small and other entities will result in a modified paperwork obligation. Cost and benefit information on these and other proposals were requested by the Commission in the *NPRM*, however commenters did not provide any information on the cost impacts of our proposals. Therefore, while the Commission cannot quantify the cost of compliance for small entities, and is not in a position to determine whether small entities will have to hire professionals to comply with our decisions in the *Report and Order,* since it is widely accepted that automated processes are generally more efficient and less burdensome than manual processes, the Commission anticipates that our actions will lessen the administrative burden on small entities.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

13. 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,

(Continued from previous page)

[13] *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.

[14] *Broadcast Station Totals as of June 30, 2023*, Public Notice, DA 23-582 (rel. July 14, 2023) (*July 2023 Broadcast Station Totals PN*), https://docs.fcc.gov/public/attachments/DA-23-582A1.pdf.

[15] *Id*.

policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[16]

14. The actions taken by the Commission in the *Report and Order* simplifying and streamlining our rules, and implementing automated and electronic filing requirements, should make it easier for small and other entities to comply with our rules. We consider the rules we adopted to be the least costly, and minimally burdensome for small and other entities impacted by the rules. In the absence of evidence to the contrary in the record, the Commission does not expect the adopted requirements to have a significant economic impact on small entities. Below we discuss actions we take in the *Report and Order* to minimize any significant economic impact on small entities and alternatives that were considered.

15. We adopted rule updates and reorganizations proposed in the *NPRM* to codify the Commission staff's current practices or to better reflect technological advancements in the industry. The Commission anticipates that these changes generally will lessen the economic burdens on small entities due to increased administrative efficiency. For example, as we discussed above in Section E, references to outdated paper maps and manual calculations relating to section 73.625(b)(5) have been replaced by computer calculations, and current automated software used by the Commission and industry. Moreover, for section 73.625(b)(4), which describes how to plot certain radials on a graph and provides a range of options for the number of points of elevation to use in each radial, we conform the rule to reference the TVStudy software currently used for preparing and processing applications, and specify the use of 10 points per kilometer in all circumstances consistent with present practice found in the TVStudy software used by the Commission and licensees to process and prepare applications. These rule changes will enable small and other television stations to more easily comply with licensing requirements through familiar and low cost measures.

16. Moreover, the Commission took steps to decrease processing burdens and application approval delays for small and other entities by adopting the proposed amendment to Section 73.6024(d) to require Class A stations within 275 kilometers of the US-Mexico border to specify a full-service emission mask in any modification application. Pursuant to the Commission's rules requiring coordination of applications in border regions with the neighboring countries' appropriate regulatory officials, in coordination with Mexico's Instituto Federal de Telecomunicaciones (IFT) it has been the Media Bureau staff's experience that a two-step process takes place where the IFT routinely requests that applications submitted for coordination of Class A stations specify a full-service emission mask, and if such applications do not initially specify the full-service emission mask, IFT asks for it to be included in an amendment. The amendment we adopted in the *Report and Order* to section 73.6024(d) will result in the inclusion of a full-service emission mask specification with an application modification when initially submitted eliminating the need for small and other entities to have to subsequently amend their application.

17. Further, we provided small and other applicants flexibility by amending section 73.625(c)(3)(v) to require licensees to submit patterns in the form of a .pdf attachment to an application filed in LMS, and clarifying that similar plots are required for elevation or matrix patterns submitted in the LMS form. Our actions are consistent with modern practices and removes the administrative burden for small and other entities of an outdated manual requirement that horizontal plane patterns be plotted "to the largest scale possible on unglazed letter-size polar coordinate paper."[17] We considered CDE's comments disagreeing with this proposal in the *NPRM,* however, CDE did not explain its objection or provide any evidence to support an alternative decision, and merely stated "Not Agreed For ATSC 3.0

[16] 5 U.S.C. § 604(a)(6).

[17] 47 CFR § 73.625(c)(3)(v).

SFN."[18]

18. Some commenters raised alternative positions which we considered in the *Report and Order*. Regarding the matrix antenna patterns described in proposed section 73.625(c)(3)(viii), NAB suggested that the Commission require only one or two representative azimuth and elevation patterns be supplied in a PDF attachment, and if additional visualizations are needed, the tabular spreadsheet data can be used in spreadsheet software to produce them.[19] The Commission agreed with NAB's suggestion and adopted a revised rule consistent with this suggestion.

19. We considered the comments of CDE which disagreed with our proposal to delete obsolete language in section 73.664(c)(3)(iii) concerning the certification of equipment.[20] However, since CDE did not provide a reason for its disagreement, there was no evidence in the record, nor a valid reason for the Commission to depart from the proposal in the *NPRM*.[21] As we stated in the *NPRM*, the Commission no longer "type accepts" equipment, having overhauled the process to allow private parties to verify such equipment meets the Commission's requirements, and the results of such verifications do not need to be submitted to the Commission. Accordingly, we deleted the obsolete language in section 73.664(c)(3)(iii).

20. The Commission also considered the objection Maranatha Broadcasting Company, Inc. (Maranatha), the licensee of WDPN-TV, to our proposed codification of the Commission's 2001 clarification that a station may not exceed the effective radiated power level assigned in the station's zone in section 73.622.[22] Maranatha proposed that the Commission retain the "largest station" rule or "make clear that any change that [the Commission] is making to its rules do not preclude power increases above zone maximums by low-VHF stations necessary to overcome the shortcomings of their digital signals and impulse noise inference."[23] Due to the propagation characteristics of digital VHF signals and the deleterious effects of manmade noise on the reception of these signals, the Commission is aware that significant over-the-air reception problems may exist within the service area of VHF stations. Since the end of the DTV transition in June 2009, Commission staff has waived the power limits in sections 73.622(f)(5) or (6) of the rules a number of times to increase the power levels of stations operating on low VHF channels above the 10 kW limit set forth in the rules. We declined Maranatha's request and adopted

[18] Supplemental Comments 2 (Late Filed) of Cohen, Dippell and Everist, P.C., MB Docket No. 22-227 (filed May 18, 2023) (CDE Supplemental Comments 2) at 18; *cf*. Supplemental Comments of Cohen, Dippell and Everist, P.C., MB Docket No. 22-227 (filed Apr. 10, 2023) (CDE Supplemental Comments 1) at 18 (indicating "Not Agreed"). ATSC 3.0 is the new TV transmission standard developed by the Advanced Television Systems Committee as the first Internet Protocol (IP)-based broadcast transmission platform, which merges the capabilities of over-the-air (OTA) broadcasting with the broadband viewing and information delivery methods of the Internet, using the same 6 MHz channels presently allocated for DTV service. *See Authorizing Permissive Use of the Next Generation Broadcast Television Standard*, GN Docket No. 16-142, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930 (2017). For a discussion of Single Frequency Networks, or SFNs, *see id*. at 9987-89, paras. 115-20.

[19] Comments of the National Association of Broadcasters, MB Docket No. 22-227 (filed Apr. 10, 2023) at 12.

[20] CDE Supplemental Comments 2 at 9 (regarding the Commission's proposal to delete obsolete language in section 73.664(c)(3)(iii) concerning the certification of equipment, CDE notes that its response is "Not Agreed.").

[21] *Id.*

[22] Comments of Maranatha Broadcasting Company, Inc., MB Docket No. 22-227 (filed Apr. 10, 2023) (Maranatha Comments) at 2-5 (arguing that "restricting a DTV station's ability to maximize height and power will be detrimental to the continued viability of low-VHF stations, arbitrary and capricious, and contrary to the public interest."). *See also* Reply Comments of Cohen, Dippell and Everist, P.C., MB Docket No. 22-227 (filed Apr. 25, 2023) at 2 (noting that the "FCC should consider special exception to permit 'largest in the market' filings. However they should be permitted within a time constraint.").

[23] Maranatha Comments at 5.

the provisions of section 73.622 as proposed in the *NPRM* because we do not believe that codifying the 2001 clarification limits our ability to continue to grant such waivers, as we have for Marantha. We noted in the *Report and Order* that Marantha's station WDPN-TV, on RF channel 2 in Zone I, currently operates with an ERP of 34 kW, pursuant to such a waiver of section 73.622(f)(6).

21. Commenters also raised proposals that we declined to adopt because the comments proposed to make material changes to our rules, or changes outside the scope of this proceeding. The scope of *NPRM* was limited to amendments to the Commission's rules primarily related to full power and Class A television service to reflect the current operating environment, and particularly, the end of the transition from analog to digital operations. [24]

G. Report to Congress

22. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[25] In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The *Report and Order* and FRFA (or summaries thereof) will also be published in the *Federal Register*.[26]

[24] Specifically, the *NPRM* proposed and sought comment on comprehensively deleting, updating, or otherwise revising Commission rules for full power and Class A stations that no longer have any practical effect given the transition from analog to digital-only operations and the post-incentive auction transition to a smaller television band with fewer channels. The *NPRM* also proposed and sought comment on a restructuring of subpart E of the Commission's rules, which largely consists of the technical licensing, operating, and interference rules for full power television. *See NPRM* at para. 1.

[25] 5 U.S.C. § 801(a)(1)(A).

[26] *See id.* § 604(b).

APPENDIX C

List of Commenters

Commenters
Cohen, Dippell and Everist, P.C.
Enterprise Wireless Alliance
Linley Gumm, Greg Best and Gary Sgrignoli
Maranatha Broadcasting Company, Inc.
National Association of Broadcasters
One Ministries, Inc.

Reply Commenters
Cohen, Dippell and Everist, P.C.

Ex Parte Comments
National Association of Broadcasters

APPENDIX D

Table 1: Cross-references	
Instead of referencing…	**Reference…**
§ 73.614(b)(7) . . .	. . . § 73.625(c)(1).
§ 73.616(a) . . .	. . . § 73.622(a).
§ 73.616(b) . . .	. . . § 73.622(d).
§ 73.616(c) . . .	. . . § 73.619(d).
§ 73.616(d) . . .	. . . § 73.620(c).
§ 73.616(d)(2) . . .	. . . § 73.620(a).
§ 73.616(e) . . .	. . . § 73.620(d).
§ 73.616(g) . . .	. . . § 73.620(f).
§ 73.622(b) . . .	. . . § 73.622(j).
§ 73.622(c) . . .	. . . § 73.623(b).
§ 73.622(e) . . .	. . . § 73.619(c).
§ 73.622(f)(5) . . .	. . . § 73.614(b)(6).
§ 73.622(f)(6) . . .	. . . § 73.614(b)(1).
§ 73.622(f)(7) . . .	. . . § 73.614(b)(2).
§ 73.622(f)(8) . . .	. . . § 73.614(b)(3).
§ 73.622(h) . . .	. . . § 73.611.
§ 73.622(i) . . .	. . . § 73.622(j).
§ 73.623(c)(1) . . .	. . . § 73.618(a).
§ 73.623(c)(2) . . .	. . . § 73.620.
§ 73.623(c)(3) . . .	. . . § 73.620(b).
§ 73.623(c)(4) . . .	. . . § 73.620(a).
§ 73.623(c)(5) . . .	. . . § 73.620(d).
§ 73.623(d) . . .	. . . § 73.622(k).
§ 73.623(e) . . .	. . . § 73.617(a).
§ 73.623(f) . . .	. . . § 73.617(c).
§ 73.623(g) . . .	. . . § 73.620(e).
§ 73.625(a) . . .	. . . § 73.618.
§ 73.625(b) . . .	. . . § 73.619(b).
§ 73.683(c) . . .	. . . § 73.619(a).
§ 73.685(b) . . .	. . . § 73.618(b).
§ 73.685(d) . . .	. . . § 73.617(d).

§ 73.685(f) . . .	. . . § 73.625(c).
§ 73.687(e) . . .	. . . § 73.617(b).

Before the
Federal Communications Commission
Washington, D.C. 20002

In the Matter of	)	
	)	
Expediting Initial Processing of Satellite and Earth Station Applications	)	IB Docket No. 22-411
	)	
	)	
Space Innovation	)	IB Docket No. 22-271

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: September 21, 2023 **Released: September 22, 2023**

Comments Date: 30 days after date of publication in the Federal Register
Reply Comments Date: 60 days after date of publication in the Federal Register

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Simington issuing separate statements.

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I. INTRODUCTION

1. In this Order, the Federal Communications Commission (Commission) advances opportunities for innovation in the new space age by taking measures to expedite the application processes for space stations and earth stations, consistent with our objective to "promote a competitive and innovative global telecommunications marketplace via space services."1 Applications for space services before the Commission continue to increase in complexity and number. Concrete measures to expedite the initial processing of applications for authority to operate space and earth stations under part 25 of the Commission's rules are vital to supporting U.S. leadership in the growing space economy. Accordingly, the rule updates and policy changes we adopt today will: (1) improve the process that our staff uses to review space and earth station applications for acceptability for filing and to place the applications on public notice; (2) eliminate processing rules that are no longer necessary; (3) establish timeframes for placing space and earth stations on public notice; and (4) advance other initiatives to expedite the processing of applications.

2. In addition, as part of the Space Innovation agenda, the Space Bureau will undertake a Transparency Initiative. The goal of this initiative is to provide information and guidance, in a variety of forms, to interested parties so they can understand the Commission's procedures and what is needed to obtain authorization for their proposed space station and earth station operations. We believe that this initiative will reduce administrative burdens on both applicants and staff and will further expedite the processing of applications.

3. The actions we take today, however, are only the first of a series of measures that we will undertake to improve the Space Bureau's processes and procedures. We look forward to building on the enthusiastic response from the space industry that we received in this proceeding, and to working with industry and other interested parties to ensure that the United States lead the way in space innovation, exploration, development, and operations.

II. BACKGROUND

4. The Commission's rules establish filing criteria for space station and earth station applications submitted under part 25 of the Commission's rules, which generally apply to commercial

[1] *See Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket No. 23-12, Order, FCC 23-1, para. 4 (Jan. 9, 2023).

satellite systems and earth stations.[2] Under these rules, an application that does not meet these criteria will be deemed unacceptable for filing and dismissed, unless a waiver of the acceptability criteria is granted.[3] Commission staff conduct an initial review of applications for acceptability for filing and compliance with procedural and substantive rules before applications are placed on public notice for comment.[4] Typical issues that may prolong staff review and delay acceptance for filing include internal inconsistencies in the application, omission of information required by the rules, omission of waiver requests, and/or missed filing deadlines. In general, a delay in acceptance for filing will also result in a delay in action on the application.

5. If an application is not dismissed as defective, then a public notice will be issued announcing that the application has been accepted for filing, which commences a 30-day period for public comment on the proposed operations.[5] Once that period is complete, the Commission will evaluate any objections or other comments, responses, and replies, and make a determination on the merits regarding the application—including, for applications that are granted, what conditions, if any, should be placed on a particular license or grant of market access.[6] In addition, where a space station or earth station application requests authority to operate in a frequency band that is shared on an equal, or subordinate, status with Federal users or stations in other services, coordination may be required with the National Telecommunications and Information Administration (NTIA) or other bureaus/offices at the Commission. This inter-agency and inter-bureau coordination may affect the timing of Commission action on those applications.

6. To facilitate application filing and processing, the Commission has improved the standard forms for satellite and earth station applications (FCC Form 312, 312R, and Schedules A and S) and is currently working on improvements to its online filing system for such applications, the International Communications Filing System (ICFS).[7] In addition, the Commission has regularly taken steps to

[2] *See generally* 47 CFR part 25 subpart B (Applications and Licenses); § 25.112.

[3] 47 CFR § 25.112(a), (b). As discussed below, a satellite application requesting to operate in a frequency band without a corresponding international frequency allocation will be considered unacceptable for filing even if the application requests waiver of the Table of Frequency Allocations. In addition, the rules provide that duplicative satellite applications are always unacceptable for filing. 47 CFR § 25.112(b).

[4] The public notice inviting comment on space station or earth station applications typically states that the applications have been found, upon initial review, to be acceptable for filing, and that the Commission reserves the right to return any of the applications if, upon further examination, it is determined that the application is not in conformance with the Commission's rules or policies. *See, e.g.*, *Satellite Licensing Division and Satellite Programs and Policy Division Information, Space Station Applications Accepted for Filing*, Report No. SAT-01748 (Aug. 4, 2023).

[5] 47 CFR § 25.151(d). The Commission is not required to place certain applications on public notice prior to action, including, among other things, applications for special temporary authority for a period not to exceed 30 days, or for a period not to exceed 60 days and the applicant plans to file a request for regular authority for the service. 47 CFR §§ 25.151(c), 25.120(b)(3)-(4).

[6] Satellite operators who file for a license through the FCC are licensees, and operators who have been previously licensed by a foreign regulator who seek access to provide satellite communications in the U.S. market must request U.S.-market access through a petition for declaratory ruling, or if a U.S.-earth station operator files a license application to communicate with the foreign operator. *See, generally*, *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Satellites to Provide Domestic and International Service in the United States*, IB Docket No. 96-111; Report and Order, 12 FCC Rcd 24094 (1997) for background on the Commission's rules to allow market access grantees to provide satellite services to the U.S. market. Unless indicated otherwise, when we refer to the term license or licensee in this document, we also include market access grants or grantees.

[7] This was formerly known as the International Bureau Filing System (IBFS). See *Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, Docket No. 23-12, Order, FCC-23-1, para. 8 (Jan. 9, 2023).

streamline its part 25 rules.[8] As part of previous streamlining efforts, the Commission adopted a 45-day expected period for placing on public notice applications both for initial space station authorizations and for modification of a space station authorization.[9] The Commission also adopted an expected time of 60 days for acting on space station applications after the close of the comment period.[10] For applications for special temporary authority (STA) for a space station, the Commission expected the application would be placed on public notice within 14 days of receipt (if public notice is required) and acted on within 30 days after the close of the comment period, or within 30 days of receipt if public notice is not required.[11] In addition, expected processing times were also announced for earth station applications.[12] These times were 45 days from confirmation of receipt of payment for placing applications for initial earth station authorizations or modifications on public notice, and 60 days after close of the comment period for action; 30 days from confirmation of receipt of payment for placing initial registrations of receive-only earth stations or modifications on public notice, and 45 days after close of comment period for action; and 14 days from confirmation of receipt of payment for applications for special temporary authority for earth stations, and 30 days after close of comment period for action, unless the application does not require public notice before action, in which case the expected time for action is 30 days of receipt.[13] In all cases, the Commission's expectations applied to "straightforward applications that are not contested" and were set "barring any complication."[14]

7. As we enter the new space age, applications for space services before the Commission continue to increase in complexity and number. In response to this unprecedented era of growth in the space industry, the Commission launched the Space Bureau on April 11, 2023.[15] Space activities are increasing in almost every industry sector. The Commission must, therefore, make expediting the processing of applications a priority of its Space Innovation Agenda. If the current rate of filings for applications continues in 2023, the Commission will receive approximately four times the number of space station applications and three times the number of earth station applications than it received in 2015. In addition, the complexity of applications continues to increase as new and novel space technologies are presented for consideration. The commercial space industry is evolving at a rapid pace, and it is critical that we keep up with the cadence of applications and complexity of regulatory issues presented.

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[8] *See, e.g.*, *Further Streamlining Part 25 Rules Governing Satellite Services*, Report and Order, 35 FCC Rcd 13285 (2020); *Streamlining Licensing Procedures for Small Satellites*, Report and Order, 34 FCC Rcd 13077 (2019); *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713 (2015) (*Part 25 Streamlining Second R&O*); *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Docket No. 12-267, Report and Order, 28 FCC Rcd. 12403 (2013).

[9] *Part 25 Streamlining Second R&O*, 30 FCC Rcd. at 14761, paras. 133-34.

[10] *Id.* at 14761, para. 134.

[11] *Id.*

[12] *International Bureau Announces Expected Processing Times for Earth Station Applications*, Public Notice, 31FCC Rcd 6854 (IB Jun. 14, 2016).

[13] *Id.*

[14] *Id.*; *Part 25 Streamlining Second R&O*, 30 FCC Rcd at 14761, para. 134.

[15] *See* Press Release, FCC, FCC Space Bureau & Office of International Affairs to Launch Next Week (Apr. 7, 2023), https://docs.fcc.gov/public/attachments/DOC-392418A1.pdf. The Commission released an order approving the establishment of the Space Bureau in January 2023. *See Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket No. 23-12, Order, FCC 23-1 (Jan. 9, 2023).

8. The Notice of Proposed Rulemaking (*NPRM*)[16] sought comment broadly on changes to our rules, policies, or practices to facilitate the acceptance for filing of space and earth station applications under part 25.[17] In particular, the *NPRM* proposed to remove a procedural rule that formally prevents consideration of waiver requests for operations not in conformance with the International Table of Frequency Allocations.[18] It also sought comment on whether the limits on applications for NGSO[19] systems and unbuilt NGSO systems should be amended, and whether the Commission should provide greater transparency or certainty with respect to its expected application processing timelines. In response to the *NPRM*, 24 comments, 11 reply comments, and multiple *ex parte* notifications were filed.[20]

III. REPORT AND ORDER

A. Facilitating the Application Process

9. An essential element of expediting the application process is to make it easier for applicants to understand what is required to have an application accepted for filing and to avoid the dismissal of an application. Accordingly, we discuss the steps we take today, and will take in the future, to provide transparency and guidance regarding our licensing procedures, as well as to reduce the risk of an application being dismissed, without considering the merits of the application, due to filing requirements that we deem are no longer needed to serve the public interest.

1. Transparency and Guidance

10. The *NPRM* sought comment on whether there is additional guidance or other assistance that the Commission should provide to applicants to avoid required information being omitted in their initial filings.[21] Omission of required information can result in delays in processing an application, or even in the dismissal of an application.[22] Commenters who responded to our procedural and technical inquiries overwhelmingly support the proposal of the Commission issuing guidance on the application process.[23]

11. We believe that our licensing process for space and earth station applications can be expedited by making it more transparent and providing applicants with further guidance on the initial application stages, as several commenters have suggested.[24] We agree with commenters that clarity and

[16] *Expediting Initial Processing of Satellite and Earth Station Applications, Space Innovation*, IB Docket Nos. 22-411 & 22-271, Notice of Proposed Rulemaking, FCC 22-95 (Dec. 22, 2022) (*NPRM*).

[17] *NPRM* at para. 1.

[18] *See* 47 CFR § 2.106(a), (b).

[19] NGSO refers to satellites in non-geostationary satellite orbit.

[20] *See* Appendix E.

[21] *NPRM* at 6, para.16.

[22] *See* 47 CFR § 25.112(a)(1) (stating that an application will be unacceptable for filing and dismissed if it is defective with respect to completeness of answers to questions, informational showings, internal inconsistencies, execution, or other matters of a formal character).

[23] *See, e.g.*, Turion Space Comments at 4-6; SIA Comments at 6-7; Iridium Comments at 8 (agreeing with SIA's suggestions that the Commission provide guidance on acceptable filing criteria); CSSMA Comments at 5-6; RBC Signals Comments at 2-3: Blue Origin Comments at 3; Swedish Space Corp. Comments at 2; Kuiper Reply Comments at 4-5 (supporting CSSMA's suggestions for guidance); SpaceX *Ex Parte* (Sept. 11, 2023) (noting that SpaceX is looking forward participating in the Transparency Initiative); SpaceX *Ex Parte* (Sept. 13, 2023).

[24] *See, e.g.*, SIA Comments at 14; Iridium Reply Comments at 3-4: ViaSat Comments at 4 (suggesting that the Commission "could provide more specific upfront guidance with respect to information that it expects applicants to provide to ensure that applicants are better equipped to satisfy the 'substantially complete' standard in the first instance."); Blue Origin Comments at 3 (recommending that "the FCC create filing guidelines that clearly specify the information required for meeting the acceptability criteria for filing and grant determinations.").

guidance on what is required for an application to be acceptable for filing will result in an increase in complete filings that can be swiftly accepted for filing,[25] which will in turn expedite the processing of space and earth station applications. Clear and transparent guidance to the applicant will aid in expediting application processing for both the applicants and staff. Accordingly, the Space Bureau will undertake a Transparency Initiative to provide such guidance. The goal of this initiative is to provide information and guidance, in a variety of forms, to interested parties so they can understand the Commission's procedures and what is needed to obtain authorization for their proposed space station and earth station operations. We believe that this initiative will reduce administrative burdens on both applicants and staff and will further expedite the processing of applications. The guidance will take a variety of forms, including "frequently asked questions" or helpful links on the FCC's website. In other cases, public workshops may be held to explain certain requirements.

12. The initiative will cover a variety of topics, for example, application completeness and orbital debris requirements. Additionally, when we release the updated International Communications Filing System (ICFS),[26] it will include multiple forms of guidance for users, including training videos for the ICFS application process and a helpful links page. We believe that this Transparency Initiative will address many of the specific requests that commenters have identified in this record, facilitate new entrants into the space economy, and further expedite the Commission's processes to meet the needs of the innovative and expanding space sector.

13. In addition, we will continue to consider various ways in which the Space Bureau can provide more clarity and guidance on the application process moving forward, including, for example, various methods for increasing transparency around the inter-bureau and inter-agency coordination process. We expect this to be a continuing process and we believe that this investment of time and resources will pay off in reducing staff time in reviewing and correcting incomplete applications and applicant time responding to staff requests for missing information, which will in turn expedite the processing of space and earth station applications. We encourage stakeholders to discuss their needs for information and guidance directly with Space Bureau staff in order that they may be considered and addressed in ways that do not require a change in our rules.

14. We received a wide variety of comments related to our various procedural and technical streamlining questions including suggestions to provide certifications or fill-in template forms in lieu of narratives to the extent possible and SpaceX suggests this could be done as a way of standardizing orbital debris showings.[27] We decline to change showings that require a narrative to certifications at this time, noting that the Commission has recently taken additional steps to utilize certifications where appropriate, such as in the 2020 unified licensing proceeding, which included new certification options for earth station operators.[28] Moreover, as EchoStar noted in its comments, certain showings require a more thorough and nuanced explanation than what could be contained in a certification.[29] But we agree that

[25] *See* SIA Comments at 14; ViaSat Comments at 4: Blue Origin Comments at 3.

[26] The former International Bureau Filing System (IBFS), which is the electronic filing database used for all space and earth station applications under part 25 and for international services and cable landing applications, was renamed as the International Communications Filing System after the reorganization of the FCC's International Bureau into the Space Bureau and the Office of International Affairs (OIA). *Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, Docket No. 23-12, Order, FCC-23-1, para. 8 (Jan. 9, 2023).

[27] *See, e.g.*, EchoStar Comments at 6-8; SpaceX Comments at 9-10; OneWeb Reply Comments at 4; Kuiper Reply Comments at 4-5; SpaceX *Ex Parte* (June 5, 2023) at 1.

[28] *See Further Streamlining Part 25 Rules Governing Satellite Services*, IB Docket No. 18-314, Report and Order, 35 FCC Rcd 13285, 13297-99, paras. 37-42 (2020).

[29] *See* EchoStar Comments at 6-7; EchoStar *Ex Parte* (Apr. 28, 2023) at 3.

providing applicants with more clarity and guidance on orbital debris plans will aid in Commission review, as SpaceX points out, and plan to incorporate such guidance into our Transparency Initiative.

2. Reducing Risk of Dismissal

15. We find that expediting the processing of space and earth station applications requires reducing the risk that an application will be dismissed before full consideration of the merits of the application, thereby necessitating refiling the application and restarting the application process anew. We take several actions below to address these issues in light of existing reasons for dismissal.

a. Omissions, Inconsistencies, and Errors

16. Existing rules provide that a space or earth station application is considered unacceptable for filing if the application is defective with respect to completeness of answers to questions, informational showings, internal inconsistencies, execution, or other matters of a formal character.[30] The requirement that applications be "substantially complete" when filed has been in place since 1998 and ended the practice of reviewing the accuracy or merits of specific information in an application before placing it on public notice.[31] Under the "substantially complete" standard, an application is reviewed to ensure that it contains all information required by the Commission's rules and, if an application fails to include any of the required information, the application is returned without prejudice as being unacceptable for filing.[32]

17. The *NPRM* noted that in recent years, Commission staff have worked with applicants to correct omissions or inconsistencies in their applications in order for an application to be deemed acceptable for filing under our rules.[33] The *NPRM* sought comment on this practice and potential alternatives that might speed up application review, such as dismissing applications that contained internal inconsistencies or omissions without prejudice to refiling or, conversely, loosening the standards for acceptability of filing.[34]

18. After consideration of the record, we will maintain our practice of not immediately dismissing applications that contain omissions or internal inconsistencies and instead working with applicants to correct such omissions or inconsistencies so that the application may be acceptable for filing. Most comments encourage the continuation of the practice of communicating with applicants and allowing them opportunities to cure small mistakes or omissions, instead of issuing dismissals.[35] We find that dismissing space and earth station applications for even minor omissions and inconsistencies, without an opportunity to correct the deficiencies, is inconsistent with our goal of expediting the processing of space and earth station applications, since substantial time is required to dismiss and refile a corrected

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[30] 47 CFR § 25.112(a)(1).

[31] *International Bureau to Streamline Satellite and Earth Station Processing*, Public Notice, Report No. SPB-140, 1998 WL 747982 (rel. Oct. 28, 1998) (*1998 Public Notice*). The Commission affirmed this "substantially complete" policy when it adopted its major First Space Station Reform Order in 2003, under what it called the "hard look" doctrine. *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, IB Docket No. 02-34, FCC 03-102, para. 244 (2003) (*First Space Station Reform Order*).

[32] *See 1998 Public Notice* at 1.

[33] *NPRM* at para. 16.

[34] *See id*.

[35] *See* TechFreedom Comments at 5; Iridium Comments at 7; EchoStar Comments at 10; CSSMA Comments at 6; Spire Comments at 19; SpaceX Comments at 13; OneWeb Comments at 4; Inmarsat Comments at 4; Boeing Comments at 6; SIA Comments at 11; Intelsat Comments at 9-11; Blue Origin Comments at 5-6; Mangata *Ex Parte*, EESS Operators Reply Comments at 4-5.

application.[36] We agree that the same result can be achieved in less time by promptly reviewing the application for any deficiencies and communicating these deficiencies to the applicant, and by giving a limited time for the applicant to make corrections or to provide missing information.

19. In order to achieve our goal of expediting application processing, we expect the Space Bureau will provide applicants with limited timeframes to respond to requests for additional information or to promptly rectify inconsistencies or omissions in the application. Limiting the time to respond will encourage applicants to file applications that are as complete and accurate as possible, with only minor errors or omissions that require correction in the limited timeframe for responding and will help ensure that a request for information does not result in unnecessary delay of processing the application if the applicant does not respond in a timely manner. Several comments support time limits for applicants to respond to Commission staff with additional information or corrections so as to avoid a drawn-out initial review process.[37] Failure to respond within those timeframes will risk dismissal of the application under existing rules.[38] Although some comments proposed specific deadlines for applicants to respond to staff inquiries,[39] we decline to adopt specific deadlines at this time. Space and earth station applications can vary greatly depending on the nature of the operations or whether the activities are novel or involve new technology. As such, it is important to allow some flexibility and case-by-case determinations on setting time limits for responses from applicants. The deadline for response will be communicated clearly to applicants as part of requests for additional information or notices to the applicant that there are errors, omissions, or inconsistencies that need to be resolved before finding the application to be acceptable for filing.

20. We find that it is unnecessary to change our rules in order to implement this practice. Although the existing rules state that an applicant will be dismissed for various omissions or internal inconsistencies, it does not preclude staff from allowing applicants the opportunity to cure omissions or internal inconsistencies before accepting the application for filing.[40] We expect that there will be prompt communications between staff and applicants in order to expedite the application process.

21. We also received several comments on whether to loosen the standard for accepting applications for filing. AWS and OneWeb put forth what they deem to be faster processes for placing applications on public notice.[41] AWS suggests that, at least for earth station applicants, applications could be automatically placed on public notice after a designated period and applicants could work to cure any errors or omissions during the public notice period.[42] OneWeb advocates for a "check box" determination method for placing applications on public notice and proposes revisions to section 25.112(a)(1) to enable

[36] *See, e.g.*, Boeing Comments at 7 ("The time required for the FCC staff to determine that an informational inquiry may need to be sent to a satellite system applicant is arguably much less than the deliberation that is necessary to determine that an application should be dismissed as defective. This is particularly true in light of the fact that application dismissals are usually accompanied by a letter or order identifying the information that was lacking in the application (the same information that could be included in a letter of inquiry). Further, a dismissal decision can result in lengthy adjudicatory proceedings involving satellite applicants seeking reversal of their dismissals as arbitrary or unwarranted."); SIA comments at 10-11.

[37] *See, e.g.*, EchoStar Comments at 8-9; Iridium Comments at 7.

[38] Existing rules allow for the dismissal of an application for failure to respond substantially within a specified time period to official correspondence or requests for additional information. 47 CFR § 25.112(c).

[39] *See, e.g.,* Iridium Comments at 7 (proposing a time frame of 60 days for the Commission to notify applicants of errors and omissions and an additional 60 days for applicants to correct those errors).

[40] In some cases, it may be necessary for the applicant to file an amendment of the pending application pursuant to section 25.116 of the rules. 47 CFR § 25.116.

[41] AWS Comments at 6; OneWeb Comments at 2-4.

[42] AWS Comments at 6 (suggesting a period of 30 days to automatically place applications on public notice).

quicker determination.[43] Boeing also suggests that the Commission could place applications on public notice without necessarily first finding them to be acceptable for filing.[44] Conversely, Viasat asserts that loosening the acceptability for filing standards would not lead to streamlining, but rather, would result in larger numbers of deficient or incomplete applications being reviewed by Commission staff and third parties, wasting limited resources.[45] Similarly, Verizon / AT&T assert that more stringent standards would reduce processing times by incentivizing applicants to submit complete and accurate applications in the first instance if they believe the Commission is more likely to dismiss an application if it is not complete.[46] Kuiper asserts that applications should be complete at the time of filing to avoid inefficiencies in review and suggests that the Commission require applicants to include a checklist table in their application demonstrating completeness and compliance with all relevant rules.[47] Others do not advocate for strengthening or loosening standards, but rather assert that the Commission could streamline the acceptability for filing process through guidance, by more clearly articulating the Commission's "substantially complete" threshold.[48]

22. We find that it is not necessary to loosen our acceptability for filing standards in order to expedite the processing of space and earth station applications. The Commission has previously explained what is meant by "substantially complete," and we continue to hold to this understanding: "[t]he applications must be complete in substance, and must provide all the information required in the application form."[49] This is a reasonable standard for finding that an application is acceptable for filing, and acceptance for filing has legal consequences for a GSO-like space station's place in the queue[50] or an NGSO-like space station's place in a processing round.[51] As such, we continue to find that there is merit

[43] OneWeb Comments at 2-3.

[44] Boeing Comments at 9 (suggesting that an "acceptability for filing" determination is not necessary prior to placing applications on public notice, and would speed up the application review process); *see also* Swedish Space Corp. Comments at 1 (suggesting that the Commission review applications while on public notice and asking whether STAs could be placed on public notice "with as little required information as possible while the rest of the application is coordinated?").

[45] ViaSat Comments at 2-3.

[46] Verizon / AT&T Comments at 6.

[47] Kuiper Comments at 7; *see also* Blue Origin Comments at 3 (suggesting a compliance checklist).

[48] *See, e.g.*, SIA Comments at 14 (also suggesting that "wholly deficient" be defined); Iridium Reply Comments at 3-4; ViaSat Comments at 4 (suggesting that the Commission "could provide more specific upfront guidance with respect to information that it expects applicants to provide to ensure that applicants are better equipped to satisfy the 'substantially complete' standard in the first instance."); Blue Origin Comments at 3 (recommending that "the FCC create filing guidelines that clearly specify the information required for meeting the acceptability criteria for filing and grant determinations.").

[49] *See Amendment of Commission's Space Station Licensing Rules and Policies*, IB Docket Nos. 02-34, 00-248, Notice of Proposed Rulemaking, FCC 02-45 at 29, para. 84 (2002). As observed in the *NPRM*, finding an application to be acceptable for filing and for placing on public notice does not imply that the Commission has no questions regarding the application or that the application is being looked upon favorably for grant. *NPRM* at para. 12.

[50] License applications for GSO-like satellite operation are placed in a queue and considered in the order that they are filed, under a "first-come, first-served" licensing process. 47 CFR § 25.158(b). The application will be reviewed to determine whether it is acceptable for filing within the meaning of section 25.112 (i.e., not dismissed). If not acceptable for filing, the application will be returned to the applicant. 47 CFR § 25.158(b)(1). If it is acceptable for filing, the Commission will issue a public notice announcing that the application has been found acceptable for filing and will give interested parties an opportunity to comment or file a petition to deny. 47 CFR § 25.158(b)(2). Although the time of filing establishes an applicant's place in the queue, the applicant loses this status if the application is found not acceptable for filing and dismissed.

[51] Applications for NGSO FSS system licenses are considered in groups based on filing date, under a processing

(continued….)

to holding applications to a "substantially complete" standard and to review an application to ensure that it complies with this standard before accepting the application for filing. We are not convinced that looser standards will result in an expedited process, and we agree with commenters who note that looser standards on the front end of application review will likely lead to a more burdensome review of incomplete applications at later stages of the application process.[52] Although we recognize the interest in straightforward review, such as via a "check box" determination,[53] part 25 applications cover many types of operations, which makes it infeasible to capture all elements of such diverse operations in a "check box" format. We also are not convinced that more stringent acceptability for filing standards will expedite application processing. Rigidity in the initial application review can lead to premature dismissals, which in turn will take more of staff and applicants' resources.[54] Instead, we believe that our process can be expedited by providing applicants at the initial application stages with greater transparency and guidance, which applicants will be able to access on our website as part of the Space Bureau's Transparency Initiative.[55]

23. Finally, numerous commenters support changes to the license application forms that would reduce duplication and the need to manually input technical information in various locations, which would reduce the risk of missing or inconsistent information being submitted.[56] Likewise, commenters generally support the inclusion of compliance checks into the application process.[57] Specifically, numerous commenters have suggested that the Commission consider these types of updates to specific licensing forms, including the Form 312, the Schedule S, and the Schedule B.[58] Additionally, although the Commission did not specifically ask about updates to ICFS, several commenters suggest that

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round procedure. 47 CFR § 25.157(c). A license application for "NGSO-like" satellite operation, including operation of an NGSO FSS system, that satisfies the acceptability for filing requirements is reviewed to determine whether it is a "competing application" or a "lead application." 47 CFR §§ 25.156(d)(1), 25.157(c). A competing application is one filed in response to a public notice initiating a processing round; any other application is a lead application. 47 CFR § 25.157(c). Competing applications are placed on public notice to provide interested parties an opportunity to file pleadings in response to the application. 47 CFR § 25.157(c)(1). Lead applications are also placed on public notice, and the public notice for a lead application initiates a processing round, establishes a cut-off date for competing NGSO-like satellite system applications, and provides interested parties an opportunity to file pleadings in response to the application. 47 CFR § 25.157(c)(2).

[52] *See, e.g.*, ViaSat Comments at 2-3.

[53] *See* OneWeb Comments at 2-3.

[54] *See also* Boeing Comments at 7; SIA Comments at 10-11.

[55] Particular anticipated guidance is discussed as part of the Space Bureau's Transparency Initiative contained above in Section III.A.1.

[56] *See, e.g.*, TechFreedom Comments at 5-6 (suggesting that an auto-populate function where information must be input in multiple locations in the application will save hundreds or thousands of staff review hours); SpaceX Comments at 8, 10 (additionally suggesting that the Commission allow incorporation by reference for technical details that have not changed); Iridium Comments at 8; Swedish Space Corp. Comments at 2; Mangata *Ex Parte* at 12; RBC Signals Comments at 5 (suggesting that the Space Bureau create a system that allows earth station STA holders "to select a license application 'template' linked to an underlying STA grant, as is possible in the OET filing system, without requiring an entirely new submission from scratch."); *see also* SIA Comments at 8 (suggesting a more flexible process for inputting technical information, such as the ability to upload excel documents to the Schedule S); Inmarsat Comments at 2-3 (also suggesting replacing repetitive information with excel sheets); *but see* SpaceX Reply Comments at 4-5 (arguing against custom spreadsheets).

[57] *See, e.g.*, SpaceX Comments at 13; Blue Origin Comments at 3; Swedish Space Corp. Comments at 2; Kuiper Reply Comments at 4-5.

[58] *See, e.g.*, TechFreedom Comments at 5-6; CSSMA Comments at 5-6 (noting that requests for waiver of Schedule S due to the form's limitations are pervasive in space station license applications); SpaceX Comments at 13-14; Inmarsat Comments at 2; SIA Comments at 8-9; Intelsat Comments at 11-13; OneWeb Reply Comments at 4-5.

the Commission consider updates or a general overhaul of the filing system.[59]

24. We observe that the electronic filing system used for space and earth station applications, ICFS, is already being updated in ways that respond to many of the issues that commenters raise regarding the technicalities of the application process. As a result of these updates, ICFS will have several new features for application forms, including automatic error notifications in the Form 312, data entry alerts to misinformation, and an overall validation prior to submitting a filing. There also will be some pre-filled sections of the application form based on previously entered data. With regard to modification or amendment applications, applicants will be presented with a pre-filled form including the information from their current authorization or pending application that they seek to modify or amend. This pre-filled form can then be adjusted in the areas that the applicant seeks to modify or amend. Additionally, the Schedule B and Form 312 will allow users to delete or remove sections or data that are no longer needed. We are also updating the fields in the Schedule S to better align with technical rules. We find that these updates address many, but not all, of the changes recommended by the comments. The Space Bureau expects to continue dialogue with system users about possible further improvements after the initial modifications of ICFS are introduced.

b. Conformance with International Frequency Allocations

25. Currently, with the exception of applications for streamlined small satellite and small spacecraft applications,[60] applications will be dismissed if they request authority to operate a space station in a frequency band that is not allocated internationally for such operations under the Radio Regulations of the International Telecommunication Union.[61] The Commission adopted this rule in 2003, with the purpose of eliminating premature applications filed prior to the ITU adopting a necessary frequency allocation, which can take several years.[62] At the time, the Commission had reasoned that applications that were filed far in advance of adoption of an ITU allocation had a likelihood of being placeholder applications for purposes of warehousing spectrum.[63]

26. We adopt the *NPRM*'s proposal to amend our license application acceptability for filing criteria to place waiver requests for satellite operations not in conformance with the International Table of Frequency Allocations on an equal procedural footing with other requests for waiver of substantive Commission rules.[64] Comments widely support adoption.[65] Furthermore, the limitation on acceptance of

[59] *See, e.g.*, Turion Space Comments at 4-5; Intelsat Comments at 11-13; SIA Comments at 7-8; Inmarsat Comments at 2.

[60] *See* 47 CFR §§ 25.122, 25.123; *see also Streamlining Licensing Procedures for Small Satellites*, Report and Order, 34 FCC Rcd 13077, 13084, paras. 19-20 (listing characteristics for satellites that can be eligible for streamlined processing under the "small satellite" application process); 13124, para. 115 ("We modify this rule to provide an exception, so that such streamlined small satellite applications requesting to operate in bands not allocated internationally, and which include an appropriate waiver request, can be considered on their merits without being deemed unacceptable for filing.").

[61] 47 CFR § 25.112(a)(3). We note that this criteria applies to requests for U.S. market access as well as applications for licenses.

[62] *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order, 18 FCC Rcd 10760, 10809, para. 124 (2003) (Space Station Licensing Reform Order).

[63] *See NPRM*, at 3 para. 6; *see also Amendment of the Commission's Space Station Licensing Rules and Policies; Mitigation of Orbital Debris*, IB Docket Nos. 02-34, 02-54, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54, 18 FCC Rcd 10760, 10783, paras. 49-50.

[64] *Expediting Initial Processing of Satellite and Earth Station Applications; Space Innovation*, IB Docket Nos. 22-411; 22-271, Notice of Proposed Rulemaking, FCC 22-95, (2022) (*NPRM*).

[65] *See, e.g.*, TechFreedom Comments at 13-14; Turion Space Comments at 2; Commercial Smallsat Spectrum Management Association Comments at 3; Spire Comments at 7; SpaceX Comments at 32-33; OneWeb Comments

(continued….)

applications has caused delay in review of applications for acceptability for filing and has complicated review of space station applications, which is contrary to our goal of expediting the space station application process. In addition, as the Commission observed when it adopted streamlined rules for the processing of applications for small satellites, there may be benefits associated with operations not consistent with the current International Table of Frequency Allocations in certain circumstances.[66] Finally, our experience over the last twenty years since the rule was adopted supports the finding that the concerns about warehousing of spectrum and orbital resources through placeholder applications have been effectively addressed through our milestone and bond requirements,[67] which makes this rule unnecessary. We find that adoption of this proposal will help avoid the dismissal of an application for failure to meet a rule that is no longer needed to protect against placeholder applications that warehouse spectrum resources.

27. Accordingly, we amend section 25.112 of our rules to delete subparagraph (a)(3) and will no longer immediately dismiss applications that request authority to operate a space station in a frequency band that is not allocated internationally for such operations under the ITU Radio Regulations when the applications include a request for waiver of the allocation.[68] We emphasize that our decision to allow the Commission to review such applications is not intended to alter the allocation status of these bands. In considering the merits of such requests, we recognize our obligations as a ratifying member of the ITU, and as the regulatory body that allocates spectrum for commercial use in the United States.[69] Accordingly, any application that includes waiver requests for satellite operations not in conformance with the International Table of Frequency Allocations would need to demonstrate sufficient justification to support the waiver request in light of Article 4.4 of the International Telecommunication Union Radio Regulations (ITU R.R.), which states that Administrations shall not assign frequencies to a station in derogation of the International Table of Frequency Allocations, except on the express condition that the station's use of the frequencies shall not cause harmful interference to, and shall not claim protection from harmful interference caused by, a station operating in accordance with the ITU R.R.[70] We may also consider, on a case-by-case basis, as some have suggested, opening rulemaking proceedings and accounting for any relevant ITU process to address potential related allocation issues if appropriate.[71]

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at 5; Boeing Comments at 5; T Mobile Comments at 2-4; Intelsat Comments at 4; Blue Origin Comments at 7; Myriota Reply Comments at 6; EESS Operators Reply Comments at 4 (EESS Operators refers to the joint comments of Maxar Technologies Inc., Planet Labs PBC, ICEYE US Inc., Fleet Space Technologies, Umbra Lab Inc., ATLAS Space Operations Inc., and Lunasonde Inc.); Letter from Noah Cherry, Director, Regulatory Counsel, Mangata, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 22-411 et al., at 12 (filed Mar. 23, 2023) (Mangata *Ex Parte*); SpaceX *Ex Parte* (Sept. 11, 2023); SpaceX *Ex Parte* (Sept. 13, 2023) at 1.

[66] *Streamlining Licensing Procedures for Small Satellites*, Notice of Proposed Rulemaking, 33 FCC Rcd 4152, 4182, para. 72 (2018). For example, the Commission observed that there may be benefits from use of inter-satellite links in alleviating some of the difficulties faced by small satellite operators in identifying frequencies for Earth-to-space and space-to-Earth links and building or seeking out ground station infrastructure. *Id*.

[67] *See, e.g.*, 47 CFR §§ 25.164, 25.165.

[68] We also revise section 25.112(b) accordingly to remove reference to paragraph (a)(3) of section 25.112.

[69] *See* ITU Rules of Procedure, 1.6, Rules Concerning Article 4 of the ITU R.R., Edition of 2021 (rev.2).

[70] For example, we agree with comments that urge, to the extent that there are co-channel operations that might be the subject of potential interference, the request for waiver should address those operations. *See, e.g.*, T-Mobile Comments at 2, 7.

[71] *See* SIA Comments at 10; Boeing Comments at 5; EchoStar Comments at 9. Moreover, we expect that such applicants would be engaged contemporaneously in activities to work toward modification of the International Table of Allocations at the ITU, and the applicants should consider describing the status of such efforts in their application. We also encourage entities that are considering making a request for authorization for a non-conforming operation to discuss the request with Commission staff prior to filing.

28. A few commenters suggest that the Commission adopt specific requirements related to these non-conforming operations beyond the Commission's rules for considering waivers, and propose other limitations,[72] including for protecting against potential interference to operations in the radioastronomy service (RAS)[73] and earth exploration-satellite service (EESS).[74] Other commenters argue that interference concerns to such services can be managed through coordination.[75] We decline to adopt such proposals. We are not convinced that adopting strict engineering protocols is a necessary or appropriate means for preventing interference for every operation, or for operations in certain services. Further, it will not result in expediting the licensing process for applicants or the Commission. Instead, we can process such requests on a case-by-case basis, taking into account the facts and circumstances of individual waiver requests and the potential for harmful interference in specific cases. Based on our experience in instances where applicants have been granted limited non-conforming operations, such as in the small satellite context,[76] any waivers that the Commission determines to grant would include non-interference conditions and coordination conditions as necessary.[77]

29. Furthermore, we are not convinced that caps on the number of waivers we grant or on the duration of operations will prevent the potential for harmful interference, and such caps will not further our goals to streamline the licensing process.[78] Rather, we emphasize our review on technical showings

[72] *See* NRAO Comments at 2-3; National Academy of Sciences Committee on Radio Frequencies (CORF) Comments at 1, 6-7. *See also* CORF Comments at 8-9 (suggesting that the Commission should not allow waivers "for space-to-Earth at or immediately adjacent to frequencies where RAS has primary or secondary allocation or to frequencies listed in fn 5.149 of the ITU table or fn US342 of the US table" or "for space-Earth, Earth-space, or space-space at frequencies where EESS (passive) has primary or secondary allocation." and "that licensed systems should be engineered with special, spectral, and temporal geofencing capability that enables suppression or coordination of transmission in radio quiet zones or within radios of RAS observatories with geographic footnote protection. Reasonable exceptions would be for intermittent safety-of-life applications."); NRAO Comments at 3 (suggesting "that the Commission should include a pre-condition that "non-conforming applications do not contain frequency assignments in bands subject to RR No. 5.340, and a further precondition that such applications demonstrate that their unwanted emissions will not generate harmful interference in frequency bands subject to RR No.5.340."); Iridium Comments at 3 (suggesting limits on the length and number of waivers); Verizon / AT&T Comments at 4.

[73] Radio Astronomy is astronomy based on the reception of radio waves of cosmic origin. 47 CFR § 2.1.

[74] EESS is a radiocommunication service between earth stations and one or more space stations, which may include links between space stations, in which: (1) Information relating to the characteristics of the Earth and its natural phenomena, including data relating to the state of the environment, is obtained from active sensors or passive sensors on Earth satellites; (2) Similar information is collected from airborne or Earth-based platforms; (3) Such information may be distributed to earth stations within the system concerned; and (4) Platform interrogation may be included. This service may also include feeder links necessary for its operation. 47 CFR § 25.103.

[75] OneWeb disagrees with CORF's proposal to mandate that space stations be specially engineered to protect radio quiet zones and RAS observatories with geographic footnote protection, arguing that quiet zones apply to terrestrial transmitters, not space-based. OneWeb Reply Comments at 6. Rather, OneWeb argues that interference concerns can be managed through coordination instead. *Id.* Similarly, SpaceX notes that it has successfully coordinated with the National Science Foundation (NSF) to ensure protection for RAS, and that CORF's recommendations are overly restrictive. SpaceX Reply Comments at 14-15; *see also* CORF Comments at 10 (noting the recent NSF and SpaceX agreement as "a significant step towards realization of protections."). Turion Space, while agreeing that demonstrating a favorable interference analysis is necessary, suggests that the 8025-8400 MHz band is suitable for sharing with EESS in particular. Turion Space Comments at 2.

[76] *See, e.g.*, Capella Space Corp., Grant Stamp, ICFS File No. SAT-LOA-20210824-00109, condition 4 (granted Dec. 15, 2021); *see also Streamlining Licensing Procedures for Small Satellites*, Report and Order, 34 FCC Rcd 13077, 13124, para. 115.

[77] *See, e.g.,* Momentus, Grant Stamp, ICFS File No. SAT-LOA-20220504-00047, condition 7 (granted Nov. 15, 2022).

of non-interference and on coordination requirements, which will better prevent harmful interference in these circumstances. Similarly, we will not exclude entire bands from consideration for non-conforming use, as some commenters suggested.[79] To preemptively exclude certain bands from possible waiver request consideration would undercut our goals of fostering innovation in the satellite industry since we cannot predict what bands will support future development.[80] We believe that the requirements for demonstrating non-interference and coordination, along with the Commission's waiver standards, will provide sufficient protections to existing services.

c. Unbuilt NGSO Systems

30. Commission rules currently contain procedural safeguards against applications that are considered more likely to be speculative or intended to warehouse spectrum resources, including the prohibition on one party having multiple NGSO-like[81] applications or licensed but unbuilt NGSO systems in the same frequency band.[82] This prohibition prevents a party from applying for an additional NGSO-like satellite system license in a particular frequency band if that party already has an application for an NGSO-like satellite system license on file or a licensed-but-unbuilt NGSO-like satellite system in the band. The Commission adopted the unbuilt systems rule, in addition to bond and milestone requirements,[83] as a means to restrain speculation without restricting applicants' business plans and to give licensees an incentive to surrender licenses for satellite systems that they do not intend to build.[84] Recognizing that the unbuilt NGSO systems rule can lead to delays in processing applications by adding complexity to the review in determining whether an applicant has violated the rule, and, considering the current rapid state of development of NGSO systems, we sought comment on whether the limit on unbuilt NGSO systems may be a hinderance to the acceptability of legitimate satellite applications and if so,

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[78] *See, e.g.*, Verizon/AT&T Comments at 4; Iridium Comments at 3.

[79] Iridium Comments at 3 (suggesting that waivers should be limited in the 1617.775-1626.5 MHz band); CORF Comments at 8 (suggesting that waivers be excluded for space-to-Earth at or immediately adjacent to frequencies where RAS has primary or secondary allocation, to frequencies listed in fn 5.149 of the ITU table, 47 CFR § 2.106(a), (b)(5.149), or fn US342 of the US table, 47 CFR §2.106(a), (c)(342) or at frequencies where EESS (passive) has primary or secondary allocation.).

[80] We note that the D.C. Circuit has emphasized the importance of allowing the possibility of waivers in such instances, explaining that "[t]he agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances." *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

[81] "NGSO-like" applications are applications for licenses for all non-geostationary satellite orbit (NGSO) satellite systems, and for geostationary satellite orbit (GSO) satellites intended to provide mobile-satellite service (MSS) to earth stations with omni-directional antennas. *See First Space Station Licensing Reform Order*, 18 FCC Rcd at 10773, para. 21. *See also* 47 CFR § 25.157(a).

[82] *NPRM* at 2, para. 2. Applicants with an application for one NGSO-like satellite system license on file with the Commission in a particular frequency band, or one licensed-but-unbuilt NGSO-like satellite system in a particular frequency band, other than those filed or licensed under the procedures in § 25.122 or § 25.123, will not be permitted to apply for another NGSO-like satellite system license in that frequency band. 47 CFR § 25.159(b); *see also* 47 CFR § 25.137(d)(5) for equivalent prohibition for market access grantees.

[83] *See, e.g.*, 47 CFR §§ 25.164 "Milestones"; 25.165 "Surety Bonds"; *see also* "three-strikes rule" at 47 CFR § 25.159(d) (providing that a licensee that misses three or more milestone requirements within any three-year period may not apply for another space station license if it has more than one space station application already pending or more than one outstanding license for an unbuilt satellite system, unless the licensee rebuts a presumption that it filed applications for speculative purposes or demonstrates that it would be "very likely" to construct the licensed facilities if allowed to file more applications.).

[84] *NPRM* at 4, para. 9; *see also Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order, 18 FCC Rcd 10760, 10847, para. 230.

whether the Commission should amend or eliminate such limitation.[85]

31. After review of the record, we conclude that our goal of expediting the initial processing of space station applications will be advanced by eliminating the part of our rule in sections 25.159(b) and 25.137(d)(5) that prohibit a licensee or market access grantee respectively from applying for another NGSO license or grant of market access where the party has an already licensed-but-unbuilt NGSO system for the same frequencies.[86] We find that it is often time consuming to determine whether the relevant applicant violates this prohibition, for example when there are disputes in the record regarding whether a system is "unbuilt," and the need to make this determination prior to accepting an application for filing can delay placing an application on public notice to permit consideration of the application on the merits.[87] And we are not convinced, as some commenters suggest,[88] that its elimination will lead to speculative license applications or spectrum hoarding. Our current bond and milestone requirements, which were also put in place to deter speculative license applications and spectrum warehousing, remain in place, and we agree with many commenters who note that these requirements serve as adequate deterrents.[89] Our experience has been that the restriction on unbuilt NGSO systems is unnecessary to deter warehousing of spectrum and orbital resources, in light of the bond and milestone requirements and other safeguards, and the restriction on unbuilt NGSO systems could delay processing times without a corresponding benefit to the public. However, we retain and revise the portion of the rule that prohibits operators from filing multiple applications in the same frequency band where such applications are subject to NGSO-like processing round rules, which require that in the event there is insufficient spectrum in the requested frequency band or there is harmful interference between NGSO FSS licensees, the available spectrum is divided equally among licensees.[90]

32. Several commenters suggested that instead of eliminating the prohibition on licensed-but-unbuilt systems, we could "soften" the rule, amend it, more broadly interpret the meaning of "unbuilt", or issue waivers on a case-by-case basis.[91] We find that these suggested changes for nuanced, case-by-case approaches in interpretation would not result in an expedited review process on the whole. Rather additional review, and therefore a more-lengthy application processing timeframe, would be required. Kuiper suggests that the Commission amend the rule to focus on investment and progress.[92] Our current bond and milestone requirements are set up for such purpose. When the Commission adopted the bond

[85] *NPRM* at 6, para. 15.

[86] We make an equivalent edit to remove this prohibition for market access grantees in section 25.137(d)(5) of our rules. 47 CFR § 25.137(d)(5).

[87] In situations where it was not clear whether the prohibition has been violated by the proposed application, the Space Bureau (and the former International Bureau) has accepted the application for filing, without prejudice to a determination. *See, e.g.*, *Satellite Policy Branch Information, Applications Accepted for Filing*, Report No. SAT-01598 (Dec. 23, 2021) (accepting ICFS file number SAT-LOA-20200526-00055, SpaceX Gen2, for filing).

[88] *See, e.g.*, ViaSat Comments at 4-5; Iridium Comments at 6; OneWeb Comments at 6.

[89] *See*; TechFreedom Comments at 16; Turion Space Comments at 3; SpaceX Comments at 24; Myriota Comments at 6; EchoStar Comments at 6-7.

[90] *See* 47 CFR § 25.157(e). NGSO FSS system applications granted with a condition to share spectrum pursuant to section 25.261 are not subject to this rule provision. 47 CFR § 25.157(b)(2). Section 25.261 provides that, absent coordination between two or more NGSO FSS satellite systems, whenever the increase in system noise temperature of an earth station receiver, or a space station receiver for a satellite with on-board processing, of either system, $\Delta T/T$, exceeds 6 percent due to interference from emissions originating in the other system in a commonly authorized frequency band, such frequency band will be divided among the affected satellite networks. 47 CFR § 25.261.

[91] *See, e.g.*, CCSMA Comments at 5; Spire Comments at 12; Mangata *Ex Parte* at 12; Kuiper Reply Comments at 2-3.

[92] Kuiper Comments at 2.

requirements in 2003, the Commission reasoned that requiring satellite licensees to make a financial commitment to construct and launch their satellites would help deter speculative applications and thus prevent valuable spectrum resources from lying fallow.[93] When the Commission adopted a revised escalating methodology for bond and milestone rules in 2015, which increases operators' liability over time, the Commission aimed to further incentivize satellite operators to construct and launch spacecraft expeditiously or surrender their authorization early.[94] We agree with comments that state that the Commission's bond and milestone rules have been effective in deterring speculative applications,[95] and we find that the licensed-but-unbuilt NGSO-like systems prohibition on filing an application for another NGSO-like satellite system license in that frequency band in section 25.159(b) has become redundant, while also creating an additional hurdle to the application process for NGSO operators. While we agree that a focus on investment and progress towards completing a system is prudent, we do not agree that amending the unbuilt systems rule to focus on investment is necessary. Rather, the most effective method for streamlining the application process is to eliminate the prohibition on applying for another NGSO system license when an applicant already has a licensed-but-unbuilt NGSO-like system and rely on our longstanding bond and milestone requirements.

33. Several commenters suggest that at the very least EESS operators should be exempt from the unbuilt NGSO systems rule given their views that EESS operators often have the ability to share spectrum without causing interference.[96] This point is moot given our decision to eliminate the prohibition on licensed-but-unbuilt systems and therefore there is no longer any need to expressly exempt EESS operators from it. However, we agree with commenters that EESS NGSO operators provide a relevant example for why the one-size-fits-all unbuilt NGSO systems rule did not account for the nuance of certain NGSO satellite operations, or the way NGSO systems have developed in the 20 years since the rule was implemented. As both Spire and a group of EESS operators point out, EESS operations licenses are routinely granted outside of processing rounds,[97] which the unbuilt systems rule was designed for.[98] Again, our experience and the record demonstrate that eliminating the prohibition on licensed-but-unbuilt systems is the most efficient method for streamlining, and because of our bond and milestone requirements, we can do so without jeopardizing our goals to prevent spectrum warehousing and

[93] *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, 10824 paras. 166-67.

[94] *Part 25 Streamlining Second R&O*, 30 FCC Rcd at 14714, 14734 paras. 3, 50-51 (2015).

[95] *See, e.g.*, TechFreedom Comments at 16; Turion Space Comments at 3; SpaceX Comments at 28; Myriota Comments at 6: EchoStar Comments at 6-7.

[96] Spire Comments at 12 ("Since EESS systems are not 'always-on,' operators can vary the number of operational satellites in the network depending on the service(s) being provided, and without impacting the spectrum available to other operators and systems."); EESS Operators Reply Comments at 6.

[97] Spire Comments at 10 (citing, as examples, Commission grants to Spire Authorizations at Condition 22; Loft Orbital Solutions Inc., Stamp Grant, ICFS File No. SAT-LOA-20220606-00057, at Condition 18 (Nov. 15, 2022)); EESS Operators Reply Comments at 6 (citing, as examples, Commission grants to Planet, Stamp Grant, IBFS File No. SAT-LOA-20130626-00087 (granted Dec. 3, 2013); Skybox, Stamp Grant, ICFS File No. SAT-LOA-20120322-00058 (granted Sep. 20, 2012); Space Imaging, LLC, Declaratory Order and Order and Authorization, 20 FCC Rcd 11964 paras. 9-11 (2005)); *see also DigitalGlobe, Inc.,* Order and Authorization, 20 FCC Rcd 15696 (Sat. Div., Int'l Bur. 2005), at para. 8. Blue Origin similarly points out that "[f]or many types of satellite systems, including the in-orbit service missions that Blue Origin intends to operate, [spectrum warehousing] is simply not an issue because of the capability of sharing." Blue Origin Comments at 5.

[98] As we explained in the NPRM, the unbuilt NGSO systems rule was issued in the context of NGSO processing rounds to prevent a speculative applicant from precluding other applicants from the ability to access the spectrum for their operations. *See NPRM* at paras. 9, 15; *see also Amendment of the Commission's Space Station Licensing Rules and Policies,* IB Docket No. 02-34, Second Order on Reconsideration, 31 FCC Rcd 9398, 9408, para. 24.

speculative applications.[99] Additionally, by revising the remaining language in section 25.159(b) and 25.137(d)(5) to clarify that the prohibition on filing multiple applications in the same frequency band is tied to being subject to our "modified processing round rules," section 25.157 of our regulations,[100] EESS operators who are granted licenses or market access outside of processing rounds will not be subject to sections 25.159(b) or 25.137(d)(5) at all.

34. Several commenters suggest that the Commission take into account how to ensure that elimination of the unbuilt systems rule does not result in the potential for interference for other operators and ensure that ITU Equivalent Power Flux Density (EPFD) limits[101] are adhered to.[102] ViaSat cautions that, if this rule were eliminated, applicants might "propose to operate multiple NGSO 'systems' that would use the same frequency bands as a way of circumventing the Commission's substantive EPFD limits" or "attempt to game the default 'band-splitting' mechanism set forth in section 25.261 of the Commission's rules (which divides spectrum equally among the 'systems' involved in an inline interference event)."[103] Intelsat raises a similar concern regarding EPFD limits and suggests that the Commission clarify that NGSO systems must continue to adhere to the EPFD limits incorporated in section 25.146(c) of the Commission's rules.[104] Our decision to eliminate the unbuilt systems rule does not alter section 25.146(c), which remains in place. Moreover, applicants will continue to be held to Commission and ITU rules on EPFD limits.[105] And, as stated above, we are retaining the portion of the rule that prohibits operators from filing multiple applications in the same frequency band in specific circumstances to avoid the possibility of a single operator receiving unequal division of spectrum in cases where band-splitting is required.

35. SES, while supporting the removal of the unbuilt systems prohibition in section 25.159 so long as other protections are in place, suggests that the Commission ensure that NGSO operators must be limited to one application per processing round. SES argues that "[p]ermitting an applicant to submit two or more system designs in a [processing] round would multiply the burden on Commission staff and other round participants, who would be forced to evaluate each possible configuration, even if it is clear that the applicant only intends to build and launch one of its proposed options."[106] EchoStar disagrees and suggests that applicants might plan to use different NGSO systems for different applications, and given the financial commitments that are necessary, companies are unlikely to file applications frivolously.[107]

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[99] EchoStar suggests in a footnote that the Commission might consider elimination of licensing bonds in the future. *See* EchoStar Comments at 3 n. 2. Such suggestion is outside the scope of this rulemaking and we do not consider this possibility here. We note the usefulness of bond requirements in many circumstances for deterring spectrum warehousing, in particular given our decision to eliminate the unbuilt systems rule.

[100] 47 CFR § 25.157(e).

[101] *See, e.g.*, ITU Radio Regulations No. 22.

[102] *See, e.g.*, ViaSat Comments at 5; Intelsat Comments at 7, Intelsat Reply Comments at 8-9; *see also* SES Comments at 1 (encouraging the Commission to take steps to "preserve… certainly regarding the prospective interference environment…").

[103] ViaSat Comments at 5.

[104] Intelsat Comments at 7.

[105] *See, e.g.*, ITU Radio Regulations No. 22.

[106] SES Comments at 2.

[107] EchoStar Comments at 4-5. EchoStar appears to go even further and suggest that the Commission eliminate section 25.159(d), 47 CFR § 25,159(d), which states, among other things, that "[i]n the event that a licensee misses three or more milestones within any three-year period, the Commission will presume that the licensee obtained one or more of those licenses for speculative purposes." *Id.* at 5 n.6. We decline to consider this suggestion further as it is beyond the scope of our queries related to paragraph (b), and we find that paragraph (d) in section 25.159 plays a distinct and important role in deterring speculative applications. *See, e.g.*, *Part 25 Streamlining Second R&O*, 30 FCC Rcd at para. 338.

We agree with SES that there are different considerations related to our rules on the number of applications per applicant per processing round versus whether the applicant has a licensed-but-unbuilt system. Although NGSO systems have evolved and an operator may have two distinct purposes for seeking multiple applications in the same processing round,[108] we are not convinced that doing away with this aspect of our rules will expedite the application or review process for processing rounds, but rather would require heightened review and consideration that might delay the processing of the application. Additionally, this aspect of the rule serves to ensure that in the event there is insufficient available spectrum in a frequency band, the available spectrum will truly be shared equally among the licensees, as required by section 25.157(e) of our rules on NGSO processing rounds. Although commenters state that an applicant could have a legitimate reason to apply for separate systems in the same processing round, the commenters do not provide any concrete examples of what these reasons might be or how, as a general matter, the benefits of allowing multiple applications in the same processing round outweigh the identified potential harms.[109] As a result, there is no basis in the record to determine that the potential harms identified by the Commission in adopting the rule, and identified by comments in this proceeding, could be outweighed by unspecified potential benefits.[110] In sum, we adopt revisions to sections 25.159(b) and its equivalent for market access grantees in 25.137(d)(5) of our rules by eliminating the prohibition on licensed-but-unbuilt systems in these rules, but we retain the limitation on the number of applications per NGSO operator per processing round. We have also clarified the text related to the number of applications to demonstrate this limit is tied directly to being subject to the procedures in sections 25.157 and 25.261.[111] Additionally, we revise section 25.159(c) of our rules for clarification and to reflect these changes.

d. Waiver Requests

36. Current rules state that an application will be unacceptable for filing and will be returned to the applicant if it is defective, internally inconsistent, or incomplete, or if it does not substantially comply with the Commission's rules, regulations, specific requests for additional information, or other requirements.[112] Current rules also, however, specifically allow the Commission to accept for filing an application that is defective for these reasons if the application contains a request for waiver of any rule,

[108] EchoStar Comments at 4-5; *see also* SpaceX *Ex Parte* (Sept. 11, 2023); SpaceX *Ex Parte* (Sept. 13, 2023) at 3.

[109] Commenters do not provide examples beyond "planning to use the system for different applications" to explain why these potentially legitimate reasons would outweigh the need to ensure that spectrum is divided in a fair and equal manner among operators when band-splitting is required. *See* EchoStar Comments at 5; *see also* SpaceX *Ex Parte* (Sept. 13, 2023) at 3.

[110] We note that applicants possess the ability to request waiver of Commission rules in particular instances. A waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)). Generally, the Commission may waive any rule if there is good cause shown to do so and, in making this determination, may take into account considerations such as hardship, equity, or more effective implementation of overall policy on an individual basis. *See* 47 CFR § 1.3; *see also Northeast Cellular*, 897 F.2d at 1166 ("[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The agency must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation"); *WAIT Radio*, 418 F.2d at 1969 ("The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances."

[111] We note that we have eliminated references to sections 25.122 (small satellites streamlined licensing procedure) and 25.123 (small spacecraft streamlined licensing procedure) as exceptions to section 25.159(b) and 25.137(d)(5) because licenses granted under these streamlined procedures are made outside of processing round and thus not subject to sections 25.157 and 25.261.

[112] 47 CFR § 25.112(a)(1)-(2).

regulation, or requirement with which the application is in conflict.[113] Alternatively, the Commission may accept the application if the Commission, upon its own motion, waives (or allows an exception to), in whole or in part, any rule, regulation or requirement.[114] Thus, the current rules allow an otherwise defective application to be accepted for filing if it contains a request for waiver of a rule[115] that it is in conflict with, or the Commission waives the rule on its own motion.

37. The *NPRM* asked whether applications omitting necessary waiver requests should be dismissed, and how well-supported should a waiver request need to be to overcome the acceptability for filing requirements, including waivers of filing deadlines or waivers that raise novel issues.[116] This is an important question, given the risk of an application being delayed from being accepted for filing while the applicant and opposing parties argue whether an application complies with Commission rules, where the application did not explicitly request a waiver of the rule in question.[117] As a result of this argument, a decision on the merits of the application instead becomes a procedural question that inhibits accepting the application for filing and placing the application on public notice for comment, which is a prerequisite for acting on the application.

38. We find that no change to our rules is necessary to address the potential delay of an application being accepted for filing because of a failure to request a waiver of our rules. Instead, we encourage applicants to remember to request any necessary waivers of Commission rules or policies in order to avoid dismissal of applications or delay in accepting applications for filing. By filing a waiver request, the applicant removes a potential obstacle to accepting the application for filing and placing the application on public notice. Likewise, we do not need to change any rules in order to answer the question of how well-supported a waiver request needs to be to overcome the acceptability for filing requirements. The current rules simply state that a defective application can be accepted for filing if it is "accompanied by a request which sets forth the reasons in support of a waiver of (or an exception to), in whole or in part, any specific rule, regulation, or requirement with which the application is in conflict."[118] The rule does not impose any separate requirements on how well-supported the waiver request needs to be, so the general requirement for any waiver request to show "good cause" under our rules applies.[119]

39. Some comments suggest that we adopt requirements for, or limitations on, requests of waivers of specific rules.[120] We find that these suggestions go beyond the generalized goal of expediting

[113] 47 CFR § 25.112(b)(1).

[114] *Id.* at § 25.112(b)(2).

[115] This includes requests for waiver of the frequency allocation table or its footnotes. *See* 47 CFR § 2.106 *et seq*.

[116] *NPRM* at 6, para. 16.

[117] For example, in one case an applicant and interested parties argued over a period of four months whether the Satellite Division was required to dismiss an application for failing to request a waiver of the rules. *See* IBCS File Nos. SAT-LOA-20200526-00055 & SAT-AMD-20210818-00105. Furthermore, the application was eventually placed on public notice as accepted for filing, even without a waiver request, without prejudice to issues raised on the record regarding alleged inconsistency of the application with Commission rules. *See, e.g*., Public Notice, *Satellite Policy Branch Information – Space Station Applications Accepted for Filing*, Report No. SAT-01598, ICFS File Nos. SAT-LOA-20200526-00055 & SAT-AMD-20210818-00105 (Dec. 23, 2021).

[118] 47 CFR § 25.112(b)(1). Because the waiver request must seek a waiver of a "specific rule, regulation, or requirement," an application cannot satisfy section 25.112(b)(1) with a blanket request for waiver of any unspecified rule that the Commission might find the application in conflict with.

[119] 47 CFR § 1.3 (stating that "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.")

[120] *See, e.g.*, CORF Comments at 8-9 (suggesting that the Commission should not allow waivers for nonconforming use with the international table of allocations "for space-to-Earth at or immediately adjacent to frequencies where RAS has primary or secondary allocation or to frequencies listed in fn 5.149 of the ITU table or fn US342 of the US (continued….)

the processing of space and earth station applications and are better addressed in the context of specific applications and rulemakings. Accordingly, we will not address them here.

B. Expediting Public Notice of Acceptability for Filing

40. We establish timelines for Space Bureau staff to either: (1) determine that an application for authority to operate a space or earth station is acceptable for filing and place it on public notice; or (2) notify the applicant that staff has identified questions, errors, or omissions, and that the application will not be placed on public notice until after these questions, errors, or omissions are addressed by the applicant to the satisfaction of the Bureau.[121] For all earth stations and GSO space station applications, we conclude that a 30-day timeline is appropriate. For all NGSO space station applications, we conclude a 60-day timeline is appropriate.[122] In all cases, the timeline is measured in calendar days, starting on the day after the application is filed in ICFS. We find that expressing clear goals for accepting an application for filing or notifying the applicant of deficiencies will establish expectations for expedited processing of applications for both staff and applicants.

41. The *NPRM* asked whether the Commission should have deadlines for accepting certain space or earth station license applications for filing or dismissing them as unacceptable for filing.[123] It also sought comment on what a reasonable deadline might be and whether deadlines should depend on the type of application filed.[124] Additionally, it asked whether there should be limitations on any acceptability for filing deadline we might adopt, such as for applications requesting operations not consistent with the International Table of Frequency Allocations, or where the application could involve initiation of a new NGSO processing round, or for contested applications.[125] Finally, it queried whether instituting a deadline would result in more dismissals.[126]

42. Most comments welcome the establishment of timeframes for placing applications on public notice, however, commenters differ on whether the timelines should be definitive deadlines, such as "shot clocks,"[127] or more flexible goalposts.[128] Commenters are generally wary of automatic

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table" or "for space-Earth, Earth-space, or space-space at frequencies where EESS (passive) has primary or secondary allocation.).

[121] Earlier in this Order, we affirmed our practice of giving a limited time for the applicant to make corrections or to provide missing information that prevents the application from being accepted for filing. *See* Section III.A.2.a. of this R&O. We do not specify the timeline for Space Bureau staff to place an application on public notice after receipt of this information from the applicant, but we expect staff to act expeditiously after receipt of the information.

[122] We note that for STAs that meet the criteria outlined in the 2015 and 2016 documents and require public notice, we continue to aim to put those STAs on public notice by 14 days. *See Part 25 Streamlining Second Report and Order*, 30 FCC Rcd at 14761, para. 134; *International Bureau Announces Expected Processing Times for Earth Station Applications*, Public Notice, 31 FCC Rcd 6854 (IB-SD rel. June 14, 2016).

[123] *NPRM* at para. 19.

[124] *Id*.

[125] *Id*.

[126] *Id*.

[127] A shot clock is a defined period for reviewing and taking an action on an application. In this instance it was considered as a review limitation for finding an application to be acceptable for filing.

[128] *Compare* EchoStar Comments at 10, 12 (suggesting that the Commission create a 30 day timeline, but not a hard deadline, for placing applications on public notice.); CSSMA Comments at 7 (The Commission should establish guidelines for timelines to place applications on public notice); *with* OneWeb Comments at 2 (suggesting the Commission implement shot clocks for placing applications on public notice and suggesting the process could be simplified through a "check box" initial review.); Boeing Comments at 9-10 (suggesting that the Commission establish shot clocks for placing all types of applications on public notice); SpaceX Comments at 1-2 (suggesting the (continued….)

dismissals.[129] AWS explains that a shot clock resulting in automatic dismissal if not approved before the deadline would not streamline the process, rather it would require an additional review burden on both the applicant and the Commission staff.[130] Instead of an automatic dismissal approach, AWS suggests that earth station applications could be automatically placed on public notice after 30 days if the Commission does not deem them acceptable for filing sooner.[131] Inmarsat and SIA also suggest a 30-day shot clock for placing earth station applications on public notice.[132] Boeing puts forth a similar suggestion, proposing that all earth station applications be placed on public notice after 30 days of filing and space stations after 90 days of filing, except in the event the staff determines that the application is incomplete or defective (thus requiring additional time for inquiry to the applicant).[133] EchoStar also generally suggests a 30-day timeline for placing applications on public notice, unless they are deemed incomplete.[134] However, EchoStar disagrees with the notion of making this timeline a shot clock and suggests that extensions to the timeline should be allowed when staff identify genuine issues that require more time to address.[135] Globalstar and Viasat also advocate against firm shot clocks for placing applications on public notice, especially for space station license applications.[136] Globalstar suggests that Commission staff will likely require at least 90 days for making the necessary technical assessments to find space station licenses acceptable for filing.[137] SpaceX advocates for the Commission to adopt the anticipated timeframes we contemplated in 2015 and 2016 for placing applications on public notice as firm shot clocks.[138]

43. We believe that establishing specific timeframes for finding applications to be acceptable for filing and placing them on public notice will aid in expediting the licensing process. Additionally, we agree with those comments that highlight the need for the Commission to have sufficient time to review applications and notify and engage in dialogue with applicants whose applications may require additional communication between Commission staff and the applicant due to the novel nature or complexity of the application.[139] Given these considerations, we conclude that maintaining a level of flexibility for dialogue with applicants is necessary when the Space Bureau staff discover errors, omissions, or unclear information. In these cases, we include an alternative to our specified timelines for determining

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Commission establish shot clocks for placing applications on public notice as a means of disincentivizing competitor operators from engaging in delay tactics). *See also* SpaceX *Ex Parte* (Sept. 11, 2023) ("By…placing applications on public notice within defined timeframes, the Commission will enable satellite operators to better meet growing consumer demand for next generation satellite services."); SpaceX *Ex Parte* (Sept. 13, 2023) at 2 (strongly supporting the adoption of timeframes for placing applications on public notice).

[129] *See supra*, Section III.A.2 for comments and discussion on dismissal.

[130] AWS Comments at 5-6.

[131] *Id*.; SIA Comments at 14.

[132] Inmarsat Comments at 3.

[133] Boeing Comments at 10.

[134] EchoStar Comments at 10.

[135] EchoStar Comments at 10; *see also* EchoStar *Ex Parte* (Apr. 17, 2023) (urging the Commission not to adopt any rules that could prevent a thorough, careful review of applications and supporting Globalstar's position against shot clocks for space station license applications).

[136] Globalstar Reply Comments at 4-5; Viasat Comments at 5-6.

[137] Globalstar Reply Comments at 4-5.

[138] SpaceX Comments at 4-5 (45 days for initial and modification space and Earth applications, except for receive-only Earth station applications which is 30 days, and 14 days for STAs for space or Earth stations); *see also International Bureau Announces Expected Processing Times for Earth Station Applications*, Public Notice, 31 FCC Rcd 6854 (IB-SD rel. June 14, 2016); *Part 25 Streamlining Second R&O*, 30 FCC Rcd 14713 (2015).

[139] *See, e.g.*, Boeing Comments at 10; EchoStar Comments at 10.

acceptability for filing. However, in the spirit of transparency, we direct the staff to notify applicants regarding their application status if those applications will not go on public notice within the specified timelines and offer the reasons why the application is not acceptable for filing. Applicants can expect, therefore, that they will receive some form of application status confirmation within the specified timelines, either with the application appearing on an accepted for filing public notice,[140] or with a communication notifying the applicant that the application requires the submission of missing information.[141]

44. Notably, we do not require that an application be automatically dismissed if Space Bureau staff does not find it acceptable for filing within the specified timelines. Such a requirement could result in more applicants having to resubmit dismissed applications simply because of expiration of time, which would delay, rather than expedite, the earth and space station application process. We also do not require automatically placing an application on public notice as acceptable for filing if Space Bureau staff does not act within the specified timelines. Although we expect Space Bureau staff to act on applications consistent with the specific timelines established today, we recognize that unusual circumstances may prevent such timely action.[142] It would not serve the public interest to automatically accept the application for filing in such circumstances, simply because of expiration of time.

45. We are mindful that different applications have different levels of complexity, and our rules require various considerations depending on the type of application. We appreciate observations that space station applications in particular can require significant time to review, even for acceptability for filing.[143] For NGSO applications, there is often a need for a longer time-period of initial review to reflect the greater complexity related to those applications. For example, deciding whether to accept an application as the lead application in a processing round requires a more substantive review than GSO applications which are not subject to a processing round because opening a new processing round affects not only the lead applicant, but also any other applicants that would apply in that processing round as well as applicants and grantees from prior processing rounds and, potentially, future processing rounds; further, potential lead applicants have often requested waiver of the processing round requirement altogether, which, if granted, would obviate the need to open a new round. Similarly, an application for NGSO space stations can include thousands of satellites in a single application, which greatly increases the amount of information that Space Bureau staff will need to review for acceptability for filing. Additionally, in our experience, NGSO applicants typically request a larger range of frequencies and utilize more complex and numerous beam patterns than GSO applicants, which again necessitates a longer review period than that for GSO and earth station applications.

46. We also recognize that the timelines we establish today differ from some previously established, which did not distinguish between applications for GSO and NGSO space stations, and were for applications considered to be "straightforward", "not contested", and "barring any complications."[144]

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[140] The Commission has a weekly schedule for placing applications that are accepted for filing on public notice: the earth station public notice is released each Wednesday, and the space station public notice is released each Friday. Therefore, we note that in some circumstances, Space Bureau staff might determine an application is acceptable for filing within the 30- or 60-day timeframe, yet the application might not appear on public notice until the next possible public notice release date following the determination.

[141] We anticipate that the most common form of this communication will be a letter to the applicant from Space Bureau staff, but do not preclude the use of other forms of communication that provide adequate notice to the applicant of the need to submit missing information.

[142] For example, new information may be placed into the record at a very late date that calls into question whether the application is acceptable for filing and does not allow time for Space Bureau staff to notify the applicant that the application is not accepted for filing.

[143] *See* Boeing Comments at 10; Globalstar Reply Comments at 4-5.

[144] *See Part 25 Streamlining Second R&O*, 30 FCC Rcd at14761, para. 134 (2015).

We find that applying our new timelines across application types will provide greater certainty to applicants, and that the initial review timelines for GSO space stations of 30 days and initial review timeline for NGSO space stations of 60 days, reflects the differences identified above in the amount of time required to review the different types of applications. By establishing timelines for initial review that the Commission believes it can consistently meet, we help to mitigate regulatory uncertainty.

47. We also find that it is unnecessary to limit our timelines to applications for initial authorizations and for modifications. The remaining categories of filings—amendments, transfers of control, and assignments—to the extent that they require public notice, are not inherently more complex or review intensive than applications for initial authorizations and for modification with respect to determining acceptability. We also apply these timeframes across the board, rather than limiting them to a smaller category such as "straightforward" applications. The decision to accept an application for filing need not consider the underlying merits of the application and is generally done prior to receiving comments and objections from other parties, which results in a simpler process than deciding whether to grant or deny an application. In any event, we believe that any staff time spent on determining whether an application is straightforward or not, for example, would be better spent on reviewing the application for public notice and resolving issues that prevent it from being accepted for filing.

48. Although some commenters suggest that the Commission consider longer timeframes for initial space station review,[145] we note that our initial review, while thorough, is focused on an acceptability for filing determination, not on the merits of the application, and generally does not require the evaluation of comments and oppositions to the application, and we believe that the revised timelines adopted here can be achieved. These new timelines strike a balance between the need to place applications for earth and space station operations on public notice expeditiously, and the time needed for staff to make the determination of whether an application is acceptable for filing under our rules.

C. Action on the Merits

49. The *NPRM* sought comment generally on whether the Commission should adopt broader shot clocks for ultimate "action taken" on certain types of space station or earth station applications.[146] We received a wide variety of comments and suggestions on this issue and the record is divided on support for "action taken" shot clocks.[147] Some commenters approve of shot clocks for certain types of applications (for example, just for earth station applications),[148] while others argue that all types of space and earth station applications should have shot clocks for Commission action taken.[149] Suggested shot clock timeframes range from 45 days after the close of public notice to one year for "action taken" on an application.[150]

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[145] *See, e.g.*, Globalstar Reply Comments at 4-5 (suggesting a timeline of 90 days for finding space stations to be acceptable for filing).

[146] *NPRM* at para. 19.

[147] A shot clock is a defined period for reviewing and, in this instance, taking action on an application.

[148] *See, e.g.*, Globalstar Reply Comments at 1-2 (suggesting shot clocks might be possible for certain types of earth stations); OneWeb Reply Comments at 1-3; *see also* AWS Comments (only addressing shot clocks for earth stations).

[149] *See, e.g.*, TechFreedom Comments at 14-15; SpaceX Comments at 4-5; Inmarsat Comments at 3-4; CSSMA Comments at 8; Myriota Reply Comments at 5, 7.

[150] *See, e.g.*, Kuiper Comments at 8 (proposing a one-year shot clock for action taken on all earth station applications); SpaceX Comments at 4-5 (proposing shot clocks to act on initial and modification space and earth station applications by 60 days after the close of the public notice period; 45 days after close of public notice for receive-only earth station applications, and 30 days after the close for STAs. Also proposing that if action is not taken by the deadline, applications should be deemed granted); Inmarsat Comments at 3-4 (suggesting a deadline of 45 days after placing on public notice for taking action on routine applications, with the applications deemed granted

(continued….)

50. A number of commenters oppose shot clocks for actions taken, cautioning that the institution of shot clocks for taking action on licenses could jeopardize the thorough review of complex technical issues that our rules require.[151] Some commenters point out that considering action taken shot clocks is "premature" or that the Commission could consider the possibility of shot clocks in the future, after the Space Bureau has been well-established and resourced, but that implementing them should at least be deferred for the time being.[152] As with the acceptability for filing issue, some commenters suggest that the Commission issue timelines instead of shot clocks, which would serve more as goals than obligations for action taken,[153] or that the Commission can toll the shot clocks as needed.[154] Several commenters offer specific suggestions for alternatives to action-taken shot clocks. Intelsat argues for an "auto grant" procedure for straightforward applications,[155] and AWS suggests that uncontested earth station applications could begin operations on a non-inference basis after six months, if action is not yet taken on their application.[156]

51. Consistent with several of the commenters' views, we recognize the need to process applications promptly after accepting them for filing. Nevertheless, we decline at this time to adopt a general, one-size-fits-all shot clock for taking action on license applications. At this point in the proceeding, the record does not show that any timeframe in particular would accommodate these complexities while also accelerating action on more straightforward applications. However, the Commission is dedicated to fostering innovation in the satellite industry and to preserving the United

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if no action, and 150 days after public notice for more complex, non-routine applications); SIA Comments at 13-14 (proposing a deadline of 45 days after the public notice date for acting on routine applications); Blue Origin Comments at 3 (proposing that the Commission take action on straightforward applications 60 days after the public notice date).

[151] *See, e.g.*, Turion Space Comments at 6-7 ("Shot clocks or very short action periods are complex to implement and risk more applications being dismissed or denied. No space or earth station application is truly identical, so each related review differs."); Viasat Comments at 5-6 (suggesting that applying shot clocks to action taken would risk undermining quality decision-making, the impact on the operating environment, and public interest considerations); Globalstar Reply Comments at 4-5; EchoStar *Ex Parte* (Apr. 28, 2023); Intelsat Reply Comments at 2 ("Shot clocks, however, fail to address the underlying cause of extended processing times and should not be adopted at this time; requiring the Commission to act more quickly on pending applications without providing a better process for doing so will not result in better outcomes for licensees, but rather could have unforeseen consequences if the Commission is unable to review applications with sufficient thoroughness."); OneWeb Comments at 1-2 (noting that "the Commission has seen a surge in the number of applications for satellite technologies… [and] [a]nalyzing these applications is no small task, as systems are complex and require careful review, with each presenting unique issues." and supporting deadlines for placing applications on public notice, but opposing them for final action on license applications); *but see* OneWeb Reply Comments at 2-3 (agreeing with shot clocks for action taken on earth station applications and suggesting that the Commission is best suited to determine the appropriate timeframe for a shot clock).

[152] *See* Turion Space Comments at 6-7; Intelsat Reply Comments at 1.

[153] EchoStar Comments at 10-11 (suggesting action taken timelines of 60 days after public notice for earth station applications and 180 days after public notice for space station applications); EchoStar *Ex Parte* (Apr. 17, 2023) ("There should be no strict shot clocks or other mandatory time limits on review of space station applications that raise concerns about legitimate issues, such as avoiding harmful interference with other space stations and limitations on orbital debris.").

[154] *See, e.g.*, EchoStar Comments at 10 (suggesting Commission staff could extend processing period timelines when they identify specific issues that require further inquiry or analysis); EchoStar *Ex Parte* (Apr. 17, 2023); CSSMA Comments at 8 (advocating for action taken shot clocks with "appropriate safeguards to allow the Commission sufficient time to address applications that present non-routine issues.").

[155] Intelsat Comments at 4-5;

[156] AWS Comments at 6.

States as an attractive and competitive licensing destination for satellite services. We believe it is important to further consider and address issues raised by commenters regarding timelines for taking action on the merits of an application. We therefore seek further comment in the *FNPRM* on proposals regarding action on the merits such as shot clocks and/or timeframes for action.

52. We also find that certain earth station applications are suitable for a more streamlined application review process, and we discuss in more detail below our decision to expand the category of applications that may be deemed granted after a specific period of time.[157]

53. Within the scope of our inquiry regarding whether the Commission should consider adopting any shot clocks or processing deadlines, we sought comment on which types of license applications the Commission should consider "straightforward" and whether to implement processing timelines for such applications in particular.[158] We pointed to our 2016 public notice that identified expected processing timelines for straightforward, uncontested earth station applications, barring any complication, and asked whether these guidelines should be codified, whether a more flexible approach and considerations of other factors was warranted, or whether given the pace of change in space activities and corresponding number of applications presenting unique or complex issues, we should limit the scope of "straightforward" applications.[159] After considering the record, we decline at this time to further identify or otherwise separate out processing timelines for "straightforward" applications.

54. The record was divided on this issue. Numerous commenters generally support the notion of identifying "straightforward" applications and creating processing timeframes for those applications.[160] However, only a few commenters specifically propose examples of applications that the Commission consider as "straightforward." RBC Signals suggests including: (1) applications for earth stations operating with a U.S.-licensed satellite and consistent with standard technical characteristics for the relevant bands; (2) earth station modification applications when it is an application to add a U.S.-licensed satellite or market access grantee operating in previously authorized bands; and (3) a new earth station license that is at a site within a defined distance of similar earth station operations (e.g., 1 mile) and operating within same parameters as pre-existing earth stations within the "straightforward" category.[161] Intelsat proposes that uncontested earth or space station applications that pose minimal interference risk should be considered "straightforward."[162] Boeing, TechFreedom, and SpaceX suggest that the Commission should not make such a distinction, and rather should apply shot clocks to all types of applications, regardless of whether they are "straightforward."[163]

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[157] *See infra*, Section III. D.

[158] *NPRM* at para. 17.

[159] *Id*.; *see also International Bureau Announces Expected Processing Times for Earth Station Applications*, Public Notice, 31FCC Rcd 6854 (IB-SD rel. June 14, 2016).

[160] *See, e.g.*, OneWeb Comments at 6; Inmarsat Comments at 3-4; SIA Comments at 13-14; Blue Origin Comments at 3.

[161] RBC Signals Comment at 6 (suggesting, in the alternative, that section 25.118 may be an appropriate vehicle for implementing some of these streamlined earth station licensing suggestions.).

[162] Intelsat Comments at 6 (providing as examples, earth station modifications requesting authority to add points of communication that are authorized to communicate with U.S. earth stations; space station applications seeking modifications that do not involve operational changes, such as modifications to coverage area or antenna repointing; and Earth and space station applications that seek to extend a license term.).

[163] Boeing Comments at 8 ("Perhaps a better approach would be to expedite the processing of all satellite and earth station applications without regard for whether they are novel or complex."); TechFreedom Comments at 14-15 ("Applying shot clocks only to 'easy' applications will stifle the cycle of innovation which has characterized the last decade of NGSO deployment and leave the United States vulnerable to foreign entities seeking to dominate the cis-lunar system."); SpaceX Comments at 5 ("But even for shot clocks for final action on an application, the

(continued….)

55. We do not believe the divided record supports the creation of a category of "straightforward" applications at this time. We recognize the potential benefit to creating such categories so long as they are well-defined, and so long as their development and application in specific cases do not hinder our goal of processing applications promptly. At the same time, we recognize the points made by SpaceX and TechFreedom that creating a carve-out for only "easy" or uncontested applications might incentivize the filing of oppositions and increase the number of contested applications.[164] In the same vein we agree with commenters that the Commission can streamline its rules to expedite processing of routine and novel or complex applications.[165] The Commission is currently faced with an unprecedented influx of earth station and space station applications.[166] We find that the other concrete steps we are taking today, including removing no longer necessary rules that slow down the application process, committing to issue numerous forms of guidance for streamlining application filing, and creating a 30 and 60-day timeframe for determining acceptability for filing, are the types of practical and necessary processing improvements that the Commission can quickly implement. Additionally, we note that we will further consider timeframes and/or shot clocks for actions taken on the merits of applications in the accompanying *FNPRM*. Taking into account the divided record on this issue, we conclude that it would not serve our goals to further identify or carve-out certain types of applications as "straightforward" at this time.

D. Expediting Earth Station Applications to Add Points of Communication

56. Today we take action to expedite the processing of a common category of earth station applications: applications to modify existing earth station licenses by adding new space stations as points of communication. Specifically, we adopt a new rule,[167] under which applications to add space station points of communication to existing earth station licenses will be deemed granted 35 days after being placed on public notice, under certain conditions described below and provided that no objection to the application is filed. While we decline to draw lines based on whether we consider this type of application to be "straightforward," we find that, under a specific set of conditions, the process of adding space station as additional points of communication to existing earth station licenses can be significantly expedited.

57. Our rules allow earth stations to transmit to any space station in the same radio service that is listed as a point of communication in the earth station license, provided that permission has been received from the space station operator to access that space station.[168] The *NPRM* specifically asked whether applications to add points of communication to existing earth station licenses should qualify as "straightforward" so long as the space station to be added is: (1) either U.S.-licensed, or (2) has been granted U.S. market access within the parameters requested in the earth station application, and the applicant identifies either the call sign of or the earth station license(s) in which the space station was

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Commission should refrain from distinguishing between types of applications—straightforward or non-straightforward; contested or uncontested. Such a carve out would exacerbate the current situation by increasing the incentives for anticompetitive manipulation that further complicate the staff's job.").

[164] *See* SpaceX Comments at 5; TechFreedom Comments at 14-15.

[165] *See* Boeing Comments at 8.

[166] *See, e.g.*, Remarks of Chairwoman Jessica Rosenworcel, Space Innovation And The FCC, Washington, D.C., Speech, (Rel. Nov. 3, 2022) ("Today the FCC has before it applications for 64,000 new satellites. 64,000. But it is not just satellites. Last year we also saw an eight-fold increase in the number of applications for fixed satellite service gateway Earth stations filed at the agency. On top of that, we are seeing new applications for novel space activities like lunar landers, space tugs that can deploy other satellites, and space antenna farms that can relay communications.").

[167] This rule is added as a new paragraph, (i) in section 25.117, which governs modifications of station licenses that require Commission authorization. 47 CFR § 25.117.

[168] 47 CFR § 25.276.

granted market access.[169] The *NPRM* sought comment on whether these types of applications should be automatically deemed granted 60 days after they are filed, absent other Commission action.[170]

58. Numerous commenters support the consideration of earth station operators' applications to add previously authorized space stations as points of communication as "straightforward" and to allow for applications to be deemed granted after 60 days, absent other Commission action.[171] AWS suggests that the Commission consider various benchmark shot clocks within the 60-day period for placing the application on public notice and coordination.[172] Several commenters suggest that the Commission go even further and allow the addition of previously authorized points of communication through notification, such as via section 25.118 of our rules, instead of through a license application process.[173] SpaceX proposes that notification, instead of authorization, should be allowed when a space station operator is also the earth station licensee and is requesting to add one of its own previously authorized space stations as a point of contact.[174] Microsoft suggests that earth station operators could add any space station as a point of communication, so long as a certain set of conditions are met.[175] EchoStar suggests that the Commission should permit earth station operators to specify in their application that they will communicate with all FCC-authorized NGSO systems (just as is done with GSO systems currently[176]),

[169] *NPRM* at para. 18.

[170] *Id*.

[171] OneWeb Comments at 6-7; EchoStar Comments at 11; AWS Comments at 4-5; Blue Origin Comments at 3; Swedish Space Corp. Comments at 2; Myriota Reply Comments at 4-5; Microsoft Reply Comments at 3-6 (supporting Commission's proposal for instances that would not fit within Microsoft's proposed notification-only scheme); EESS Operators Reply Comments at 2-3 (supporting the Commission's proposal as well as alternative proposals raised by other commenters).

[172] AWS Comments at 5 (suggesting 14 days after filing to put the application on public notice, 14 days after public notice to input application information into OFACS for NTIA coordination, 14 days for NTIA to review after FCC review, otherwise deemed coordinated, 60 days after public notice to issue decision, otherwise deemed granted.).

[173] *See, e.g.*, RBC Signals Comments at 3 ("Subject to any Earth station coordination requirements, operating Earth stations with satellites using previously authorized uplink or downlink spectrum should be subject to the streamlined procedures of Section 25.118."); TechFreedom Comments at 6-7 (suggesting the Commission develop rules to allow adding points of communication through notification, noting similarity with CSAT rules and expanding on the fleet operations approach the Commission took in 2003); SpaceX Comments at 15 (suggesting amending Section 25.118(a)(3) to include adding points of communication so long as the operator does not simultaneously seek to change the relevant operating parameters of either system in a way that would require prior authorization, and provides notice of the change within 30 days); Kuiper Reply Comments at 6 (supporting commenters' proposals to expand the types of modifications that could be made through notification under Section 25.118, noting SpaceX's proposal); Microsoft Comments at 13-14 (advocating amending Section 25.118 to allow earth station operators to add a point of communication through notification so long as five criteria are met); Intelsat Reply Comments at 3 n. 5 (noting commenters' suggestion for Section 25.118 notification as an alternative to an automatic grant procedure).

[174] SpaceX Comments at 16.

[175] Microsoft Comments at 13-14 (including the following five conditions for adding points of communication without prior authorization: the space station has been licensed or granted market access, the space station is a U.S. government satellite, the space station is operating in EESS, all communications would occur in the 2025–2110 MHz, 8025–8400 MHz, or 25.5–27.0 GHz bands, the space station operator certifies that it has complied with regulatory requirements, and all transmissions from the earth station occur in bands where the earth station is authorized to operate and consistent with the earth station's authorized transmit power limits and pointing angles); Microsoft *Ex Parte* (Sept. 14, 2023).

[176] U.S.-licensed and market access GSO space stations providing Fixed-Satellite Service in certain frequency bands where GSO FSS has primary status, are on "The Permitted List" for routine earth stations to communicate with. 47 CFR § 25.103.

which will reduce the number of modifications requiring filing.[177]

59. In contrast, several commenters suggest the Commission proceed with caution on this proposal. For example, Iridium cautions that in the case of earth stations subject to section 25.203(k) of the Commission's rules,[178] applicants must either complete coordination or demonstrate that they will not cause unacceptable interference and therefore proposes that given these requirements, such applications should not be considered "straightforward" or subject to the proposed 60-day timeline for being deemed granted.[179] Viasat asserts that adding NGSO systems as points of communication could "upset" the EPFD limit calculations and coordination agreements in NGSO system authorizations.[180] Viasat proposes that if the Commission allows for streamlining in adding points of communication, earth station operators should be required to include a certification that the addition will not result in operations or impacts inconsistent with the EPFD analysis or coordination agreements of the NGSO operator.[181]

60. After consideration of the record, we conclude that, in a specific set of instances, it is feasible and appropriate to adopt a licensing procedure by which an application to add a point of communication can be deemed granted 35 days after the application has been found acceptable for filing and also placed on public notice[182] if no sooner action is taken by the Commission. This timeline takes into account our new timeframe for finding earth stations to be acceptable for filing within 30 days (or notifying the applicant of the need for further information). Therefore, a substantially complete application to add a point of communication would be found acceptable for filing and placed on public notice within 30 days, starting on the day after the application is filed in ICFS, and then would be deemed granted 35 days after public notice, a total of 65 days for processing. We agree with commenters that applications requiring coordination, including federal coordination, require additional time.[183]

61. Initially, this expedited process is premised on the following conditions, which are necessary to balance faster processing for adding points of communication and protecting other spectrum users from interference. First, we note that Commission staff will retain discretion to remove the application from the deemed-granted process if merited.[184] Additionally, we require that these modifications be limited in nature, and not part of a larger set of modifications, which might require more

[177] EchoStar Comments at 9; *see also* SpaceX Reply Comments at 7 (supporting EchoStar's suggestion); SpaceX *Ex Parte* (Sept. 13, 2023).

[178] *See* 47 CFR § 25.203(k) (requiring earth station applicants, other than an ESV, VMES or an ESAA, operating with GSO or NGSO satellites in a shared frequency band to either demonstrate in its application that it will not cause harmful interference or certify that its operations will conform to established coordination agreements with other operators).

[179] Iridium Comments at 4-5.

[180] Viasat Reply Comments at 10-11.

[181] *Id*. at 11.

[182] We note that in some instances an application might be found acceptable for filing within 30 days, but might not be placed on public notice exactly within 30 days due to the weekly schedule of releasing public notices.

[183] *See* Iridium Comments at 4-5; Iridium *Ex Parte* (Sept. 14, 2023). SpaceX suggests that the Commission could establish an equivalent 35-day timeline for sending applications requiring federal coordination to NTIA. *See* SpaceX *Ex Parte* (Sept. 13, 2023) at 5. AWS suggests that federal coordination could be completed within 14 days or deemed coordinated. AWS Comments at 5. We note that the process for preparing documents for and engaging in federal coordination is distinct from the proposed deemed-granted process, requires additional resources and staff time, and may not always be feasible within this timeframe. However, we note that we are considering whether this process could be expanded to operators in shared bands in the accompanying *FNPRM*.

[184] *See* Appendix A, to be added at 47 CFR § 25.117(i) ("Unless otherwise ordered by the Commission, an application to add a space station point of communication to an earth station authorization will be deemed granted 35 days after the date of the public notice that the application has been accepted for filing…").

lengthy review. Therefore, the modification can be only to add space stations as points of communication. Next, applications will need to demonstrate that the addition of a new point of communication will not cause earth station transmissions to exceed the highest equivalent isotropically radiated power (EIRP),[185] EIRP density, and bandwidth prescribed for any already authorized emission. Finally, this option will only be available in frequency bands that are not shared with federal or terrestrial wireless users and are not subject to coordination requirements with other non-federal satellite services.[186] We do, however, seek comment in the *FNPRM* below regarding some additional circumstances in which an earth station modification to add a point of communication could be expedited.

62. We are not convinced, as some have suggested, that all applications for adding a point of communication are appropriate for notification-only consideration.[187] We observe that applications to add space stations as points of communication are only required for space stations that are not on the Permitted List,[188] and for operations that fall outside "routine" earth station technical parameters.[189] If a GSO space station is licensed by the Commission, or has been granted access to the U.S. market, and operates in specified frequency bands where GSO FSS has primary status, then the space station is a Permitted List space station and is automatically included as a point of communication for all U.S.-licensed earth stations that list the Permitted List as a point of communication, provided that the earth station operations with the space station fall within the existing technical parameters and conditions of the earth station license.[190] The Permitted List already represents the Commission's judgment as to which space stations can be added as points of communications to an earth station's license without requiring an application and approval by the Commission. Allowing the addition of any space station as a point of communication, without prior application or approval, in any orbit or service or frequency band, and without regard to whether the operations fall within existing technical parameters would essentially render the Permitted List meaningless, which is an outcome outside the scope of this proceeding to expedite the processing of space and earth station applications. The Permitted List is limited to GSO space stations providing fixed-satellite service,[191] and the Commission has not so far determined that it is possible to include NGSO space stations within the definition of the Permitted List.[192] In the

[185] EIRP is the product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna (absolute or isotropic gain). 47 CFR 2.1.

[186] *See,* Iridium *Ex Parte* (Sept. 14, 2023).

[187] *See, e.g.*, RBC Signals Comments at 3; TechFreedom Comments at 6-7; SpaceX Comments at 15; Microsoft Comments at 13-14; Microsoft *Ex Parte* (July 12, 2023). Under section 25.118 of our rules, some minor modifications can be made by providing notification to the Commission, as opposed to seeking authorization. 47 CFR § 25.118.

[188] The Permitted List is a list of all U.S.-licensed GSO space stations providing Fixed-Satellite Service in certain frequency bands where GSO FSS has primary status, as well as non-U.S. licensed GSO space stations approved for U.S. market access to provide FSS in those same frequency bands. 47 CFR § 25.103.

[189] *See* 47 CFR § 25.103, Definitions, "Routine Processing or Licensing."

[190] Upon grant, a licensed earth station with Permitted List as an authorized point of communications may communicate with, consistent with the technical parameters of its license, all U.S.- licensed GSO FSS space stations authorized to operate in the conventional C, Ku, or Ka bands, and all non-U.S.-licensed space stations operating in these bands that are included on the Permitted List. *See Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Report and Order, FCC 13-111, 28 FCC Rcd 12403 at para. 13 (2013).

[191] 47 CFR 25.103; *see also* SpaceX *Ex Parte* (Sept. 13, 2023).

[192] The conditions of the Permitted List, including specific limits and identified routine earth stations to communicate with, have been uniquely identified. We also require GSO operators who relocate their satellite to a new orbital location to revise its Permitted List entry and we must be able to determine that operation of the satellite at the new location would not cause harmful interference to other satellite systems after the relocation. *See Part 25 Streamlining Second R&O,* 30 FCC Rcd at 14795, paras. 248-49 (2015); *see also Amendment of the Commission's Space Station Licensing Rules and Policies, Mitigation of Orbital Debris*, 18 FCC Rcd 10760 at para. 317-318.

accompanying *FNPRM,* however, we seek comment on commenter proposals to create a process for allowing U.S.-licensed earth stations to have automatic authority to communicate with certain approved NGSO space stations, in a manner similar to the how the Permitted List functions for approved GSO space stations.

E. Other Suggestions

63. The *NPRM* sought comment generally on the issues we identified for streamlining and on other guidance that may assist applicants and speed application processing.[193] In response to our general questions, some commenters advocate for additional rule changes that they believe will reduce the need to file modification applications, but which are either outside of the scope of this proceeding or which we decline to take action on at this time. Additionally, some of the comments and suggestions more appropriately align with other ongoing Commission proceedings and, as such, are not further considered in this Report and Order. Finally, several comments can be addressed by clarifying and explaining existing Space Bureau practices. We value the input that we received in response to the *NPRM*, and the absence of action today or inclusion in the accompanying Further Notice of Proposed Rulemaking in no way precludes consideration of these ideas as part of other existing proceedings or as part of future rulemaking proceedings.

64. *Suggestions for Modifications without Prior Authorization*. Spire proposes that the Commission adopt a new provision in section 25.118 for EESS spacecraft, permitting operators to notify the Commission of these set of changes.[194] SpaceX suggests that the Commission expand Spire's proposal to include all NGSO systems, not just EESS.[195] We decline to adopt Spire's proposal at this time. While we believe expanding notification-only modifications could have merit, we remain concerned that this proposal in particular would leave important determinations, such as the evaluation of interference risk, solely to the applicant.[196] We note, however, that some satellite design changes may not require our review or notification to the Commission at all if they create no change to radio frequency, do not affect orbital debris mitigation plans, or otherwise affect the parameters or terms and conditions of the station authorization.[197]

65. Spire additionally proposes that discrepancies related to whether an applicant can make a minor modification through notification or via prior authorization can be alleviated to some degree if the Commission codifies a broad definition of the term "technically identical."[198] Spire proposes that "[t]he Commission should formally codify the explanation it provided in the 1994 MSS Order that 'technically identical' spacecraft are those that have 'identical satellite antenna footprints and transmission parameters' but which may have de minimis variation among them—including the physical structure or microelectronics." Additionally, Spire suggests that the Commission should expressly exempt

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[193] *NPRM* at para. 20.

[194] Spire Comments at 15-16 (Specifically, Spire suggests that EESS operators could notify the Commission of any changes to "(1) the size or mass of the cubesat form factor, and (2) equipment and sensors from one spacecraft to another, that do not involve: (i) an increased risk of harmful interference to other systems not permitted by coordination agreements; (ii) a request for increased interference protection; (iii) an increased risk of causing orbital debris; or (iv) a change in orbital altitude (unless it meets the criteria otherwise permitted by Section 25.118(f)).").

[195] SpaceX Reply Comments at 6-7.

[196] SpaceX suggests that the Commission is creating a "new and unvetted requirement" in providing this explanation. *See* SpaceX *Ex Parte* (Sept. 13, 2023) at 6. We note that we are not creating a new requirement here, rather we are declining to adopt a proposal to amend section 25.118 to include certain additional changes to satellites. Our rules on modifications remain the same. *See* 47 CFR §§ 25.117, 25.118.

[197] 47 CFR § 25.117.

[198] Spire Comments at 3, 14-15.

"technically identical" components from modification rules.[199] We decline to adopt a specific definition of "technically identical" in our rules at this time because such a definition may become outdated as technology advances. We aim to amend our rules in technologically-neutral and performance-based ways, and in light of this framework we find it inappropriate to adopt such a definition in the rules based on the current record.

66. *Suggested Changes to the Space Bureau's Special Temporary Authority Process*. Several commenters suggest various approaches to further streamline the license application process for STAs. SpaceX proposes, and other commenters agree, that STAs with an underlying request for full authorization should renew automatically while the underlying application is pending.[200] RBC Signals suggests that the Space Bureau adopt a procedure which allows STA operations to continue while a license application with identical parameters to the STA is under review.[201] And Intelsat suggests that the Commission "adopt the Section 1.62 policies previously employed" for Earth station applications "wherein operators were not required to file a new STA extension request prior to the grant of the previous STA extension request."[202]

67. Here we find that an explanation of the Space Bureau's STA process is merited when considering these comments. Our rules for special temporary authorizations under part 25 allow operators to apply for STAs for various amounts of time,[203] and state that STAs expire at the end of those allotted terms.[204] These rules stem from the Communications Act, which allows the Commission to grant STAs for up to 180 days if they are placed on public notice per section 309(f) of the Act,[205] and allows the Commission to grant up to 30 and 60-day STAs in certain circumstances without public notice per section 309(c)(2)(G) of the Act.[206] The reasoning behind these rules is simple: special temporary authorizations are meant to be used under exceptional or "extraordinary" circumstances, as the Act states and as our rulemakings have emphasized.[207] The Space Bureau has applied section 1.62 to special temporary authorizations in that if an applicant with an STA files a new STA application to extend its temporary authorization three days prior to the end of its current license term, it may continue its temporary

[199] Spire Comments at 3, 15.

[200] SpaceX Comments at 17-18; Kuiper Reply Comments at 6-7; Intelsat Reply Comments at 4; *see also generally* TechFreedom Comments at 8.

[201] RBC Signals Comments at 5; *see also* 47 CFR § 5.61(c) ("Extensions of an STA may be granted provided that an application for a conventional experimental license that is consistent with the terms and conditions of that STA (i.e., there is no increase in interference potential to authorized services) has been filed at least 15 days prior to the expiration of the licensee's STA. When such an application is timely filed, operations may continue in accordance with the other terms and conditions of the STA pending disposition of the application, unless the applicant is notified otherwise by the Commission.").

[202] Intelsat Comments at 6.

[203] *See* 47 CFR § 25.120.

[204] *See* 47 CFR § 25.163(b).

[205] *See* 47 U.S.C. § 309(f) (allowing 180-day STAs under extraordinary circumstances for applications subject to 309(b), which requires a 30-day public notice period prior to grant).

[206] *See* 47 U.S.C. § 309(c)(2)(G) (paragraph (c) is an exception to the 30-day public notice requirement in paragraph (b) and allows for 30-day STAs without an underlying application and allowing 60-day STAs with a contemplated underlying application).

[207] *See Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10862-63 para. 271-73 (2003) ("In addition, the Communications Act specifies that we grant STAs only when there are 'extraordinary circumstances.' There is nothing in the Communications Act that suggests that Congress contemplated allowing STA requests to be routinely granted.").

operations while the new STA application is pending.[208] As such, an operator with an STA may continue its temporary operations while a new application to extend the time period for their authorization is under review and we acknowledge this in our license grants. We note that our rules allow for STAs for up to 180 days at a time. Despite this, many applicants still file shorter-term STA applications for up to 30 days, which the Commission can issue without placing on public notice or 60-day durations, which the Commission has the discretion to not place on public notice if the applicant plans to file an underlying request for regular authority of the service.[209] Additionally, because requests for special temporary authority are meant to be granted under exceptional circumstances and for relatively short duration, any coordination that is needed for the temporary authorization is generally limited to the time period requested by the applicant, or no more than up to 180 days. Additional requests then require additional coordination for the new time period.

68. For all these reasons, we decline to adopt the suggested changes to our STA rules at this time. We recognize that STA applications are often accompanied by an underlying license or modification application for regular operations, and it can be difficult for applicants to determine the full timeframe for which they might require special temporary authorization. However, we note that applicants may consider a variety of time frames for their STA needs, including the 180-day STA.[210] We also note that we do not wish to circumvent our 180-day STA requirements, which is distinguished by the 30 and 60-day STAs only in so far that the Act requires the Commission to place applications for STAs beyond 60 days and up to 180 days on public notice. Therefore, the Commission has discretion to place 30 and 60-day STA applications on public notice, and may choose to do so in the event an individual applicant files numerous shorter-term STA requests that result in longer than a 180-day use. Ultimately, we are hopeful that our continued streamlining efforts will lead to faster processing of underlying applications and a reduction in the need for extensions to STAs.

69. *Additional Suggestions for Streamlining of Modifications*. SpaceX suggests that the Commission should permit and encourage operators to submit a single modification application that applies an identical change across multiple Earth station licenses.[211] SpaceX proposes, as part of its suggestion, that for any modification that would require re-coordination with other commercial or federal users, "the Commission could require the modification application to attach coordination information for each separate site."[212] TechFreedom suggests "a hybrid licensing approach under which the common elements (technical parameters, points of communications, etc.) of a network of earth stations could be licensed on a network basis under a single license with only the individual elements (e.g., location) licensed separately."[213] Both SpaceX and TechFreedom assert that these types of changes would dramatically cut down on the amount of modification applications that would require filing and review.[214]

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[208] *See* 47 CFR § 25.120(a); § 1.62(a)(1) ("Where there is pending before the Commission at the time of expiration of license any proper and timely application for renewal of license with respect to any activity of a continuing nature, in accordance with the provisions of section 9(b) of the Administrative Procedure Act, such license shall continue in effect without further action by the Commission until such time as the Commission shall make a final determination with respect to the renewal application."); *see also, e.g., Satellite Communications Services Information, Actions Taken*, Report No. SES-02594, (SB Aug, 16, 2023).

[209] *See* 47 CFR § 25.120(b)(3), (4).

[210] 47 CFR § 25.120(b)(2).

[211] SpaceX Comments at 17 (citing to its own experience of having to file nearly 60 separate modification applications to make a common change to multiple earth stations).

[212] *Id*. at 17 n. 15.

[213] TechFreedom Comments at 7.

[214] SpaceX Comments at 17; TechFreedom Comments at 7 (noting that "a modification of any of the common elements (e.g., a change in antenna parameters that did not increase possible interference) could be accomplished with a single form rather than require the filing of hundreds of nearly identical applications.").

70. We are conscious of commenters' points regarding large numbers of modification applications being filed for common changes, and we will consider this issue for future updates to our filing system, which currently cannot support this modification. In response to TechFreedom's suggestion, we note that the Commission has made similar efforts to streamline common changes, such as through C-band earth station network licensing in section 25.115(c)(2) of our rules[215] and our unified licensing system for space stations and blanket earth stations adopted in 2020.[216] In the 2020 order creating the unified licensing system, the Commission declined to include individually licensed earth stations in the process, finding that adding them would "create more complexity than its streamlining benefit," given the need for site-specific information and coordination.[217] This reasoning remains valid. However, we may consider similar suggestions such as TechFreedom's "hybrid licensing" approach as we gain more experience with some of the streamlining rules we have more recently put in place, such as the unified licensing system, that have not yet been widely utilized. We may consider further streamlining in a future proceeding.

71. *Emission Designators.* Intelsat and SIA both suggest that the Commission do away with requiring emission designators in earth station applications.[218] SIA asserts that requiring applicants to include emission designators causes confusion, delay, and complexity to the application process "without providing any meaningful information."[219] We decline to consider changes to our emission designator requirements. Emission designators provide a variety of necessary information to inform the licensing process and to make a determination to authorize an operation under Part 25. For example, they provide technical information that Commission staff use to verify and calculate the power spectral density, occupied bandwidth, whether transmissions are analog or digital, etc. Additionally, this information is typically requested as part of the federal coordination process with NTIA. We also note that emission designators are required by OET in their license applications as well for similar reasons.[220]

72. *Market Access and Orbital Debris Mitigation Showings*. In response to the *NPRM*, a few commenters suggest that the Commission ensure market access operators and U.S. licensees are subject to the same rules, in particular they suggest the Commission amend its rules related to orbital debris showings.[221] TechFreedom asserts that applicants for market access are treated more favorably than U.S. licensees in part because "domestic applications are vetted at the acceptance stage to determine whether their orbital debris showings are sufficient, whereas such showings in market access petitions are not reviewed until a later stage."[222] Conversely, OneWeb notes that market access applicants are effectively required to provide the same orbital debris showings as license applicants, but because this is often done through requests for information from Commission staff, OneWeb asserts the determination process is delayed as compared with the process for U.S. licensees.[223]

73. As an initial matter, we note that section 25.114(d)(14)(v) of the Commission's rules,

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[215] *See* 47 CFR 25.115(c)(2) "Networks of earth stations operating in the 3700–4200 MHz and 5925–6425 MHz bands".

[216] *See Further Streamlining Part 25 Rules Governing Satellite Services*, IB Docket No. 18-314, Report and Order, 35 FCC Rcd 13285 (2020).

[217] *Id*. at para. 28.

[218] Intelsat Comments at 13; SIA Comments at 9.

[219] SIA Comments at 9 (additionally asserting that OET does not use emission designators). As stated further below, OET does require emission designators in their applications.

[220] *See, e.g.*, 47 CFR part 2 subpart C; § 5.61.

[221] *See, e.g.*, TechFreedom Comments at 11-12; SpaceX Comments at 20-21; OneWeb Reply Comments at 4.

[222] TechFreedom Comments at 11-12.

[223] OneWeb Reply Comments at 4.

which addresses orbital debris showings for market access grantees, is the subject of a pending petition for reconsideration filed by SpaceX for the same reasons raised by SpaceX in this proceeding.[224] Therefore, we will consider any changes to that rule in the other proceeding. However, we take this opportunity to emphasize that the Commission applies the same scrutiny to orbital debris showings for market access grantees and U.S.-licensees, and ultimately determines whether to grant market access based on the same technical information that a U.S.-licensee would provide for orbital debris considerations.[225] Our current rules allow market access applicants to satisfy the requirement to describe the design and operational strategies to minimize orbital debris risk by demonstrating that their debris mitigation plans are subject to direct and effective regulatory oversight by the national authority that licensed their space station operations.[226] Such a showing requires market access applicants to provide supporting documentation and respond to inquiries from Commission staff in order for the staff to compare the foreign rules and determine whether there is an effective regulatory regime in place.[227] However, while this provision allows the Commission to accept such equivalent regulatory oversight showings, it does not preclude applicants from alternatively providing the same orbital debris mitigation showings that are detailed elsewhere in section 25.114 of the rules. And, except for a few cases, applicants have generally found it preferable to just provide the Commission with a description of the design and operational strategies for orbital debris mitigation instead of presenting all of the showings necessary to demonstrate the effective regulatory oversight of another national authority.

74. *UMFUS Pre-Application Coordination*. Verizon / AT&T assert in their comments that the Commission could streamline the license application process by requiring earth station operators in bands shared with the Upper Microwave Flexible Use Service (UMFUS) to engage in additional pre-application coordination and certify conformance with section 25.136 of the Commission's rules and Space Bureau guidance in addition to the Part 101 coordination requirements.[228] Additionally, they suggest that the Commission require earth station operators to provide more than visual information about proposed earth station contours, including the antenna gain at the horizon or the maximum equivalent isotropically radiated power at the horizon to validate how the contours were developed.[229] OneWeb, Viasat, Intelsat, and EchoStar disagree with this proposal.[230] We agree with commenters' assertions that these proposals fall outside the scope of this rulemaking.[231] Similarly, we find that Viasat's proposal to amend our review process under section 25.136 is also beyond the scope of this rulemaking.[232] We agree that operators must fully engage in the coordination process identified for specific applications, but we do not believe this proceeding, which focuses on expediting the license application process, is the pertinent

[224] *See, Mitigation of Orbital Debris in the New Space Age*, Petition for Reconsideration of Space Exploration Technologies Corp., IB Docket No. 18-313 (Sep. 24, 2020).

[225] *See, e.g.*, *WorldVu Satellites Limited Petition for Declaratory Ruling to Modify the U.S. Market Access Grant for the OneWeb Ku-band and Ka-Band NGSO FSS System*, ICFS File Nos. SAT-MPL-20200526-00062 and SAT-APL-20210112-00007, Order and Declaratory Ruling, para. 28 (SB Apr. 28, 2023).

[226] *See* 47 CFR § 25.114(d)(14)(v).

[227] This includes submitting an English language version of the debris mitigation rules or regulations of the authority and indicating the current status of the national licensing authority's review. *See Mitigation of Orbital Debris in the New Space Age*, IB Docket No. 18-313, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 4156, 4222-23 para. 145 (2020).

[228] Verizon / AT&T Comments at 6-7.

[229] *Id*. at 7.

[230] *See* OneWeb Reply Comments at 4-5; Viasat Reply Comments at 9; Intelsat Reply Comments at 6-7; EchoStar *Ex Parte* (Apr. 17, 2023); EchoStar *Ex Parte* (Apr. 28, 2023).

[231] *See, e.g.*, Viasat Reply Comments at 9; EchoStar *Ex Parte* (Apr. 28, 2023).

[232] Viasat Comments at 7; *see also* Verizon / AT&T Reply Comments at 6-8 (opposing Viasat's proposal).

forum for considering additions to pre-application coordination requirements.

75. *Redefining NGSO systems and EESS Licensing*. Spire suggests that the Commission consider expanding and altering its NGSO licensing framework beyond the streamlined procedure carve out for small satellites in section 25.122.[233] We note that Spire's suggestions, which concern our overall licensing framework, operator definitions, and NGSO processing rounds, are beyond the scope of this rulemaking. Similarly, Spire's proposals related to amending the U.S. Table of Frequency Allocations for space-to-space transmissions in the S-Band and considering other frequencies for intersatellite links is beyond the scope of this rulemaking.[234] The Commission may consider these suggestions when contemplating future rulemaking proceedings.

76. *Other Ongoing Commission Proceedings*. Several other commenters raise issues that are beyond the scope of this proceeding but may be more appropriate for consideration in other ongoing Commission proceedings. For example, Kuiper suggests that the Commission can streamline its licensing procedures in part by finishing its rulemaking to revise section 25.261 of the Commission's rules.[235] SpaceX asserts these issues are beyond the scope of this rulemaking.[236] We agree and we note that the Commission adopted new rules for satellite system spectrum sharing and issued a further notice of proposed rulemaking on April 20, 2023.[237] Turion Space proposes that In-space Servicing, Assembly, and Manufacturing (ISAM) operations should be authorized by service category and the Commission should develop a new framework for space stations that deploy third-party payloads.[238] The Commission has issued a Notice of Inquiry on ISAM operations and proposals related to these novel operations are more appropriate for consideration in that proceeding and are beyond the scope of this rulemaking.[239] Myriota's suggestions related to Space-as-a-service (SaaS) and licensing antennas hosted at third-party facilities[240] are also beyond the scope of this proceeding, however we note that similar suggestions have been raised in response to the Commission's ISAM NOI.

77. *Station-keeping Requirements*. Intelsat suggests that the number of modification and STA requests could be cut down by revising section 25.210(j) of the Commissions' rules to permit maintaining GSO satellites within 0.1° of their assigned orbital longitude, which is consistent with the ITU's east-west station-keeping requirements as opposed to our current rules, which require maintaining satellites within 0.05° of their assigned orbital longitude[241] Intelsat suggests that this change would give

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[233] Spire Comments at 10-13. (asserting that "[b]y formally adopting a more expansive vocabulary with which to describe and categorize classes of satellites—including by size, capability, and service (i.e., non-propulsive EESS small satellite)—the Commission will be better able to adopt a more precise framework, tailoring regulations to the specific vehicles that can and should be subject to a particular course of action.") Additionally, Spire proposes that the Commission modify its licensing process for EESS operators "to authorize EESS systems with a variable number of satellites, allowing operators to scale their system up or down depending on the needs of their customers." *Id*. And Spire suggests we exempt EESS operators from NGSO processing rounds through a rule modification, noting that we routinely waive these rules for EESS operators. *Id*.; *see also* Spire *Ex Parte*, (Mar. 9, 2023).

[234] *See* Spire Comments at 8-9; Spire *Ex Parte* (Sept. 14, 2023).

[235] Kuiper Comments at 3-4.

[236] SpaceX Reply Comments at 16.

[237] *FCC Adopts New Rules for Satellite System Spectrum Sharing*, Report and Order and Further Notice of Proposed Rulemaking, FCC-23-29, SB Docket No. 21-456 (Rel. Apr. 21, 2023).

[238] Turion Space Comments at 8, 10.

[239] *Space Innovation; Facilitating Capabilities for In-space Servicing, Assembly, and Manufacturing*, Docket Nos. 22-271, 22-272, Notice of Inquiry (2022) (ISAM NOI).

[240] Myriota Reply Comments at 2-4.

[241] Intelsat Comments at 6-7 (citing ITU R.R. No. 22.6-8.).

operators increased flexibility for conducting fleet management maneuvers and obviate the need for requests for modifications or STAs in that situation.[242] This suggestion falls outside the scope of this proceeding, which is focused on expediting the application process and not a review of all of our technical rules. Nonetheless, we note that we have amended the rule in the past to allow exceptions for end-of-life operations,[243] and we have considered waiver requests to this rule for applicants in the past.[244] We believe our current rules and practice are prudent, while allowing operators to apply for a waiver if needed under unique conditions.

78. *Bureau Practices*. Several commenters raise issues that can be clarified by pointing commenters to current Space Bureau practices, procedures, and policies. One commenter suggests that the Commission waive, for good cause, NGSO-like processing rules for EESS operators.[245] This type of waiver has been granted where justified given the nature of EESS operations and the ability for operators to share spectrum. Similarly, requests for email notification when licenses are granted and contact information for Bureau staff are already a part of Space Bureau practice.[246] However, we note that FCC emails are sent to the designated point of contact on applications and, we remind applicants to notify the Commission of any updates to their designated point of contact details.

79. *Timing of Orbital Debris Showings*. The Swedish Space Corporation asserts that the Commission should allow applicants to address space debris mitigation plans and deorbiting strategy after a license is granted because these matters require obtaining data from manufacturers and may cause delay before licensing.[247] The commenter could raise this in our Orbital Debris Mitigation proceeding.[248] While orbital debris assessments are a key component in determining whether to grant a license or market access, in some instances we have authorized licenses on the condition that the applicant must submit its orbital debris plan through a modification and meet the requirements in the Commission's rules prior to commencing operations.[249]

80. *License Conditions*. A number of commenters raise suggestions and observations about the Commission's practices related to license conditions.[250] Commenters suggest, for example, that the Commission could cut down on the license processing time by also limiting the number of conditions applied to each license. TechFreedom suggests this could be achieved in part by adding a new rule to part 25 "making clear that all licenses are issued subject to any rule changes later adopted."[251] Similarly,

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[242] *Id*. at 7.

[243] *See Mitigation of Orbital Debris*, IB Docket No. 02-54, Second Report and Order, 19 FCC Rcd 11567, 11586, paras. 42-43 (2004).

[244] *See, e.g.*, SES Americom, Inc., File Nos. SAT-MOD-20050325-00075 SAT-STA-20050531-00112, Order and Authorization, 20 FCC Rcd 11542, 11545 para. 14 (IB 2005).

[245] Swedish Space Corp. Comments at 1-2.

[246] Swedish Space Corp. Comments at 2. We note that Bureau staff contact information is listed in the FCC website ICFS sends automatic notification of license grant via email to applicants, and FCC staff assigned to space station licenses routinely email applicants to notify them as well.

[247] Swedish Space Corp. Comments at 1.

[248] *Orbital Debris Mitigation in the New Space Age*, IB Docket No. 18-313, Second Report and Order and Further Notice of Proposed Rulemaking, 35 FCC 4156 (2020).

[249] *See, e.g.*, *Kuiper Systems LLC, Request for Modification for the Authorization for the Kuiper NGSO Satellite System*, ICFS File No. SAT-MOD-20211207-00186, Order and Authorization, DA 23-114 (IB Feb. 8, 2023); *Kuiper Systems LLC, Application for Authority to Deploy and Operate a Ka-band Non-Geostationary Satellite Orbit System*, Order and Authorization, 35 FCC Rcd 8324 (2020).

[250] *See* TechFreedom Comments at 10-11; SpaceX Comments at 16; Intelsat Comments at 11;

[251] TechFreedom Comments at 11.

Intelsat asserts that current license grants are more lengthy than needed due to restatements of various of FCC rule requirements.[252] SpaceX asserts that the Commission should avoid imposing any conditions that conflict with section 25.118.[253] SpaceX also asserts that the Commission has inconsistently applied conditions to similarly situated applicants in the past and suggests that the Commission should adopt "consistent conditions—ideally with identical language—that reduce the incentive for operators to claim heightened conditions for their competitors and reduce the need for operators to contest their competitors' applications to ensure equitable treatment."[254]

81. We find these comments to be outside the scope of our queries on expediting application processing, and rather directly concerns the specifics of license operations. However, we recognize that authorization conditions do at times include restatements of our rules. As commenters point out, all operators are subject to the rules in part 25, unless granted a waiver of a specific rule section. Additionally, it is already well established that licenses are subject to changes in rules that are the result of Commission rulemaking proceedings.[255] Nonetheless, the Space Bureau may consider these suggestions when crafting future license conditions. Regarding SpaceX's suggestion, we note that certain conditions may apply generally, for example if applications are requesting a particular frequency or waiver of a particular section of our rules. In such instances, effort is made to have standardized conditions that are placed in license grants where possible, and we expect the Space Bureau will continue to review license conditions accordingly. Beyond that, however, we note that each application presents individualized circumstances and operations, and conditions will reflect those differences.[256]

82. *Experimental Licensing.* Turion Space suggests that the Commission's experimental licensing rules under part 5 of our rules should be updated and that the Space Bureau, not OET, should administer the experimental licenses.[257] OET has delegated authority to administer experimental licenses under part 5,[258] in coordination with the Space Bureau when necessary. We note that part 5 rules cover all manner of experimental licenses and OET has the delegated authority and expertise related to experimental licenses generally. When OET receives experimental license applications for satellite operations, OET and the Space Bureau coordinate given the Bureau's subject-matter expertise on satellite operations.

83. *Physical Characteristics of Spacecraft.* SpaceX suggests that the Commission should cease requiring operators to provide specific dimensions for satellites, claiming requests for such information is inconsistent with Commission rules and policy.[259] We disagree with SpaceX's interpretation of our rules and policy. In a past licensing streamlining proceeding the Commission deleted a specific requirement in section 25.114(c)(10) requiring space station applications to provide, among other things, specific dimensions and mass because the Commission found that the information was either

[252] Intelsat Comments at 11.

[253] SpaceX Comments at 16.

[254] *Id*. at 19.

[255] *See Celotronix Telemetry, Inc. v. FCC*, 272 F.3d 585, 589 (D.C. Cir. 2001), *citing United States v. Storer Broadcasting Co.*, 351 U.S. 192, 205 (1956); *National Broadcasting Co. v. United States*, 319 U.S. 190, 225 (1943); Committee for Effective Cellular Rules v. FCC, 53 F.3d 1309, 1319-20 (D.C. Cir. 1995); *WBEN, Inc. v. FCC*, 396 F.2d 601, 617-18 (2d Cir. 1968)).

[256] For example, the conditions placed on an applicant requesting to launch and operate one NGSO satellite will be different from an applicant requesting to launch and operate a fleet of satellites. In turn, the number of satellites, the size and location of the fleet, and other factors will all play a role in what conditions are placed on an operator.

[257] Turion Space Comments at 10.

[258] *See, e.g.* 47 CFR §§ 0.241(a)(1)(ii); 5.55(d)(1); 5.61(a)(2).

[259] SpaceX Comments at 16.

collected elsewhere or was unnecessary.[260] In the case of specific dimensions, this information is often pertinent to the design and operational strategy that operators submit to demonstrate compliance with orbital debris mitigation under section 25.114(d)(14). Although the Commission removed the blanket requirement under section 25.114(c)(10) in 2013, the Commission retains authority under section 25.114(d)(14) to ensure that applicants submit sufficient showings to ensure compliance with orbital debris mitigation requirements concerns and therefore may request or expect operators to provide such information in individual cases.

84. *Public Participation in the Application Process, Informal Complaints, and Commission Discretion on Considering Comments*. TechFreedom and SpaceX suggest that the Commission can further streamline the application process by dismissing any late-filed informal complaints related to an application.[261] Additionally, TechFreedom suggests that the Commission hold informal complaints to the standards set forth in section 1.41 of the Commission's rules.[262] Both commenters suggest that the informal complaint procedure has been used to frustrate and slow down application processing.[263]

85. As commenters suggest, the Commission's rules offer multiple avenues for public participation related to Commission licensing actions: for example, through filing objections or petitions to deny under section 25.154(a), through informal objections under section 25.154(b), as well as other avenues such as section 1.1307 (actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared).[264] Formal pleadings, such as petitions to deny, must generally be made within the 30-day public comment period,[265] however, the Commission has authority to extend the opportunity for public comment.[266] Under FCC rules, pleadings that are not filed in accordance with section 25.154(a), including those not meeting the 30-day deadline, are classified as informal objections under subsection (b).[267] We recognize that allowing informal objections that are not subject to the 30-day public notice timeframe may slow down the pace of application processing in some instances, especially when a significant number of comments are generated due to an application for innovative services and novel operations. However, allowing public comment under our existing processes and rules benefits our review process, especially when comments are well thought out, and factually supported.[268] Thus, we believe the benefit of robust debate and input as part of the record

[260] *See Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Docket No. 12-267, Report and Order, 28 FCC Rcd. 12403, para. 89 (2013); *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Docket No. 12-267, Notice of Proposed Rulemaking, 27 FCC Rcd 11619, 11639 para. 60 (2012).

[261] TechFreedom Comment at 8; SpaceX Comments at 7.

[262] TechFreedom Comments at 8.

[263] SpaceX refers to the process as "sandbagging" staff, *see* SpaceX Comments at 7, and TechFreedom states that it is "no secret" that companies use the process to slowdown competitors' applications, *see* TechFreedom Comments at 8.

[264] *See, e.g.*, 47 CFR §§ 1.1307; 25.154(a), (b); *see also, e.g.,* Petition Pursuant to Section 1.1307(c) of Viasat, Inc., ICFS File No. SAT-MOD-20200417-00037 (Dec. 22, 2020).

[265] *See* 47 CFR § 1.45.

[266] *See, e.g.*, 47 CFR § 25.154(a)(2).

[267] 47 CFR § 25.154(b).

[268] TechFreedom cites to *NetworkIP, LLC v. Federal Communications Commission*, 548 F.3d 116 (D.C. Cir., 2008) and proposes that the Commission should extend the court's reasoning in that case "to the informal complaint procedures for satellite applications" and hold "all parties to strict filing deadlines". *See* TechFreedom Comments at 9-10. We find the court's decision in *NetworkIP* to be inapposite. In that case, the court found that the FCC's failure to apply its six-month filing deadline by granting a waiver was arbitrary and capricious. 548 F.3d at 128. Unlike the situation in *NetworkIP,* here, by accepting a filing after the 30-day period and classifying it as an informal objection, we are complying with our rules, not waiving them.

outweighs the concerns about delay, and therefore decline to change the informal objection process. However, in those cases where parties file frivolous pleadings, or pleadings meant solely to delay the process, we remind them that such filings are prohibited under section 1.52 of the Commission's rules.[269]

F. Digital Equity and Inclusion

86. In the *NPRM,* the Commission noted its continuing efforts to advance digital equity for all, consistent with the Communications Act and with Executive Order 13985.[270] Specifically, we asked how our streamlining proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.[271] Both SIA and EchoStar assert that efforts to expedite the licensing process will advance digital equity. EchoStar notes that a simpler, more efficient application process supports the Commission's digital equity and inclusion goals and will make it easier for satellite operators to offer services and lower costs to users across the country, including members of historically disadvantaged groups.[272] Additionally, EchoStar notes that a streamlined process makes it more likely that a wide range of applicants will be able to participate in space business.[273] SIA similarly emphasizes the effect of satellite broadband services in closing the digital divide for rural communities in particular and highlights the important role that satellite remote sensing services can play in natural and cultural resource management on Tribal lands.[274] SIA also urges the Commission to "continue to adopt rules that remain neutral with respect to the business models of the satellite systems that the Commission authorizes… [which] will ensure that the benefits of broadband satellite services will continue to be available to all end user groups, including underserved consumers, and the business, industries, and government infrastructure that support them and their communities."[275]

87. We agree with commenters that our efforts to expedite the application process and increase transparency for applicants will aid in lowering barriers to new entrants into the satellite communications industry. We also agree that supporting efforts to increase connectivity to historically underserved communities is in line with our mandate under the Communications Act and our efforts to comply with Executive Order 13985. With this in mind, the actions we take today to increase transparency and guidance for applicants are aimed at increasing accessibility, supporting innovation, and furthering the Commission's goal of increasing connectivity for all.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

88. In this Further Notice of Proposed Rulemaking (*FNPRM*), we continue our long-standing practice of reviewing our licensing rules and practices in light of innovation and development in the satellite industry and seek further comment on possible further streamlining of our rules. Specifically, we seek further comment on several proposals raised by commenters in response to the *NPRM*, but which require more development of the record and opportunity for public input.

A. Allowing Additional Minor Modifications without Prior Authorization.

89. We seek comment on whether to expand upon the list of minor modifications that can be made by operators without prior authorization by the Commission. Currently, the section of our part 25 rules addressing minor modifications provides for various circumstances in which operators can make

[269] 47 CFR § 1.52; *see also Commission Taking Tough Measures Against Frivolous Pleadings*, 11 FCC Rcd 3030, FCC-96-42, (Feb. 9, 1996).

[270] *NPRM* at para. 21.

[271] *Id*.

[272] EchoStar Comments at 3-4.

[273] *Id*. at 3-4, 11.

[274] SIA Comments at 15.

[275] SIA Comments at 16-17.

minor modifications without prior Commission approval.[276] In response to the *NPRM,* numerous commenters suggest additions to this list of modifications. Intelsat proposes that earth station modifications including removal of a satellite point of communication or modification of an earth station's antenna identification should be included as minor modifications.[277] SpaceX suggests that NGSO system operators should be able to modify space station antenna parameters without prior Commission authorization so long as those changes fall within the authorized parameters of the satellite system, with notice after the fact.[278] Intelsat also suggests that the Commission consider revising the existing provision allowing certain relocation of GSO space stations with prior notification to the Commission to permit operation of service links during the drift period to the new location, rather than limiting operations to 'tracking, telemetry, and command functions during the drift period."[279]

90. We seek comment on expanding the list of minor modifications not requiring prior authorization, and if we do expand this list, what the appropriate notification process should be. Should we permit earth station operators to remove satellite points of communication and modify antenna identification without prior authorization? If so, should the additions be included in the existing provision allowing earth station licensees to make certain modifications without prior authorization provided that the licensee notify the Commission within 30 days of the modification?[280] Or is a different notification process appropriate? What certifications should be made in connection with any notification?[281] Should we consider allowing satellite operators to change antenna parameters without prior authorization?[282] If so, what notification process might be appropriate, and if so, what certifications should be required in connection with this type of modification? We seek comment by way of examples, information, and other data that would demonstrate that such a change would not require Commission prior approval. Are there types of space station antenna changes or other changes that should be excluded from potential consideration under this minor modification rule? [283]

91. Finally, we seek comment on Intelsat's proposal suggesting that operations beyond tracking, telemetry, and command functions (TT&C) should be able to continue during certain satellite drifts so long as the operator provides "certification that operations are limited to coordinated

[276] *See* 47 CFR § 25.118. Section 25.118 specifies circumstances under which operators can make minor modifications (1) with the obligation to notify the Commission of the change(s) within 30 days of implementing them, 47 CFR § 25.118(a); (2) without the need to notify the Commission, 47 CFR § 25.118(b); or (3) with the obligation to notify the Commission in advance of making the change(s), 47 CFR § 25.118(e), (f).

[277] Intelsat Comments at 7 (suggesting additions to section 25.118(a)); *see also* Kuiper Reply Comments at 6 (agreeing with commenter proposals to expand the list of minor modifications that do not require pre-authorization).

[278] SpaceX Comments at 16 ("For example, as the Commission already permits for earth stations, the Commission should permit operators to modify the antenna parameters of their previously authorized satellites without seeking prior authorization where such changes fall within the envelope of the parameters for which the operator has received authorization, with notice after the fact").

[279] Intelsat Comments at 12.

[280] *See* 47 CFR § 25.118(a).

[281] *See, e.g.*, 47 CFR § 25.118(b)(2)(i)-(vi) (allowing modifications of antennas without prior Commission approval so long as they do not involve: "(i) An increase in EIRP or EIRP density (either main lobe or off-axis); (ii) Additional operating frequencies; (iii) A change in polarization; (iv) An increase in antenna height; (v) Antenna repointing beyond any coordinated range; or (vi) A change from the originally authorized coordinates of more than 1 second of latitude or longitude for stations operating in frequency bands shared with terrestrial systems or more than 10 seconds of latitude or longitude for stations operating in frequency bands not shared with terrestrial systems."

[282] *See* SES *Ex Parte* (Sept. 18, 2023).

[283] For any proposed additions to the list of minor modifications, we ask commenters to address how such minor modifications should be handled in the event of a temporary freeze on applications for new or modified space stations in a particular band.

transmissions during the relocation and drift transition period."[284] We observe that under our current rules addressing certain GSO satellite relocations as minor modifications,[285] the operators would be able to resume full satellite operations, including provision of service, once the space station arrives at its new destination without prior Commission approval, i.e. it may continue normal operations within the technical parameters authorized and coordinated for the space station previously assigned to that location.[286] We seek comment on whether continued operations during relocation, provided the operator certifies that operations are limited to transmissions that have been coordinated with other potentially affected operators, would result in an important benefit to licensees? We also seek comment on any potential interference concerns that may arise during relocation and whether the risk of potential interference outweighs any temporary benefits to allow continued operations during drift. Would it be sufficient for the operator to conduct such operations on a non-interference, unprotected basis? Would any additional certifications to the Commission be required before the operator initiates the drift? Additionally, we seek comment on whether we should limit operations to instances of short drift periods only, e.g. less than 30-days total duration. Finally, we seek comment on additional conditions that might be appropriately placed on any operations during drift beyond TT&C to protect other operators in the GSO arc.

B. Market Access and Requests for Special Temporary Authority

92. In an effort to continue our streamlining goals, we seek further comment on the suggestion for a type of temporary authorization that could be sought by U.S. market access grantees whose operations are authorized through a space station grant. U.S. licensees may apply for an STA to operate under certain circumstances. Under current rules, market access grantees may file the equivalent of an amendment and a modification to petitions for declaratory ruling via section 25.137(e) and (f) respectively.[287] However, although earth station licensees may request special temporary authority to reflect changes to the communications with non-U.S. licensed space stations, there is no such provision for an STA to be filed as part of the space station application process for market access grantees. This is consistent with the distinction between market access grants and licensees. Nonetheless, since the Commission frequently issues grants of U.S. market access to space station operators through action on petitions for declaratory ruling,[288] we seek further comment on some type of special temporary grant that could be sought by the space station operator.

93. Nearly three decades ago the Commission began efforts to consider how to expand competition and provide opportunities for foreign entities to deliver satellite services in this country.[289] This effort coincided with broader U.S. government negotiations through the World Trade Organization to establish the WTO Basic Telecom Agreement.[290] In the order establishing rules to implement U.S. commitments to the WTO Basic Telecom Agreement, the Commission explained that "[e]nhanced competition in the U.S. market, in turn, will provide users more alternatives in choosing communications

[284] Intelsat Comments at 12.

[285] 47 CFR § 25.118(e).

[286] 47 CFR § 25.118(e), 25.137(f).

[287] 47 CFR § 25.137(e), (f).

[288] *See, e.g.*, *WorldVu Satellites Limited Petition for Declaratory Ruling to Modify the U.S. Market Access Grant for the OneWeb Ku-band and Ka-Band NGSO FSS System*, Order and Declaratory Ruling, DA 23-362 (SB, Apr. 28, 2023).

[289] *See, e.g.*, *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Satellites to Provide Domestic and International Service in the United States*, IB Docket No. 96-111; Report and Order, 12 FCC Rcd 24094 (1997).

[290] *Id*. at paras. 1-3.

providers and services, as well as reduce prices and facilitate technological innovation."[291] The Commission further noted that "in addition to encouraging a more competitive satellite market in the United States, this new environment will spur development of broader, more global satellite systems[,]" and that "these advancements will foster greater global community benefits by providing users, ranging from individual consumers and businesses to schools and hospitals, increased access to people, places, information, and ideas worldwide."[292] The public interest goals articulated by the Commission at that time are just as relevant today. Additionally, as we seek to keep pace with the ever expanding satellite communications market, we are continuously evaluating whether and where we can streamline our rules and procedures to provide for greater clarity and accessibility for applicants seeking to engage in satellite operations in the United States.[293]

94. As such, we seek comment on whether it is in the public interest to amend our rules to allow for an equivalent to special temporary authority for space station market access grantees to communicate with U.S. licensed earth stations. For example, should we include a new paragraph in section 25.137 of our rules to allow market access space station grantees to seek some type of temporary authorization related to their grant of market access? If so, would applications for such authority be subject to our application public notice requirements in all cases? Under any new process we would continue to consider public interest factors in reviewing requests,[294] and we would treat market access applicant petitions for declaratory ruling the same as a satellite application, consistent with our WTO commitments to treat non-U.S. satellite operators no less favorably than we treat U.S. satellite operators.[295] Alternatively, are the current procedures by which STA requests can be filed by earth station operators sufficient? We invite comment.

C. Considering STA Extension Requests Concurrently with Initial STA Applications

95. In response to the *NPRM*, several commenters suggest that grants of STA should continue automatically while an underlying application is being considered.[296] We observe in the accompanying Report and Order that the Space Bureau's STA process stems from the Communications Act, which allows the Commission to grant STAs for up to 180 days if they are placed on public notice and to grant up to 30 and 60-day STAs in certain circumstances without public notice.[297] SpaceX raises an additional proposal to allow operators to request multiple extensions of an initial 60-day STA as part of the same initial STA application.[298] We seek comment on this proposal. Would such a process conform with statutory requirements under section 309(f) (e.g., the obligations for operators to file for an extension of an STA even though they would effectively do so at the same time and in the same

[291] *Id*. at para. 4.

[292] *Id*.

[293] *See, e.g.*, *Part 25 Streamlining Second R&O*, 30 FCC Rcd at 14803, para. 275, n. 668 (2015). ("This will place market access recipients on an equal footing with U.S. licensees in this regard, and is consistent with the Commission's decisions to extend similar provisions to foreign licensees granted market access. *See, e.g.*, *Amendment of the Commission's Space Station Licensing Rules and Policies*, Second Report and Order, IB Docket No. 02-34, 18 FCC Rcd 12507, 12514, para. 14 (2003) (applying the "fleet management" procedure in Section 25.118(e) to market access recipients through Section 25.137(f)).)."

[294] *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Satellites to Provide Domestic and International Service in the United States*, 12 FCC Rcd at 24100, para. 15.

[295] *See Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10870 para. 294 (2003)

[296] *See* Section III. E of the accompanying Report and Order for a discussion on the Space Bureau's STA process and commenter suggestions.

[297] *See id.*; *see also* 47 U.S.C. §§ 309(c)(2)(G), (f).

[298] *See* SpaceX *Ex Parte* (Sept. 13, 2023) at 6-7.

application as the initial STA; authorizing the Commission to extend authorization of temporary operations for a period not exceeding 180 days and upon making like findings for an extension for additional periods) and section 309(c)(2)(G) (e.g., allowing the Commission to grant up to 30 and 60-day STAs in certain circumstances without public notice)?[299] Are there public interest or policy concerns that are implicated by allowing automatic extensions of STAs while an underlying application is being considered? Additionally, we seek comment on whether allowing such a process might present conflict or confusion with regard to the provisions of the Communications Act regarding STAs and the assessment of filing fees.[300]

D. Expanding Timeframes for Filing License Renewal Applications

96. In response to our general streamlining queries in the *NPRM*, we received a suggestion to expand or eliminate the current 60-day window for earth station licensees to submit a renewal application. Under our current rules, earth station license holders may seek a renewal of their license between 90 and 30 days prior to their license expiration.[301] Intelsat suggests that the Commission remove this 60-day window, or in the alternative, provide operators a 365-day window in the year leading up to the license expiration.[302] We note that renewal applications must be placed on a 30-day public notice and so we tentatively decline to expand the renewal application period up to the license expiration date, as this change would create a potentially larger administrative burden for Commission staff reviewing applications. Nonetheless, we believe that a longer window for filing renewals could provide more flexibility for operators without negatively impacting Commission processing. As such, we propose to amend our rules to expand the window for earth station operators to file an application for renewal from no earlier than 180 days, and no later than 30 days, prior to the expiration of the existing license. We seek comment on this proposal and any alternatives.

97. We note that NGSO space station licensees are required to file applications for renewal no earlier than 90 days, and no later than 30 days, prior to the end of the twelfth year of the existing 15 year license term.[303] We seek comment on whether we should consider similarly expanding the filing window within the twelfth year of the existing term for these space station operators as another means of providing flexibility and streamlining the application process. For example, should we amend our rules to include a window of no earlier than 180 days and no later than 30 days prior to the end of the twelfth year of the license for filing a renewal? We seek comment this proposal as well as any alternatives.

E. Timing for Completion of Application Review

98. In the *NPRM*, the Commission briefly sought comment on timeframes for application review, including whether to impose shot clocks for final action on certain types of satellite or earth station applications.[304] As noted in the accompanying Report and Order, the record on this issue was divided on whether the Commission should consider shot clocks, and if so, for what types of applications and for what length of time.[305]

99. Given the significant additional volume of space and earth station applications in today's burgeoning satellite service market and our goals of supporting innovation in space, we believe it is

[299] *See* 47 U.S.C. §§ 309(c)(2)(G), (f).

[300] *See* 47 U.S.C. §§ 309(c)(2)(G), (f); *see also* 47 U.S.C. § 158 (instructing the Commission to assess and collect filing fees to recover the costs of the Commission to process applications).

[301] *See* 47 CFR § 25.121(e).

[302] Intelsat Comments at ; *see also* Section III.E for discussion.

[303] *See* 47 CFR § 25.121(e).

[304] *NPRM* at para. 19.

[305] *See generally*, Section. III. C. for discussion on timelines and shot clocks for action on the merits.

imperative to seek additional comment on this issue. We also note that the Commission has considered such timelines and shot clocks in other contexts, such as for the processing of applications related to major transactions[306] and state and local review of applications for siting of wireless facilities,[307] and we may consider how such contexts are applicable or distinct from the needs of satellite operators and the unique complexities of space and earth station operation considerations. In support of this inquiry, we seek further comment on any relevant comparisons to other forms of timelines and shot clocks that could shed light on this inquiry. Additionally, we note that satellite licensing often requires coordination with federal entities in order to protect U.S. national interests, as well as international considerations, to comply with our ITU obligations, for example. We are also subject to various statutory requirements.[308] We seek input on these considerations and how they should affect the consideration of shot clocks or other specific timeframes. We seek comment, data, and information on circumstances, such as the need for operators to file amendments to their application, that would need to be considered in developing an appropriate timeline for shot clocks or other specific timeframes for action on the merits. What events would warrant pausing the clock? Should the clock run during a public notice period, for example? In the context of shot clocks, we also seek comment on whether applications would be deemed granted at the close of the relevant time period, or if we should revise our dismissal criteria or other practices, in order to meet potential shot clock obligations. Finally, while the record on this issue was inconclusive on the appropriate use of shot clocks, the Commission will continue to gather data on applications and processing timelines that could inform on the appropriate length of future shot clocks.

F. Earth Station Licensing without an Identified Satellite Point of Communication

100. In the *NPRM* we asked whether the Commission should consider allowing earth station operators to receive a license without having first identified a satellite point of communication.[309] We received limited, but supportive comments for creating such a procedure. We seek to expand the record on this issue, considering what some operators have described as "ground stations as a service" (GSaaS)

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[306] For example, historically, the Commission has proceeded under informal timelines for reaching a decision on most applications, such as merger transaction applications. *See* https://www.fcc.gov/reports-research/guides/mergers-frequently-asked-questions. The 180 day merger transaction shot clock is a guideline that can be stopped if the staff's review is delayed for reasons outside the Commission's control, e.g., a change in the application, delayed submission of information or documents in response to a request from the Commission, or delay required by another agency or court (e.g., national security requirements or bankruptcy proceedings). Further, although the Commission seeks to meet the 180 day benchmark in all cases, its statutory obligation to determine that an assignment or transfer serves the public interest takes precedence over the informal timeline.

[307] The Commission adopted section 332 shot clocks for wireless facilities that require state and local authorities to review wireless siting applications within a "reasonable period of time" beyond which state or local inaction on wireless infrastructure siting applications would constitute a "failure to act." *See* 47 U.S.C. § 332; *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd 9088, 9142-43 para. 105-06; *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, 24 FCC Rcd 13994 (2009); *see also City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), aff'd, 569 U.S. 290 (2013). The Commission found that these shot clocks were justified because state and local siting application processing timelines did not "reflect the evolution of the application review process." *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd 9088, 9142-43 para. 105-06. Additionally, in 2018, the Commission adopted two new section 332 shot clocks for small wireless facilities and clarified the ability of providers to batch applications and adopted a new remedy for violations of shot clocks. *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088, 9142-9155, paras. 105-131 (Sept. 27, 2018); *see also City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020).

[308] *See, e.g.* 5 U.S.C. § 551 *et seq*.; 47 U.S.C. § 309(b).

[309] *NPRM* at para. 18.

operations in particular.[310] We tentatively conclude that issuing a limited license for earth station operators who do not yet have an identified point of communication would align with our goals to support innovation in the satellite industry and increase accessibility to services. However, we envision that such a license would need to be limited and include a mechanism for modification once a point of communication has been established, prior to initiation of operations. In addition, for frequency bands shared with terrestrial systems (for example, bands shared with point-to-point microwave stations licensed under Part 101 of the Commission's rules), we are not proposing to confer first-in-time rights to earth stations without an identified satellite point of communication on what could effectively be a multi-band, full-arc basis. Furthermore, in bands shared with UMFUS, earth stations would need to make a showing under section 25.136 of the Commission's rules in order to limit their obligation to protect UMFUS or to receive interference protection.[311] We seek comment on how this process may affect coordination processes. We propose to create a new provision in our rules that would allow earth station operators to apply for and receive a limited license under the condition that the license will require modification prior to operations with a specific point of communication, unless the point of communication is already on the Permitted List[312] and the operations fit within the parameters specified therein. We seek comment on this proposal, as well as on any alternatives to facilitate licensing where a satellite point of communication has not been identified, or perhaps a point of communication has been identified but a space station application has not yet been granted.

G. Feasibility of a Permitted List for NGSO Operators

101. In response to the *NPRM,* commenters suggested the Commission consider allowing earth station applicants to specify that they will communicate with certain authorized NGSO systems, in a procedure similar to the Permitted List, which is currently available to routinely granted earth station operators for communications with GSO space stations that are licensed by the FCC or that have been granted U.S. market access, and that provide fixed-satellite service in certain frequency bands where GSO fixed-satellite service has primary status.[313] We seek comment on this suggestion.

H. Inter-Bureau and Inter-Agency Review and Coordination Streamlining

102. In the *NPRM* we sought comment on various coordination considerations, including how the Commission might better streamline inter-Bureau reviews in shared-spectrum bands, and how we might eliminate duplicative coordination requirements.[314] Although we did not specifically ask about it, multiple commenters offered suggestions on streamlining the inter-agency coordination and review process with NTIA.[315] We seek to further expand the record on coordination considerations and the suggestions raised by commenters.

103. With respect to the coordination within the Commission, for coordination with other bureaus and offices, several commenters suggested updates to timeframes, or other limitations on inter-bureau review.[316] Recognizing the establishment of the Space Bureau, we expect that the Bureau will

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[310] *See* Microsoft Comments at 3 (discussing the GSaaS model).

[311] *See* 47 CFR 25.136. If adding a point of communication would modify the earth station's −77.6 dBm/m^2/MHz contour, the earth station operator would need to make a showing that the revised contour complies with section 25.136.

[312] *See* Section III.D for discussion on the Permitted List.

[313] *See* EchoStar Comments at 9; SpaceX Reply Comments at 7; SpaceX *Ex Parte* (Sept. 13, 2023).

[314] *NPRM* at para. 16.

[315] *See, e.g.*, CSSMA Comments at 6; Turion Space Comments at 9; SpaceX Comments at 10-13; AWS Comments at 3-4; SIA Comments at 7; Intelsat Comments at 10; Swedish Space Corp. Comments at 2; Iridium Reply Comments at 5.

[316] *See, e.g.*, EchoStar Comments at 12-13; SpaceX Reply Comments at 10; Intelsat Comments at 8; AWS

(continued….)

continue to look at means to make the inter-bureau and office coordination process more efficient, taking into consideration certain types of applications and the unique issues that those applications present from a coordination perspective. We note that such improvements to the inter-bureau coordination process do not require any rule changes. We will plan, however, to continue the practice of conducting coordination at the bureau/office level once the draft authorization, including proposed conditions, is ready to share within the Commission and to pursue ways to improve the internal coordination processes.

104. Several commenters also offered suggestions to improve the inter-agency coordination process.[317] Often, applications must be coordinated with NTIA because the applicant requests use of a frequency band that is also allocated for use by Federal stations. We note as a general matter that broader issues regarding coordination are addressed through the Memorandum of Understanding (MOU) between the Commission and NTIA.[318] At the bureau level, the Space Bureau facilitates the coordination process by engaging directly with NTIA both for earth stations and space stations applications, as well as applications for special temporary authority in certain instances. The bureau-level coordination process varies slightly depending on the type of application presented for review.

105. Among the suggestions on the record, SpaceX states that the Commission could streamline coordination, in particular for earth station applications, by preparing specific shared databases for coordination and by adopting a "green light / yellow light" system for coordination with federal users.[319] Similarly, Turion Space argues that standardized input documents and processing would ease the inter-agency application coordination process.[320] Intelsat suggests that applications that have been pre-coordinated between an applicant and federal user should not require an additional referral from the Commission to NTIA and otherwise suggests that the Commission consider automating the referral process and eliminating manual data entry.[321] SIA suggests that the Commission provide applicants with NTIA contact information or share specifics of concerns raised by NTIA during the application review process so that applicants can address any concerns expeditiously.[322] AWS proposes that the Commission provide applicants with a template and guidance for the information needed for NTIA coordination.[323] Some commenters also suggest that coordination and review would be faster if applications are sent to other reviewers as soon as they are filed or as soon as they are placed on public notice. To the extent that such a practice would involve the inter-agency coordination process, we observe that sending a large amount of application information for coordination to NTIA without direction from the Bureau on what the yet-to-be-proposed authorization would entail has the potential to encumber review and slow down deliberations on the application. Therefore, we will plan to continue the practice of conducting coordination once the draft authorization, including proposed conditions, is ready to share with NTIA

(Continued from previous page)
Comments at 7 (suggesting a two-week deadline for the Commission to input information into the Office of Engineering and Technology's Frequency Assignment System (OFACS)) .

[317] *See, e.g.*, SpaceX Comments at 11-12; Turion Space Comments at 9-10; Intelsat Comments at 8; SIA Comments at 12; AWS Comments at 3.

[318] Memorandum of Understanding Between the Federal Communications Commission and the National Telecommunications and Information Administration (Aug. 1, 2022), https://docs.fcc.gov/public/attachments/DOC-385867A1.pdf (MOU).

[319] SpaceX Comments at 10, 11-12 ("To speed earth station coordination with federal users, the Commission could adopt a "green light" / "yellow light" system, as it has done for fixed links in the 70/80 GHz band, for checking whether a proposed earth station deployment falls within coordination zones of existing federal deployments, such as radio astronomy sites and military installations.".

[320] Turion Space Comments at 9-10.

[321] Intelsat Comments at 8.

[322] SIA Comments at 12.

[323] AWS Comments at 3.

reviewers.

106. As part of the transparency initiative described above, there may be opportunities to provide additional information to applicants regarding processes for the coordination of specific application requests. We do not seek to unilaterally adopt changes to the overall inter-agency coordination process. We further note the interests of NTIA and appropriate federal stakeholders in the process and recognize that implementation may not be achievable considering technological limitations and various agency security needs. However, we agree with commenters that providing increased information regarding federal coordination may aid in streamlining the application process. Commission staff will continue to engage in their regular and ongoing dialogue with our colleagues at NTIA and other federal agencies to identify and consider ways to improve the inter-agency coordination process. In support of such discussions, we seek comment on the proposals above made by commenters, as well as any additional proposals for improvements regarding inter-agency coordination of space station and earth station applications.

I. Eliminating Potentially Duplicative Coordination Requirements

107. We seek further comment on whether we can further streamline some of our coordination requirements for earth and space station operators in instances in which the earth station and space station sides must engage in potentially duplicative coordination. In the *NPRM* we asked about any duplicative coordination processes that could be streamlined and received several comments pointing to areas in which earth and space station applications are part of separate coordinations related to the same underlying set of operations. AWS suggests that the Commission could reduce duplicative coordination in cases where a space station's downlinks have already been coordinated and the same frequencies and points of communication corollate with earth station applications and provided an example of the requirements for EESS operators in the X-band (8025-8400 MHz).[324] Similarly, Microsoft asserts that authorization process for communications in the S-, X-, and Ka-bands between EESS space stations and earth stations requires a space station operator to engage in the same coordination to add an earth station to its authorized list that an earth station operator is also required to engage in to add the space station to its authorized list.[325]

108. We seek comment on how to expedite the coordination process where the Commission has already required a space-station operator to coordinate its communications with each earth station, for operations where the space station operator has identified earth stations and where such a list of such earth stations is provided to NTIA during the space station licensing process or coordinated with NTIA after licensing.[326] Specifically, we consider whether it is possible to coordinate the earth station sites and frequencies utilized with those earth stations once, as part of either just the space station or earth station coordination with NTIA? Again, we do not seek to change these processes unilaterally and note this will involve continued dialogue to assess whether such changes are feasible given the need to coordinate operations in frequency bands that are shared with federal users. If we determine that such streamlining is possible, we seek comment on how to ensure that the earth stations have been previously coordinated. For example, should we allow earth station applicants to certify that a new satellite point of contact the earth station operator seeks to add has already been coordinated with NTIA in the relevant frequency bands in connection with a space station application? Additionally, we seek further comment on any additional situations in which identical coordination is required and could be eliminated without creating any gaps in coordination and interference protection.

J. Earth Station Applications Adding a Satellite Point of Communication

109. We also inquire as to how our proposal on eliminating potentially duplicative

[324] AWS Comments at 7.

[325] Microsoft Comments at 12.

[326] *See* Microsoft *Ex Parte* (Sept. 14, 2023).

coordination may affect the new streamlined modification procedure for earth station operators adding points of communication that we adopt in the Order.[327] While we have initially determined that this new, deemed-granted process can move forward in the limited set of circumstances we identified in the Report and Order at this time,[328] we seek to expand the record on this issue to determine whether and how we might be able to broaden the universe of operators that could access the new process we created in section 25.117(i). For example, should we enable earth station licensees operating in bands shared with federal users to take advantage of the streamlined modification procedure to add a new point of communication that has already been coordinated with federal users through the space station licensing process? Assuming that we determine that coordinating certain earth stations with federal users through the space station process is possible, are there other change to our licensing rules we should consider? Similarly, should we allow operators in a band shared with non-federal services to take advantage of this expedited process if they certify, or otherwise demonstrate, that they have successfully completed coordination with other users prior filing their application?[329] Are there any other mechanisms that could be implemented to expand access to this process without creating new interference concerns or circumventing the need for coordination in shared bands?

110. Additionally, we seek further comment on whether expedited treatment might be appropriate in bands that require coordination, even without a demonstration of pre-coordination, if applicants must demonstrate both that the addition of a new point of communication will not cause earth station transmissions to exceed the highest equivalent EIRP, EIRP density, and bandwidth prescribed for any already authorized emission, and that the modification would not cause earth station to repoint the earth station's antenna beyond any coordinated range. If so, for what subset of applications subject to coordination would expedition be appropriate, and would a mechanism of expedition short of a "deemed grant" be better suited to those applications? Whether such applications are eligible for a "deemed grant" or otherwise expedited, what processing timeframe would be realistic to ensure any required coordination is completed? With respect to federal coordination in particular, how can we ensure that expedition does not unreasonably or unilaterally curtail the federal coordination review process given the important scientific, safety, and security-related federal operations at play? Finally, if we expand the list of applicants who could access this deemed-granted process to include bands that are shared with other services and additional operators, we seek comment on whether a notification process[330] rather than public notice may be appropriate in some circumstances, and on how to address objections or other comments that may be filed.

K. Eliminating Printed, Hardcopies Requirement.

111. Intelsat suggests eliminating our current part 25 rule that requires operators to keep an original paper copy of an electronically filed application.[331] We agree that this requirement, found in section 25.110(e) of our rules, is outdated and unnecessary and we therefore propose to amend our rules to eliminate this procedural requirement. Applicants of course are free to continue such practice if they so choose, but we believe that removal of the requirement would fit squarely into our application

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[327] *See, supra*, Section III.D for the discussion on new section 25.117(i); *see also* SpaceX *Ex Parte* (Sept. 7, 2023).

[328] *See* SpaceX *Ex Parte* (Sept. 13, 2023) at 4 (explaining that operators would need to file separate modification applications to account for operations "in bands with shared and unshared components" if they wished to access the new, "deemed-granted" process for the unshared component).

[329] *See, e.g.*, SpaceX *Ex Parte* (Sept. 13, 2023) (Suggesting a deemed granted process for operators in bands shared with terrestrial wireless users should be possible.); *see also* SES *Ex Parte* (Sept. 18, 2023) (suggesting that this option should be available in bands shared with terrestrial wireless so long as the modification does not cause the earth station to repoint the earth station's antenna beyond any terrestrially coordinated range.).

[330] *See, e.g.*, 47 CFR 25.118(a). *See also*, RBC Signals Comments at 3; TechFreedom Comments at 6-7; SpaceX Comments at 15; Microsoft Comments at 13-14.; Microsoft *Ex Parte* (July 12, 2023).

[331] Intelsat Comments at 13 (citing 47 CFR § 25.110(e)).

streamlining goals as well as conform with long-standing broader government initiatives to reduce reliance on hard copy paper filings.[332] We seek comment on this proposed change.

L. Change of Default *Ex Parte* Status of Space and Earth Station Applications

112. We propose to change the default status of all space and earth station applications from "restricted" to "permit but disclose" under our rules governing *ex parte* presentations[333] and seek comment on this proposal. Currently, space and earth station applications are by default classified as "restricted" proceedings under the rules, since they are applications for authority under Title III of the Communications Act, and *ex parte* presentations are prohibited.[334] Our rules regarding *ex parte* presentations give Commission staff discretion to modify applicable *ex parte* rules, where it is in the public interest to do so in a particular proceeding,[335] and Commission staff has frequently done so, sometimes at the request of parties. The reasons for changing the *ex parte* status of a particular application can include, but are not limited to, the fact that the application covers the same subject area as a related rulemaking proceeding,[336] or the topic to be discussed in a particular application has applicability across a wide number of applications.[337] The change of status of an application from "restricted" to "permit-but-disclose" requires resources to draft and release an order, letter, or public notice.[338] Modifying the *ex parte* status of an application is an ancillary task that requires Space Bureau resources that could otherwise be spent on placing applications on public notice or acting on the merits of applications. In addition, applicants – especially new space industry entrants or entrants from countries outside the United States – are often unaware of the Commission's *ex parte* rules and can inadvertently make impermissible presentations in restricted proceedings, which further diverts staff resources from processing applications.

113. We propose to amend part 1 of the rules[339] by adding "applications for space and earth station authorizations, including requests for U.S. market access through non-U.S. licensed space stations" to the list of proceedings that are "permit-but-disclose" proceedings from the outset. As "permit-but-disclose" proceedings, applications for space and earth station authorizations would be

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[332] *See, e.g.,* Government Paperwork Elimination Act, Pub. L. No. 105-277 (1998).

[333] The Administrative Procedure Act (APA) defines "*ex parte* communication" as "an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter." 5 U.S.C. § 551(14). Consistent with that definition, the Commission's rules define an *ex parte* presentation as "[a]ny presentation which: (1) If written, 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," with "presentation" defined as "[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." 47 CFR § 1.1202(a), (b).

[334] 47 CFR § 1.1208 ("Proceedings in which *ex parte* presentations are prohibited, referred to as "restricted" proceedings, include, but are not limited to, all proceedings that have been designated for hearing, proceedings involving amendments to the broadcast table of allotments, applications for authority under Title III of the Communications Act, and all waiver proceedings (except for those directly associated with tariff filings.")

[335] 47 CFR § 1.1200(a).

[336] 47 CFR § 1.1206(a)(1)-(3) (listing informal rulemaking proceedings as "permit-but-disclose" proceedings).

[337] *See, e.g.*, *Satellite Policy Branch Information, Actions Taken*, Report No. SAT-01695 (Jan. 20, 2023) (including changes to the designations of a dozen proceedings from "restricted" to "permit-but-disclose" to serve the public interest by facilitating the resolution of broad policy issues raised in the applications).

[338] 47 CFR § 1.1200(a).

[339] Specifically, we would propose to amend section 1.1206(a) by adding a new subparagraph. *See* 47 CFR § 1.1206(a).

subject to the disclosure requirements that apply to *ex parte* presentations in such proceedings.[340] We seek comment on this proposed implementation.

V. PROCEDURAL MATTERS

A. Ex Parte Rules - Permit-But-Disclose

114. The proceeding this Further Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[341] 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.

B. Filing Requirements—Comments and Replies

115. *Filing Comments*. 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 in response to this Further Notice 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

[340] 47 CFR § 1.1206(b).

[341] *Id.* §§ 1.1200 *et seq.*

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.

116. *Persons 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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

C. Regulatory Flexibility Act

117. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[342] 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."[343] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of rule and policy changes adopted in this Report and Order on small entities. The FRFA is set forth in Appendix C.

118. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *Further Notice*. The IRFA is set forth in Appendix D. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Further Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

D. Paperwork Reduction Act

119. *Paperwork Reduction Act Analysis*. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), 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).

120. In addition, this *FNPRM* may contain potential new or revised information collection requirements. Therefore, we seek comment on potential new or revised information collections subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq*. If the Commission adopts any new or revised information collection requirements, the Commission will publish a notice in the Federal Register inviting the general public and the Office of Management and Budget to comment on the information collection requirements, as required by the Paperwork Reduction Act. The PRA defines a "collection of information" as " the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format OMB, other Federal agencies, and the general public are invited to comment on the modified information collection requirements contained in this document."[344] 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.

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[342] 5 U.S.C. §§ 601–612. The RFA 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).

[343] 5 U.S.C. § 605(b).

[344] 44 U.S.C. § 3502(3)(A).

E. Congressional Review Act

121. 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).

F. Further Information.

122. For additional information on this proceeding, contact Julia Malette, Space Bureau Satellite Programs and Policy Division, at julia.malette@fcc.gov or 202-418-2453.

VI. ORDERING CLAUSES

123. IT IS ORDERED, pursuant to Sections 4(i), 7(a) , 301, 303 , 307, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 157(a), 301, 303, 307, 309, 310, 332, that this Report and Order IS ADOPTED, the policies, rules, and requirements discussed herein ARE ADOPTED, Part 25 of the Commission's rules IS AMENDED as set forth in Appendix A, and this Further Notice of Proposed Rulemaking IS ADOPTED.

124. IT IS FURTHER ORDERED that Part 25 of the Commission's Rules IS AMENDED as set forth in Appendix A and such rule amendments will become effective 30 days after publication in the Federal Register.

125. IT IS FURTHER ORDERED that the Office of the Secretary, SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C.

126. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of this 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

Final Rules

For the reasons discussed in the document, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25 – SATELLITE COMMUNICATIONS

1. 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.

2. Amend § 25.112 by removing and reserving paragraph (a)(3) and revising the introductory text of paragraph (b) to read as follows:

§ 25.112 Dismissal and return of applications.

(a) * * *

(3) [Reserved]

* * * * *

(b) Applications for space station authority found defective under paragraph (a)(4) of this section will not be considered. Applications for authority found defective under paragraphs (a)(1) or (a)(2) of this section may be accepted for filing if:

* * * * *

3. Amend § 25.117 by adding paragraph (i) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(i) Unless otherwise ordered by the Commission, an application to add a space station point of communication to an earth station authorization will be deemed granted 35 days after the date of the public notice that the application has been accepted for filing, provided :

(1) the license modification is only to add one or more points of communication;

(2) the modification will not cause the earth station transmissions to exceed the highest EIRP, EIRP density, and bandwidth prescribed for any already authorized emission; and

(3) the new space station point of communication will operate with the earth station only in frequency bands that are not shared with federal or terrestrial wireless users and are not subject to coordination requirements with other non-federal satellite services.

4. Amend § 25.137 by revising paragraph (d)(5) to read as follows:

§ 25.137 Requests for U.S. market access through non-U.S.-licensed space stations.

* * * * *

(d) * * *

(5) Entities that have one market access request on file with the Commission for NGSO-like satellite operations in a particular frequency band will not be permitted to request access to the U.S. market for another NGSO-like satellite system in that frequency band in the same processing round subject to the procedures of §§ 25.157 and 25.261.

* * * * *

5. Amend § 25.159 by revising paragraph (b) and the introductory text of paragraph (c) to read as follows:

§ 25.159 Limits on pending applications and unbuilt satellite systems.

* * * * *

(b) Applicants with an application for one NGSO-like satellite system license on file with the Commission in a particular frequency band will not be permitted to apply for another NGSO-like satellite system license in that frequency band in the same processing round subject to the procedures of §§ 25.157 and 25.261.

(c) If an applicant has an attributable interest in one or more other entities seeking one or more space station licenses or grants of U.S. market access, the pending applications and licensed-but-unbuilt satellite systems filed by those other entities will be counted as filed by the applicant for purposes of the limits on the number of pending space station applications or requests for U.S. market access and licensed-but-unbuilt satellite systems in this section and in § 25.137(d)(5). For purposes of this section, an applicant has an "attributable interest" in another entity if:

* * * * *

APPENDIX B

Proposed Rule Changes

For the reasons discussed in the document, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 25 as follows:

PART 1 – PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 47 U.S.C. chs 2,5,9,13; 28 U.S.C. 2461

2. Amend § 1.1206 by adding paragraph (a)(14) to read as follows:

§ 1.1206 Permit-but-disclose proceedings.

(a) * * *

(14) Applications for space and earth station authorizations, including requests for U.S. market access through non-U.S. licensed space stations.

* * * * *

PART 25 – SATELLITE COMMUNICATIONS

3. 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

4. Amend § 25.110 by removing and reserving paragraph (e).

§ 25.110 Filing of applications, fees, and number of copies.

* * * * *

(e) [Reserved]

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APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended,[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Expediting Initial Processing of Satellite and Earth Station Applications* Notice of Proposed Rulemaking (*NPRM*) released in December 2022.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

2. In recent years, the Commission has received an unprecedented number of applications for earth and space station licenses. The Report and Order facilitates and expedites the acceptance for filing of satellite and earth station applications under 47 CFR part 25 and adopts other streamlining measure to keep pace with growing demand for satellite services and innovative satellite operations. This rulemaking continues to and will promote competition and innovation among satellite and earth station operators, including the market entry of new competitors by removing barriers to applying for licenses.

3. The Report and Order adopts changes to Commission rules aimed at reducing barriers and burdens on satellite operators. Specifically, the Report and Order removes and reserves section 25.112(a)(3) thus allowing operators to seek a waiver for operations not in conformance with the international table of allocations. Additionally, the Report and Order removes the prohibition on licensed-but-unbuilt systems for NGSO operators by amending sections 25.159(b) and 25.137(d)(5), and creates a new, streamlined processing framework for earth station operators to add satellite points of communication under certain circumstances. Finally, the Report and Order lays the groundwork for a broader transparency initiative led by the Space Bureau to provide clarity and access to applicants when interfacing with our license application processes and filing system.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business

5. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments the Chief Counsel for Advocacy of the Small Business Administration (SBA) filed in this proceeding, and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[4] The Chief Counsel did not file any comments in response to the proposed rules or policies in this proceeding.

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, an where feasible, an estimate of,

[1] 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).

[2] *Expediting Initial Processing of Satellite and Earth Station Applications, Space Innovation*, IB Docket Nos. 22-411 & 22-271, Notice of Proposed Rulemaking, FCC 22-95 (Dec. 22, 2022) (*NPRM*).

[3] 5 U.S.C. § 604.

[4] *Id.* § 604(a)(3).

the number of small entities that may be affected by the rules adopted herein.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] 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).[8]

7. Below, we describe and estimate the number of small entities that may be affected by the adoption of the final rules.

8. *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."[9] 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.[10] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[11] Of this number, 242 firms had revenue of less than $25 million.[12] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.[13] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[14] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

9. The Report and Order amends rules that are applicable to earth and space station operators requesting a license or authorization from the Commission, or entities requesting that the Commission grant a request for U.S. market access. The changes adopted in the Report and Order, as

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[5] *Id.*

[6] 5 U.S.C. § 601(6).

[7] 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."

[8] 15 U.S.C. § 632.

[9] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[10] *See* 13 CFR § 121.201, NAICS Code 517410.

[11] *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.

[12] *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.

[13] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[14] *Id.*

described below, will decrease the burden for small entities and other business operators. Specifically, the Report and Order eliminates the rule requiring automatic dismissal of applications requesting operations not in conformance with the international table of allocations, eliminates the NGSO unbuilt systems rule, and creates an expedited licensing process for certain earth station operators to add points of communication. Further, in light of these limited changes and rule reductions, the Commission does not believe that small entities will have to hire professionals to comply with the Report and Order.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Alternatives Considered

10. 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 other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.[15]

11. The Report and Order amends the Commission's rules governing acceptability for filing by removing and reserving section 25.112(a)(3), which led to automatic dismissals of applications that proposed frequency operations not in conformance with the international table of frequency allocations. By removing this barrier, applicants may now apply for a waiver of the international table, just as operators applying under the small satellite or small spacecraft streamlined procedures have been able to do and just as all operators have been able to apply for waivers of the U.S. table of frequency allocations.

12. As an alternative, the Commission could have left 25.112(a)(3) in place. This would have potentially created a barrier to innovative uses of spectrum and stifled the development of the industry, including for small entities. The Commission allowed waivers of the international table of frequency allocations for small satellites and small spacecraft through its streamlined rulemaking processes, found at sections 25.122 and 25.123 respectively. However, small entities as defined for purposes of the RFA do not always align with the requirements to apply for a license under the small satellite or small spacecraft streamlined process. By removing 25.112(a)(3), all applicants may now seek a waiver for nonconforming use instead of risking automatic dismissal of an application that required time and resources to file.

13. In addition, the Report and Order removes the prohibition on applicants from applying for an additional NGSO-like satellite system license in a particular frequency band if that party already had a licensed-but-unbuilt NGSO-like satellite system in the band. By removing this prohibition we eliminate an additional barrier to applicants in moving forward with their satellite operations while maintaining safeguards against speculative license applications through our bond and milestone requirements.

14. As an alternative, the Commission could have allowed applicants to seek waivers of the prohibition on a case-by-case basis. This alternative would have been more costly to small entities, requiring additional resources to craft a request for waiver as part of their application or to engage with outside counsel to assist with crafting the waiver request. Leaving the rule as is would have potentially created a barrier to small entities to apply for a license and expand their operations.

15. The Report and Order creates a new, streamlined review process under section 25.117 (Modification of station licenses) for earth station operators to add points of communication under specific circumstances. The Commission identified a set of circumstances under which the review process can be expedited and applications for this modification can be deemed granted 35 days after being placed on public notice. This new process will allow applicants to add points of communication to their operations at a quicker pace, thus creating an economic benefit to operators as well as a benefit to the public who will be able to access the services being provided sooner.

[15] 5 U.S.C. § 604(a)(6).

G. Report to Congress

16. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[16] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.

[16] 5 U.S.C. § 801(a)(1)(A).

APPENDIX D

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[1] 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 Further Notice of Proposed Rulemaking (*FNPRM*). The Commission requests written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines provided on the first page of the *FNPRM*. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In recent years, the Commission has received an unprecedented number of applications for earth and space station licenses. The *FNPRM* continues to and will facilitate the application streamlining process and promote competition and innovation among satellite and earth station operators, including the market entry of new competitors.[4] The *FNPRM* seeks public comment on proposed revisions to the Commission's rules governing satellite and earth station applications under 47 CFR part 25. Specifically, the *FNPRM* proposes to eliminate the procedural burden of printing and maintaining a paper copy of license applications by removing and reserving section 25.110(e) and amend section 25.118 of the Commission's rules, which allows operators to make certain minor modifications without prior authorization from the Commission. In addition, we propose to create a new provision in our rules that would allow earth station operators to apply for and receive a limited license under the condition that the license will require modification prior to operations with a specific point of communication, unless the point of communication is already on the Permitted List and the operations fit within the parameters specified therein. Further, the *FNPRM* seeks comment on whether to provide an equivalent to special temporary authority for space station market access grantees to communicate with U.S. licensed earth stations. We also seek comment on whether to expand the window for operators to file renewal applications for existing licenses. Additionally, the *FNPRM* seeks further comment on whether we can further streamline some of our coordination requirements for earth and space station operators in instances in which the earth station and space station sides must engage in potentially duplicative coordination. And, finally, the *FNPRM* proposes to change the default status of space and earth station proceedings to permit-but-disclose as a means of further streamlining the licensing process.

B. Legal Basis

3. The proposed action is authorized under sections 4(i), 7(a), 301, 303, 307, 308(b), 309, 310, 332, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 157(a), 301, 303, 307, 308(b), 309, 310, 332.

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[1] 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. 847 (1996).

[2] 5 U.S.C. § 603(a).

[3] *Id.*

[4] *See generally* Executive Order No. 14036, Promoting Competition in the American Economy, 86 FR 36987 (July 9, 2021 ("The heads of all agencies shall consider using their authorities to further the policies set forth in section 1 of this order, with particular attention to: (i) the influence of their respective regulations, particularly any licensing regulations, on concentration and competition in the industries under their jurisdiction; and…"). Executive Order at 86 FR 36991.

C. Description and Estimate of the Number of Small Entities to which the Proposed Rules will Apply

4. 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.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] 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.[8]

5. *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."[9] 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.[10] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[11] Of this number, 242 firms had revenue of less than $25 million.[12] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.[13] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[14] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

6. *All Other Telecommunications*. The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[15] This industry also

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[5] 5 U.S.C. § 603(b)(3).

[6] 5 U.S.C. § 601(6).

[7] 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."

[8] 15 U.S.C. § 632.

[9] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[10] *See* 13 CFR § 121.201, NAICS Code 517410.

[11] *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.

[12] *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.

[13] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[14] *Id.*

[15] *See* U.S. Census Bureau, 2017 NAICS Definition, "*517919 All Other Telecommunications*,"

(continued….)

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.[16] Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[17] 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.[18] For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.[19] Of those firms, a total of 1,400 had annual receipts of less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999.[20] Thus, the Commission estimates that the majority of "All Other Telecommunications" firms potentially affected by our action can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

7. The *FNPRM* seeks public comment on proposed revisions to the Commission's rules governing satellite and earth station applications under 47 CFR part 25. Specifically, the *FNPRM* proposes to eliminate the procedural burden of printing and maintaining a paper copy of license applications by removing and reserving section 25.110(e) and amend section 25.118 of the Commission's rules, which allows operators to make certain minor modifications without prior authorization from the Commission. In addition, we propose to create a new provision in our rules that would allow earth station operators to apply for and receive a limited license under the condition that the license will require modification prior to operations with a specific point of communication, unless the point of communication is already on the Permitted List and the operations fit within the parameters specified therein.

8. Further, the *FNPRM* seeks comment on whether to provide an equivalent to special temporary authority for space station market access grantees to communicate with U.S. licensed earth stations. We also seek comment on whether the Commission could allow operators to file STA extensions concurrently with an STA application. Additionally, we seek comment on whether to consider a permitted list type process for NGSO operators. We also seek comment on whether to expand the window for operators to file renewal applications for existing licenses and we ask about establishing timeframes for action on the merits of applications. Additionally, the *FNPRM* seeks further comment on whether we can further streamline some of our coordination requirements for earth and space station operators in instances in which the earth station and space station sides must engage in potentially duplicative coordination and expand the possibilities for earth station operators to take advantage of our new, expedited deemed-granted process for adding points of communication. And, finally, the *FNPRM* proposes to change the default status of space and earth station proceedings to permit-but-disclose as a means of further streamlining the licensing process.

(Continued from previous page)
https://www.census.gov/cgibin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017.

[16] *Id*

[17] *Id.*

[18] *See* 13 CFR § 121.201, NAICS Code 517919.

[19] *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.

[20] *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 $35 million or less.

9. In the *FNPRM*, the Commission seeks comment on whether any of the burdens associated with the filing, recordkeeping and reporting requirements can be minimized for small entities. We therefore expect the information we received in comments to include cost and benefit data, and to help the Commission further identify and evaluate relevant matters for small entities, including compliance costs, and other burdens that may result from the proposals and inquiries we make in this proceeding.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

10. 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 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."[21]

11. In the *FNPRM,* our proposal to remove and reserve section 25.110(e) should minimize the economic impact for small entities by eliminating the administrative burdens associated with printing and maintaining a paper copy of license applications. Likewise amending section 25.118 of the Commission's rules to allows operators to make certain minor modifications without prior authorization from the Commission should reduce administrative costs for small entities. In addition, small entities should benefit if our proposal to add a provision allowing earth station operators to apply for and receive a limited license under the condition that the license will require modification prior to operations with a specific point of communication, subject to the limitations described above in section A, is adopted.

12. An alternative we considered and seek comment on involved the elimination of potentially duplicative coordination requirements. More specifically, we inquired if some of our coordination requirements for earth and space station operators in situations where the earth station and space station sides must engage in potentially duplicative coordination can be streamlined. We also considered whether or not to expand timeframes for filing license renewal applications in our efforts to provide small and other entities flexibility, and further streamline the application process. We consider whether or not to expand the renewal filing window of the existing term for earth and space station operators.

13. We also consider the possibility of allowing applicants to file STAs concurrently with an initial application, which may reduce filing burdens on small entities in particular. And we are considering several possibilities for expanding the universe of operators who could access a streamlined process for adding satellite points of communication, which could also provide a benefit to a greater number of entities. And in considering timelines for taking action, including possible shot clocks, we ask several questions to consider whether timeframes, and which timeframes are appropriate.

14. We project that the changes considered in the *FNPRM* will be cost-neutral or result in lower costs for small entities and other operators. Additionally, while the Commission believes the possible rule changes considered in the *FNPRM* will generally reduce costs and burdens for the regulated community, the Commission seeks comment on whether any of the costs associated with any possible rule changes would have a significant negative economic impact on small entities. The Commission expects to more fully consider the economic impact and alternatives for small entities based on its review of the record and any comments filed in response to the *FNPRM* and this IRFA.

[21] 5 U.S.C. § 603(c)(1)–(c)(4).

F. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules

15. None.

APPENDIX E

List of Commenters

Comments in IB Docket No. 22-411
Amazon Web Services, Inc. (AWS)
Blue Origin
Commercial Smallsat Spectrum Management Association (CSSMA)
National Academy of Sciences Committee on Radio Frequencies (CORF)
Hughes Network Systems, LLC, EchoStar Satellite Services, LLC, EchoStar Mobile Limited (EchoStar)
Inmarsat Inc. (Inmarsat)
Intelsat License LLC (Intelsat)
Iridium Communications Inc. (Iridium)
Kuiper Systems LLC (Kuiper)
Microsoft Corporation
National Radio Astronomy Observatory (NRAO)
OneWeb
RBC Signals, LLC (RBC Signals)
Satellite Industry Association (SIA)
SES Americom, Inc. and O3b Limited (SES)
Space Exploration Holdings, LLC and Space Exploration Technologies Corp. (SpaceX)
Spire Global, Inc. (Spire)
Swedish Space Corporation US, Universal Space Network (Swedish Space Corp.)
TechFreedom
The Boeing Company (Boeing)
T-Mobile USA, Inc. (T-Mobile)
Turion Space
Verizon, AT&T Services, Inc. (Verizon / AT&T)
Viasat, Inc. (Viasat)

Reply Comments in IB Docket No. 22-411
Globalstar, Inc. (Globalstar)
Intelsat
Iridium
Kuiper
Maxar Technologies Inc. Planet Labs PBC, ICEYE US, Inc., Fleet Space Technologies, Umbra Lab Inc., ATLAS Space Operations, Inc., Lunasonde Inc. (EESS Operators)
Microsoft
Myriota Pty. Ltd. (Myriota)
SpaceX
Verizon / AT&T
Viasat
WorldVu Satellites Limited (OneWeb)

***Ex Parte* Filings in IB Docket No. 22-411**
Atomos Nuclear and Space Corporation (Atomos) (filed June 7, 2023)
EchoStar (filed Apr. 17, 2023)
EchoStar (filed Apr. 28, 2023)
Mangata Networks (filed Mar. 23, 2023)
Mangata Networks (filed Mar. 15, 2023)
Mangata Networks (filed Mar. 10, 2023)
Mangata Networks (filed Mar. 6, 2023)

Letter from Paul Caritj, Counsel for Microsoft to Marlene H. Dorch, Secretary, FCC (filed Dec. 14, 2022)
Microsoft (filed Sept. 14, 2023)
Microsoft (filed July 12, 2023)
Iridium (filed Sept. 13, 2023)
SES (filed Sept. 18, 2023)
SpaceX (filed Sept. 13, 2023)
SpaceX (filed Sept. 11, 2023)
SpaceX (filed June 5, 2023)
Space X (filed Dec. 14, 2022)
Spire (filed Sept. 14, 2023)
Spire (filed June 28, 2023)
Spire (filed Mar. 9, 2023)

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Expediting Initial Processing of Satellite and Earth Station Applications*, *Space Innovation*; IB Docket No. 22-411, IB Docket No. 22-271; Report and Order and Further Notice of Proposed Rulemaking (September 21, 2023)

It was just a month ago that we learned about the deadly wildfires in Hawai'i. The stories that came out of Lahaina are harrowing. When I was first hired on Capitol Hill, I worked for Senator Daniel Inouye. I spent a lot of time in the Aloha State. It was definitely not a hardship assignment. Hawai'i is so lush in so many places, it is almost impossible to imagine flames rising on the western coast of Maui. But they did. So we keep in our thoughts those who lost homes and loved ones and those who now need to rebuild. We also need to pay attention to how people assisted one another in this crisis. Because it is important to understand what warnings worked and what systems helped save lives.

When the fires were raging, five young people aged 18 to 30 found themselves trapped in a white van near the outlet mall in Lahaina. The skies were smoky. It was not clear where to go or what to do, so they decided to drive toward the ocean. But the roads to the water were blocked, and poor visibility quickly deteriorated into no visibility. They were stuck in a sea of flames with nowhere to go. Terrestrial wireless services were knocked out so there was no way to call 911 for help. The van was hot and getting hotter. The situation seemed helpless.

But this crew of five young people survived. They are alive today thanks to new technology. Their phone had a new feature—the ability to connect directly to emergency personnel by bypassing ground-based communications and instead using satellite signals delivered from space. At 6:14 PM their message asking for help reached first responders along with their location. By 6:47 PM they sent a follow-up message to the dispatchers to say they had been rescued.

That's incredible. When we talk about the benefits of space-based innovation, it is easy to crow about the value of United States leadership and the value of growing the more than half-a-trillion dollar space economy. But it is important to remember that if we do this right, we are unlocking advances that have the power to make us safer in crisis and stronger in day-to-day life.

At this agency every day we get to see how innovation is changing the way we connect, and how those connections fuel everything in modern civic and commercial life. You could argue that nowhere are these innovations growing as fast as they are in space.

Consider the numbers. Right now we have applications for more than 56,000 satellites pending before the FCC. That is twice the number of applications we had just four years ago. On top of that, we are seeing new applications for novel space activities like lunar landers, space tugs that can deploy other satellites, and space antenna farms that can relay communications.

So we made some changes. We launched the Space Bureau to support United States leadership in the space economy, promote long-term technical capacity to address satellite policies, and improve our coordination with other agencies. We facilitated satellite spectrum sharing by modernizing our approach to processing rounds. We updated our approach to orbital

debris in order to shorten the decades-old 25-year guideline for deorbiting satellites post-mission. We are also exploring how to support greater direct satellite-to-smartphone communication and bring our spectrum policies into a single network future. And we launched an inquiry into how communications can support In-Space Servicing, Assembly, and Manufacturing activities—or ISAM—like re-fueling, inspecting, and repairing satellites in orbit and capturing or removing debris.

It's a lot. Today we take another important step forward because we streamline the processing of commercial satellite applications. It is a new era so we eliminate old rules that no longer meet the moment and establish clear timeframes for placing space and earth station applications on public notice. This makes our process easier to understand for existing players and new entrants alike. On top of this, the Space Bureau is launching a Transparency Initiative with frequently asked questions, how-to-videos, workshops and more—aimed at providing applicants with the tools and knowledge they need to get their applications filed. Our goal is to make it easier for new companies to get the authorizations they need to enter the market.

By streamlining our process for commercial satellite applications, I know we can foster more of the kind of boundary-breaking innovation that brought five people home through unimaginable circumstances just a few weeks ago. So let's keep at it.

Thank you to the staff who have made this latest entry in our space innovation agenda possible, including Clay DeCell, Steve Duall, Jennifer Gilsenan, Franco Hinjosa, Julie Kearney, Whitney Lohmeyer, Karl Kensinger, Julia Malette, Kerry Murray, Jeanine Poltronieri, Troy Tanner and Merissa Velez from the Space Bureau; Jason Koslofsky, Jeremy Marcus and Michael Rhodes from the Enforcement Bureau; Joy Ragsdale and Chana Wilkerson from the Office of Communications Business Opportunities; Kate Matraves and Aleks Yankelevich from the Office of Economics and Analytics; Jamie Coleman, Patrick Forster, Howard Griboff, JC Montenegro, Ira Keltz, Nick Oros, and Jamison Prime from the Office of Engineering and Technology; Susan Aaron, David Konczal, Andrea Kearney, Anjali Singh and Jeff Steinberg from the Office of the General Counsel; and Simon Banyai, Stephen Buenzow, Peter Daronco, Jessica Greffenius, Kari Hicks, Alice Koethe, John Lockwood, Jon Markman, John Schauble and Blaise Scinto from the Wireless Telecommunications Bureau.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Expediting Initial Processing of Satellite and Earth Station Applications*; *Space Innovation*; IB Docket No. 22-411, IB Docket No. 22-271; Report and Order and Further Notice of Proposed Rulemaking (September 21, 2023)

When we proposed to streamline our satellite application rules just last December, I said that supporting U.S. leadership in commercial space meant moving at the speed of space-based innovation. I also said that it meant creating a path toward regulatory approval even for applications that propose something new—and perhaps even especially for systems that challenge the old playbook.

That's why I'm pleased we've reached an order so quickly. That's why I'm also pleased that we've set the right tone for the rest of this proceeding, and for the licensing process in general, by elevating accountability, practicality, and innovation.

In this item, we're accelerating our process for reviewing satellite applications before we accept them for filing—and we're providing timeframes for the FCC to complete that important process. That's accountability.

At the same time, we're eliminating outdated rules that led to time-consuming squabbles about what words like "unbuilt" mean without actually doing much to advance the public interest. We're also committing to shed more daylight on the licensing process and to explain what our requirements mean for prospective licensees in practice. That's practicality.

While we're taking steps to accelerate licensing for *all* systems, we're also removing specific hurdles that tend to slow down and deter applications for groundbreaking ones. Furthermore, we're creating a new streamlined process for earth station applications with the hope of facilitating next-gen upgrades and new "as-a-service" business models. That's innovation.

I'm also glad to see that we revised the item to advance these goals even more than the draft item already did. At my request, we're no longer shutting the door to timeframes for deciding applications on the merits *after* they're accepted for filing. In fact—at my colleague Commissioner Simington's request—we're committing to build a stronger record on whether and how we can do that in the Further Notice. We're also more clearly conveying that while we must ensure new systems comply with our rules, we don't intend to micromanage operators' design choices—especially ones that are irrelevant to our jurisdiction. Finally, we're taking steps to make our streamlined procedure for earth stations more practically useful.

This item is an important first step toward expedition, and my hope and expectation is that there will be much more to come. I thank the Space Bureau for its excellent work on this item, and for its Herculean efforts, day in and day out, to support space innovation.

STATEMENT OF COMMISSIONER NATHAN SIMINGTON

Re: *Expediting Initial Processing of Satellite and Earth Station Applications, Space Innovation*; IB Docket No. 22-411, IB Docket No. 22-271; Report and Order and Further Notice of Proposed Rulemaking (September 21, 2023)

I support today's item. Thank you to the Chairwoman and Commissioners for their willingness to include specific questions in the FNPRM that seek comment on final action shot clocks for satellite applications. I believe that the most important part of streamlining the FCC's application processing procedures is ensuring swift and efficient FCC action—which will maintain U.S. leadership in the satellite communications service industry. It will also nurture the growth of the broader space sector, which includes new and innovative manufacturing processes, robotics, earth surveillance and exploration and other future innovations.

A strong proposal for shot clocks and streamlined rules that provide certainty to industry are vital to ensuring that we do not mire a budding industry in regulatory sludge that encourages anticompetitive gamesmanship. So often regulators with good intentions get in the way of innovation. And yet those same regulators never even realize the detriments caused by these supposed good intentions. While it is vitally important that the FCC and other policy makers get things right—as they say, we know that perfect is the enemy of the good.

I have heard time and again—specifically from U.S.-based companies—that delays in application processing times are forcing them to entertain licensing in other countries with more industry friendly and expeditious licensing regimes. This item is hopefully the springboard to change any such plans. It includes a great start with adopting shot clocks for placing applications on public notice and establishing practices for greater transparency and staff guidance. So now I look forward to working with my colleagues to swiftly take action to execute shot clocks for final action, and to take any other steps to change our rules to reflect the current realities of the satellite industry.

Thank you to the staff of the Space Bureau for their great work on a very important proceeding. Looking forward to our next steps.

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

In the Matter of	)	
	)	
Establishing a 5G Fund for Rural America	)	GN Docket No. 20-32

FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: September 21, 2023 **Released: September 22, 2023**

Comment Date: October 23, 2023
Reply Comment Date: November 21, 2023

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements; Commissioner Simington concurring and issuing a separate statement.

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APPENDIX A – SUPPLEMENTAL INITIAL REGULATORY FLEXIBILITY ANALYSIS

I. INTRODUCTION

1. Today, armed with the new, granular, and improved mobile coverage data obtained in the Broadband Data Collection (BDC) and reflected on our new National Broadband Map, we continue the

implementation of the 5G Fund for Rural America (5G Fund) and advance our efforts to ensure the deployment of high-speed, 5G mobile service in areas of the country where, absent subsidies, it will continue to be lacking.[1] We undertake this effort in recognition that those living, working, and travelling in unserved areas must have access to high-speed, 5G mobile service.[2] The need for high-speed mobile services has never been more critical, yet there are many areas of our country that continue to lack access to 5G service. In fact, some areas continue to lack access to any mobile broadband service at all. Moreover, moving forward with the 5G Fund will allow the Commission to proceed with its plan to transition from mobile legacy high-cost support, which continues to be distributed inefficiently.[3]

2. Accordingly, with this narrowly tailored Further Notice of Proposed Rulemaking, we seek to refresh the record and reignite the Commission's plan to expand the deployment of 5G service to those rural communities that remain trapped on the wrong side of the digital divide. To that end, we seek comment on a limited set of issues that are critical to the 5G Fund's success, namely: (1) defining the areas that will be eligible for 5G Fund support; (2) reassessing the budget for the 5G Fund; (3) potentially reconsidering the use of adjusted square kilometers as the metric for accepting bids and identifying winning bids in a 5G Fund auction; (4) aggregating areas eligible for 5G Fund support to minimum geographic areas for bidding; (5) measuring a 5G Fund support recipient's compliance with its public interest obligations and performance requirements based on any modified metric for accepting bids and identifying winning bids; (6) modifying the schedule for transitioning from mobile legacy high-cost support to 5G Fund support consistent with recent legislative amendments; (7) a proposal to require each 5G Fund Phase I auction applicant to certify, under penalty of perjury, that it has read the public notice adopting procedures for the auction, and that it has familiarized itself with those procedures and any requirements related to the support made available for bidding in the auction; (8) whether to require 5G Fund support recipients to implement cybersecurity and supply chain risk management plans; and (9)

[1] *See generally Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Report and Order, 35 FCC Rcd 12174 (2020), modified by *Errata* released Nov. 10, 2020, Nov. 27, 2020, and Jan. 11, 2021 (*5G Fund Report and Order*). The Commission received five timely filed petitions for reconsideration of the *5G Fund Report and Order*. *See* The Rural Wireless Association and NTCA – The Rural Broadband Association, Joint Petition for Reconsideration, GN Docket No. 20-32 (filed Dec. 28, 2020) (*RWA/NTCA Joint Petition for Reconsideration*); The Coalition of Rural Wireless Carriers, Petition for Reconsideration, GN Docket No. 20-32 (filed Dec. 28, 2020) (*CRWC Petition for Reconsideration*); CTIA, Petition for Partial Reconsideration, GN Docket No. 20-32 (filed Dec. 28, 2020); Smith Bagley, Inc, Petition for Reconsideration, GN Docket No. 20-32 (filed Dec. 28, 2020); 5G Fund Supporters, Petition for Partial Reconsideration, GN Docket No. 20-32 (filed Nov. 30, 2020); *see also* Petitions for Reconsideration of Action in Proceeding, Public Notice, Report No. 3165 (Jan. 6, 2021). These petitions remain pending. At the time the *5G Fund Report and Order* was adopted, the BDC was known as the Digital Opportunity Data Collection.

[2] *Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, Report, FCC 22-67, at 29, para. 53 (2022) (*Report to Congress*). In determining that the Commission should proceed with providing additional support for mobile broadband through the competitive process after it launched the National Broadband Map, the Commission's Report to Congress explained that "[f]unding for the deployment under the Infrastructure Act focuses on fixed services, not mobile services. The Commission has a unique role to play in supporting the deployment of mobile broadband to maintain connectivity wherever people live, work, or travel." *Id.*

[3] *5G Fund Report and Order*, 35 FCC Rcd at 12176-77, para. 6. In 2016, staff conducted an analysis of mobile wireless providers' FCC Form 477 submissions that revealed that almost 75% of legacy high-cost support was being distributed to carriers in areas where 4G LTE service was already being provided by an unsubsidized provider. *Id*. Furthermore, according to the report, only approximately 20% of the land area of the United States outside of Alaska either lacked 4G LTE service entirely or had 4G LTE service provided only by a subsidized carrier. *Id*. Therefore, mobile wireless carriers were receiving approximately $300 million or more each year in unnecessary legacy high-cost subsidies for 4G LTE. *Id*.; *see also id.* at 12175, para. 1 (stating that the 5G Fund would direct "limited Universal Service Fund dollars . . . to support the deployment of state-of-the art wireless networks that are more responsive, more secure, and faster than today's 4G LTE networks").

determining whether and how this proceeding might create an opportunity to support further deployment of Open Radio Access Network (Open RAN) technologies.

3. The entire country benefits when everyone, including those living and working in rural areas, can communicate and innovate equally through access to high-speed, mobile broadband services. Access to high-speed, mobile services allows connections to essential civic, economic, and social opportunities. It touches almost all aspects of daily life, including work and education, access to news and entertainment, public safety information and services, and healthcare, and allows interconnection in times of national crisis. The importance of expanding access to high-speed, 5G services in rural communities cannot be overstated. We therefore issue today's Further Notice of Proposed Rulemaking mindful that full participation in American society requires us to make 5G service available to everyone, no matter where they live.

II. BACKGROUND

4. In October 2020, the Commission established the 5G Fund as a replacement for Mobility Fund Phase II.[4] The 5G Fund would use multi-round reverse auctions to distribute up to $9 billion, in two phases, to retarget mobile universal service in the high-cost program to bring voice and 5G broadband service to rural areas of the country unlikely to otherwise see unsubsidized deployment of 5G-capable

[4] *Id.* at 12175, para. 1. The 5G Fund is the culmination of almost a decade of hard work to reform and redirect universal service funds to areas of the country that need them the most. In its 2011 *USF/ICC Transformation Order*, the Commission took numerous steps to comprehensively reform and modernize the universal service program to ensure that robust, affordable, fixed and mobile broadband service are available to Americans living in rural, insular, and high cost areas of the country. *See Connect America Fund et al.*, WC Docket 10-90 et al., Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order), aff'd sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). Among other things, the Commission established a two-phased Mobility Fund dedicated to targeting universal service support for mobile services in a cost-effective manner to no more than one provider per area in areas where a private-sector business case was lacking. *See id.* at 17674-75, 17773, 17779, 17819, 17821, paras. 28, 299, 316, 481, 486. In Phase I of the Mobility Fund, which was composed of a general Mobility Fund and a Tribal Mobility Fund, the Commission awarded almost $350 million in one-time universal service support through two reverse auctions. *See 5G Fund Report and Order*, 35 FCC Rcd at 12176-77, para. 6. In 2017, the Commission adopted rules for Mobility Fund Phase II that provided $4.53 billion in ongoing support over a ten-year term, redirected universal service funds to areas of the country unlikely to receive 4G Long Term Evolution (LTE) service absent subsidies, and established the framework for a challenge process to resolve disputes about areas that were found to be presumptively ineligible for support. *See Connect America Fund; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90 and 10-208, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152, 2154, para. 2 (2017) (*Mobility Fund Phase II Report and Order*); *Connect America Fund; Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, WT Docket No. 10-208, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282 (2017) (requiring mobile wireless providers to submit 4G LTE coverage maps and adopting a process for challenging those coverage maps). After questions about the accuracy of the submitted coverage maps arose, the Commission launched an investigation into the 4G LTE coverage data submitted by some providers and suspended the challenge process pending the investigation. *See* News Release, FCC, FCC Launches Investigation into Potential Violations of Mobility Fund Phase II Mapping Rules (Dec. 7, 2018), https://docs.fcc.gov/public/attachments/DOC-355447A1.pdf (last visited Sept. 18, 2023). Commission staff ultimately determined that the coverage maps submitted by certain carriers overstated actual coverage and did not reflect on-the-ground performance in many instances, and recommended that the Commission terminate the challenge process because the coverage maps were not "a sufficiently reliable or accurate basis upon which to complete the challenge process as it was designed." Rural Broadband Auctions Task Force, Mobility Fund Phase II Coverage Maps Investigation Staff Report at 2, para. 6 (2019), https://docs.fcc.gov/public/attachments/DOC-361165A1.pdf (last visited Sept. 18, 2023) (*Mobility Fund Phase II Coverage Maps Investigation Staff Report*). The Commission proposed, and later established, the 5G Fund as a comprehensive replacement for Mobility Fund Phase II, and adopted the framework and rules for the 5G Fund. *See generally 5G Fund Report and Order; Establishing a 5G Fund for Rural America; Universal Service Reform – Mobility Fund*, GN Docket No. 20-32, WT Docket No. 10-208, Notice of Proposed Rulemaking and Order, 35 FCC Rcd 3994, 3996, para. 2 (2020) (*5G Fund NPRM*).

networks.[5] The Commission decided that it would use new, more precise, verified mobile coverage data gathered through the BDC to determine the areas eligible for support in a 5G Fund auction.[6] The Commission defined the areas eligible for support in the 5G Fund Phase I auction as those that lack unsubsidized 4G LTE and 5G broadband service by at least one service provider based on BDC data.[7] The Commission also decided that it would accept bids and identify winning bids in a 5G Fund auction using a support price per adjusted square kilometer.[8]

5. The Commission recognized from the outset that waiting for the collection of new, more precise, verified mobile coverage data obtained in the BDC would not be the fastest path to holding a 5G Fund auction, but reasoned that this would allow the Commission to better target 5G Fund support to those areas of the country where support is most needed and where the funds could be spent most efficiently.[9] The Commission explained that waiting for the development of a National Broadband Map

[5] *5G Fund Report and Order*, 35 FCC Rcd at 12176, para. 4. In adopting a budget of up to $9 billion for the 5G Fund, the Commission explained that support would be awarded in two phases, with up to $8 billion for Phase I, of which it would reserve $680 million of support for service to Tribal lands, and at least $1 billion in Phase II, as well as any unawarded funds from Phase I. *Id.* at 12185, para. 28.

[6] *See id.* at 12179, para. 11; *see also 5G Fund NPRM*, 35 FCC Rcd at 4007-08, paras. 37-39.

[7] *5G Fund Report and Order*, 35 FCC Rcd at 12181, para. 17.

[8] *Id.* at 12194, para. 48; *see also 5G Fund NPRM*, 35 FCC Rcd at 4014, para. 57. Under this approach, each eligible area will have an associated number of square kilometers that will be adjusted by an adjustment factor that will assign a weight to each geographic area and apply that adjustment factor to bidding for support amounts, and support amounts for an area will be determined by multiplying an area's associated adjusted square kilometers by the relevant price per square kilometer. *See 5G Fund Report and Order*, 35 FCC Rcd at 12194-95, 12196-97, paras. 48, 54-55. For example, an area with 100 square kilometers and an adjustment factor of 1.2 would have 100×1.2 or 120 adjusted square kilometers. *Id*. at 12195, para. 48 n.124.

[9] *5G Fund Report and Order*, 35 FCC Rcd at 12176, 12179, paras. 4, 11. When the *5G Fund Report and Order* was adopted, all of the major nationwide wireless carriers had begun launching their 5G networks, and many urban and suburban areas of the country had benefitted from the evolution to 5G networks. *Id*. at 12175-76, para. 2. Since then, the deployment of 5G networks in many parts of the country has continued—both generally and as a result of T-Mobile's and DISH Network Corporation's (DISH) respective enforceable transaction commitments. T-Mobile committed to deploy 5G service covering 85% of the population in rural areas and 97% of the United States population within three years after consummation of its transaction, with coverage rising to 90% of the population in rural areas and 99% nationwide within six years after consummation of its transaction, and it also committed to deploy 5G service meeting minimum download speed performance benchmarks of at least 50 Mbps available to 90% of the rural population, with two-thirds of the rural population able to receive download speeds of at least 100 Mbps within three years after consummation of its transaction. *Applications of T-Mobile US, Inc., and Sprint Corporation For Consent To Transfer Control of Licenses and Authorizations*, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10589, 10682, paras. 26-27, 235 (2019) (*T-Mobile-Sprint Order*). To verify its commitments, T-Mobile must submit drive test results, infrastructure data, and shapefiles. *See id.* at 10807, Appx. G. at 7. Measured data will be mapped to unique 500-meter grids in census blocks containing population across the entire country, and the population of each census block will be associated with the average speed across all speed-tested grids in the census block. *See generally T-Mobile USA, Inc, Methodology for T-Mobile Drive Tests to Verify Compliance with T-Mobile/Sprint Merger Commitments* (Jan. 8, 2020). The T-Mobile-Sprint transaction was consummated on April 1, 2020, and the data as of the April 1, 2023 coverage deadline for T-Mobile's first commitment must be submitted by January 2024. *See T-Mobile-Sprint Order*, 34 FCC Rcd at 10812, Appx. G, Attach. 1 at 3. DISH committed to deploy 5G broadband service on its AWS-4, Lower 700 MHz E Block, and AWS H Block licenses to at least 20% of the United States population by June 14, 2022, and to deploy 5G service on these licenses to at least 70% of the United States population at download speeds of at least 35 Mbps (as verified by a drive test), deploy at least 15,000 5G sites, and deploy at least 30 megahertz of downlink 5G spectrum averaged over all DISH 5G sites deployed nationwide by June 14, 2023. *See id.* at 10740, para. 369. DISH must submit a report demonstrating compliance with its 2022 and 2023 coverage deadlines in December 2023. *See id.* at 10744, para. 381. DISH further committed (continued….)

was critical to the success of the 5G Fund, even though at the time it lacked the congressional appropriation necessary to implement the BDC.[10] The Commission also reasoned that any risk of delay in holding a 5G Fund auction was further mitigated by the public interest obligations it was adopting for competitive eligible telecommunications carriers (ETCs) to continue receiving legacy high-cost support for mobile wireless services.[11]

6. In this regard, the Commission adopted requirements for both competitive ETCs receiving legacy high-cost support for mobile wireless service and 5G Fund auction support recipients to meet public interest obligations to provide voice and 5G broadband service, and to satisfy distinct, measured performance requirements as a condition of receiving support. Pursuant to the rules adopted in the *5G Fund Report and Order*, recipients of both legacy mobile high-cost support and 5G Fund auction support are required to meet minimum baseline performance requirements for data speed, latency, and data allowance, including: (1) deploying 5G networks that meet at least the 5G-NR (New Radio) technology standards developed by the 3rd Generation Partnership Project with Release 15 (or any successor release that may be adopted by the Office of Economics and Analytics (OEA) and Wireline Competition Bureau (WCB) after appropriate notice and comment) with median download and upload speeds of at least 35 Mbps and 3 Mbps with minimum cell edge download and upload speeds of 7 Mbps

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to deploy 5G broadband service on each of its 600 MHz licenses and to offer 5G broadband service using its 600 MHz licenses to at least 70% of the U.S. population no later than June 14, 2023, and to at least 75% of the population in each Partial Economic Area (PEA) no later than June 14, 2025. *Id*. at 10740, para. 369. DISH must submit a report demonstrating compliance with the first of these two commitments in December 2023. *Id*. at 10744, para. 381.

[10] *5G Fund Report and Order*, 35 FCC Rcd at 12179, para. 11. In March 2020, Congress passed the Broadband Deployment Accuracy and Technological Availability Act. Broadband Deployment Accuracy and Technological Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Act); *see also Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Third Report and Order, 36 FCC Rcd 1126, 1128, para. 5 (2021) (*BDC Third Report and Order*). The Broadband DATA Act prohibited the Commission from delegating any responsibilities under the Act to the Universal Service Administrative Company (USAC) or from using funds collected through the Universal Service Fund (USF) to pay any costs associated with fulfilling them. 47 U.S.C. §§ 646(c), 645(a). In 2021, Congress appropriated the funds necessary for the Commission to implement the BDC. *See BDC Third Report and Order*, 36 FCC Rcd at 1127, para. 2 n.4 (citing Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, H.R. 133, Div. E, Tit. V, Div. N, Tit. V, § 906(1) (Dec. 27, 2020)). To align the BDC with the requirements of the Broadband DATA Act, the Commission adopted rules regarding reporting standards for fixed and mobile services consistent with Broadband DATA Act requirements and established processes for verifying the data collected from providers, including certification requirements, regular Commission audits, and the acceptance of crowdsourced data. *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Second Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, 7465-83, 7485-92, paras. 12-51, 58-76 (2020). In a *Third Report and Order*, the Commission required, for mobile services, additional information reporting concerning provider networks and propagation, which would allow the Commission to verify provider data more effectively. *BDC Third Report and Order*, 36 FCC Rcd at 1141-44, paras. 36-42. The Commission also established the requirements for challenges to mobile service coverage reporting. *Id.* at 1164-75, paras. 97-125; *see generally Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, Order, 37 FCC Rcd 3007 (WTB/OEA/OET 2022) (*BDC Mobile Technical Requirements Order*) (adopting technical requirements to implement the mobile challenge, verification, and crowdsourcing processes as part of the BDC). Moreover, the Commission established standards for enforcement of the requirements associated with the BDC. *Id.* at 1178-84, paras. 133-47.

[11] *5G Fund Report and Order*, 35 FCC Rcd at 12179, para. 11. The phase down of "legacy" high-cost support for competitive ETCs to provide mobile wireless service had previously been frozen at the 60% support level until Mobility Fund Phase II was operational. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17832, para. 519. We use the term "legacy high-cost support" and "legacy support" throughout this item to refer specifically to the high-cost support that was frozen in the *USF/ICC Transformation Order* and is disbursed to competitive ETCs to provide mobile wireless service.

and 1 Mbps; (2) meeting end-to-end round trip data latency measurements of 100 milliseconds or below; and (3) offering at least one service plan that includes a minimum monthly data allowance that is equivalent to the average United States subscriber data usage.[12] The Commission explained that these performance requirements, along with public interest obligations for reasonably comparable rates, collocation, and voice and data roaming, will ensure that rural areas receive service reasonably comparable to high-speed, mobile broadband service available in urban areas.[13]

7. To make certain that 5G Fund support recipients meet their public interest obligations and performance requirements in areas where they receive support, the Commission adopted interim and final service deployment milestones along with reporting requirements to monitor their progress. Specifically, the Commission adopted milestones requiring a 5G Fund support recipient to offer 5G service meeting established performance requirements to at least 40% of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state by the end of the third full calendar year following authorization of support, to at least 60% of the total square kilometers by the end of the fourth full calendar year, and to at least 80% of the total square kilometers by the end of the fifth full calendar year.[14] Moreover, the Commission adopted a final service deployment milestone that would require a 5G Fund support recipient to offer 5G service that meets the established 5G Fund performance requirements to at least 85% of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state by the end of the sixth full calendar year following authorization of support.[15] Additionally, a 5G Fund support recipient is required to demonstrate by the end of the sixth full calendar year following authorization of support that it provides service that meets the established 5G performance requirements to at least 75% of the total square kilometers within each of its individual biddable areas.[16]

8. In May 2023, we released the latest version of our new National Broadband Map, which reflects the most granular and accurate mobile coverage data we have gathered through the BDC to date.[17] The Commission will release major updates to this map twice a year, overlaying available data from service providers in these updates to ensure that the National Broadband Map is current.[18] Based on the mobile coverage data we have collected in the BDC, our understanding of where mobile service remains lacking has improved significantly, and therefore, we are proceeding with our plans for the 5G Fund. Accordingly, we seek comment on the limited set of issues discussed below to ensure that we meet our statutory obligation of ensuring that those in rural America have access to services reasonably comparable to those provided in urban areas and to achieve our policy goal of ensuring that everyone who lives, works, and travels throughout our country experiences the benefits of high-speed, mobile 5G technology.[19]

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[12] *5G Fund Report and Order*, 35 FCC Rcd at 12183-84, para. 20; *see also id*. at 12206, para. 78.

[13] *Id.* at 12184, para. 21.

[14] *Id.* at 12204, para. 73.

[15] *Id.* at 12204, para. 74; *see also 5G Fund NPRM*, 35 FCC Rcd at 4026, para. 95.

[16] *5G Fund Report and Order*, 35 FCC Rcd at 12204, para. 74; *see also 5G Fund NPRM*, 35 FCC Rcd at 4027, para. 96.

[17] *See National Broadband Map,* https://broadbandmap.fcc.gov/home (last visited Sept. 18, 2023).

[18] 47 CFR § 1.7008(c); *see National Broadband Map: It Keeps Getting Better*, Note, Jessica Rosenworcel, Chairwoman, FCC (May 30, 2023) (*Chairwoman Rosenworcel May 30, 2023 Note)*, https://www.fcc.gov/national-broadband-map-it-keeps-getting-better (last visited Sept. 18, 2023); *see also* 47 U.S.C. § 642(c)(3) (requiring the Commission to update the maps at least biannually using the data collected from providers).

[19] *See 5G Fund Report and Order*, 35 FCC Rcd at 12178, para. 10.

III. IDENTIFYING AREAS ELIGIBLE FOR 5G FUND SUPPORT

A. Defining the Areas Eligible for 5G Fund Support

9. In the *5G Fund Report and Order*, the Commission decided to determine the areas eligible for support in the 5G Fund Phase I auction based on where new mobile coverage data submitted in the BDC show a lack of both unsubsidized 4G LTE and unsubsidized 5G broadband service by at least one service provider.[20] The Commission noted in the *5G Fund Report and Order* that while most providers were then still in the early stages of deploying their 5G networks in rural areas, it expected that the data collected in the BDC would show significant 5G broadband deployments.[21] The Commission concluded that consistent with its longstanding policy of avoiding overbuilding competitive networks, it would exclude areas with unsubsidized 5G broadband deployment from eligibility for 5G Fund support.[22] The Commission also decided to exclude from eligibility for 5G Fund support those areas where BDC data show the deployment of unsubsidized 4G LTE networks, reasoning that subsidizing 5G deployments where unsubsidized 4G LTE networks already have been deployed would be unnecessary and risk preempting 5G deployments the Commission expected in those areas.[23] Moreover, the Commission adopted restrictions on the use of 5G Fund support to fulfill enforceable commitments to deploy 5G, concluding that it would be inefficient to allow any provider with enforceable 5G deployment obligations to use universal service support to fund those deployments.[24] In light of T-Mobile's extensive rural 5G deployment commitments relating to its acquisition of Sprint, the Commission said it would allow T-Mobile to make binding pre-auction commitments to identify the areas in which it will deploy 5G to fulfill its transaction commitments so that such areas can be removed from the auction inventory.[25]

10. Throughout this proceeding, some parties have taken issue with the definition of areas eligible for 5G Fund support. These parties maintain that the Commission incorrectly presumed that an area that has unsubsidized 4G LTE service will see the deployment of 5G service without the need for subsidies,[26] and/or ask the Commission to define the areas eligible for 5G Fund support as those where

[20] *Id.* at 12181, para. 17.

[21] *Id*. at 12181-82, para. 17.

[22] *Id*. at 12182, para. 17. At the time it established the 5G Fund, the Commission noted that because nationwide providers had already begun to deploy 5G service in more populated parts of the country, many urban and suburban areas had already benefitted from the evolution to 5G networks, and that even more widely-available 5G service was expected in the near future. *Id.* at 12175, para. 2.

[23] *Id*. at 12182, para. 17. The Commission based this belief on the combination of the then-rapid state of competitive deployment in the marketplace and T-Mobile's enforceable transaction commitments. *Id.*

[24] *Id*. at 12246-47, paras. 178-80.

[25] *Id*. at 12248, para. 182. The Commission directed OEA and WCB to establish specific procedures for making such pre-auction binding commitments that would cover, as appropriate, qualifications and restrictions on participating in the pre-selection process. *See id.* at 12248, para. 182 & n.457.

[26] *See, e.g.,* Verizon 5G Fund NPRM Comments at 2 (stating that "designing the 5G Fund rules [at the time of the 5G Fund comment cycle in mid-2020] will be challenging[] [b]ecause the deployment of high-speed 5G services is in its early stages[] [and] the Commission will have to make predictive judgments about offered 5G speeds and the areas that will require support"); Letter from Richard A. Ruhl, General Manager, Cellular Network Partnership, LLP d/b/a Pioneer Cellular, John Lightle, CEO, Nex-Tech Wireless LLC, Eric Woody, CTO, Union Telephone Company d/b/a Union Wireless, Justin E. Hinkle, President, Smith Bagley, Inc., W. Allen Gillum, CEO, East Kentucky Network, LLC d/b/a Appalachian Wireless, and Francis J. DiRico, President, NE Colorado Cellular, Inc. d/b/a Viaero Wireless, to Marlene H. Dortch, Secretary, FCC at 2 (filed Oct. 19, 2020) (*Rural Carriers October 19, 2020 Letter)* (stating that the Commission's assumption that because there is "unsubsidized 4G service in a rural area, a carrier will promptly build unsubsidized 5G meeting its proposed performance standards in the same area . . . is unsupported by any record evidence and . . . is likely to be incorrect"); Letter from Michael D. Rosenthal, Director (continued….)

BDC mobile coverage data show a lack of unsubsidized 5G broadband service.[27] Furthermore, the Commission received two petitions seeking reconsideration of its decision to exclude from eligibility for 5G Fund support areas where BDC mobile coverage data show the existence of unsubsidized 4G LTE or 5G broadband service by at least one provider, each of which asks us to instead define as eligible for 5G Fund support any area that lacks unsubsidized 5G broadband service.[28]

11. Today, our new National Broadband Map reflects the most recently available data concerning mobile broadband service availability and provides us with a substantially improved understanding of where service is available and where it remains lacking.[29] Our new map provides an improved picture of where mobile broadband service is available, the type(s) of service available, the speeds available, and the environment(s) in which service is available.[30] Historically, mobile data collected in FCC Form 477 suffered from a lack of any standardized parameters for the submission of propagation maps. The Commission remedied this issue in the *BDC Second Report and Order* by adopting certain uniform minimum parameter values that it believed to be equally important for demonstrating 3G and 5G-NR coverage as well as voice coverage,[31] as recommended by the Rural

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of Legal & External Affairs, Southern Linc, to Marlene H. Dortch, Secretary, FCC at 2 (filed Oct. 20, 2020) (*Southern Linc October 20, 2020 Letter)* ("The presence of unsubsidized 4G LTE service in an area does not mean that the deployment of 5G is reasonably likely in the near-term, if ever."); Letter from Carri Bennet, General Counsel, Rural Wireless Association, to Marlene H. Dortch, Secretary, FCC at 3 (filed Oct. 20, 2020) (stating that "exclud[ing] areas served by unsubsidized 4G LTE and 5G broadband service . . . would deprive a large number of rural areas of the benefits of the 5G Fund since having unsubsidized 4G LTE service in a certain area does not guarantee that 5G service will be deployed by such unsubsidized carriers at a later point in time"); Letter from Carri Bennet, General Counsel, Rural Wireless Association, to Marlene H. Dortch, Secretary, FCC at 2 (filed Jan. 17, 2023) ("The assumption that areas with unsubsidized 4G coverage today will be upgraded to 5G is, in many cases, overly optimistic. There are a number of areas where a smaller carrier has deployed unsubsidized 4G coverage at 5/1 Mbps but will not be able to upgrade to 5G without universal service support because the area is too high cost.").

[27] *See, e.g.,* Letter from Alexi Maltas, Senior Vice President & General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC at 3 (filed Oct. 16, 2020) ("If the Commission insists on funding only 5G deployments, the relevant question for eligibility should be the presence or absence of unsubsidized 5G services."); *Rural Carriers October 19, 2020 Letter* at 1 (requesting the Commission define as eligible for 5G Fund support any areas that lack only unsubsidized 5G broadband service); *Southern Linc October 20, 2020 Letter* at 2 ("If the 5G Fund is to be used to fund only 5G deployments, then eligibility for funding in a given area should be determined on the basis of the presence or absence of unsubsidized 5G services in that area."); Letter from David A. LaFuria, Counsel for the Coalition of Rural Wireless Carriers, to Marlene H. Dortch, Secretary, FCC at 3 (filed July 13, 2022) (urging the Commission to "rectify the prior Commission's premature decision to adopt a rule providing that areas currently receiving unsubsidized 4G LTE service are ineligible for inclusion in the 5G Fund auction").

[28] *See RWA/NTCA Joint Petition for Reconsideration* at 5 (asking the Commission to define as eligible for 5G Fund support any area that lacks unsubsidized 5G service); *CRWC Petition for Reconsideration* at 14 (asking the Commission to "reassess its determination of eligible areas after it has accurate 4G/5G maps through the DODC process," and then "define as eligible [for 5G Fund support] any area that lacks unsubsidized 5G service"). The Commission sought comment on these petitions, *see* Petitions for Reconsideration of Action in Proceeding, Public Notice, Report No. 3165 (Jan. 6, 2021), and they remain pending.

[29] *See* Updated National Broadband Map, released May 30, 2023, https://broadbandmap.fcc.gov/home (last visited Sept. 18, 2023). The Updated National Broadband Map released on May 30, 2023, shows the Fabric Version 2 location data and broadband availability data as of December 31, 2022.

[30] *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3008, para. 1. In the BDC, the term "environment" in the context of mobile services refers to service provided in an outdoor stationary environment or an in vehicle mobile environment. *Id.* at 3024, para. 29.

[31] *See Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, 7474-83, paras 32-51 (2020) (*BDC Second Report and Order*). The Commission stated that "[i]n

(continued….)

Broadband Auctions Task Force in the *Mobility Fund Phase II Coverage Maps Investigation Staff Report*.[32] The new map allows us to more accurately target universal service funding to expand broadband to unserved and underserved areas.

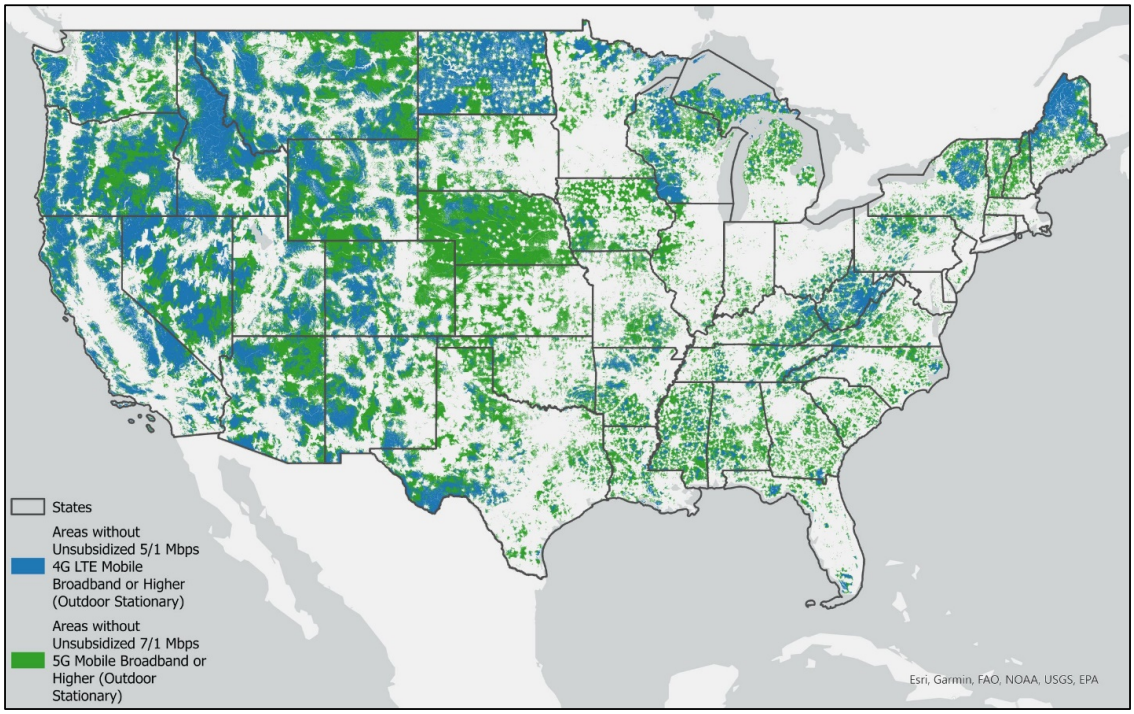
12. Figure 1, below, shows areas where mobile coverage data submitted in the BDC show a lack of unsubsidized 5G mobile broadband service at speeds of at least 7/1 Mbps by at least one service provider, and areas where the data show a lack of unsubsidized 5/1 Mbps 4G LTE mobile broadband service or higher by at least one service provider. Figure 2 shows a picture of the USAC's online map delineating the boundaries of the subsidized service areas of each competitive ETC receiving mobile legacy high-cost support used in determining which areas are subsidized for this purpose.[33]

addition to requiring mobile broadband providers to use propagation modeling to generate and to submit maps showing their 4G LTE coverage, [such providers are] additionally required . . . to submit information, data, and coverage maps for existing 3G networks and next-generation 5G-NR networks." *Id.* at 7474, para. 33. *See also 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, 1141-42, paras. 36-37 (2021) (requiring mobile providers to submit a second set of maps showing the Reference Signal Received Power (RSRP) and Received Signal Strength Indicator (RSSI) signal levels in the coverage areas for each technology, and requiring that such signal strength maps reflect coverage in both the outdoor stationary and in-vehicle environments).

[32] *See Mobility Fund Phase II Coverage Maps Investigation Staff Report* at 53, para. 80.

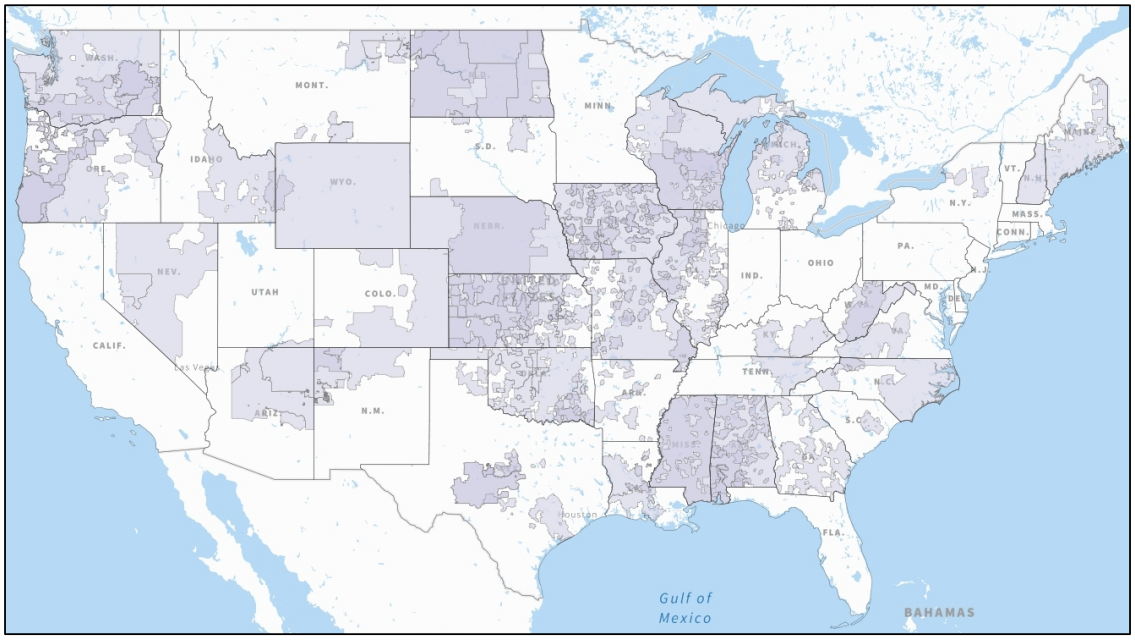
[33] The Commission stated in the *5G Fund Report and Order* that it will use Geographic Information Systems (GIS) data from USAC delineating the boundaries of the subsidized service areas of each competitive ETC receiving mobile legacy high-cost support in determining which areas are subsidized for this purpose. *5G Fund Report and Order*, 35 FCC Rcd at 12181, para. 17 n.43; *see 5G Fund NPRM*, 35 FCC Rcd at 4017-18, para. 71 & n.104.

Figure 1: Areas Without Unsubsidized Mobile Broadband Service[34]



[34] Figure 1 was created using overlapping provider-reported BDC mobile availability data as of December 31, 2022 (updated August 16, 2023), depicting coverage based on an outdoor stationary environment. See https://www.fcc.gov/reports-research/maps/5g-fund-fnprm for an interactive version with additional data.

Figure 2: USAC Mobile CETC Service Area Boundaries Map[35]



13. The following two charts provide more detail about the distribution of mobile legacy high-cost support by state.

[35] Mobile CETC Service Area Boundaries Map, https://data.usac.org/publicreports/cetc-map/ (data as of Feb. 16, 2023; image generated Aug. 28, 2023). The following states and Washington, D.C. do not have any mobile legacy high-cost support service areas: California, Connecticut, Delaware, Florida, Hawaii, Indiana, Maryland, Massachusetts, Minnesota, New Jersey, Ohio, Pennsylvania, Rhode Island, and Vermont.

Figure 3: Percent of a State's Total Area Within a Subsidized CETC Area and the Percent of Total High-Cost Subsidy Directed to That State

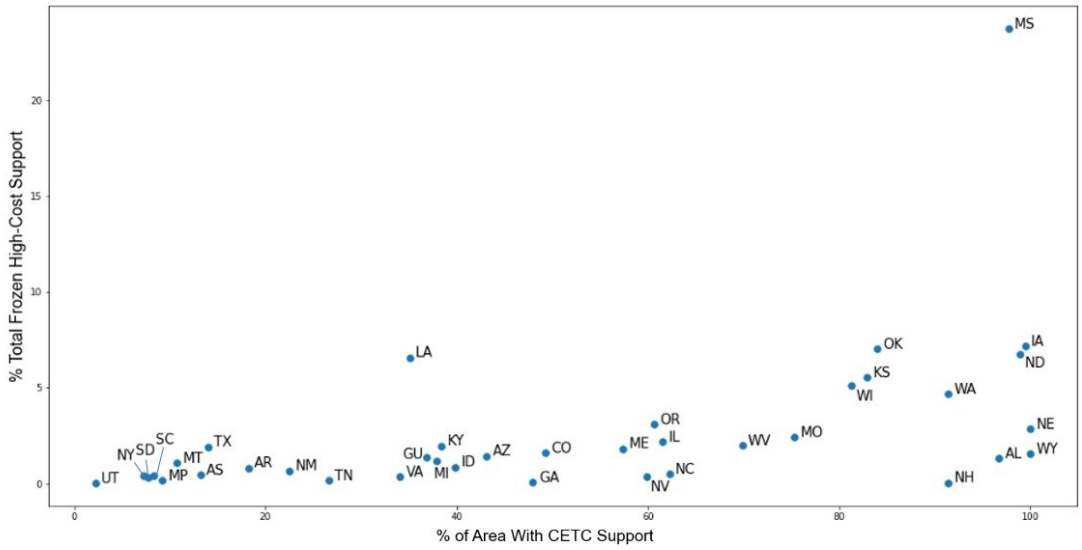
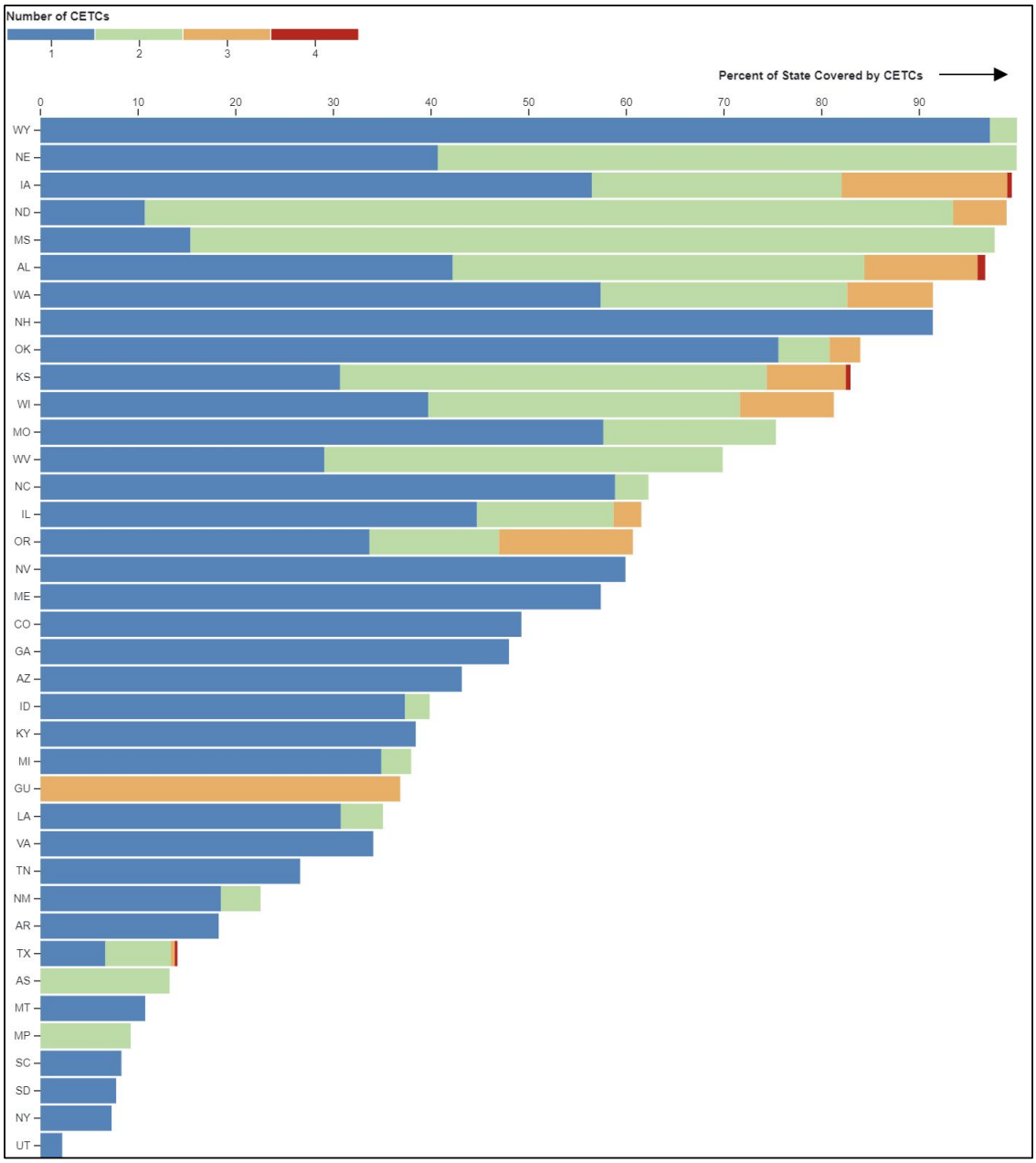


Figure 4: Percent of a State's Total Area Within the Subsidized Areas of 1, 2, 3 or 4 CETCs



14. With data collected in the BDC and currently reflected on our National Broadband Map, we are better able to assess where mobile broadband services are—and are not—available. In the nearly three years since the adoption of the *5G Fund Report and Order,* the deployment of high-speed 5G mobile services has significantly expanded. However, even with this expansion of 5G coverage, the

digital divide remains, and numerous "broadband deserts" continue to exist.[36] Indeed, based on BDC data as of December 2022, we estimate that there are over 14 million broadband serviceable locations (locations) that lack mobile 5G coverage at speed thresholds of at least 7/1 Mbps in an in-vehicle environment.[37] Given how mobile broadband coverage has evolved over the past three years and our improved understanding of mobile coverage based on data gathered through the BDC, we seek comment on how to ensure that the 5G Fund most efficiently promotes the deployment of 5G mobile broadband service in areas where it would not be offered absent subsidies. To that end, we seek comment on whether we should continue to use the definition adopted by the Commission in the *5G Fund Report and Order* to determine areas eligible for the 5G Fund Phase I auction, or whether we should modify the definition to base the determination of eligible areas on where mobile coverage data submitted in the BDC show a lack of unsubsidized 5G broadband service by at least one service provider.

15. As the map in Figure 1 above shows, we expect that using the definition of eligible areas adopted in the *5G Fund Report and Order* would result in fewer areas being eligible for support in the 5G Fund Phase I auction than if we modified the definition to be based on areas that lack unsubsidized 5G coverage. Given our objective of ensuring that we target our finite budget to where it is most needed to promote the deployment of 5G mobile broadband service, we seek comment on whether using an eligible areas definition that is more likely to limit, or more likely to expand, the number of areas that would be eligible for support in the 5G Fund Phase I auction serves the public interest. If we modify the definition of eligible areas as discussed above, would 5G Fund support be more likely to end up in areas that do not have 5G service but do have unsubsidized 4G LTE service?

16. We seek comment on what motivations there are for unsubsidized providers of 4G LTE service to upgrade their networks to 5G technology in rural areas. Does the provision of unsubsidized 4G LTE service in rural areas serve as an indicator that 5G mobile broadband service will be deployed in those areas absent subsidies? What metrics can the Commission consider to reliably identify rural areas that will not see unsubsidized 5G mobile broadband service? Over what time period should the Commission expect to see an unsubsidized 4G LTE network be replaced by 5G technology in rural areas, absent subsidies? Commenters should specifically address why subsidies are, or are not, necessary in areas that already have unsubsidized 4G LTE coverage. We also seek comment on how we can balance our objective to provide support for the provision of 5G mobile broadband service in all areas where people live, work, and travel with our obligation to be a fiscally responsible steward of our limited universal service funds and our commitment to prevent overbuilding. What are the costs and benefits of

[36] *See, e.g.,* Ely Portillio, *Who's on the wrong side of the digital divide in NC — and how are rural communities affected?* (Jul. 19, 2023), https://www.wfae.org/race-equity/2023-07-19/whos-on-the-wrong-side-of-the-digital-divide-in-nc-and-how-are-rural-communities-affected (last visited Sept. 18, 2023); Zach Fischer, *Rural Iowa a broadband desert: No streaming, no Zoom* (Jun. 21, 2023), https://www.ourquadcities.com/news/state-news/iowa-news/rural-iowa-a-broadband-desert-no-streaming-no-zoom/ (last visited Sept. 18, 2023).

[37] This estimate is based on overlapping provider-reported BDC mobile availability data as of December 31, 2022, depicting coverage based on in-vehicle, mobile environment, on broadband serviceable locations. The Broadband Serviceable Location Fabric (Fabric) is a dataset of all locations in the United States and its Territories where fixed broadband Internet access service can be installed. *See* 47 CFR § 1.7007(a); *see also* 47 U.S.C. § 642(b)(1)(A)(i). The Fabric contains geocoded information for each such location and is the foundation upon which all data relating to the availability of fixed broadband Internet access service collected in the BDC is overlaid. *See* 47 CFR § 1.7007(a)(1)-(4); *see also* 47 U.S.C. § 642(b)(1)(B)(i)-(iv). Specifically, service providers express fixed broadband availability in the BDC in terms of which particular Fabric locations can be served. The Fabric therefore represents the universe of locations to which fixed broadband service can be provided, and the semi-annual BDC tells us which locations have fixed broadband service available, and which do not. Locations are treated as lacking coverage if they fall outside (the latitude/longitude coordinates are not covered by) the areas reported by providers as having coverage available with the relevant technology, speed, and environment. Mobile availability based on coverage in an outdoor stationary environment results in a smaller number of locations, 6 million, that lack 5G coverage at speed thresholds of 7/1 Mbps.

deployment of 5G mobile broadband service in areas lacking both 4G LTE and 5G mobile broadband service relative to deployment of 5G to areas lacking only 5G service? We seek comment on which definition of eligible areas best ensures that the Commission will not subsidize areas that will otherwise see competitive, market-based deployments of 5G mobile broadband networks.

17. We also seek comment on the appropriate 4G LTE and 5G speed thresholds to use as the benchmark for determining areas eligible for support in the 5G Fund Phase I auction under either the previously adopted or a modified definition of eligible areas. Specifically, we seek comment on using speed thresholds of 5/1 Mbps with respect to 4G LTE service[38] and 7/1 Mbps for 5G service as the benchmark when determining areas eligible for support in the 5G Fund Phase I auction.[39] Under this approach, if we continue to use the definition of eligible areas adopted in the *5G Fund Report and Order*, we would exclude from eligibility for 5G Fund support areas where unsubsidized 4G LTE service and unsubsidized 5G service is available at speed thresholds of at least 5/1 Mbps and at least 7/1 Mbps, respectively. Or, if we modify the definition of eligible areas to be those that lack unsubsidized 5G service, we would exclude from eligibility for 5G Fund support areas where unsubsidized 5G service is available at speed thresholds of at least 7/1 Mbps. We seek comment on using these speed thresholds.

18. The Commission requires that the coverage maps submitted by providers in the BDC predict 4G LTE and 5G coverage based on both outdoor stationary and in-vehicle mobile environments.[40] An outdoor stationary environment typically results in a larger coverage footprint than an in-vehicle mobile environment. We seek comment on which environment to use when determining the areas eligible for 5G Fund support under whichever definition we use to determine areas eligible for the 5G Fund Phase I auction.

19. Because we seek to direct 5G Fund Phase I support to areas where people live, work, and travel, regardless of the definition we use to identify the areas eligible for the 5G Fund Phase I auction, we seek comment on limiting eligible areas to those that contain locations[41] and/or roads. We seek comment on limiting eligible areas to those that contain locations as identified through the BDC and/or roads. Under this approach, we would use road data from OpenStreetMap, and we seek comment on which categories of roads should be considered in determining eligible areas. We also seek comment on

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[38] The BDC collects 4G LTE coverage areas based on speed thresholds of 5/1 Mbps in accordance with the Broadband DATA Act. *See* 47 U.S.C. § 642(b)(2)(B)(ii) (establishing minimum speeds of 5/1 Mbps for 4G LTE services as a requirement of demonstrating coverage).

[39] The BDC collects 5G coverage areas based on speed thresholds of both 7/1 Mbps and 35/3 Mbps. *See BDC Second Report and Order*, 35 FCC Rcd at 7479-80, para. 45. In the *5G Fund Report and Order*, the Commission adopted a minimum baseline performance requirement for 5G Fund support recipients to deploy 5G-NR service with median speeds of at least 35/3 Mbps and speeds of 7/1 Mbps at the cell edge. *5G Fund Report and Order*, 35 FCC Rcd at 12206, para. 78. Consistent with the Commission's rationale in the *Mobility Fund Phase II Report and Order* with respect to determining eligible areas, we do not believe it would be advisable to use the same 35/3 Mbps speed thresholds for determining areas eligible for 5G Fund support that we will require of 5G Fund support recipients for determining compliance with their performance requirements. *See Mobility Fund Phase II Report and Order*, 32 FCC Rcd at 2173, para. 51 & n.129 (rejecting the use of the 10/1 Mbps speed thresholds for determining area eligibility required of Mobility Fund Phase II support recipient for determining compliance with their performance requirements). Moreover, we expect that a speed threshold of 7/1 Mbps reflects the minimum desired typical mobile user experience across broad 5G coverage areas. *BDC Second Report and Order*, 35 FCC Rcd at 7480, para. 45.

[40] *See BDC Second Report and Order*, 35 FCC Rcd at 7481-82, para. 48 ("We also require that propagation maps submitted by providers predict outdoor coverage, which should include both (1) on-street or pedestrian stationary usage and (2) in-vehicle mobile usage.").

[41] We would determine the areas that contain locations using the Fabric. Having the Fabric through the BDC enables us to do this at a granular level.

whether we should use an alternate source of road data and why. In order to limit eligible areas in this manner, we would need to designate the geographic areas that contain locations and/or roads.

20. Under this approach, we would use the H3 hexagonal geospatial indexing system (H3 system) to identify specific geographic areas eligible for 5G Fund support.[42] The Wireless Telecommunications Bureau (WTB), OEA, and the Office of Engineering and Technology (OET) adopted the H3 system to identify geographic areas where a challenge to a provider's mobile BDC availability data can be created based on the point locations of on-the-ground challenger speed tests.[43] The H3 system has also been adapted to the Commission's National Broadband Map to divide the map into specific geographic areas and show the percentage of a hexagon that is "covered" (i.e., where a provider has claimed it can make broadband available) at different resolutions and levels of granularity as a user zooms in or out on the map.[44] Mobile broadband coverage is displayed down to the resolution-9 hexagon level (hex-9) on the map, and data on such coverage is made available for download based on hex-9s. Because of its nested structure, using the H3 system allows the Commission to categorize geographic areas at multiple levels of granularity.[45]

21. We would then convert the areas eligible for 5G Fund support to, and make them available in the form of, H3 hexagonal units, specifically as hexagons at resolution 9. As opposed to "raw" coverage footprints based on propagation model output, which do not conform to any defined boundary, hex-9s are standardized and can be clearly identified and referenced. Because hex-9s are relatively small, with an average area of approximately 0.1 square kilometer,[46] any reduction in map resolution when converting from raw propagation model output (as filed by providers) to hex-9s is minimal. We believe the use of hex-9s can strike the appropriate balance between the benefits of their use and this loss in granularity, particularly given that the data as filed are based on models of coverage. As is the case with the data available on the National Broadband Map, if any part of the hex-9 is overlapped by the relevant mobile coverage area, then we would consider the entire hex-9 as covered or

[42] H3 is an open-source GIS dataset developed by Uber Technologies, Inc., that overlays the globe with hexagonal cells of different sizes at various resolutions, from zero to 15. *See* Isaac Brodsky, *H3: Uber's Hexagonal Hierarchical Spatial Index*, (June 27, 2018), https://eng.uber.com/h3/ (last visited Sept. 18, 2023). The smallest hexagonal cells are at resolution 15, in which the average hexagonal cell has an area of approximately 0.9 square meters, and the largest are at resolution 0, in which the average hexagonal cell has an area of approximately 4.25 million square kilometers. *See id.* The H3 system is designed with a nested structure wherein a lower resolution cell (the "parent" hexagon) contains approximately seven hexagonal cells at the next higher resolution (its "children" where each "child" is a smaller, nested hexagon), which fit approximately within the "parent" hexagon. *See id.* ("H3 supports sixteen resolutions. Each finer resolution has cells with one seventh the area of the coarser resolution. Hexagons cannot be perfectly subdivided into seven hexagons, so the finer cells [i.e., the 'children'] are approximately contained within a parent cell. The identifiers for these child cells can be easily truncated to find their ancestor cell at a coarser resolution, enabling efficient indexing.").

[43] *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3031-32, para. 41. WTB, OEA, and OET adopted the H3 system for use in the BDC mobile verification process. *Id.* at 3058, para. 94.

[44] *See generally FCC National Broadband Map*, https://broadbandmap.fcc.gov/home?version=dec2022 (last visited Sept. 18, 2023).

[45] *See* ESRI, *Why Hexagons?*, https://pro.arcgis.com/en/pro-app/latest/tool-reference/spatial-statistics/h-whyhexagons.htm (last visited Sept. 18, 2023) ("Hexagons reduce sampling bias due to edge effects of the grid shape, this is related to the low perimeter-to-area ratio of the shape of the hexagon. A circle has the lowest ratio but cannot tessellate to form a continuous grid. Hexagons are the most circular-shaped polygon that can tessellate to form an evenly spaced grid."). Tessellations (i.e., the arrangement of shapes closely fitted together, such as polygons in a repeated pattern without gaps or overlapping) with large hexagons "suffer less distortion due to the curvature of the [E]arth." *Id.* The orientation of a hexagon matters less as compared with squares and rectangles. *Id.*

[46] H3, *Table of Cell Areas for H3 Resolutions*, https://h3geo.org/docs/core-library/restable/ (last visited Sept. 18, 2023).

served by that coverage area for purposes of generating the areas eligible for 5G Fund support. We seek comment on this approach, as well as the use of the H3 geospatial indexing system generally, and the hex-9 resolution specifically, as the basis for identifying specific geographic areas that are eligible for 5G Fund support.

22. We also seek comment on other factors we should consider in determining the areas eligible for 5G Fund support, such as whether to include Urbanized Areas, water-only areas, and/or inaccessible areas.[47]

23. Regardless of how we define eligible areas, we propose to use as the basis for the final eligible areas the version of the mobile availability data published on the National Broadband Map no later than 30 days prior to the start of bidding. This version will reflect updates filed by providers as the result of resolved challenges and other corrections and published on the map by that date.[48]

A. Puerto Rico and the U.S. Virgin Islands

24. As a result of the devastation to the communication networks in Puerto Rico and the U.S. Virgin Islands caused by Hurricanes Irma and Maria in September 2017, the Commission took immediate steps to make emergency funding available for the restoration of mobile communications on these islands, and subsequently adopted funding mechanisms to restore and rebuild mobile networks there.[49] In the *5G Fund Report and Order*, the Commission therefore excluded areas in Puerto Rico and the U.S. Virgin Islands from eligibility for 5G Fund support because the Commission was already providing high-cost support, including support for 5G mobile broadband, through the Bringing Puerto Rico Together Fund and the Connect USVI Fund.[50]

25. In its 2019 *PR-USVI Stage 2 Order*, the Commission adopted a three-year funding period and budgets for Stage 2 of the Bringing Puerto Rico Together Fund and the Connect USVI Fund pursuant to which carriers could elect to receive up to 75% of the support for which they are eligible to restore, harden, and expand their networks using 4G LTE or better technology capable of providing service at speeds of at least 10/1 Mbps, and up to 25% of the support for which they are eligible to deploy 5G

[47] For example, some areas contain only private roads that are not accessible to the public.

[48] We expect to provide a preview of the eligible areas based on the most recent version of the data that has been published prior to release of the public notice seeking comment on auction procedures.

[49] *Connect America Fund*, WC Docket No, 10-90, Order, 32 FCC Rcd 7981, 7981, 7983, 7985, paras. 1, 3, 7, 14-15 (2017) (directing USAC to make available, at the carrier's election, a single advance payment of up to seven months of high-cost support to facilitate expeditious restoration of essential communications services); *The Uniendo a Puerto Rico Fund and the Connect USVI Fund; Connect America Fund,* WC Docket Nos. 18-143, 10-90, and 14-58, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 5404, 5408, 5423-24, paras. 13, 82 (2018) (establishing the two stages of the Bringing Puerto Rico Together Fund and the Connect USVI Fund, providing immediate Stage 1 support to help restore voice and broadband service on the islands following the devastation to the communications networks caused by Hurricanes Irma and Maria, and proposing to carve Puerto Rico and the U.S. Virgin Islands out from the Mobility Fund Phase II auction and instead provide support under Stage 2 of the Funds to rebuild, improve, and expand voice and broadband networks on the islands in the longer term); *The Uniendo a Puerto Rico Fund and the Connect USVI Fund; Connect America Fund,* WC Docket Nos. 18-143, 10-90, and 14-58, Report and Order and Order on Reconsideration, 34 FCC Rcd 9109, 9162-63, 9165, paras. 101, 110 (2019) (*PR-USVI Stage 2 Order*) (adopting a three-year funding period and budget for Stage 2 mobile support under the Bringing Puerto Rico Together Fund and the Connect USVI Fund as an alternative to mobile high-cost support).

[50] *5G Fund Report and Order*, 35 FCC Rcd at 12182-83, para. 19. The Commission also excluded from eligibility for the 5G Fund areas in Alaska for which high-cost support is provided via the mobile portion of the Alaska Plan. *Id.*; *see also Connect America Fund; Universal Service Reform – Mobility Fund; Connect America Fund – Alaska Plan,* WC Docket No. 10-90, et al*.,* 31 FCC Rcd 10139, 10159-60, 10163-66, paras. 66, 72, 75, 80 (2016) (adopting an Alaska Plan for mobile carriers as a comprehensive alternative plan for providing high-cost mobile support to competitive ETCs offering mobile service to consumers in remote Alaska over a 10-year term of support term).

mobile networks capable of providing service at speeds of at least 35/3 Mbps.[51] The Commission noted that it expected to establish a competitive funding mechanism for the long-term expansion of advanced telecommunications access and next generation wireless services for Puerto Rico and the U.S. Virgin Islands by the conclusion of Stage 2.[52] Stage 2 mobile support under the Bringing Puerto Rico Together Fund and the Connect USVI Fund was scheduled to conclude at the end of June 2023; however, the Commission adopted a transitional support period of up to 24 months to allow eligible mobile carriers currently receiving Stage 2 mobile support to continue receiving support to harden their networks as the Commission works to develop a long-term funding mechanism.[53] The Commission stated in the *Transitional Support Report and Order* that transitional support would end sooner than 24 months if such a long-term funding mechanism were established before the transition period ends.[54]

26. At the time of Hurricanes Irma and Maria, the Mobility Fund Phase II auction had not yet taken place. Moreover, the Commission has since replaced Mobility Fund Phase II with the 5G Fund. Accordingly, now, as the Commission transitions from providing restorative support to mobile carriers in Puerto Rico and the U.S. Virgin Island to repair and harden their networks to offering support to mobile carriers to deploy high-speed 5G mobile services in areas that that would otherwise not see such services absent subsidies, we seek comment on whether to make 5G Fund support available to areas in Puerto Rico and the U.S. Virgin Islands meeting the eligible areas definition, subject to the same terms and conditions as 5G Fund support awarded in other eligible areas. Alternatively, should the Commission instead explore a dedicated long-term funding mechanism for support for mobile services on these islands? Commenters should explicitly explain whether, having been provided support under a dedicated mechanism for the last several years, it is now appropriate to view the funding needs for support for mobile broadband services in Puerto Rico and the U.S. Virgin Islands through the same lens as other areas eligible for mobile support.

IV. 5G FUND BUDGET

27. In the *5G Fund Report and Order*, the Commission adopted a budget of $9 billion for the 5G Fund, which incorporated and repurposed the $4.53 billion originally budgeted for Mobility Fund Phase II.[55] In establishing the 5G Fund budget, the Commission recognized that extending deployment of 5G networks would require significant expenditures.[56] Nonetheless, the Commission was mindful of its obligation to balance the objectives of the 5G Fund with its obligation to exercise fiscal responsibility by avoiding excessive subsidization, recognizing that the cost of subsidies distributed under the 5G Fund would ultimately be borne by consumers and businesses.[57] Accordingly, the Commission adopted a reverse auction mechanism to ensure that funds from the available budget would be spent as efficiently and effectively as possible.[58]

28. We take this opportunity to ask if there are significant reasons to modify the budget, and if so, by how much. We note that none of the parties that commented on the *5G Fund NPRM* proposed an alternative amount for the 5G Fund budget, and no party sought reconsideration of the $9 billion budget that the Commission adopted. Some commenters, however, suggested that the 5G Fund budget should be

[51] *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9163, paras. 101-02.

[52] *Id.* at 9163, para. 102.

[53] *The Uniendo a Puerto Rico and the Connect USVI Fund; Connect American Fund,* Report and Order and Order on Review, FCC 23-32, at 2, 6-7, paras. 1, 14-17 (Apr. 19, 2023) (*Transitional Support Report and Order*).

[54] *Id*. at 7-8, paras. 19-20.

[55] *5G Fund Report and Order*, 35 FCC Rcd at 12185, para. 28.

[56] *Id.* at 12186, para. 29.

[57] *Id*. at 12186, para. 30 (citing 47 U.S.C. § 254).

[58] *Id.* at 12184, para. 24.

increased to an amount that would be sufficient to deploy 5G networks to all eligible areas.[59] Subsequently, other parties, in *ex parte* communications and other filings, echoed the assertion that the budget was insufficient, with several citing to a 5G mobility cost model placed in the record by the Competitive Carriers Association.[60]

29. We ask those commenting on the budget to keep in mind the reasons underlying the Commission's adoption of a reverse auction—the auction uses competition across areas and within areas to determine which areas will receive support, in what amounts, and which entities will receive that support, all within the available budget. This ensures that as many units as possible can be covered within the budget at prices the winning bidders have agreed to accept, consistent with our fiscal responsibilities. As a threshold matter, basing the budget on the estimated cost of serving all areas (however estimated, according to a model such as that submitted in the record[61] or any other method) conflicts with the rationale for using a reverse auction—that is, of spending available funds cost-effectively. Even if we were willing to increase universal service contributions to raise such funds[62]—and we are not—establishing a budget based on total estimated costs would not result in support amounts that are competitive but still acceptable to the providers, as a reverse auction does.[63] With respect to using a cost model to determine reserve amounts, i.e., maximum bid amounts, also as suggested in the record,[64] we do not believe such a process is needed to determine a uniform starting clock price in dollars per adjusted square kilometer that would apply to all areas.[65, 66]

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[59] *See, e.g.*, Coalition of Rural Wireless Carriers Comments at 22-24; Trevor Eisnaugle Express Comments; AST&Science Comments at 26 (supporting a $9 billion budget as it represents a good start, but stating that it is ultimately unlikely to be sufficient to bring 5G service to all rural areas that lack 4G or 5G service).

[60] *See* Letter from Alexi Maltas, SVP & General Counsel, Competitive Carriers Association, to Marlene Dortch, FCC, GN Docket No. 20-32, *Ubiquitous Mobile Connectivity: A Plan for Nationwide 5G*, Whitepaper, Competitive Carriers Association (November 2021), and CostQuest Associates, *CostQuest National 5G Model: Methodology, Understanding the Costs to Deploy and Serve Unserved Areas Across the U.S. with 5G Mobile Broadband* (Nov. 2021) (filed Nov. 23, 2021) (*CCA 5G Mobility Cost Model Ex Parte Filing*); Letter from Carri Bennet, General Counsel, Rural Wireless Association, Inc., to Marlene Dortch, FCC, GN Docket No. 20-32, at 2 (filed Jan. 17, 2023); Letter from Carri Bennet, General Counsel, Rural Wireless Association, Inc., to Marlene Dortch, FCC, GN Docket No. 20-32, at 1-2 (filed May 30, 2023) (*RWA May 30, 2023 Letter*); Letter from David A. LaFuria, Counsel for Coalition of Rural Wireless Carriers, to Marlene Dortch, FCC, GN Docket No. 20-32, at 1-2 (filed July 19, 2022); Letter from Angela Simpson, Competitive Carriers Association, to Marlene Dortch, FCC, GN Docket No. 20-32, at 1 (filed Feb. 2, 2023); AST&Science Reply Comments, WC Docket No. 21-476, at 4-5 (filed Mar. 17, 2022).

[61] *See CCA 5G Mobility Cost Model Ex Parte Filing* at 2 (stating that the adopted 5G Fund budget will fall short of supporting nationwide 5G).

[62] *See id.* (estimating that a total investment of $36 billion is needed to ensure ubiquitous 5G service).

[63] *See 5G Fund Report and Order,* 35 FCC Rcd at 12184, para. 23.

[64] *RWA May 30, 2023 Letter* at 1.

[65] *See infra* Section V.A., in which we seek comment on using a support unit metric different than the adjusted square miles metric the Commission adopted in the *5G Fund Report and Order*. If a different support unit were to be adopted, the starting/reserve price and the clock price would be denominated in dollars per that new unit.

[66] Moreover, we disagree with the assertion that "a reverse auction without [area-specific] reserve prices is likely to provide excessive support in areas with few applicants." Letter from Carri Bennet, General Counsel, Rural Wireless Association, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 20-32 (filed Nov. 23, 2022). The reverse auction format previously used by the Commission and adopted for the 5G Fund incorporates competition across areas, which lowers the support price for all areas before assigning support to any areas. Further, even if there is only one other bidder for a given area, the support price will be lowered still further. That is, under the basic reverse auction format, the support clock price applicable to all areas would begin high and descend in discrete rounds. In

(continued….)

30. In seeking comment on the budget, we ask commenters to provide specific examples of any fundamental factors that have changed since the *5G Fund Report and Order* was adopted. Commenters should also explain how any such factors are significant enough to warrant allocating more Universal Service Fund (USF) monies to the 5G Fund.[67] Should any change in the budget affect both phases of the 5G Fund, and if so, how? We also ask, if the budget is modified, whether the size of the Tribal reserve budget as previously adopted should also change, and if so, how.

31. We remind those commenting on the 5G Fund budget that the Commission is obligated to distribute universal service funds in the most cost-efficient way possible and that arguments that focus solely on estimates do not take into account the Commission's obligation to balance the cost of subsidies with the additional burden that such increased expenditures would impose on the consumers and businesses that fund the subsidies. Therefore, commenters advocating for an increased budget should consider and address the source of any funds potentially allocated to the 5G Fund.

32. We also seek comment on whether any adjustments to the 5G Fund budget would be necessary if the 5G Fund were to become the long-term funding mechanism for Puerto Rico and the U.S. Virgin Islands and areas in Puerto Rico and the U.S. Virgin Islands meeting the eligible areas definition are eligible for 5G Fund support.

V. ACCEPTING BIDS AND IDENTIFYING WINNING BIDS

A. Metric for Accepting Winning Bids and Identifying Winning Bids

33. In the *5G Fund Report and Order*, the Commission decided that it would accept bids and identify winning bids in the 5G Fund auctions using a support price per adjusted square kilometer.[68] Under this metric, each eligible area would be associated with a number of units equal to the square kilometers of the area multiplied by an adjustment factor based on a number of area-specific characteristics, including terrain and elevation, and demand-related factors, such as income, gross domestic product (GDP), and population density.[69] Adjustment factor values ranged from 1 to 3.8, with higher adjustment factors associated with more sparsely populated areas and/or forested and mountainous areas and lower average incomes.[70] However, the Commission also determined that the 5G Fund auction would wait for the more precise data on "areas of the country where support is most needed and will be spent most efficiently" that would be forthcoming from the BDC.[71]

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each round, bidders will indicate their willingness to accept support for an area at iteratively lower clock prices. When the total amount of support requested by bidders (counting an area only once) falls to an amount that can be accommodated within the budget, the areas that still have bids will receive support. Areas with a single remaining bidder will be supported at the "clearing price." If there are areas where more than one bidder is still competing, the support clock price will continue descending until a single bidder remains, which will be supported at that price.

[67] The Commission adopted an overall budget of $9 billion for the 5G Fund to be awarded in two phases, with up to $8 billion for Phase I, of which it reserved $680 million of support for service to Tribal lands, and at least $1 billion in Phase II. *5G Fund Report and Order*, 35 FCC Rcd at 12185, para. 28.

[68] *Id.* at 12194-95, para. 48.

[69] *See id*. at 12194-95, 12196-97, 12197-98, paras. 48, 54-55, 57-58; *see also Office of Economics and Analytics and Wireline Competition Bureau Adopt Adjustment Factor Values for the 5G Fund*, Public Notice, GN Docket 20-32, 35 FCC Rcd 12975, 12976-77, 12979, paras. 4-5, 8 (OEA/WCB 2020) (*Adjustment Factor Values Public Notice*); *Office of Economics and Analytics and Wireline Competition Bureau Seek Comment on Adjustment Factor Values for the 5G Fund*, GN Docket No. 20-32, Public Notice, 35 FCC Rcd 5704, 5706-11, 5714-49, paras. 6-17, Appendices A and B (OEA/WCB 2020) (*Adjustment Factor Values Comment Public Notice*).

[70] *Adjustment Factor Values Public Notice*, 35 FCC Rcd at 12976-77, para. 5 & Fig. 1.

[71] *5G Fund Report and Order*, 35 FCC Rcd at 12976, para. 4.

34. As discussed above, we seek comment on limiting eligible areas to resolution-9 H3 hexagons that have locations and/or roads. If we were to limit eligible areas to resolution-9 H3 hexagons that have locations and/or roads, we would use a bidding and support price metric based on dollars per square kilometer for those eligible areas. Accordingly, the support amount for an area would be determined as the number of square kilometers associated with the area times the price at which support is assigned. We seek comment on whether we should use the adjustment factor as previously adopted. The adjustment factor was designed to equalize the cost of serving all areas, so that it would be equally likely that particularly costly areas (defined, in part, by low population density and difficult terrain) and areas that can be served more cost-effectively would win support.[72] Moreover, we seek comment on whether a support unit in terms of square kilometers alone—absent the adjustment that would have given priority to areas with low incomes, low population density, and costly terrain—would, to the greatest extent possible, promote our goal of providing 5G coverage to places where people live, work, and travel. We also seek comment on whether we should adopt an alternative approach that would provide some advantage to particularly costly areas that nonetheless are areas with a considerable number of homes, business, and other locations, and/or roads that are frequently travelled. Could parameters for an alternative approach be determined without unduly delaying the auction?

35. As an alternative to using dollars per square kilometer as the bidding and support price metric, we also seek comment on using a bidding and support price metric based on the number of locations in the eligible areas. If we were to adopt this metric, eligible areas would be associated with a number of such locations in the area; the clock would announce prices in terms of dollars per location; and support amounts would be calculated as the number of locations in the area times the support price per location.

36. We also seek comment on potentially incorporating the number of unserved road miles in an area, as well as the number of locations, into the bidding and support price metric. What source of road data and which road categories should we use? How could we do so in a way that would appropriately balance unserved road miles and unserved locations in a single metric? For example, could we adjust the number of locations upward by a fraction, e.g., 25%, in an area with a moderate number of unserved road miles, and by a larger fraction, e.g., 40%, if the area has a large number of unserved road miles? Or, would a metric that is a weighted sum of unserved locations and unserved road miles be appropriate? For example, a metric might be the total of the number of unserved locations and one half of the number of unserved road miles. If we were to use such a hybrid metric, would covering an unserved road mile be more or less preferred than covering a location? How would we determine the appropriate weights? Commenters should keep in mind that the weights would not have to be precisely calculated, but simply represent the extent to which the auction mechanism would put a "finger on the scale."

37. Limiting eligible areas to those areas that have unserved road miles and/or unserved locations would reflect our goal of providing support to areas where people live, work, and travel. If we use a bidding and support metric of dollars per square kilometer, are there other ways to incorporate incentives to bid for areas covering unserved locations and road miles, such as by requiring winning bidders' support obligations to include unserved locations and road miles? A bidder would know the extent of its obligations in advance of the auction and could adjust accordingly the amount of support in terms of dollars per square kilometer that it is willing to accept. Are there other ways to encourage coverage of locations and road miles without explicitly incorporating them into the metric? Commenters should consider that a suggested approach should be transparent and straightforward to measure.

38. We also seek comment on a possible metric based on predicted usage from serving eligible areas. This metric would consider all measurable factors that can affect mobile usage, such as

[72] *5G Fund Report and Order*, 35 FCC Rcd at 12196-99, paras. 54-60. For a detailed explanation of the adjustment factor, *see Adjustment Factor Values Comment Public Notice*, 35 FCC Rcd 5706-11, 5714-49, paras. 6-17, Appendices A and B.

unserved locations, road miles, and areas with parks or wilderness where devices are likely to be used. For such an approach, we would need to consider what data are available that would enable us to make useful predictions of usage. If we were to use this usage-based approach, how should usage be measured? One possible measure of usage would be the average number of connected 5G devices in 15-minute periods throughout the day. Another possible measure of usage would be total megabytes of data usage during a reporting period. Similar to the approaches used to generate the adjustment factor that was adopted in the *5G Fund Report and Order*,[73] such data could be used in a regression or another modeling approach to generate weights for each eligible area based on predicted usage.

A. Minimum Geographic Area for Bidding

39. In the *5G Fund Report and Order*, the Commission concluded that "the minimum geographic area for bidding—i.e., the geographic area by which areas eligible for support for 5G Fund support will be grouped for bidding—in a 5G Fund auction will be no larger than a census tract and no smaller than a census block group, as designated by the U.S. Census Bureau."[74] Census tracts and census block groups are practical units for aggregation when starting with census blocks, as, for example, in the Rural Digital Opportunity Fund.[75] As discussed above, we would convert the areas eligible for the 5G Fund to, and make them available in the form of, hex-9s. We can then group the eligible hex-9s into larger geographic areas for purposes of bidding. For example, we could have the geographic bidding unit be all of the eligible hex-9s that overlap a census tract or census block group. Alternatively, eligible hex-9s could be aggregated to another geographic area, such as the H3 hexagonal geospatial indexing system resolution-5 hexagon level (hex-5s). We seek comment on what aggregation scheme would be an efficient and appropriate way to group eligible hex-9s for bidding.[76]

VI. COMPLIANCE WITH 5G FUND PUBLIC INTEREST OBLIGATIONS AND PERFORMANCE REQUIREMENTS

A. Metric for Measuring Compliance with 5G Fund Public Interest Obligations and Performance Requirements

40. The Commission adopted interim and final service deployment milestones for 5G Fund support recipients in the *5G Fund Report and Order* to ensure that they meet their public interest obligations and performance requirements in areas where they receive support.[77] Our proposal to use dollars per square kilometer as the bidding and support price metric is consistent with this approach. If we decide to modify the bidding and support price metric for the 5G Fund auctions to use a metric that targets locations (and possibly road miles), as discussed above, we would need to make corresponding modifications to the rules adopted in the *5G Fund Report and Order* concerning the metric that would be used to measure a 5G Fund support recipient's compliance with its public interest obligations and performance requirements.

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[73] *Adjustment Factor Values Public Notice*, 35 FCC Rcd at 12976-77, 12979, paras. 4-5, 8; *Adjustment Factor Values Comment Public Notice*, 35 FCC Rcd 5704, 5706-11, paras. 6-17, Appendices A and B.

[74] *5G Fund Report and Order*, 35 FCC Rcd at 12195, para. 50.

[75] *Rural Digital Opportunity Fund; Connect America Fund*, Order, WC Docket Nos. 19-126 and 10-90, 35 FCC Rcd 686 (2020), paras. 9-13; *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 (2020), para. 22.

[76] If we were to adopt an alternative method of aggregating eligible areas for bidding, we would delegate authority to OEA, WCB, and WTB to determine during the pre-auction process how best to implement it in a manner that is suitable for auction procedures.

[77] *5G Fund Report and Order*, 35 FCC Rcd at 12204, 12205-06, paras. 73-74, 77; *see* 47 CFR §§ 54.1015, 54.1019, 54.1020.

41. Under this approach, if we adopt a different bidding and support price metric, we would likely adopt the same metric for measuring compliance.[78] For example, if we were to use a locations-based metric without a road miles component, we would measure compliance based on a support recipient deploying service that meets the 5G Fund performance requirements to a specified percentage of the total locations within the eligible areas for which it is authorized to receive 5G Fund support in a state by the relevant interim service milestone and the final service milestone. Or, if we were to use a hybrid metric that incorporates locations and road miles, we would measure compliance based on a support recipient deploying service that meets the 5G Fund performance requirements to a specified percentage of the total unserved locations and a specified percentage of the total unserved road miles within the eligible areas for which it is authorized to receive 5G Fund support in a state by the relevant interim service milestone and the final service milestone.

42. We seek comment on our approach to harmonizing the metric we use to measure a 5G Fund support recipient's compliance with its public interest obligations and performance requirements should we decide to modify the bidding and support price metric adopted in the *5G Fund Report and Order*.

43. We also seek comment on whether, in determining the metric we use to measure a 5G Fund support recipient's compliance with its public interest obligations and performance requirements, we should also consider how any such metric might allow us to account for the impact of the Broadband Equity, Access, and Deployment (BEAD) Program and other federal and state broadband infrastructure investments, if any, on the deployment of mobile broadband. Given that the BEAD Program does not provide funding for mobile broadband deployment,[79] we seek comment on whether our proposals herein, together with the rules and procedures already adopted for the 5G Fund, are sufficient to ensure that the Commission efficiently and effectively facilitates the deployment of mobile broadband service to those areas where support is most needed. Furthermore, we seek comment on whether the use of a metric that targets locations and/or road miles to measure a 5G Fund support recipient's compliance with its public interest obligations and performance requirements provides us with the ability to determine if, and how, mobile broadband deployment supported through the 5G Fund complements other federally funded buildout efforts and investments in broadband infrastructure. Finally, we seek comment on steps we can take to ensure that any final decision here is taken in coordination and with due consideration for the other various broadband infrastructure funding initiatives underway.

A. Methodologies for Demonstrating Compliance with 5G Fund Performance Requirements

44. In the *5G Fund Report and Order*, the Commission decided to generally align the framework for 5G Fund support recipients' demonstration of compliance with their 5G Fund interim and final performance requirement milestones with the BDC, concluding that standardizing the data required for compliance reporting was likely to ease the burden on support recipients throughout universal service programs, while collecting sufficient data to confirm that the 5G Fund's requirements have been met.[80] To that end, the Commission adopted a requirement that 5G Fund support recipients certify at the established interim and final service deployment milestones that their 5G mobile broadband coverage data reflects deployments in the eligible areas for which they are authorized to received 5G Fund support, and also adopted a requirement that 5G Fund support recipients conduct on-the-ground measurement tests to

[78] An exception to this would be if we adopt an alternative approach to encouraging coverage of unserved road miles by using a metric based on locations alone, but require coverage of road miles as well as locations as part of the winner's obligations, as mentioned in Section V, above.

[79] *Report to Congress* at page 30, para. 54. *See also* National Telecommunications and Information Administration, *Broadband Equity, Access, and Deployment Program*, Notice of Funding Opportunity, (2022), https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf (last visited Sept. 18, 2023).

[80] *5G Fund Report and Order*, 35 FCC Rcd at 12233-12234, paras. 143, 145.

substantiate their 5G broadband coverage data pursuant to methodologies for conducting such testing and validating the test results and file that data in the BDC portal.[81] With respect to the methodologies for conducting on-the-ground tests, the Commission decided that a 5G Fund support recipient must submit on-the-ground measurement tests with at least three tests conducted per square kilometer, measured by overlaying a uniform grid of one square kilometer (1 km by 1 km) on its submitted 5G coverage maps within the area for which 5G Fund support was awarded in a percentage of all drive-testable grid cells where the recipient reports deployment of 5G service by the applicable service deployment milestone.[82]

45. We propose to modify the methodologies that support recipients would use to substantiate their 5G broadband coverage certifications in the areas for which they receive 5G Fund support in order to be consistent with both our proposal above to use hexagonal areas as the basis for the areas eligible for 5G Fund support and the Commission's decision in the *5G Fund Report and Order* to generally align the framework for demonstrating compliance with 5G Fund performance requirement milestones with the BDC. Specifically, we propose requiring 5G Fund support recipients to use the methodologies adopted for the BDC mobile verification process as the basis for substantiating coverage and demonstrating compliance with the 5G Fund interim and final deployment milestones.[83] Under the requirements for the BDC mobile verification process, mobile providers can submit either on-the-ground test data or infrastructure data to verify coverage in response to a mobile verification request from the Commission.[84] The Commission may then use the infrastructure data to generate a predicted coverage area using propagation modeling software.[85] We seek comment on this proposal and, in particular, whether 5G Fund support recipients should be required to submit on-the-ground test data for areas that are accessible and infrastructure data for areas that are inaccessible. Should they submit infrastructure data sufficient to generate a "core coverage area," as defined in the BDC mobile verification process,[86] and on-the-ground test data for areas outside of such a core coverage area? Alternatively, should providers be allowed to submit either type of data regardless of the type of area in which they are deploying service?

46. If a provider chooses to submit on-the-ground test data in response to a BDC mobile verification request, it must provide such data based on a sample of on-the-ground tests that is statistically appropriate for the area tested.[87] The sampled area is based on H3 resolution-8 hexagonal areas, and the provider must submit the results of at least two tests within each hexagon, and the time of the tests must

[81] *Id*. at 12230-33, paras. 137-41. Rather than adopting customized 5G Fund testing requirements, the Commission decided to adopt test metrics, data specifications, and permitted testing applications that are at least as stringent as those adopted for governmental and third party challenges in the BDC as a minimum for the on-the ground tests required for the 5G Fund. *Id*. at 12231-32, para. 139.

[82] *Id.* at 12232, para. 140. The minimum percentage of drive-testable grid cells tested must equal the minimum percentage of coverage required for each service buildout milestone (i.e., 40%, 60%, 80%, 85%). *Id.*

[83] *See BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3054-68, paras. 86-113, for information on the BDC mobile verification process. The Commission adopted interim and final service deployment milestones for 5G Fund support recipients that require such recipients to deploy 5G service meeting the 5G Fund performance requirements to at least covering 40% of the areas for which they receive 5G Fund support in a state by the end of the third full calendar year following support authorization, to at least 60% of such areas by the end of the fourth full calendar year, to at least 80% of such areas after the fifth full calendar year, and to at least 85% of such areas after the sixth full calendar year. *5G Fund Report and Order*, 35 FCC Rcd at 12204, paras. 73-74.

[84] 47 CFR § 1.7006(c); *BDC Third Report and Order*, 36 FCC Rcd at 1146, para. 50.

[85] *See BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3063-64, paras. 104-05.

[86] *Id.* at 3064, para. 104.

[87] 47 CFR § 1.7006(c); *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3060-62, paras. 97-99.

be at least four hours apart, irrespective of date.[88] The tests are then evaluated to confirm, using a one-sided 95% statistical confidence interval, that the cell coverage is 90% or higher.[89] We propose to use a methodology for support recipients to demonstrate compliance with their 5G Fund performance requirement milestones that is similar to that adopted for the BDC mobile verification process, except that 5G Fund support recipients would not submit speed data based on a *sample* of areas, but for *all* supported areas subject to the on-the-ground testing requirement, and the area would be hex-9 instead of a hex-8. Under this approach, a 5G Fund support recipient's cumulative test data will be required to show that at least 90% of measurements report 5G service at download and upload speeds of at least 7/1 Mbps and median download and upload speeds of at least 35/3 Mbps, and that at least 90% of tests record data latency of 100 milliseconds or less at the cell edge, as adopted in the *5G Fund Report and Order* for each of the support recipient's interim and final deployment milestones.[90] We seek comment on this approach. Do commenters believe that more tests or fewer tests should be required within a hexagonal area? Should the tests be spaced further than four hours apart or closer together?

47. If a provider chooses to submit infrastructure data in response to a BDC mobile verification request, it must submit additional information beyond what is submitted as part of its biannual BDC availability data (propagation modeling details, as well as link budget and clutter data), including cell-site and antenna data for the targeted area.[91] We propose to require 5G Fund support recipients to submit the same additional infrastructure data as is required in the BDC mobile verification process to substantiate coverage in the areas for which they receive 5G Fund support. We seek comment on this approach.

VII. SCHEDULE FOR TRANSITIONING FROM MOBILE LEGACY HIGH-COST SUPPORT TO 5G FUND SUPPORT

48. In the *5G Fund Report and Order,* as part of its determination that the 5G Fund constitutes a comprehensive mechanism for mobile high-cost support that would serve as the alternative to Mobility Fund Phase II, the Commission concluded that it would commence the phase down of legacy mobile high-cost support in areas that are ineligible for 5G Fund support as soon as those areas were finalized.[92] In the Consolidated Appropriations Act of 2023, however, Congress amended the language that allowed the Commission to consider support mechanisms as alternatives to Mobility Fund Phase II to further provide that "any such alternative mechanism shall maintain existing high-cost support to competitive eligible telecommunications carriers until support under such mechanism commences."[93] Accordingly, we propose to treat the release of the public notice announcing the close of the 5G Fund Phase I auction to be the point at which support under the 5G Fund commences. We seek comment on this proposal. We also seek comment on whether the appropriations rider requires the Commission to modify or consider any other changes to aspects of its plan for transitioning from mobile legacy high-cost

[88] 47 CFR § 1.7006(c). The BDC rules provide that a provider must submit the results of at least two tests "unless, for any sampled hexagon, the provider has and submits alongside its speed tests actual cell loading data for the cell(s) covering the hexagon sufficient to establish that median loading, measured in 15-minute intervals, did not exceed the modeled loading factor for the one-week period prior to the verification inquiry, in which case the provider is required to submit only a single test for the sampled hexagon." *Id.*

[89] *Id*. For more details on the BDC methodology for verifying mobile coverage data, see the technical appendix in the *BDC Mobile Technical Requirements Order* and section 1.7006(c) of the Commission's rules. *Id.*; *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3084-106, Appx. A.

[90] *5G Fund Report and Order*, 35 FCC Rcd at 12232-33, para. 141.

[91] *See BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3063-64, para. 104.

[92] *5G Fund Report and Order*, 35 FCC Rcd at 12224-25, para. 123.

[93] *See* Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, Div. E, Title VI § 624, 136 Stat. 4459, 4702; *see also 5G Fund Report and Order*, 35 FCC Rcd at 12218-19, paras. 109-10 (discussing prior appropriations rider).

support to 5G Fund support. Commenters should provide support for any interpretation they offer and how the public interest is best served by any such interpretation.

VIII. CERTIFICATION OF NOTICE OF 5G FUND PHASE I AUCTION REQUIREMENTS AND PROCEDURES

49. We propose to adopt a requirement for the 5G Fund Phase I auction that each auction applicant certify, under penalty of perjury, that it has read the public notice adopting procedures for the auction, and that it has familiarized itself with those procedures and any requirements, terms, and conditions associated with receipt of 5G Fund support. As with other required certifications, an auction applicant's failure to make the required certification in its short-form application by the applicable filing deadline would render its application unacceptable for filing, and its application would be dismissed with prejudice.[94]

50. Prior to the deadline by which an interested party must submit a short-form application to participate in a given auction, a public notice is released announcing the procedures for the auction. This "Procedures Public Notice" describes in detail both the requirements for participating in the auction and the procedures that will be used to conduct all stages of the auction. The Commission has a longstanding policy that expressly places a burden upon each applicant to be thoroughly familiar with the procedures, terms, and conditions contained in the relevant Procedures Public Notice and any future public notices that may be released in the auction proceeding.[95] In recent spectrum auctions we and OEA, in conjunction with WTB and the Media Bureau, have reinforced this policy by adopting, as part of the procedures for those auctions, a requirement that each auction participant certify, under penalty of perjury, that it has read the Procedures Public Notice for the auction in question, and that it has familiarized itself with the auction procedures and with the requirements related to the licenses made available for bidding.[96] In adopting this certification requirement for prior Commission auctions, we noted that it was intended to bolster applicants' efforts to educate themselves to the greatest extent possible about the procedures for auction participation and to ensure that, prior to submitting their short-form applications, applicants understood their obligation to stay abreast of relevant, forthcoming information.[97] We further reasoned that familiarity with the Commission's rules and procedures governing the auctions would help bidders avoid the consequences to them associated with defaults, which also cause harm to other applicants and the public by reducing the efficiency of the auction process and reducing the likelihood that the license or construction permit will be assigned to the bidder that

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[94] *See* 47 CFR § 1.21001(f)(2).

[95] *See, e.g., 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, WC Docket Nos. 19-126 and 10-90, Public Notice, FCC Rcd 6077, 6081, para. 7 (2020); *Tribal Mobility Fund Phase I Auction Rescheduled For December 19, 2013; Notice and Filing Requirements and Other Procedures for Auction 902*, AU Docket No. 13-53, Public Notice, 28 FCC Rcd 11628, 11647, para. 53 (2013).

[96] *See, e.g.*, *Auction of Flexible-Use Licenses in the 2.5 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 108*, AU Docket No. 20-429, Public Notice, 37 FCC Rcd 4370, 4381-83, paras. 24-28 (2022) (*Auction 108 Procedures Public Notice*); *Certification Adopted for Auction of Flexible-Use Service Licenses in the 3.45–3.55 GHz Band For Next-Generation Wireless Services,* AU Docket No. 21-62, Public Notice, 36 FCC Rcd 8444 (OEA/WTB May 19, 2021) (*Auction 110 Certification Public Notice*); *Auction of Construction Permits for Full Power Television Stations; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 112*, AU Docket No. 21-449, Public Notice, 37 FCC Rcd 1155, 1162-1163, paras. 19-23 (OEA/MB Feb. 10, 2022) (*Auction 112 Procedures Public Notice*).

[97] *Auction 108 Procedures Public Notice*, 37 FCC Rcd at 4382, para. 25; *Auction 110 Certification Public Notice*, 36 FCC Rcd at 8445, para. 4; *Auction 112 Procedures Public Notice*, 37 FCC Rcd at 1162, para. 20.

values it the most.[98] The Commission has also previously expressed in the context of spectrum auctions that the certification requirement will help ensure that an "auction applicant . . . has investigated and evaluated those technical and marketplace factors that may have a bearing on its potential use of any licenses won at auction."[99]

51. We believe that applicants for universal service support in the 5G Fund Phase I auction would benefit from a similar certification because, as is the case with our spectrum auctions, familiarity with the rules and procedures governing the 5G Fund Phase I auction would help bidders avoid the consequences to them associated with defaults, which also cause harm to other applicants and the public by reducing the efficiency of the auction process. We also believe that such certification would promote the integrity of and public confidence in the Commission's auction processes as well as ensure that 5G Fund Phase I support recipients are aware of and better prepared to comply with their public interest obligations and performance requirements. We therefore propose to adopt this requirement for the 5G Fund Phase I auction and seek comment on this proposal. We seek comment on any alternative procedures that could be implemented that would better ensure that an applicant has thoroughly reviewed the auction's procedures and considered all relevant factors that may affect its participation in the auction and use of any support for which it is the winning bidder.

IX. CYBERSECURITY AND SUPPLY CHAIN RISK MANAGEMENT

52. We seek comment on whether to require 5G Fund support recipients to implement cybersecurity and supply chain risk management plans as a condition of receiving 5G Fund support.[100] In the *Enhanced Alternative Connect America Cost Model Report and Order*, the Commission adopted a requirement that wireline providers receiving funds through the Enhanced Alternative Connect America Cost Model (Enhanced A-CAM) program implement such plans prior to the start of the program's support term, and that they submit their plans to USAC and certify that they have done so by the established deadline.[101] In adopting this requirement, the Commission stated that its actions "emphasize the critical importance of cybersecurity and supply chain risk management in modern broadband

[98] *Auction 108 Procedures Public Notice* 37 FCC Rcd at 4382, para. 25; *Auction 110 Certification Public Notice*, 36 FCC Rcd at 8445, para. 4; *Auction 112 Procedures Public Notice*, 37 FCC Rcd at 1162, para. 20.

[99] *Auction of Flexible-Use Service Licenses in the 2.5 GHz Band for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 108*, AU Docket No. 20-429, Public Notice, 36 FCC Rcd 645, 648, para. 8 (2021); s*ee also Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 110*, AU Docket No. 21-62, Public Notice, 36 FCC Rcd 6100, 6105, para. 12 (2021); *Auction of Construction Permits for Full Power Television Stations; Comment Sought on Competitive Bidding Procedures for Auction 112*, AU Docket No. 21-449, Public Notice, 36 FCC Rcd 16222, 16224, para. 6 (OEA/MB 2021).

[100] We note that the Commission sought comment in the *Enhanced Alternative Connect America Cost Model Notice of Proposed Rulemaking* on whether to adopt cybersecurity and supply chain risk management requirements for Enhanced A-CAM carriers or, alternatively, for all carriers receiving high-cost support. *See Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support et al.,* WC Docket No. 10-90 *et al.,* Notice of Proposed Rulemaking, 37 FCC Rcd 6728, 6749, para. 57 (2022). However, the Commission decided to adopt cybersecurity and supply chain risk management requirements only for Enhanced A-CAM carriers because the record contained sparse comment on whether to extend these requirements to other high-cost programs. *See Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support et al.,* WC Docket No.10-90 *et al.*, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60, at 47, para. 109 & n. 311 (Jul. 24, 2023) (*Enhanced A-CAM Report and Order*).

[101] *See Enhanced A-CAM Report and Order*, FCC 23-60, at 47, para. 109. The Commission stated that a failure to submit the plans and make the certification will result in 25% of monthly support being withheld until the carrier comes into compliance. *Id.*

networks, consistent with broader initiatives across the federal government,"[102] and reasoned that a risk management requirement was necessary to ensure that the program "does not deprive rural consumers in high-cost areas of broadband service that is as secure as the service deployed pursuant to other federal funding initiatives."[103] Specifically, we seek comment on whether 5G Fund support recipients should be required to implement a cybersecurity risk management plan that reflects the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity,[104] and that reflects an established set of cybersecurity best practices, such as the standards and controls set forth in the Cybersecurity & Infrastructure Security Agency (CISA) Cybersecurity Cross-sector Performance Goals and Objectives[105] or the Center for Internet Security Critical Security (CIS) Controls.[106] We also seek comment on whether these carriers should be required to implement supply chain risk management plans that incorporate the key practices discussed in NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management Observations from Industry,[107] and related supply chain risk management guidance from NIST 800-161.[108] Would it be appropriate for 5G Fund recipients to submit to USAC their updated cybersecurity and supply chain risk management plans within 30 days of making a substantive modification thereto, as Enhanced A-CAM recipients must?[109] What are the differences (if any) between 5G Fund recipients and Enhanced A-CAM recipients that might warrant different approaches to ensuring cybersecurity?

X. USE OF OPEN RADIO ACCESS NETWORK TECHNOLOGIES IN 5G FUND SUPPORTED NETWORKS

53. We seek comment on whether we should use the 5G Fund to encourage the deployment

[102] *Id., citing* Exec. Order No. 14028, 86 Fed. Reg. 26633, Improving the Nation's Cybersecurity (May 17, 2021); NIST IR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry (February 2021), https://csrc.nist.gov/publications/detail/nistir/8276/final (last visited Sept. 18, 2023); Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60102(g)(1)(B) (2021) (mandating compliance with "prudent cybersecurity and supply chain risk management practice").

[103] *Enhanced A-CAM Report and Order*, FCC 23-60, at 47, para. 110.

[104] NIST, Framework for Improving Critical Infrastructure Cybersecurity, v.1.1 (2018), https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf.

[105] *See* Cybersecurity and Infrastructure Security Agency, *Cross-Sector Cybersecurity Performance Goals and Objectives*, https://www.cisa.gov/cpgs (last visited August 28, 2023).

[106] *See* Center for Internet Security, *Critical Security Controls Version 8,* https://www.cisecurity.org/controls (last visited August 28, 2023) (providing security controls grouped by priority and feasibility for different sizes and resources of businesses in Implementation Groups).

[107] NIST, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry (2021), https://csrc.nist.gov/publications/detail/nistir/8276/final (presenting the following as key practices: 1) integrating cyber supply chain risk management across the organization; 2) establishing a formal cybersecurity supply chain risk management program; 3) knowing and managing critical components and suppliers; 4) understanding the organization's supply chain; 5) collaborating closely with key suppliers; 6) including key suppliers in resilience and improvement activities; 7) assessing and monitoring throughout the supplier relationship; and 8) planning for the full life cycle).

[108] NIST, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations (2022), https://csrc.nist.gov/publications/detail/sp/800-161/rev-1/final (identifying critical success factors for cyber supply chain risk management).

[109] Defining a "substantive" modification to a cybersecurity or supply chain risk management plan as occurring when at least one among certain conditions apply. *See Enhanced ACAM Order*, FCC 23-60 at 48, para. 112.

of Open RAN, and if so, how.[110] In its March 2021 *Open RAN NOI*, the Commission sought input on "whether, and if so, how, deployment of Open RAN-compliant networks could further the Commission's policy goals and statutory obligations, advance legislative priorities, and benefit American consumers by making state-of-the-art wireless broadband available faster and to more people in additional parts of the country."[111] Soon after the *Open RAN NOI* was adopted, the President signed Executive Order 14036, which encouraged the Commission to "consider . . . providing support for the continued development and adoption of 5G Open Radio Access Network . . . protocols and software."[112] The Commission has since sought comment in its *Enhanced Competition Incentive Program Further Notice of Proposed Rulemaking* on "whether and how we should factor the use of Open RAN technologies into the [Enhanced Competition Incentive Program],"[113] noting that "Open RAN has the potential to allow carriers to promote the security of their networks while driving innovation, in particular in next-generation technologies like 5G, lowering costs, increasing vendor diversity, and enabling more flexible network architecture."[114]

[110] The Radio Access Network (RAN) is the portion of the wireless telecommunication system that connects user devices (e.g., mobile phones) with the core network that performs routing or delivery of content. Open RAN is a term that describes a general disaggregation of RAN functionality built using open interface specifications between elements instead of proprietary specifications. Open RAN can be implemented in vendor-neutral hardware and software-defined technology based on open interfaces and community-developed standards providing a flexible and interoperable deployment architecture across multiple vendors.

[111] *Promoting the Deployment of 5G Open Radio Access Networks*, GN Docket No. 21-63, Notice of Inquiry, 36 FCC Rcd 5947, 5948, para. 3 (2021) (*Open RAN NOI*).

[112] Exec. Order No. 14036 § 5(l)(iii), 86 Fed. Reg. 36987, 36994, Promoting Competition in the American Economy (July 9, 2021). Even prior to the issuance of Executive Order 14036, the Commission recognized the potential benefits of Open RAN by including it in the list of the categories of suggested replacements for communications equipment that must be removed by eligible telecommunications carriers (ETCs) that receive USF funds, pursuant to the *Supply Chain Second Report and Order*. *See 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, 14366, para. 202 (2020).

[113] *Partitioning, Disaggregation, and Leasing of Spectrum*, WT Docket No. 19-38, Further Notice of Proposed Rulemaking, 36 FCC Rcd 16956, 16977, para. 63 (2021).

[114] *Id.* at 16977, para. 62. We note that other federal agencies are also working to encourage the expansion of Open RAN technologies. For example, the National Telecommunications and Information Administration (NTIA) recently released the first of a series of Notices of Funding Opportunity for the purpose of funding "efforts that accelerate the development, deployment, and adoption of open and interoperable radio access networks . . . through a competitive grant program." National Telecommunications and Information Administration, *Public Wireless Supply Chain Innovation Fund Grant Program—Expanding Testing and Evaluation,* Notice of Funding Opportunity, at 2 (2023), https://ntia.gov/sites/default/files/publications/pwscif_final_nofo.pdf (last visited Sept. 18, 2023). NTIA also released an in-depth report on security issues related to Open RAN, stating that "[c]ompared to non-disaggregated, non-virtualized RAN, Open RAN has potential security advantages, incl. openly specified, verifiable security controls and capabilities associated to virtualization and cloudification that can help to improve operational security tasks." NTIA, *Open RAN Security Report: Outcome From Quad Critical and Emerging Technology Working Group* at 7 (May 2023), https://ntia.gov/sites/default/files/publications/open_ran_security_report_full_report_0.pdf (last visited Sept. 18, 2023). The report also found that Open RAN could be expected to provide other benefits, such as "[i]mprovement of the performance and reducing the cost of equipment by stimulating competition in the base station market; [m]itigating supply chain risks (diversifying suppliers) according to the multi-vender configuration; [o]ptimizing energy efficiency through intelligence (Energy saving); [and] [i]mprovement of monitoring and maintenance functions by [Service Management and Orchestration]." *Id.* at 8. We recognize, however, that there is some debate about whether Open RAN is ready for full network deployment, as well as concern that Open RAN may, in fact, create additional security risks. *See, e.g.,* T-Mobile Comments, GN Docket No. 21-63, at 13-14 (filed Apr. 28, 2021); *see also* Verizon Comments, GN Docket No. 21-63, at 4 (filed Apr. 28, 2021) (stating that there are "many

(continued….)

54. We consider here whether and if so, how, this 5G Fund proceeding should promote the continued deployment of Open RAN technologies in networks built with 5G Fund support. As noted above, we seek comment on whether we should use the 5G Fund to encourage the deployment of Open RAN, and if so, how. We also seek comment on whether the 5G Fund could be an appropriate vehicle by which to further the goals outlined in Executive Order 14036 and if so, what the best mechanism(s) for doing so might be. For example, would deploying Open RAN networks require more time such that we should afford a 5G Fund support recipient an extension of the interim and/or final service milestone deadlines if it demonstrates that it is using Open RAN in its network deployment? If we do adopt such an incentive to encourage the use of Open RAN technologies, how would a support recipient demonstrate compliance with a requirement to implement those technologies, and how would we measure a support recipient's continued compliance with such a requirement? Would supporting the deployment of Open RAN be consistent with our objective to efficiently and effectively distribute finite universal service support?

XI. PROMOTING DIGITAL EQUITY AND INCLUSION

55. The Commission, as part of its continuing effort to advance digital equity for all,[115] including for 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[116] 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 to address any such issues.

XII. PROCEDURAL MATTERS

56. *Paperwork Reduction Act.* This Further Notice of Proposed Rulemaking does not contain proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, this Further Notice of Proposed Rulemaking 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).

57. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[117] 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

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unspecified and non-standardized functionalities that Open RAN will need to support for network operators who provide customers with advanced wireless capabilities at scale").

[115] 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.

[116] 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).

[117] 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).

economic impact on a substantial number of small entities."[118] Accordingly, the Commission has prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) concerning the potential rule and policy changes in this Further Notice of Proposed Rulemaking. The Supplemental IRFA is set forth in Appendix B. Written public comments are requested on the Supplemental IRFA. Comments must be filed by the same deadlines for comments on this Further Notice of Proposed Rulemaking indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the Supplemental IRFA.

58. *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.[119] 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.

59. *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. All comments must be filed in GN Docket No. 20-32. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (May 1, 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.
    - 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

[118] 5 U.S.C. § 605(b).

[119] 47 CFR § 1.1200 et seq.

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.[120]

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

61. *Additional Information.* For additional information on this proceeding, contact Kelly Quinn of the Office of Economics and Analytics, Auctions Division, at kelly.quinn@fcc.gov, Valerie Barrish of the Office of Economics and Analytics, Auctions Division, at valerie.barrish@fcc.gov or (202) 418-0354, or Mary Lovejoy of the Office of Economics and Analytics, Auctions Division, at mary.lovejoy@fcc.gov or (202) 418-2024.

XIII. ORDERING CLAUSES

62. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.421 of the Commission's rules, 47 CFR §§ 1.1 and 1.421, that this Further Notice of Proposed Rulemaking IS ADOPTED.

63. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.421 of the Commission's rules, 47 CFR §§ 1.1 and 1.421, NOTICE IS HEREBY GIVEN of the proposals described in this Further Notice of Proposed Rulemaking.

64. 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 the Further Notice of Proposed Rulemaking in the captioned docket on or before the date shown on the first page of this document, and reply comments on or before the date shown on the first page of this document.

65. IT IS FURTHER ORDERED that the Office of the Secretary, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Supplemental Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[120] *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-andchanges-hand-delivery-policy.

APPENDIX A

Supplemental Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in the Further Notice of Proposed Rulemaking (*Further Notice*) to supplement the Commission's Regulatory Flexibility Analyses completed in the *5G Fund NPRM* and *5G Fund Report and Order*.[2] The Commission requests written public comment on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments on the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[3] In addition, the *Further Notice* and Supplemental IRFA (or summaries thereof) will be published in the Federal Register.[4]

A. Need For, And Objectives Of, The Proposed Rules

2. The new, granular, and more accurate mobile coverage data obtained in the Broadband Data Collection (BDC) and reflected on the Commission's new National Broadband Map allows the Commission to continue the implementation of the 5G Fund for Rural America (5G Fund) and advance our efforts to ensure the deployment of high-speed 5G service in areas of the country where, absent subsidies, it will continue to be lacking.[5] We undertake this effort in the *Further Notice* in recognition that those living, working, and travelling in unserved and underserved areas must have access to high-speed 5G service. Mobile services that may have once been considered a luxury by some have become a necessity for all Americans. The need for such services has never been more critical, yet not only are there people in many areas of our country that continue to lack access to 5G services, Americans in some rural areas still lack access to any broadband service at all.

3. In today's narrowly tailored *Further Notice*, we seek to refresh the record and reignite the Commission's plan to expand the deployment of 5G service to those rural communities that remain trapped on the wrong side of the digital divide. We seek comment on a limited set of proposals and other issues that are critical to the 5G Fund's success, including: (1) defining the areas that will be eligible for 5G Fund support; (2) reassessing the budget for the 5G Fund; (3) potentially reconsidering the use of

[1] 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).

[2] *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, WT Docket No. 10-208, Notice of Proposed Rulemaking and Order, 35 FCC Rcd 3994, at App. C (2020) (*5G Fund NPRM*); *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Report and Order, 35 FCC Rcd 12174, 12304, at App. B (2020), modified by *Errata* released Nov. 10, 2020, Nov. 27, 2020, and Jan. 11, 2021 (*5G Fund Report and Order*). The Commission received five timely filed petitions for reconsideration of the *5G Fund Report and Order*. *See* The Rural Wireless Association and NTCA – The Rural Broadband Association, Joint Petition for Reconsideration, *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32 (filed Dec. 28, 2020); The Coalition of Rural Wireless Carriers, Petition for Reconsideration, *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32 (filed Dec. 28, 2020); CTIA, Petition for Partial Reconsideration, *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32 (filed Dec. 28, 2020); Smith Bagley, Inc, Petition for Reconsideration, *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32 (filed Dec. 28, 2020); 5G Fund Supporters, Petition for Partial Reconsideration, *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32 (filed Nov. 30, 2020); *see also* Petitions for Reconsideration of Action in Proceeding, Public Notice, Report No. 3165 (rel. Jan. 6, 2021). These petitions remain pending.

[3] 5 U.S.C. § 603(a).

[4] *Id.*

[5] *See generally 5G Fund Report and Order,* 35 FCC Rcd 12174. At the time the *5G Fund Report and Order* was adopted, the BDC was known as the Digital Opportunity Data Collection.

adjusted square kilometers as the metric for accepting bids and identifying winning bids in a 5G Fund auction; (4) aggregating areas eligible for 5G Fund support to minimum geographic areas for bidding; (5) measuring a 5G Fund support recipient's compliance with its public interest obligations and performance requirements based on any modified metric for accepting bids and identifying winning bids; (6) modifying the schedule for transitioning from mobile legacy high-cost support to 5G Fund support consistent with recent legislative amendments; (7) a proposal to require each 5G Fund Phase I auction applicant to certify, under penalty of perjury, that it has read the public notice adopting procedures for the auction, and that it has familiarized itself with those procedures and any requirements related to the support made available for bidding in the auction; (8) whether to require 5G Fund support recipients to implement cybersecurity and supply chain risk management plans; and (9) determining whether and how this proceeding might create an opportunity to support further deployment of Open Radio Access Network (Open RAN) technologies.

4. Based on data obtained in the BDC and currently reflected on our National Broadband Map, our understanding of where mobile service remains lacking has improved significantly, and we now seek comment on whether to modify the definition of eligible areas we adopted in the *5G Fund Report and Order*. Specifically, we seek comment on whether we should continue to use the definition adopted by the Commission in the *5G Fund Report and Order* to determine areas eligible for the 5G Fund Phase I auction, or whether we should modify the definition to base the determination of eligible areas on where mobile coverage data submitted in the BDC show a lack of unsubsidized 5G broadband service by at least one service provider. Regardless of how we define the areas eligible for 5G Fund support, we propose to use as the basis for the final eligible areas the version of the mobile availability data published on the National Broadband Map approximately 30 days prior to the start of bidding. Because we seek to direct 5G Fund support to areas where people live, work, and travel, regardless of the definition we use to identify the areas eligible for the 5G Fund Phase I auction, we seek comment on limiting eligible areas to those that contain locations and/or roads that lack unsubsidized 5G service. We would then use the H3 hexagonal geospatial indexing system (H3 system) to identify specific geographic areas eligible for 5G Fund support, limiting eligible areas to resolution-9 H3 hexagons that have locations and/or roads. If we were to limit eligible areas to resolution-9 H3 hexagons that have locations and/or roads, we would use a bidding and support price metric based on dollars per square kilometer for those eligible areas and we seek comment on whether to use the adjustment factor as previously adopted.

5. We also propose to modify the methodologies that support recipients would use to substantiate their 5G broadband coverage certifications in the areas for which they receive 5G Fund by requiring 5G Fund support recipients to use the methodologies adopted for the BDC mobile verification process as the basis for substantiating coverage and demonstrating compliance with the 5G Fund interim and final deployment milestones. Finally, we propose to treat the release of the public notice announcing the close of the 5G Fund Phase I auction to be the point at which support under the 5G Fund commences. We believe these proposals make the best use of our National Broadband Map and will facilitate our policy goals of achieving ubiquitous high-speed broadband coverage, providing rural areas with access to mobile services reasonably comparable to those provided in urban areas, and ensuring that all Americans have access to 5G service where they live, work, and travel.

6. Additionally, we propose to require each 5G Fund Phase I auction applicant to certify, under penalty of perjury, that it has read the public notice adopting procedures for the auction, and that it has familiarized itself with those procedures and any requirements related to the support made available for bidding in the auction. We believe that such a certification would promote the integrity of and public confidence in the Commission's auction processes as well as ensure that 5G Fund Phase I support recipients are aware of and better prepared to comply with their public interest obligations and performance requirements.

7. Access to high-speed, mobile services touches almost all aspects of daily life and is essential to civic, economic, and social opportunities for those living and working in rural areas as well as in big cities and suburban areas. The ability to communicate and innovate through access to high-speed,

mobile broadband services is a necessity for work, education, healthcare, news and entertainment, public safety information and services, and communication during a national emergency or other crisis. Thus, the importance of expanding access to high-speed 5G services in rural communities cannot be overstated. With this in mind, the Commission issued today's *Further Notice* cognizant that full participation in American society requires us to make 5G service available to everyone no matter where they live.

B. Legal Basis

8. The proposed action is authorized pursuant to sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.421 of the Commission's rules, 47 CFR §§ 1.1 and 1.421.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

9. 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.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[8] 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.[9]

10. As noted above, Regulatory Flexibility Analyses were incorporated into the *5G Fund NPRM* and *5G Fund Report and Order*.[10] In those analyses, we described in detail the small entities that might be significantly affected. In this Supplemental IRFA, we hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *5G Fund NPRM* and *5G Fund Report and Order*.[11]

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

11. Possible modification to some of the compliance requirements adopted in the *5G Fund Report and Order* that may be necessary based on the proposals and/or the other issues on which we seek comment in the *Further Notice* could impact the reporting, recordkeeping, and other compliance requirements for small and other providers that receive 5G Fund support.

12. In the *5G Fund Report and Order*, the Commission decided that it would accept bids and identify winning bids in the 5G Fund auctions using a support price per adjusted square kilometer, and adopted interim and final service deployment milestones for small and other 5G Fund support recipients to ensure that all support recipients meet their public interest obligations and performance requirements in areas where they receive support. If we decide to modify the bidding and support price metric for the 5G Fund auctions to use a metric other than square kilometers and make corresponding modifications to the

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[6] 5 U.S.C. § 603(b)(3).

[7] *See id*. § 601(6).

[8] *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."

[9] 15 U.S.C. § 632.

[10] *5G Fund NPRM,* at App. C; *5G Fund Report and Order,* at App. B.

[11] *5G Fund NPRM,* at App. C; *5G Fund Report and Order,* at App. B.

rules adopted in the *5G Fund Report and Order* concerning the metric that would be used to measure a 5G Fund support recipient's compliance with its public interest obligations and performance requirements, small and other providers that receive 5G Fund support will be required to use a different metric than what was adopted in the *5G Fund Report and Order* for purposes of measuring and reporting compliance with the 5G Fund public interest obligations and performance requirements.

13. The Commission decided to generally align the framework for 5G Fund support recipients' demonstration of compliance with their 5G Fund interim and final performance requirement milestones with the BDC in the *5G Fund Report and Order*, concluding that standardizing the data required for compliance reporting was likely to ease the burden on support recipients throughout universal service programs, while collecting sufficient data to confirm that the 5G Fund's requirements have been met.[12] With respect to the methodologies for conducting on-the-ground tests, the Commission decided in the *5G Fund Report and Order* that a 5G Fund support recipient must submit on-the-ground measurement tests with at least three tests conducted per square kilometer, measured by overlaying a uniform grid of one square kilometer (1 km by 1 km) on its submitted 5G coverage maps within the area for which 5G Fund support was awarded in a percentage of all drive-testable grid cells where the recipient reports deployment of 5G service by the applicable service deployment milestone.[13] In the *Further Notice*, we propose to modify the methodologies that support recipients would use to substantiate their 5G broadband coverage certifications in the areas for which they receive 5G Fund support in order to be consistent with both our proposal to use hexagonal areas as the basis for the areas eligible for 5G Fund support and the Commission's decision in the *5G Fund Report and Order* to generally align the framework for demonstrating compliance with 5G Fund performance requirement milestones with the BDC. If this proposal is adopted, small and other providers that receive 5G Fund support will be required to use different methodologies than were adopted in the *5G Fund Report and Order* for purposes of demonstrating compliance.

14. The *Further Notice* also seeks comment on whether to adopt a requirement that each 5G Fund support recipient implement cybersecurity risk management and supply-chain risk management plans as a condition of receiving 5G Fund support, similar to the requirement adopted for the Enhanced Alternative Connect America Cost Model program. In that program, support recipients are required to implement such plans prior to the start of the program's support term, and to submit the plans to the Universal Service Administrative Company and certify that they have done so.[14]

15. In assessing the cost of compliance for small entities, at this time the Commission is not in a position to determine whether small entities will be required to hire professionals, and cannot quantify the cost of compliance with our proposals related to the above-described possible modifications to the metric and methodologies for demonstrating and reporting compliance with the 5G Fund public interest obligations and performance requirements. We anticipate, however, that the comments the Commission receives will discuss any potential changes to compliance costs and/or administrative burdens for small entities, and may help the Commission identify and evaluate other relevant issues for small entities associated with the matters discussed in the *Further Notice*.

16. The *Further Notice* also seeks comment on a proposal to add to the existing certifications that are required under the Commission's competitive bidding rules a requirement that each applicant in the 5G Fund Phase I auction certify, under penalty of perjury, that it has read the public notice adopting procedures for the auction, which will be released in advance of the auction's short-form deadline, and it

[12] *5G Fund Report and Order*, 35 FCC Rcd at 12233-12234, paras. 143, 145.

[13] *Id.* at 12232, para. 140. The minimum percentage of drive-testable grid cells tested must equal the minimum percentage of coverage required for each service buildout milestone (i.e., 40%, 60%, 80%, 85%). *Id.*

[14] *See Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support, et al.,* WC Docket No. 10-90 *et al.*, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60, at 47-49, paras. 109-14 (Jul. 24, 2023).

has familiarized itself both with the auction procedures and with any requirements related to the authorizations or support made available for bidding in the auction. Consistent with other certifications required in an auction application, a failure to make these certifications would render an application unacceptable for filing, and the applicant will not be found qualified to bid.[15]

17. Typically, the auction procedures inform prospective applicants that they should familiarize themselves with the Commission's general competitive bidding rules, Commission decisions regarding competitive bidding procedures, application requirements, obligations of Commission licensees, construction permit holders, and support recipients, and the Commission's service rules for the frequency band available in the auction or for construction permits or universal service support, and that they must be thoroughly familiar with the procedures, terms, and conditions contained in the public notice adopting procedures for the auction.[16] We therefore do not expect that the certification requirement proposed in this *Further Notice* will increase the need for small entities to hire attorneys, engineers, consultants, or other professionals because it does not increase the level of education or due diligence beyond what was required of applicants prior to the adoption of the certification requirement, and thus it should not increase an applicant's burden in complying with the additional certification requirement. Additional public notices adopting the procedures for any auction will be released before the auction's short-form filing deadline and made publicly available on each auction's web page. We believe that this is sufficient to ensure that applicants in each auction can certify truthfully that they have read the auction procedures and familiarized themselves with the relevant rules and requirements.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

18. 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 (among others) the following four alternatives: "(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."[17]

19. We believe that the proposed modification to the metric for measuring compliance that may be necessary depending on the metric that we will use to accept bids and identify winning bids will also benefit small entities as corresponding changes to the metric that will be used to measure compliance will ensure that small entities would not be required to undertake separate analyses to determine how, and where they wish to bid, to identify the areas for which they are awarded support, and to measure and report compliance with their public interest obligations.

20. In the *Further Notice*, an alternative we considered to our proposal to use dollars per square kilometer as the bidding and support price metric, which we seek comment on, is whether to adopt an alternative approach that would provide some advantage to particularly costly areas that nonetheless

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[15] *See* 47 CFR § 1.21001(f)(2).

[16] *See, e.g.*, *Auction of Flexible-Use Licenses in the 2.5 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 108*, AU Docket No. 20-429, Public Notice, 37 FCC Rcd 4370, 4373-74, paras. 5 (2022); *Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 110; Bidding to Begin October 5, 2021,* AU Docket No. 21-62, Public Notice, 36 FCC Rcd 9272, 9275, para. 5 (OEA/WTB June 9, 2021); *Auction of Construction Permits for Full Power Television Stations; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 112*, AU Docket No. 21-449, Public Notice, 37 FCC Rcd 1155, 1157, paras. 3 (OEA/MB Feb. 10, 2022).

[17] 5 U.S.C. § 603(c).

are areas with a considerable number of homes, businesses, and other locations, and/or roads that are frequently travelled. We inquire whether parameters for such an alternative approach could be determined without unduly delaying the auction. Another alternative considered is to use a bidding and support price metric based on the number of locations in the eligible areas. Additionally, we seek comment on potentially incorporating the number of unserved road miles in an area, as well as the number of locations, into the bidding and support price metric. We inquire whether there is an approach that would appropriately balance unserved road miles and unserved locations in a single metric. For example, we ask whether we could adjust the number of locations upward by a fraction, e.g., 25%, in an area with a moderate number of unserved road miles, and by a larger fraction, e.g., 40%, if the area has a large number of unserved road miles, or whether a metric that is a weighted sum of unserved locations and unserved road miles would be appropriate, such as a metric that is the total of the number of unserved locations and one half of the number of unserved road miles. We also considered and seek comment on a possible metric based on predicted usage from serving eligible areas. This metric would consider all measurable factors that can affect mobile usage, such as unserved locations, road miles, and areas with parks or wilderness where devices are likely to be used. Possible options we raise for discussion to measure usage are using the average number of connected 5G devices in 15-minute periods throughout the day or the total megabytes of data usage during a reporting period.

21. Our discussion of the approach we should take to harmonize the metric we use to measure a 5G Fund support recipient's compliance with its public interest obligations and performance requirements should we decide to modify the bidding and support price metric adopted in the *5G Fund Report and Order* looked at two potential options upon which we seek comment. If we were to use a locations-based metric without a road miles component, we would measure compliance based on a support recipient deploying service that meets the 5G Fund performance requirements to a specified percentage of the total locations within the eligible areas for which it is authorized to receive 5G Fund support in a state by the relevant interim service milestone and the final service milestone. Alternatively, if we were to use a hybrid metric that incorporates locations and road miles, we would measure compliance based on a support recipient deploying service that meets the 5G Fund performance requirements to a specified percentage of the total unserved locations and a specified percentage of the total unserved road miles within the eligible areas for which it is authorized to receive 5G Fund support in a state by the relevant interim service milestone and the final service milestone.

22. With respect to the proposed certification requirement for short-form auction applications, the Commission has taken steps to minimize any economic impact of the certification requirement on small entities through the many free resources we provide to potential auction participants. The public notice adopting the procedures for each auction will be posted to the auction's website prior to the opening of the application window, and other relevant orders are available through EDOCS, the Commission's online document database (www.fcc.gov/edocs). We believe that reading these materials will be sufficient for applicants to certify that they have familiarized themselves with the relevant auction procedures and other requirements. The Commission also makes available additional educational materials to help potential auction participants understand the auction process, including short-form filing instructions and a tutorial. The Commission makes this information publicly available and easily accessible and without charge to benefit all potential auction applicants, including small entities, thereby lowering their administrative costs to comply with the Commission's competitive bidding rules.

23. Small entities and other auction participants also may seek clarification of, or guidance regarding, auction procedures, the competitive bidding rules, and any requirements related to the authorizations or support to be made available through the auction from Commission staff prior to each auction's application window. Additionally, an FCC Auctions Hotline provides small entities one-on-one access to Commission staff for information about the auction process and procedures. The FCC Auctions Technical Support Hotline is another resource that provides technical assistance to applicants, including

small entities, on issues such as access to or navigation within the electronic short-form application and use of the bidding system.

24. Additionally, in the *Further Notice* we also considered and seek comment whether, and to what extent, if any, we can or should use the 5G Fund to encourage the deployment of Open RAN, and if so, how. We considered, as an example, whether deploying Open RAN networks requires more time such that we should afford a 5G Fund support recipient an extension of the interim and/or final service milestone deadlines if it demonstrates that it is using Open RAN in its network deployment. This approach could benefit small providers by allowing them the flexibility to choose an option that may provide an extension of compliance deadlines.

25. The issues on which we seek comment in the *Further Notice* are designed to ensure the Commission has a complete understanding of the costs, benefits, and potential burdens associated with the different actions and methods. We seek to continue to learn from the experience of small entities so that we can balance our responsibility to monitor the use of universal service funds with minimizing administrative and compliance costs and burdens on 5G Fund participants. The Commission expects to more fully consider the economic impact on small entities, as identified in comments filed in response to the *Further Notice* and this Supplemental IRFA, in reaching its final conclusions and taking final action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

26. None.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Establishing a 5G Fund for Rural America*; GN Docket No. 20-32

This week the United Nations General Assembly is gathering in New York. Just before this meeting got underway, I did something that the Federal Communications Commission has not done in years. I joined the United Nations Broadband Commission to discuss ideas to support universal access to high-speed communications. I believe that one of the best ideas is ensuring that the systems we develop for support are based on good data.

That is the reason we are talking today about the future of the 5G Fund for Rual America. For the first time in our history of supporting wireless networks through the universal service system, this agency has comprehensive data about where service is and is not all across the country.

Thanks to the work of our Broadband Data Task Force we have maps that are light years ahead of what we produced before. We standardized the propagation data that carriers must submit to us twice a year and created new ways for consumers, governments, and others to help verify the data when the maps do not reflect service on the ground. As a result, we now know that over 14 million homes and businesses nationwide do not have mobile 5G coverage today.

What this means is that as we develop the 5G Fund and build the successor to our existing universal service program supporting wireless networks in rural America, known as the Mobility Fund, we will be able to incorporate this detailed picture of where service is and is not. We will be able to see gaps in coverage and ensure support actually reaches the communities that need it most.

On top of these data improvements, a lot has changed since the FCC first announced the 5G Fund, including a global pandemic that underscored the importance of access to high-speed mobile services. So we seek comment on updating the 5G Fund proposal in several ways.

First, we look at how best to support 5G service, so that we can address areas without service and we aren't short-changing rural communities covered by the last generation of wireless technology.

Second, we are revisiting the budget so that we can better account for the state of the supply chain and current costs associated with deploying 5G networks.

Finally, we seek comment on how best to leverage our new maps to target the first phase of funding to places where it is needed most—where people live, work and travel.

These are important questions. I look forward to the record that develops. I look forward to combining what we learn from commenters with the information we have from our maps. And I hope that if I get the opportunity to return to the United Nations Broadband Commission I can share what we have done to support universal wireless access—powered by good data.

I would like to thank the team behind this effort to build a better 5G Fund: Valerie Barrish, Craig Bomberger, Emily Burke, Chelsea Fallon, Jill Goldberger, Evan Kwerel, Paul Lafontaine, Mary Lovejoy, Kenneth Lynch, Giulia McHenry, Gary Michaels, Mark Montano, Murtaza Nasafi, Jeffrey Ocker, Kelly Quinn, Steve Rosenberg, Alexander Simmons, and Martha Stancill from the Office of Economics and Analytics; Rebekah Douglas, Jesse Jachman, Dangkhoa Nguyen, and Suzanne Yelen from the Wireline Competition Bureau; Barbara Esbin, Garnet Hanly, William Holloway, Susannah Larson, John Lockwood, Jennifer Salhus, and Thuy Tran from the Wireless Telecommunications Bureau; Michael

Janson, Douglas Klein, and Keith McCrickard from the Office of General Counsel; and Chana Wilkerson from the Office of Communications Business Opportunities.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32

Wireless devices deliver more than just convenience. They're also a means of finding work, doing the job you already have, acing schoolwork, and accessing healthcare, financial services, and emergency services. That's why I've long said that when we talk about making quality, affordable broadband available to every American—finally cracking the digital divide—advanced wireless services are and will remain an important part of the conversation.

That's why I'm proud to support today's action on the 5G Fund. When we first established the 5G Fund, I highlighted that "it's important we get every last drop out of our Universal Service dollars." I noted that the process for allocating those dollars efficiently and fairly "starts with gathering adequate data" that does not risk leaving rural communities behind. Thanks to bipartisan leadership in Congress and the hard work of so many here at the FCC, we now have vastly improved broadband mapping that provides a more accurate picture of where wireless coverage exists, and at what speeds, and where greater support is needed. So today, we propose rules to leverage that clearer data in determining which areas are eligible for receiving support in our reverse auction. Armed with that better data, we also take a second look at key aspects of the program, including speed and technology thresholds for eligibility. Importantly, we also explore the future of mobile support mechanisms in the U.S. Virgin Islands and Puerto Rico. With these combined efforts, we're clearing the way to finally deliver on a more-than decade-long commitment to fund the next phase of mobile deployments in rural America.

Finally, I'm pleased that we're also taking steps to keep our funded networks secure. In other proceedings, I've fought hard to ensure that carriers receiving high-cost support observe baseline cybersecurity and supply chain risk management requirements. I asked that we propose similar requirements for this high-cost program as well. Rural consumers have already experienced the risks posed by insecure equipment in their wireless networks, including ones funded by universal service dollars. In fact, due to a shortfall in rip-and-replace funding, some rural folks are still living through those threats today. Managing cyber and supply chain risks no doubt will be an ongoing process. But this time around, let's do what we can to get the security piece right from the start.

STATEMENT OF
COMMISSIONER NATHAN SIMINGTON
CONCURRING

Re: *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32

I have been extremely supportive of 5G as a Commissioner. I am enthusiastic about the advanced network engineering that it enables and especially about what it can do for specialized use cases like high-tech manufacturing and precision agriculture. And without a doubt, 5G is the gold standard for new mobile broadband deployment. Except for special circumstances, the FCC should not be paying for the deployment of previous generation mobile technologies at this point. But I am also aware that, especially in low density rural areas, 5G does not represent a transformational change for end-consumer mobile broadband service. In fact, 5G service in those areas operates on similar bands, at similar speeds, and with similar performance characteristics as 4G LTE service.

So when we are deciding where to spend limited funds to subsidize the deployment of 5G, it is obvious to me that we should prioritize areas that do not even have 4G service to speak of before we start paying for upgrades from 4G to 5G. And that is in fact how our rules, adopted in 2020, say the 5G Fund should work.

Unfortunately, this item seeks to upend that decision. The draft version outright proposed that we treat areas with existing 4G service as being exactly the same as areas with no service at all when it comes to qualifying for 5G Fund subsidies. I was disappointed that the Chairwoman's office was unwilling to accommodate my simple request that the item seek comment on the relative benefit to end-consumers of going from 4G to 5G versus going from no service at all to 5G, given that 4G and 5G are likely to offer similar speeds in these areas. The refusal to confront this glaring issue head-on is concerning.

Because the Chairwoman's office did downgrade this wrongheaded idea from an official proposal to just something we are seeking comment on, I am able to concur on passage of this item in the interests of getting more public input on the issue, but I will be watching this proceeding closely. Like then-Commissioner Rosenworcel said in her statement on our 2020 5G Fund order, "These are not communities without 5G, they are communities with no G." Her office may now be inclined to leave those no G communities behind, but I am not.

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

In the Matter of	)	
	)	
Numbering Policies for Modern Communications	)	WC Docket No. 13-97
	)	
Telephone Number Requirements for IP-Enabled Service Providers	)	WC Docket No. 07-243
	)	
Implementation of TRACED Act Section 6(a) — Knowledge of Customers by Entities with Access to Numbering Resources	)	WC Docket No. 20-67
	)	
Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership	)	IB Docket No. 16-155

SECOND REPORT AND ORDER AND
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: September 21, 2023 **Released: September 22, 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 issuing a statement.

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I. INTRODUCTION

1. While technological innovations such as VoIP calling capabilities have brought advanced communications services to the marketplace to the benefit of consumers, the proliferation of interconnected VoIP providers and entities originating calls today has resulted in the voice network becoming more vulnerable to bad actors.[1] Illegal robocalls continue to expose millions of consumers to harmful risks. Today, we modify and strengthen our rules to reduce access to telephone numbers by potential perpetrators of illegal robocalls. We take this action in furtherance of Congress' directive in the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act to examine how to modify the Commission's rules and policies regarding direct access to numbers by providers of interconnected Voice over Internet Protocol (VoIP) services.[2] We also adopt important guardrails to protect national security and law enforcement, safeguard the nation's finite numbering resources, reduce the opportunity for regulatory arbitrage, and further promote public safety.

2. The Commission has worked diligently to encourage innovation and technology transition in the voice marketplace while striving to protect consumers from any negative effects of such new technologies. Over the last three years, we have strengthened and expanded the STIR/SHAKEN caller ID authentication framework, which protects consumers from illegally spoofed robocalls by verifying that the caller ID information transmitted with a particular call matches the caller's telephone number.[3] We have also expanded robocall mitigation requirements for all providers, and taken major enforcement action against bad actors.[4]

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[1] The rising tide of robocalls and the emergence of VoIP go hand in hand. Driven in part by the rise of VoIP, the telecommunications industry has transitioned from a limited number of carriers that all trusted each other to provide accurate calling party origination information to a proliferation of vastly different voice service providers and entities originating calls, which allows consumers to enjoy the benefits of increased competition but also creates new ways for bad actors to undermine trust. *Call Authentication Trust Anchor*; *Implementation of TRACED Act Section 6(a)—Knowledge of Customers by Entities with Access to Numbering Resources*, WC Docket Nos. 17-97 and 20-67, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3241, 3243-44, para. 4 (2020) (*Caller ID Authentication First Report and Order*); *see also Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, FCC 23-18, at 19-20, para. 34 (rel. Mar. 17, 2023) (*Caller ID Authentication Sixth Report and Order*); S.C. Dep't of Consumer Aff. Comments at 4 (SCDCA Comments) ("VoIP originated calls are the largest portion of unwanted calls.").

[2] Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105 § 6(a) (2019) (TRACED Act). Section 6(a) requires the Commission to examine its policies regarding access to both toll free and non-toll free telephone numbers. *Id.* The Commission initially sought comment regarding its policies in March 2020. *Caller ID Authentication First Report and Order*, 35 FCC Rcd at 3492-96, paras. 123-30. While this *Second Report and Order* addresses numbering resources generally, the issue of changes to our toll free numbering policy specifically remains under advisement. For a definition of interconnected VoIP, *see* 47 CFR § 9.3; *see also* 47 CFR § 52.5(b); 47 U.S.C. § 153(25).

[3] *See Caller ID Authentication Sixth Report and Order* at 2, para. 2 n.5. STIR/SHAKEN stands for Secure Telephone Identity Revisited, and Signature-based Handling of Asserted information using toKENs.

[4] *Id.*; *Sumco Panama SA et al.*, File No. EB-TCD-21-00031913, Forfeiture Order, FCC 23-64 (Aug. 3, 2023) (levying an historic fine of almost $300 million against a variety of entities which placed over five billion illegal

(continued….)

3. We adopt this *Second Report and Order* to further stem the tide of illegal robocalls perpetrated by interconnected VoIP providers, to protect the nation's numbering resources from abuse by foreign bad actors, and to advance other important public policy objectives tied to the use of our nation's limited numbering resources. To that end, we strategically update the Commission's direct access to numbering process. First, we require applicants seeking direct access to numbering resources to make robocall-related certifications to help ensure compliance with our rules targeting illegal robocalls. Second, we require applicants to disclose and keep current information about their ownership, including foreign ownership, to mitigate the risk of providing bad actors abroad with access to our numbering resources. Third, we require applicants to certify to their compliance with other Commission rules applicable to interconnected VoIP providers to bolster awareness and compliance with such rules. Fourth, we require applicants to comply with state laws and registration requirements that are applicable to businesses in each state in which numbers are requested. Fifth, we require applicants to include a signed declaration that their applications are true and accurate. Sixth, and finally, we codify the Wireline Competition Bureau's (Bureau) application review, application rejection, and authorization revocation processes.

4. In the accompanying *Second Further Notice of Proposed Rulemaking* (*Second Further Notice*), we seek comment on the duties of existing direct access authorization holders whose authorizations predate the new application requirements we adopt today. We also seek comment on whether direct access applicants should disclose a list of states in which they seek to provide initial service. Finally, we seek comment on a proposal to minimize harms that may arise from bad actors that access numbering resources indirectly by holding their direct access authorization holder "partners" accountable for their actions.

II. BACKGROUND

5. Section 52.15(g)(2) of the Commission's rules governs the application process for numbering resources.[5] It limits access to telephone numbers to entities that demonstrate they are authorized to provide service in the area for which they are requesting numbers.[6] The Commission has interpreted section 52.15(g)(2) to require evidence of either a state certificate of public convenience and

(Continued from previous page)
auto warranty robocalls to consumers between January 2021 and March 2021); *Robocall Enforcement Notice to All U.S.-Based Voice Service Providers*, File No. EB-TCD-20-00031678, Public Notice, DA 23-652 (EB Aug. 1, 2023) (notifying all U.S.-based voice service providers that if One Owl fails to mitigate apparently illegal robocalls, U.S.-based voice service providers may block voice calls or cease to accept traffic from One Owl, without liability under the Communications Act or the Commission's rules); *One Eye LLC*, File No. EB-TCD-20-00031678, Final Determination Order, DA 23-389 (EB May 11, 2023) (prohibiting voice service providers from accepting call traffic from One Eye LLC); *Urth Access, LLC*, File No. EB-TCD-22-00034232, Order, DA 22-1271 (EB Dec. 8, 2022), https://docs.fcc.gov/public/attachments/DA-22-1271A1.pdf (directing all U.S.-based voice service providers to take immediate steps to mitigate suspected illegal student loan-related scam robocall traffic). In October 2022, the Enforcement Bureau adopted orders to begin the process of removing seven voice service providers from the Robocall Mitigation Database for filing deficient certifications. Press Release, FCC, FCC Plans to Remove Companies from Key Database for Non-Compliance with Anti-Robocall Rules (Oct. 3, 2022), https://www.fcc.gov/document/fcc-remove-companies-robocall-database-non-compliance. The Commission has also entered into Memoranda of Understanding with 46 state jurisdictions, the District of Columbia, and Guam to establish critical information sharing and cooperation regarding robocalls. *See* FCC, *State Robocall Investigation Partnerships*, https://www.fcc.gov/fcc-state-robocall-investigation-partnerships (last updated Aug. 3, 2023); Press Release, FCC, FCC Chairwoman and Illinois Attorney General Announce Robocall Enforcement Partnership (Feb. 17, 2023), https://docs.fcc.gov/public/attachments/DOC-391161A1.pdf.

[5] 47 CFR § 52.15(g)(2).

[6] *Id.* The North American Numbering Plan (NANP) is the basic numbering scheme for telecommunications networks located in the United States and its territories, Canada, and parts of the Caribbean. *See id.* § 52.5(c). NANP telephone numbers are ten-digit numbers consisting of a three-digit area code, followed by a three-digit central office code, followed by a four-digit line number.

necessity (CPCN) or a Commission license or authorization.[7] Because only telecommunications carriers were able to provide this proof of authorization, in 2015, the Commission revised its numbering rules and adopted a process by which interconnected VoIP providers could satisfy this authorization requirement and thus obtain numbers directly from the Numbering Administrator.[8] The Commission found that permitting interconnected VoIP providers to obtain telephone numbers directly from the Numbering Administrator would improve responsiveness in the number porting process and improve the visibility and accuracy of number utilization, which would in turn enable the Commission to more effectively protect our nation's limited numbering resources.[9] Moreover, the Commission found that this change to its authorization process would enhance its ability to enforce rules governing interconnected VoIP providers, and help stakeholders and the Commission identify the source of routing problems and take corrective actions.[10]

6. The Commission's rules now require interconnected VoIP providers obtaining numbering resources to comply with both the requirements applicable to telecommunications carriers seeking to obtain numbering resources[11] and certain interconnected VoIP-specific requirements for applying for, and maintaining, a Commission authorization for direct access to numbering resources.[12] Section 52.15(g) currently requires an interconnected VoIP applicant for direct access to numbering resources to:

- provide its company name, headquarters address, Operating Company Number (OCN), parent company's OCN(s), and the primary type of business in which the numbering resources will be used;[13]
- provide contact information for personnel qualified to address issues relating to regulatory requirements, numbering, compliance, 911, and law enforcement;[14]
- comply with applicable Commission rules related to numbering, including, among others, numbering utilization and optimization requirements (in particular, filing Numbering Resource Utilization and Forecast (NRUF) Reports); comply with guidelines and procedures adopted pursuant to numbering authority delegated to the states; and comply with industry guidelines and practices applicable to telecommunications carriers with regard to numbering;[15]

[7] *See Numbering Policies for Modern Communications et al.*, WC Docket Nos. 13-97 et al., Report and Order, 30 FCC Rcd 6839, 6841, para. 4 (2015),*appeal dismissed*, *NARUC v. FCC*, 851 F.3d 1324 (D.C. Cir. 2017) (*VoIP Direct Access Order*).

[8] *Id.* at 6848, para. 21. In this *Second Report and Order*, we refer to both the North American Numbering Plan Administrator and the Pooling Administrator as the Numbering Administrator. Although these functions are described separately in our rules, *see, e.g.*, 47 CFR §§ 52.13, 52.20, they are currently combined under a single Commission contract. *See* Press Release, FCC, FCC Selects SomosGov as Next Telephone Number Administrator and Reassigned Numbers Database Administrator (Dec. 21, 2020), https://docs.fcc.gov/public/attachments/DOC-368493A1.pdf.

[9] *VoIP Direct Access Order*, 30 FCC Rcd at 6840-41, para. 2.

[10] *Id.*

[11] *Id.* at 6844, para. 13; 47 CFR § 52.15(g)(1)-(2).

[12] 47 CFR § 52.15(g)(3).

[13] *Id.* § 52.15(g)(1).

[14] *Id.* § 52.15(g)(3)(i)(A).

[15] *Id.* § 52.15(g)(3)(i)(B).

- file requests for numbers with the relevant state commission(s) at least 30 days before requesting numbers from the Numbering Administrator;[16]
- provide proof it is or will be capable of providing service within sixty (60) days of the numbering resources activation date in accordance with 47 CFR § 52.15(g)(2), i.e., "facilities readiness";[17]
- certify that it complies with its Universal Service Fund contribution obligations, its Telecommunications Relay Service contribution obligations, its NANP and local number portability administration contribution obligations, its obligations to pay regulatory fees, and its 911 obligations;[18]
- certify that it has the requisite technical, managerial, and financial capacity to provide service; include the name of its key management and technical personnel, such as the Chief Operating Officer and the Chief Technology Officer, or equivalent; and state that none of the identified personnel are being or have been investigated by the Commission or any law enforcement or regulatory agency for failure to comply with any law, rule, or order;[19] and
- certify that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.[20]

7. The Commission directed and delegated authority to the Bureau to "implement and maintain the authorization process."[21] Bureau staff review applications for conformance with procedural rules, and if the rule requirements are satisfied, release an "Accepted-for-Filing Public Notice" seeking comment on the application.[22] Applications are deemed granted by the Commission on the 31st day after the release of the public notice, unless the Bureau notifies the applicant that the grant will not be automatically effective.[23] The Bureau may halt the auto-grant process if (1) an applicant fails to respond promptly to Commission inquiries, (2) an application is associated with a non-routine request for waiver of the Commission's rules, (3) timely filed comments on the application raise public interest concerns that

[16] *Id.* § 52.15(g)(3)(i)(C), (iv)(C). The Commission also requires interconnected VoIP providers to give accurate regulatory and numbering contact information to a state commission when they request numbers in that state, and to update this information whenever it becomes outdated. *Id.* § 52.15(g)(3)(iv)(D).

[17] *Id.* § 52.15(g)(3)(i)(D). The Commission permits an interconnected VoIP provider to demonstrate proof of facilities readiness by (1) providing a combination of an agreement between the interconnected VoIP provider and its carrier partner and an interconnection agreement between that carrier and the relevant local exchange carrier, or (2) proof that the interconnected VoIP provider obtains interconnection with the Public Switched Telephone Network (PSTN) pursuant to a tariffed offering or a commercial arrangement (such as a TDM-to-IP or a VoIP interconnection agreement) that provides access to the PSTN. *See VoIP Direct Access Order*, 30 FCC Rcd at 6856-57, para. 37.

[18] 47 CFR § 52.15(g)(3)(i)(E).

[19] *Id.* § 52.15(g)(3)(i)(F).

[20] *Id.* § 52.15(g)(3)(i)(G).

[21] *VoIP Direct Access Order*, 30 FCC Rcd at 6849, para. 22 & n.70 ("This Report and Order's delegation of authority to the Wireline Competition Bureau is limited to the specific delegations made herein. Unless otherwise within the scope of the Bureau's delegated authority, matters pertaining to the process for authorizing direct access to numbers for interconnected VoIP providers will be decided by the full Commission.").

[22] *Id.* at 6858, para. 39.

[23] 47 CFR § 52.15(g)(3)(iii).

require further Commission review, or (4) the Bureau determines that the request requires further analysis to determine whether the application serves the public interest.[24]

8. Once an interconnected VoIP provider has Commission authorization to obtain numbering resources, it may request numbers directly from the Numbering Administrator.[25] Interconnected VoIP providers that apply for and receive Commission authorization for direct access to numbering resources "are subject to, and acknowledge, Commission enforcement authority."[26] Failure to comply with the obligations set out by the Commission "could result in revocation of the Commission's authorization, the inability to obtain additional numbers pending that revocation, reclamation of unassigned numbers already obtained directly from the Numbering Administrators, or enforcement action."[27] The Commission delegated authority to both the Bureau and the Enforcement Bureau to order the revocation of authorization and to direct the Numbering Administrator to reclaim any of the service provider's unassigned numbers.[28]

9. Based on lessons learned from reviewing scores of direct access applications[29] since the 2015 *VoIP Direct Access Order*, the Commission began to consider ways to update the interconnected VoIP provider application requirements to add important information that is useful or necessary to the Bureau's public interest review.[30] To date, the Bureau has requested such information from applicants on a case-by-case basis where appropriate.[31] For example, certain applications with significant foreign ownership that raise potential national security and/or law enforcement issues have been filed.[32]

[24] *See id.* § 52.15(g)(3)(iii)(A)-(D); *VoIP Direct Access Order*, 30 FCC Rcd at 6858, para. 40.

[25] *VoIP Direct Access Order*, 30 FCC Rcd at 6849, para. 22 & n.70 ("Once an interconnected VoIP provider obtains Commission authorization, we do not require it to notify the Commission of ongoing requests for numbers.").

[26] *Id.* at 6864, para. 52.

[27] *Id.* at 6852, para. 28.

[28] *Id.* at 6865, para. 53.

[29] We refer to "direct access to numbers applications" and "direct access applications" interchangeably throughout this item.

[30] *See Numbering Policies for Modern Communications et al.*, WC Docket Nos. 13-97 et al., Further Notice of Proposed Rulemaking, 36 FCC Rcd 12907, 12912, para. 10 (2021) (*VoIP Direct Access Further Notice*). There, the Commission stated that the Bureau had reviewed nearly 150 VoIP direct access to number applications in the six years between the *VoIP Direct Access Order* and the *VoIP Direct Access Further Notice*, and determined that it required additional information from applicants for its public interest review. *Id*. Since August 5, 2021, the Bureau has reviewed an additional 18 applications and found it needed to request the additional information in nearly every case.

[31] *Id.*

[32] *See, e.g.*, *Interconnected VoIP Numbering Authorization Application Filed by Mitel Cloud Services, Inc., Pursuant to Section 52.15(g)(3) of the Commission's Rules*, WC Docket No. 20-149, Public Notice, 36 FCC Rcd 1343 (WCB 2021); *Interconnected VoIP Numbering Authorization Application Filed by Simwood, Inc., Pursuant to Section 52.15(g)(3) of the Commission's Rules*, WC Docket No. 19-96, Public Notice, 36 FCC Rcd 1346 (WCB 2021); *Interconnected VoIP Numbering Authorization Application Filed by NobelBiz, Inc., Pursuant to Section 52.15(g)(3) of the Commission's Rules*, WC Docket No. 20-385, Public Notice, 36 FCC Rcd 4756 (WCB 2021); *Interconnected VoIP Numbering Authorization Application Filed by TRUSTID, Inc., Pursuant to Section 52.15(g)(3) of the Commission's Rules*, WC Docket No. 20-132, Public Notice, 36 FCC Rcd 4759 (WCB 2021); *Interconnected VoIP Numbering Authorization Application Filed by CSC Voice, LLC Pursuant to Section 52.15(g)(3) of the Commission's Rules*, WC Docket No. 22-330, Public Notice, DA 23-220 (WCB Mar. 15, 2023).

Additionally, direct access applications have been challenged by commenters raising concerns about intercarrier compensation and call routing or call blocking practices.[33]

10. In August 2021, the Commission adopted a *Further Notice of Proposed Rulemaking* seeking comment on how to improve the interconnected VoIP direct access application process to address the identified gaps in the direct access application process, the continued scourge of illegal robocalls, national security, and number resource exhaust.[34] We received comments from a wide range of stakeholders, including state public utility commissions, interconnected VoIP providers, industry standards groups and trade associations, and consumer advocates.[35]

III. DISCUSSION

11. The application process for interconnected VoIP providers' direct access to numbering is the first line of defense in mitigating the risk of providing scarce numbering resources to bad actors.[36] It is thus critically important that the rules governing this process prevent, to the greatest extent possible, interconnected VoIP providers that engage in unlawful robocalling or spoofing, or otherwise threaten the national security and law enforcement interests of the United States, from accessing or retaining our nation's numbering resources.[37] While our direct access rules currently contemplate that the Bureau may request supplemental information as necessary to conduct a thorough public interest review,[38] the rule changes we adopt today make certain previously supplemental showings a mandatory prerequisite before the Bureau accepts new applications for filing and grants such applications in the public interest. The rules we adopt today strike an appropriate balance between establishing necessary checks on interconnected VoIP direct access applicants and authorization holders and fostering an efficient direct access process that has, in part, facilitated the ongoing technological transition to advanced IP communications networks.

A. Ensuring that Authorization Approvals Serve the Public Interest

12. First, we tighten our application requirements to ensure that the Bureau receives sufficient detail from interconnected VoIP applicants to make informed, public-interest-driven decisions about their direct access applications and thereby protect the public from bad actors. These new requirements will also increase our enforcement capabilities should we find that providers are skirting our rules. Upon the effective date of these rules, we require explicit acknowledgment of compliance with all robocall regulations; implement disclosure and update requirements regarding ownership and control; require certification of compliance with other applicable Commission regulations and certain state law; and add a declaration requirement to hold applicants accountable for the truthfulness and accuracy of their direct access applications.

1. Certifying Compliance with Robocall-Related Rules

13. We adopt our proposal to require a direct access applicant to certify that it will use numbering resources lawfully and will not encourage, assist, or facilitate illegal robocalls, illegal

[33] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12913, para. 10 & n.44; *see, e.g.*, AT&T Comments in Opposition to Interconnected VoIP Numbering Authorization Applications Filed by HDC Alpha, LLC et al., WC Docket Nos. 19-313 et al. (rec. Jan. 21, 2021) (AT&T Opposition).

[34] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12913, para. 11.

[35] *See* WC Docket No. 13-97.

[36] *See VoIP Direct Access Further Notice*, 36 FCC Rcd at 12908-09, 12918, paras. 2-4, 23.

[37] *Id.* at 12913, 12919, paras. 12, 24.

[38] *See* 47 CFR § 52.15(g)(3)(iii)(D) (stating that the Bureau reserves the right to request additional information after its initial review of an application).

spoofing, or fraud.[39] Protecting Americans from the harmful effects of unwanted and illegal robocalls remains the Commission's top consumer protection priority. More than just a nuisance, illegal robocalls continue to expose millions of American consumers to harmful risks.[40] The Commission receives more complaints about such unwanted calls than about anything else—approximately 119,000 last year alone.[41]

14. To help curb illegal robocalls and enhance the Bureau staff's ability to protect the public interest from such calls, the *VoIP Direct Access Further Notice* proposed requiring applicants to certify in their direct access applications to numerous statements regarding illegal robocalls and the Robocall Mitigation Database and to disclose whether they are subject to a robocall-related action, investigation, or inquiry from various enforcement entities.[42] We received substantial opposition from a wide range of commenters in response to these proposals.[43] Many commenters argued that our proposed approach would risk creating redundancies and cause confusion because interconnected VoIP providers are already subject to the Commission's comprehensive framework to combat illegal robocalls.[44] Some commenters also argued that our proposals would not effectively reduce the origination of illegal robocalls,[45] or would impact interconnected VoIP providers' competitiveness with other types of providers by imposing on

[39] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12913-14, para. 13.

[40] The Commission has estimated that $10.5 billion is lost annually by consumers due to illegal robocalls, not accounting for the non-quantifiable losses suffered by consumers and the erosion of confidence in the nation's telephone network. *See Caller ID Authentication First Report and Order*, 35 FCC Rcd at 3263, para. 48. The Commission has also found that the potential benefits resulting from eliminating the wasted time and nuisances caused by illegal scam robocalls would exceed $3 billion annually. *Id.*, para. 47.

[41] The Commission received approximately 193,000 such complaints in 2019, 157,000 in 2020, 164,000 in 2021, and 119,000 in 2022. FCC, *Consumer Complaint Data Center*, https://www.fcc.gov/consumer-help-center-data (last visited Jan. 31, 2023).

[42] We proposed requiring applicants for direct access to certify that they: (1) will use numbering resources lawfully; (2) will not encourage nor assist and facilitate illegal robocalls, illegal spoofing, or fraud; (3) will take reasonable steps to cease origination, termination, and/or transmission of illegal robocalls once discovered; (4) will cooperate with the Commission, federal and state law enforcement and regulatory agencies with relevant jurisdiction, and the industry-led registered consortium, regarding efforts to mitigate illegal or harmful robocalling or spoofing and tracebacks; (5) have filed in the Robocall Mitigation Database; (6) have either (A) fully implemented the STIR/SHAKEN caller ID authentication protocols and framework or (B) have implemented either STIR/SHAKEN caller ID authentication or a robocall mitigation program for all calls for which it acts as a voice service provider, and if the latter, have described in the Database the detailed steps they are taking regarding number use that can reasonably be expected to reduce the origination and transmission of illegal robocalls. *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12913-14, paras. 13-14. We also proposed requiring direct access applicants or authorization holders to inform the Commission if they are subject to a Commission, law enforcement, or regulatory action, investigation, or inquiry due to their robocall mitigation plan being deemed insufficient or problematic, or due to suspected unlawful robocalling or spoofing, and to acknowledge this requirement in their applications. *Id.* at 12914-15, para. 15.

[43] *See, e.g.*, Lumen Comments at 12; RingCentral, Inc., Telnyx, LLC & Vonage Holdings Corp. Comments at 6 (RingCentral et al.); Twilio Comments at 5-6; USTelecom – The Broadband Association Comments at 3 (USTelecom); Voice on the Net Coalition Comments at 3 (VON); Cloud Commc'ns All. Reply at 1-2 (CCA); Lumen Reply at 9-10; RingCentral et al. Reply at 3-5, 10; USTelecom Reply at 2.

[44] *See*, *e.g.*, Lumen Comments at 12 ("[T]hese certifications would be wholly duplicative of requirements already imposed as part of the far more comprehensive framework in the Commission's robocalling proceedings in the wake of the TRACED Act. This framework already applies to all types of voice service providers, including interconnected VoIP providers."); RingCentral et al. Comments at 7 (arguing that certifications that duplicate existing requirements are "unnecessary," because "[t]he Commission can readily verify whether applicants have," for instance, "register[ed] in the robocall mitigation database"); Twilio Comments at 5-6; USTelecom Comments at 3 ("[T]he Commission should re-focus its proposal to avoid imposing confusing and duplicative requirements on service providers and to instead focus on potential gaps in its existing requirements.").

[45] VON Comments at 3 & n.4.

them unique burdens.[46] Upon consideration of the record, we adopt a more straightforward approach that avoids these concerns and instead cross-references the relevant Commission rules targeting illegal robocalls in our new certifications.

15. *Robocall-related certifications*. We revise section 52.15(g)(3) of the Commission's rules[47] to require an interconnected VoIP provider seeking direct access to numbering resources to certify that:

- the applicant will not use the numbers obtained pursuant to an interconnected VoIP provider numbering authorization to knowingly transmit, encourage, assist, or facilitate illegal robocalls, illegal spoofing, or fraud, in violation of robocall, spoofing, and deceptive telemarketing obligations under 47 CFR §§ 64.1200, 64.1604, 64.6300 *et seq.*, and 16 CFR § 310.3(b); [48]
- the applicant has fully complied with all applicable STIR/SHAKEN caller ID authentication and robocall mitigation program requirements and filed a certification in the Robocall Mitigation Database as required by 47 CFR §§ 64.6301-64.6305;[49] and

[46] *See* RingCentral et al. Comments at 11; VON Comments at 2 ("[A]dopting these new requirements would not protect against illegal robocalls. More problematic, the proposed rules would be anticompetitive in that they would impose burdens on interconnected VoIP providers not applied to other direct access recipients without any record that the new rules would prevent robocalls or enhance network security."); CCA Reply at 2-3.

[47] *See* Appx. A, § 52.15(g)(3)(ii)(C), (D), and (K).

[48] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12913, para. 13. As voice service providers, interconnected VoIP providers must comply with all regulations that target illegal robocalls that are generally applicable to all voice service providers. *See* 47 CFR §§ 64.1600(r)(1), 64.6300(n)(1) (defining "voice service" as "any service that is interconnected with the public switched telephone network and that furnishes voice communications to an end user using resources from the North American Numbering Plan"); *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) (defining "voice service provider" for the purposes of the Commission's call blocking rules as including "any entity originating, carrying, or terminating voice calls through time-division multiplexing (TDM), Voice over Internet Protocol (VoIP), or commercial mobile radio service (CMRS)"). Additionally, interconnected VoIP providers acting as terminating, originating, intermediate, and/or gateway providers must accordingly also comply with the specific regulations targeting illegal robocalls that are applicable to each type of provider. Some commenters propose additional changes to the robocalling rules that are not necessarily tied to direct access to numbers or limited to interconnected VoIP providers. Electronic Privacy Information Center Comments at 3-16 (EPIC) (urging the Commission to provide "[m]ore explicit guidance to providers on what activities should be considered indicators of an illegal robocall operation," "[a] list of methods providers should be required to use to maximize their opportunities to spot these indicators[,]" "[s]pecific actions providers should be required to take once the indicators are apparent," "[a] clear statement that a provider's failure to . . . use either the Commission's proposed methods of spotting illegal robocall operations or a different but equally effective method, and . . . shut down access to the callers conducting an illegal robocall operation, will lead to the suspension and possible permanent expulsion of the provider from the numbering system," and "greater transparency . . . regarding sources of potential robocall threats"); ZipDX, LLC Reply at 9 (ZipDX) (requesting that the Commission "migrate all automated calling to a new, non-geographic NPA (area code) specifically allocated for that purpose," and require voice callers using automation "to register their campaigns"). We decline to adopt or address these proposals, as they are beyond the scope of this proceeding.

[49] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12914, para. 14. Accordingly, should the Commission deem the applicant's filing insufficient and remove it from the Robocall Mitigation Database, the applicant may not validly certify to this statement. As noted above, we proposed requiring interconnected VoIP providers to certify that they will cooperate with various governmental agencies and the industry-led registered consortium regarding efforts to mitigate illegal or harmful robocalling or spoofing and tracebacks. *See supra* para. 14 n.42. In our recent *Caller ID Authentication Sixth Report and Order*, we expanded the scope of a similar Robocall Mitigation Database (continued….)

- neither the applicant nor any of its key personnel identified in the application are or have been subject to a Commission, law enforcement, or any regulatory agency investigation for failure to comply with any law, rule, or order, including the Commission's rules applicable to unlawful robocalls or unlawful spoofing.[50]

16. The additional certifications we adopt today strike a balance between acknowledging interconnected VoIP providers' disproportionate role in the facilitation of illegal robocalls,[51] and ensuring that our approach is minimally burdensome and competitively neutral.[52] Consistent with the record here,[53] we do not adopt new obligations regarding STIR/SHAKEN caller ID authentication or robocall mitigation specifically for interconnected VoIP providers, but instead merely require those providers to certify that they will comply, or have complied, with certain preexisting requirements.[54] These certifications are not redundant and serve an important proactive educational function—alerting interconnected VoIP providers at the outset of the direct access application process of important obligations, thereby helping to ensure robust compliance and foster a more trustful numbering ecosystem.

(Continued from previous page)
certification requirement to cover all providers. *See Caller ID Authentication Sixth Report and Order* at 18, para. 29-31. We thus decline to adopt our proposal here to avoid imposing redundant requirements.

[50] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12914-15, para. 15. Our rules already require interconnected VoIP direct access applicants to certify that none of the key personnel identified in their applications are or have been subject to a Commission, law enforcement, or regulatory agency investigation for failure to comply with *any* law, rule, or order. 47 CFR § 52.15(g)(3)(i)(F). By adding the language regarding the Commission's rules applicable to unlawful robocalls or unlawful spoofing to the end of the provision, we do not narrow the broader scope of the certification, as VON suggests, but rather place additional emphasis on the need for applicants to disclose robocalling compliance issues to the Commission. Letter from Glenn S. Richards, Counsel for Voice on the Net Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 13-97 et al., at 2 (filed Sept. 14, 2023) (VON *Ex Parte*); *see also* Letter from Joshua M. Bercu, Vice President, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 13-97 et al. (filed Sept. 14, 2023) (USTelecom *Ex Parte*). Additionally, we note that this certification is consistent with the reporting requirements recently adopted by the Commission for all providers to certify as to whether they have been the subject of a formal Commission, law enforcement, or regulatory agency action or investigation with accompanying findings of actual or suspected wrongdoing due to the filing entity transmitting, encouraging, assisting, or otherwise facilitating illegal robocalls or spoofing. *Caller ID Authentication Sixth Report and Order* at 25-26, para. 47; *id.* at 62-63 (amending 47 CFR § 64.6305 to include this new certification). We decline at this time to adopt our proposal to expand the sphere of proceedings (i.e., to include "actions" and "inquiries" in addition to investigations) covered by this certification, as we agree with RingCentral that the proposal was vaguely worded and therefore did not "provide[] sufficient notice to enable providers to comply." RingCentral et al. Comments at 6. Additionally, we emphasize that being subject to an investigation would not necessarily disqualify an applicant from receiving direct access authority. In the event an applicant is not able to certify that it is not subject to a Commission, law enforcement, or regulatory agency investigation, an applicant can explain in its application why the investigation should not disqualify the applicant from receiving direct access authorization. For example, an applicant could provide information rebutting a warning letter (e.g., a cease-and-desist letter) of suspected illegal robocalling received from the Commission or FTC and/or a description of the steps the applicant has taken to respond to such a letter.

[51] *See Caller ID Authentication Sixth Report and Order* at 19-20, para. 34.

[52] This approach accords with our recent decision in the *Caller ID Authentication Sixth Report and Order* not to adopt heightened robocall mitigation standards for interconnected VoIP providers. *See id.*

[53] *See, e.g.*, CCA Reply at 1-2 (agreeing with commenters that "the manifold proposals to address illegal robocalls set forth in the Further Notice are largely redundant of existing requirements and are potentially counterproductive"); *id.* at 5 (arguing that new substantive requirements on interconnected VoIP providers "are more appropriately targeted to all voice service providers . . . [and] would require additional rulemakings").

[54] By requiring applicants to certify compliance with preexisting rule sections, we ensure that our approach does not cause confusion, and remains accurate should we decide to revise the robocall-related obligations applicable to voice service providers in the Call Authentication Trust Anchor or other robocall-related dockets.

As explained below, the certifications carry the weight of the Commission's requirement that an officer or responsible official of the company attests under penalty of perjury, pursuant to section 1.16 of the Commission's rules,[55] that all statements in the application are true and accurate.[56] These certifications will thus serve the public interest by further deterring direct access applicants from engaging in unlawful robocalling or spoofing, and by giving the Commission another enforcement mechanism to use against bad actors. Our requirement that applicants certify that they are not subject to an investigation, including a robocall-related investigation, paired with our preexisting rule that authorization holders must maintain the accuracy of their certifications,[57] will keep us informed of such investigations as they arise.[58] Due to the persistence of robocalls and associated complaints nationwide, we unsurprisingly received broad support for adding robocall-specific certifications to direct access applications from governmental entities.[59] RingCentral additionally supports our approach of strengthening our enforcement of already existing requirements.[60]

17. Some commenters contend that these new certifications could incentivize interconnected VoIP providers to obtain numbers from the secondary market, rather than by applying for direct access.[61] This, they posit, would be a negative outcome because direct access to numbers facilitates traceback requests and gives regulators better visibility into number utilization.[62] While we agree with commenters regarding the benefits of direct access, we disagree that our new certifications will push interconnected VoIP providers into the secondary market. The additional certifications we adopt today are minimally burdensome as they do not add any new substantive obligations, and are only incremental to the existing certifications required by the Commission's rules. We are therefore confident that the incremental cost of

[55] 47 CFR § 1.16. We also note that, by statute, any person that knowingly and willfully makes a false statement shall be fined or imprisoned or both. 18 U.S.C. § 1001.

[56] *See VoIP Direct Access Further Notice*, 36 FCC Rcd at 12918, para. 22.

[57] *See* 47 CFR § 52.15(g)(3)(iv)(A).

[58] The Commission publishes an up-to-date list of robocall-related cease-and-desist letters that it has sent to voice service providers. *See* FCC, *Robocall Facilitators Must Cease and Desist*, https://www.fcc.gov/robocall-facilitators-must-cease-and-desist (last visited May 16, 2023).

[59] *See, e.g.*, Mich. Pub. Serv. Comm'n Comments at 4-5 (Mich. PSC); Neb. Pub. Serv. Comm'n Comments at 3 (Neb. PSC); Pa. Pub. Util. Comm'n Comments at 4 (Pa. PUC); Fifty-One (51) State Attorneys General Reply at 2 (NAAG) ("Every day, State AGs hear from constituents about the terrible damage inflicted through illegal robocalls. In most State AG offices, illegal robocalls top the list of most frequent consumer complaints. Phone calls and texts are by far the most common contact method for fraud and account for 58% of all fraud with a contact method reported to the Federal Trade Commission—almost four times higher than the next most common contact method. Moreover, fraudulent phone calls and texts account for over $500 million in reported losses.") (citing FTC, *Consumer Sentinel Network Databook 2020* at 12 (2021), https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn_annual_data_book_2020.pdf)).

[60] *See* RingCentral et al. Reply at 3-4 ("[T]he Commission should focus on enforcing existing requirements.").

[61] *See* CCA Reply at 2 (stating that "proposed certification requirements and technical documentation are redundant, overly burdensome, and counterproductive in that they may drive providers back to the secondary market for numbers").

[62] *See* VON Comments at 4 ("Direct access to phone numbers will facilitate traceback efforts which, in turn, can help to quickly identify and stop illegal robocalling and other forms of calling fraud."); CCA Reply at 2 ("Discouraging applications for direct number access could actually undermine the Commission's robocall mitigation efforts, as well as hinder its efforts to track number utilization. Direct access to numbers facilitates traceback, improves visibility into number utilization, and promotes the transition from TDM to IP network infrastructure, among other benefits.") (internal citations omitted).

filing such certifications will not materially impact an interconnected VoIP provider's decision regarding numbering resource acquisition.[63]

18. *Notification of investigations post-grant*. In the *VoIP Direct Access Further Notice*, we proposed requiring direct access authorization holders to inform the Commission if the authorization holder is subject—either at the time of its application or after its filing or its grant—to a Commission, law enforcement, or regulatory agency action, investigation, or inquiry due to its robocall mitigation plan being deemed insufficient or problematic, or due to suspected unlawful robocalling or spoofing.[64] We decline to adopt our proposal at this time. Because we adopt a new certification in this regard (as explained above), and because the Commission's rules already contain a requirement that an authorization holder "[m]aintain the accuracy of all . . . certifications in its application," and "file a correction with the Commission . . . within thirty (30) days" of any changes, adopting this proposal is unnecessary.[65] By taking this approach, we address RingCentral's concern regarding adding a potentially confusing additional layer of reporting requirements beyond what is already required by the current rule.[66] We are satisfied that our current requirement to keep all certifications up-to-date will capture our new robocall-related certifications, and will keep us apprised of any new investigations involving interconnected VoIP direct access authorization holders.

2. Enhanced Disclosure and Review of Ownership and Control of Applicants

19. We adopt rules to require the disclosure and review of foreign ownership and control of interconnected VoIP direct access applicants. The Commission has recognized that "[i]llegal robocalling often originates from sources outside the United States,"[67] and "[t]he Commission and Congress have long acknowledged that illegal robocalls that originate abroad are a significant part of the robocall problem."[68] Indeed, in 2020, the North American Numbering Council (NANC), the Commission's advisory committee of outside experts on telephone numbering matters, stated that "it is a long-standing

[63] *See* Bandwidth Reply at 6 (stating that "the bulk of the proposed rules are reasonable and appropriately targeted toward preventing potential abuses that harm the public interest while simultaneously continuing to encourage innovative and wanted services"); *see also* TelSwitch, Inc., Reply Comments of the Second Report and Order and Second Further Notice of Proposed Rulemaking, WC Docket No. 20-67 at 1-2 (filed Sept. 15, 2023). We note the other issues raised by TelSwitch are outside the scope of this proceeding. Moreover, to the extent this does occur, our accompanying *Second Further Notice* seeks to explore how we can reach interconnected VoIP providers that obtain their numbering resources other than through direct access. *See infra* Part IV.C.

[64] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12914-15, para. 15.

[65] 47 CFR § 52.15(g)(3)(iv)(A).

[66] *See* RingCentral et al. Comments at 6.

[67] *Advanced Methods to Target and Eliminate Unlawful Robocalls*; *Call Authentication Trust Anchor*, CG Docket No. 17-59 et al., Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876, 4902, para. 82 (2019); *see also, e.g.*, *One Eye LLC*, EB-TCD-20-0031678 and EB Docket No. 22-174, Final Determination Order (rel. May 11, 2023) (directing downstream voice providers to block traffic from gateway provider found to be transmitting illegal robocalls that originated overseas).

[68] *Advanced Methods to Target and Eliminate Unlawful Robocalls*; *Call Authentication Trust Anchor*, GC Docket No. 17-59 & WC Docket No. 17-97, Sixth Report and Order in CG Docket No. 17-59, Fifth Report and Order in WC Docket No. 17-97, Order on Reconsideration in WC Docket No. 17-97, Order, Seventh Further Notice of Proposed Rulemaking in CG Docket No. 17-59, and Fifth Further Notice of Proposed Rulemaking in WC Docket No. 17-97, FCC 22-37, at 5, para. 7 (May 20, 2022) (*Caller ID Authentication Fifth Further Notice*); *see also Advanced Methods to Target and Eliminate Unlawful Robocalls*; *Call Authentication Trust Anchor*, GC Docket No. 17-59 & WC Docket No. 17-97, Fifth Further Notice of Proposed Rulemaking in CG Docket No. 17-59 and Fourth Further Notice of Proposed Rulemaking in WC Docket No. 17-97, 36 FCC Rcd 14971, 14972-73, para. 5 (2021).

problem that international gateway traffic is a significant source of fraudulent traffic."[69] The Commission accordingly strives to stay abreast of foreign companies using U.S. telephone numbers. For example, it has stressed that "[e]nsuring that foreign voice service providers using U.S. telephone numbers comply with the certification requirements prior to being listed in the database is especially important in light of the prevalence of foreign-originated illegal robocalls aimed at U.S. consumers and the difficulty in eliminating such calls."[70] VoIP providers require particular scrutiny in the robocall area as well, given that "[t]he rising tide of robocalls and the emergence of VoIP go hand in hand."[71] In fact, "[t]oday, widely available VoIP software can allow bad actors with malicious intent to make spoofed calls with minimal technical experience and cost."[72] As a result, "[a]llowing [VoIP providers with foreign ownership or control] direct access to numbers and critical numbering databases raises a number of potential risks, including the impact to number conservation requirements; questions related to jurisdiction, oversight, and enforcement of numbering rules; consideration of assessment of taxes and fees upon foreign-owned entities; and potential national security and law enforcement risks with access to U.S. telecommunications network operations."[73] These factors make it important for the Commission to know about foreign ownership of interconnected VoIP providers seeking direct access to our nation's finite numbering resources, especially because a number of providers with substantial foreign ownership have applied to obtain direct access to numbering resources since the 2015 *VoIP Direct Access Order*.[74]

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[69] N. Am. Numbering Council Call Authentication Trust Anchor Working Grp., Best Practices for the Implementation of Call Authentication Frameworks at 14 (2020), https://docs.fcc.gov/public/attachments/DOC-367133A1.pdf (2020 NANC Best Practices Report).

[70] *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1906, para. 91 (2020). Foreign ownership of providers serving our nation's consumers also is a matter of concern for the Commission generally, as it may pose national security and/or law enforcement risks to the United States. *Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks*; *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, IB Docket No. 21-119 & MD Docket No. 23-134, Order and Notice of Proposed Rulemaking, FCC 23-28, at 3, 8-9, 11-13, paras. 3, 8, 13-15 (rel. Apr. 25, 2023) (*International Section 214 Authorization Order and Notice*).

[71] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12908, para. 2; FCC, *Robocall Facilitators Must Cease and Desist*, https://www.fcc.gov/robocall-facilitators-must-cease-and-desist (last visited May 16, 2023) (website collecting Enforcement Bureau cease-and-desist letters to suspected illegal robocallers, including interconnected VoIP providers with foreign ownership).

[72] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12908, para. 2.

[73] *Id*. at 12918, para. 23.

[74] *Id.* at 12918-19, para. 23 & n.72 (citing Application of Mitel Cloud Services, Inc. for Authorization to Obtain Numbering Resources, WC Docket No. 20-149 (filed May 19, 2020), https://www.fcc.gov/ecfs/filing/105190855208032 (Mitel Application) (subsequently withdrawn)); *see also* Joint Application of MLNTopCo Ltd., Mitel Networks Corporation, and Mitel Cloud Services, Inc. f/k/a/ Mitel NetSolutions, Inc for Assignment or Transfer of Control of International Section 214 Authorizations, File No. ITC-T/C-20190517-00094, Attach. 1 at 2-4 (filed May 17, 2018), https://licensing.fcc.gov/myibfs/download.do?attachment_key=1403175 (disclosing that MLN TopCo Ltd is a Cayman Islands exempted company and a wholly owned subsidiary of Searchlight II MLN, L.P., a Cayman Islands exempted limited partnership, and that, post transaction, Applicant will be a wholly owned direct subsidiary of MLN TopCo Ltd through a number of intermediate holding companies) (Mitel Int'l 214 Attachment); Application of Simwood, Inc. for Authorization to Obtain Numbering Resources, WC Docket No. 19-96 (filed March 25, 2019), https://www.fcc.gov/ecfs/filing/103250408620404 (Simwood Application); Application of Simwood, Inc., for International Section 214 License, File No. ITC-214-20181120-00222, Attach. 2 at 2 (filed Nov. 11, 2018), https://licensing.fcc.gov/myibfs/download.do?attachment_key=1577583 (describing applicant's United Kingdom foreign ownership at 10% or greater via Simwood's parent company Simwood Group, PLC and overlapping director Simon Woodhead) (Simwood International 214 Application); Application of NobelBiz for Authorization to Obtain Numbering Resources, WC Docket No. 20-385 (filed Nov. 10, 2020),

(continued….)

20. The current rules on direct access applications, however, do not require interconnected VoIP providers to disclose any information about their ownership or affiliation, nor do they specify a process to evaluate applications with substantial foreign ownership. The *VoIP Direct Access Further Notice* therefore proposed requirements aimed at ascertaining the foreign ownership and control of interconnected VoIP applicants and tentatively concluded that applicants should disclose any 10% or greater "equity and/or voting interest, or a controlling interest."[75] It also proposed requiring such applicants to identify any interlocking directorates with a foreign carrier, as well as any affiliation with a foreign carrier.[76] As discussed below, we now adopt ownership disclosure requirements for interconnected VoIP direct access applicants, and relatedly conclude that applications from such providers will be placed on a "non-streamlined" processing track if the applicant has a foreign owner whose interest exceeds the reporting threshold set forth in section 63.18(h) of the Commission's rules, which we incorporate for purposes of ownership reporting here.[77]

21. *Ownership disclosure requirements*. We adopt a rule to require interconnected VoIP applicants for a Commission direct access authorization to provide all of the information, disclosures, and certifications required by sections 63.18(h) and (i) of the Commission's rules.[78] If the applicant does not have information required to be provided under sections 63.18(h) and (i), the application must include a statement to that effect. This approach ensures the requirements for interconnected VoIP direct access applicants match the requirements for international section 214 applications, as well as applications for submarine cable landing licenses (which likewise cross-reference section 63.18(h)).[79] It also ensures the requirements for interconnected VoIP direct access applicants will remain consistent with the requirements for international section 214 applicants regardless of any modifications to sections 63.18(h) or (i).[80] We find that adopting a reporting threshold consistent with that used in other Commission

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https://www.fcc.gov/ecfs/filing/1110286733148 (NobelBiz Application); Supplement to NobelBiz Application, WC Docket No. 20-385 (filed Feb. 19, 2021), https://www.fcc.gov/ecfs/filing/10219635126636 (NobelBiz Supplement); Application of TRUSTID for Authorization to Obtain Numbering Resources, WC Docket No. 20-132 (filed May 7, 2020), https://www.fcc.gov/ecfs/filing/1050732674916 (TRUSTID Application); *id.* at 2; *Number Resource Optimization et al*., Memorandum Opinion and Order, 32 FCC Rcd 5855, 5856, paras. 1-2 nn.1, 9 (2017) (describing Hux Investment Pte. Ltd., also referred to as "GIC Investor," as a "private limited company organized under the laws of Singapore" that has approximately 31% ownership interest in Neustar).

[75] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12919, para. 24.

[76] *Id*.; *see* 47 CFR § 63.09(g)(1).

[77] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12920, para. 26.

[78] 47 CFR § 63.18(h) (requiring "[t]he name, address, citizenship and principal businesses of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent . . . ."); 47 CFR § 63.18(i) (requiring "[a] certification as to whether or not the applicant is, or is affiliated with, a foreign carrier. The certification shall state with specificity each foreign country in which the applicant is, or is affiliated with, a foreign carrier."); *see infra* note 80 (addressing amendments to section 63.18(h), and addressing a rulemaking proceeding in which the Commission sought comment on changing the requirement in section 63.18(h)).

[79] 47 CFR § 1.767(a)(8)(i); *see also Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks*; *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, IB Docket No. 23-119, MD Docket No. 23-134, Order and Notice of Proposed Rulemaking, FCC 23-28, at *64, para. 172 (rel. Apr. 25, 2023) (*Evolving Risks Order and NPRM*) (seeking comment on amending section 1.767(a)(8)(i) of the rules to remove the reference to section 63.18(h) and retain the current 10% reporting threshold for submarine cable landing license applications); *see infra* note 80.

[80] For example, the Commission adopted changes to section 63.18(h) in 2020. *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, 35 FCC Rcd 10927, 10985, Appx. B, para. 11 (2020) (*Executive Branch Process Reform Order*); *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign*
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application processing regimes promotes certainty and transparency.[81] This approach also ensures there is no undue burden on direct access applicants, since many companies already provide the same or similar information to the Commission in other contexts.

22. Adopting the same standards that will be used for international section 214 applications,[82] in particular, is appropriate given our focus on national security and law enforcement concerns and reducing risks of illegal robocalling facilitated by potential bad actors abroad.[83] Requiring ownership information, from a U.S.- or foreign-owned applicant, will assist Bureau staff in their existing practice of identifying applications that require further review to determine whether the direct access applicant's ownership, control, or affiliation raises national security and/or law enforcement concerns.[84] Indeed, "[i]t is axiomatic that the Commission needs accurate information in order to carry out its work, and this is especially true with regard to compliance with foreign ownership disclosures. In several recent cases the Commission has found that foreign ownership of telecommunications companies providing services in the United States may pose a risk to national security, law enforcement interests, or the safety of U.S. persons."[85] As noted above, several providers with substantial foreign ownership have applied to obtain

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Ownership, IB Docket No. 16-155, Erratum, 35 FCC Rcd 13164, 13173, para. 11 (2020) (*Order Erratum*) (amending section 63.18(h) to read, "[t]he name, address, citizenship, and principal businesses of any individual or entity that directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those entities (to the nearest one percent) . . ."). The amendments to section 63.18(h), however, are not yet effective. Federal Communications Commission, Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, 85 Fed. Reg. 76360, 76376, 76385-86 (Nov. 27, 2020). The Commission also has a pending rulemaking proceeding seeking comment, among other things, on whether to adopt a new ownership reporting threshold that would require disclosure of certain 5% percent or greater direct and indirect equity and/or voting interests with respect to applications for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority, and on whether to apply the 5% reporting threshold to encompass all equity and voting interests, regardless of whether the interest holder is a domestic or foreign individual or entity. *Evolving Risks Order and NPRM* at *38-41, paras. 88-97. In that proceeding, the Commission stated, "[t]he current 10% reporting threshold may not capture all foreign interests that may present national security, law enforcement, foreign policy, and/or trade policy concerns." *Id.* at *38, para. 89. If the Commission amends 63.18(h) by adopting a 5% reporting threshold, we direct the Bureau to seek comment on whether applicants for a direct access authorization should disclose information, including the name, address, citizenship, and principal business, of any individual or entity that directly or indirectly owns 5% percent or greater equity and/or voting interests, or a controlling interest, of the applicant. Based upon the Bureau's review of the comments, we further delegate to the Bureau the authority to address any such final threshold requirement in a public notice.

[81] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12919, para. 24.

[82] Note that applicants seeking assignment or transfer of control of an international section 214 authorization are also subject to the ownership-disclosure requirement in section 63.18(h) pursuant to section 63.24. *See* 47 CFR § 63.24.

[83] *See VoIP Direct Access Further Notice*, 36 FCC Rcd at 12908-09, 12918, 12920, paras. 3-4, 23, 26.

[84] *See id*. at 12918-19, paras. 23-24 & n.73 (citing NANC, Report on Foreign Ownership of Interconnected Voice over Internet Protocol Applicants, at 3-5 (June 29, 2017) (NANC Report on Foreign Ownership), http://nanc-chair.org/docs/mtg_docs/Jun17_NANC_Report_on_Foreign_Ownership_of_Interconnected_VOIP_Applicants.pdf); *see also International Section 214 Authorization Order and Notice* at 14-17, paras. 16-23 (requiring all international section 214 authorization holders to respond to a one-time collection to update the Commission's records regarding the foreign ownership of international section 214 authorization holders). We do not require ownership disclosures by existing interconnected VoIP direct access authorization holders but seek comment on whether they should provide such information in the *Second Further Notice* accompanying this *Second Report and Order*. *See infra* para. 81.

[85] *Truphone, Inc.*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 5393, 5394, para. 2 (2022) (citing, e.g., *Pacific Networks Corp. and ComNet (USA) LLC*, GN Docket No. 20-111, Order of Revocation and Termination, 37 FCC Rcd 4220 (2022); *China Unicom (Americas) Operations Limited*, GN Docket No. 20-110, Order on
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direct access to numbering resources since adoption of the 2015 *VoIP Direct Access Order*, making the initial review process especially important to address the risk of providing access to our numbering resources to potential bad actors abroad.[86] This requirement also will cause applicants to conduct robust due diligence, thus increasing the reliability of their information.

23. The record largely supports instituting some form of ownership disclosure for direct access applicants.[87] VON and Microsoft, however, argue that a foreign ownership reporting requirement "will add unnecessary time and expense to the review process without any obvious purpose or anticipated reduction in illegal robocalls."[88] While we recognize that an ownership disclosure requirement constitutes an additional step in the direct access application process for interconnected VoIP providers, we conclude that the public interest in receiving this information outweighs any incremental cost on applicants. Interconnected VoIP providers that seek access to telephone numbers on a permanent basis acquire both the rights and obligations associated with using that access in the public interest,[89] and we must ensure that access does not result in illegal practices that harm consumers. As noted above, the ownership disclosures we adopt are like those required in several other Commission application processes, so requiring the same kind of disclosure here is not unduly onerous.[90] Moreover, an applicant that is a privately held entity should know its investors and maintain records of their significant direct or indirect

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Revocation, 37 FCC Rcd 1480 (2022); *China Telecom (Americas) Corporation*, GN Docket No. 20-109, Order on Revocation and Termination, 36 FCC Rcd 15966 (2021)).

[86] *See supra* para. 19 n.74.

[87] *See* Bandwidth Inc. and Bandwidth.com CLEC, LLC Comments at 16 (Bandwidth Comments) (ownership, generally); Twilio Comments at 7 (Twilio "supports the proposal to require interconnected VoIP applicants seeking direct access to numbering resources to provide information regarding foreign ownership and to remove applications with reportable foreign ownership from streamlined processing."); NAAG Comments at 5 ("State AGs support . . . requiring applicants for direct access to numbers to disclose foreign ownership information . . . ."). The Cloud Communications Alliance supports the Commission's efforts to determine the foreign ownership or control of direct access applicants, but argues that we should adopt a greater than 50% threshold instead of 10% as in 47 CFR § 63.18(h). CCA Comments at 4. We decline to adopt a higher threshold because, as we recognized in the international section 214 context, "although a 10-percent threshold is somewhat more burdensome [than a higher threshold], that increased burden does not outweigh the potential value to the Commission of being able to review the additional information about the applicant's ownership. Leaving the threshold at 10% or greater will help us determine whether a particular application raises issues of national security, foreign policy, or law enforcement risks." *1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909, 4940, para. 76 (1999). Twilio requests that we establish review periods for processing applications with reportable foreign ownership "to ensure applications are not allowed to linger indefinitely." Twilio Comments at 7. We decline to do so. We note, however, that fixed deadlines do apply when a direct access application is referred to the Executive Branch agencies. *Executive Branch Process Reform Order*, 35 FCC Rcd at 10955-59, paras. 76-84.

[88] VON Comments at 5-6 (stating that the Commission "has reviewed nearly 150 VoIP direct access to number applications in the past six years, and can cite to just four instances when applicants were asked to provide additional ownership information") (footnote omitted); *see also* Microsoft Reply at 3 (agreeing with VON in opposing ownership disclosure requirements).

[89] *VoIP Direct Access Order*, 30 FCC Rcd at 6851-52, 6878, paras. 27, 78 (stating that interconnected VoIP providers must comply with all numbering rules, industry guidelines and practices, and that the Commission has authority to extend to interconnected VoIP providers both the rights and obligations associated with using telephone numbers).

[90] Twilio argues that applicants for growth numbering resources should not have to disclose ownership information in those applications because they would already have been granted access to numbers. Twilio Comments at 8. We are not revising the rules on applications for growth numbering resources in 47 CFR § 52.15(g)(4). We do, however, address below the duty to update ownership disclosures when the relevant information changes. *See infra* paras. 28-31.

equity and/or voting interest holders in the ordinary course of business. An applicant that is a publicly held company is also required to identify its interest holders in requisite filings with the U.S. Securities and Exchange Commission (SEC).[91] As in other contexts requiring the same kind of ownership disclosure, the relatively minor burden of disclosing ownership information in a direct access application is outweighed by the public interest benefit of the Commission having the information when the application is filed, in time to address potential issues raised by foreign ownership before granting an applicant rights or privileges.[92]

24. *Non-streamlined pleading cycle for direct access applicants with reportable foreign ownership*. As proposed in the *VoIP Direct Access Further Notice*, we amend our rules to state that the Bureau will remove applications from streamlined processing whenever the applicant has reportable foreign ownership, meaning ownership or control by a foreign entity that meets or exceeds the threshold for disclosure under section 63.18(h) of the Commission's rules, as now incorporated in section 52.15(g)(3).[93] The rule formalizes the current practice of taking applications with substantial foreign ownership off the streamlined processing cycle.[94]

25. Allowing sufficient time for review of applications with reportable foreign ownership will help the Bureau identify and assess potential national security and law enforcement risks raised by such applications, and provide transparency to applicants regarding the timeframe for processing their applications. Twilio supported this proposal, and no commenter opposed it.[95]

26. *Referral of applications with reportable foreign ownership to Executive Branch agencies*. We decline to automatically refer to the Executive Branch agencies interconnected VoIP providers' direct access applications that have reportable foreign ownership or control.[96] There was a lack of strong record support for automatic referrals. Moreover, given the limited number of referrals to date, it is more prudent and efficient to continue the current practice under 1.40001(a) of the rules, where the Commission, in its discretion, makes case-by-case referrals of direct access applications if it finds that "the specific circumstances of an application require the input of the Executive Branch as part of [the Commission's] public interest determination of whether an application raises national security, law enforcement, foreign policy, and/or trade policy concerns."[97]

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[91] *See* 15 U.S.C. § 78m(d)(1); 17 CFR §§ 240.13d-1, 229.403; *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, 11293-94, paras. 45-46 & n.130 (2016).

[92] *See FCC Enforcement Advisory: FCC Licensees and Authorization Holders Must Timely Disclose Changes in Foreign Ownership and Control*, Public Notice, DA 23-336, at 2 (EB Apr. 20, 2023) (*Enforcement Advisory*) ("The Commission's public interest analysis of ownership and control of applicants for Commission licenses [under 47 USC § 214] rests, in part, on an applicant's foreign ownership structure as it exists at the time the Commission considers the application, and in connection with such consideration, refers an application to the Executive Branch for review. The level of foreign ownership or control at the time of a review may also inform the analysis of whether these risks can be mitigated.").

[93] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12920, para. 26; 47 CFR § 63.18(h); *Executive Branch Process Reform Order*, 35 FCC Rcd at 10985-86, Appx. B, para. 11; *Order Erratum*, 35 FCC Rcd at 13173-74, para. 11; Appx. A, § 52.15(g)(3)(ii)(L) & (v). We codify the Bureau's application review procedure below. *See infra* Part III.B.1.

[94] *See VoIP Direct Access Further Notice*, 36 FCC Rcd at 12920, para. 26 ("Pursuant to the *Executive Branch Review Order*, the Commission, in its discretion, recently has referred a number of direct access to numbering applications where there is substantial foreign ownership of the applicant to the Committee.").

[95] Twilio Comments at 7.

[96] *See VoIP Direct Access Further Notice*, 36 FCC Rcd at 12920, para. 26.

[97] *Executive Branch Process Reform Order*, 35 FCC Rcd at 10935-36, para. 24 & n.55; *see* 47 CFR § 1.40001(a).

27. *Development of standard questions*. We also decline to develop a list of "Standard Questions" for interconnected VoIP applicants with reportable foreign ownership or control. While the Commission has adopted "a standardized set of national security and law enforcement questions (Standard Questions) that certain applicants and petitioners . . . with reportable foreign ownership will be required to answer as part of the Executive Branch review process,"[98] there was no strong record support for developing such questions for all interconnected VoIP direct access applicants with reportable foreign ownership. Given the lack of a developed record and our decision not to automatically refer applications to the Executive Branch agencies when an interconnected VoIP provider has reportable foreign ownership, we find it appropriate to rely on the current practice, under which Commission staff and the Executive Branch agencies can request additional information from applicants on a case-by-case basis.[99]

28. *Duty to update ownership information.* To ensure ownership information remains up to date, we revise section 52.15(g)(3) to require interconnected VoIP providers that obtain direct access authorization under the revised rules to submit an update to the Commission and each applicable state (i.e., each state where the provider has acquired or applied to receive numbers from the state at the time of the ownership change) within 30 days of any change to the reportable ownership information disclosed in their direct access applications, or if a provider that previously did not have reportable ownership information comes to have reportable foreign ownership information.[100] Alternatively, if the provider that obtained direct access authorization under our revised rules did not have reportable ownership percentages and information (whether on domestic or foreign owners) at the time of its original application, but subsequently has reportable information, we require it to provide the information as an update to its authorization within a 30-day timeframe.[101] We also delegate authority to the Bureau to direct the Numbering Administrator to suspend number requests if the Bureau determines, based on updated information, that further review of the direct access authorization is necessary.

29. This requirement builds upon the current rules, which require each interconnected VoIP provider with direct access to numbering resources to maintain the accuracy of all the contact information and certifications submitted in its application, and to file a correction with the Commission and each applicable state within 30 days of any change to the contact information or certifications.[102] Going forward, obtaining such updates regarding changes to ownership information will help us ensure that direct access authorization holders' ownership does not change post-authorization in a manner contrary to the public interest, such as introducing a potential bad actor-owner that facilitates illegal robocalling, poses a threat to the national security and law enforcement interests of the United States, or otherwise engages in conduct detrimental to the public interest. Under the current rules, bad actors could surreptitiously strengthen their influence on authorization holders by increasing their ownership after the Commission grants the initial authorization, thereby evading Commission oversight and undermining enforcement efforts if that change in ownership levels did not have to be reported. By requiring all ownership information to be updated within 30 days of a change, potential bad actors can no longer

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[98] *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Second Report and Order, 36 FCC Rcd 14848, 14848, para. 1 (2021).

[99] *See* 47 CFR § 1.745.

[100] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12921-22, para. 30; *see* Appx. A, § 52.15(g)(3)(x)(A). For example, if a provider had no reportable ownership information at the time of its application but a person or entity later came to possess more than 10% of the equity in the provider, the provider would have to report the change. If a provider had reportable ownership information at the time of its application but the ownership changes (e.g., a holder of 10% of the equity came to hold 50%), the provider would have to report than change. But if there is a change in ownership that does not reach the reportable level (e.g., a holder of two percent of the equity came to hold six percent), no update would have to be filed.

[101] *See* Appx. A, § 52.15(g)(3)(x)(A).

[102] 47 CFR § 52.15(g)(3)(iv)(A); *VoIP Direct Access Order*, 30 FCC Rcd at 6859, para. 53; *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12921-22, paras. 30-32.

remain hidden from view. In fact, such information can be used to determine whether a change in authorization is warranted (e.g., making the authorization be conditioned on a mitigation agreement, or even revoking the authorization).[103]

30. The National Association of Attorneys General supports requiring interconnected VoIP authorization grantees to update their ownership information after a change.[104] Some commenters oppose it,[105] however, arguing that such a requirement would be onerous and unnecessary, especially with regard to information that has no bearing on the Commission's objective to prevent foreign bad actors from gaining direct access to U.S. numbers, and is not competitively neutral because non-VoIP providers would not have to provide it.[106] Twilio also questions whether the 30-day deadline is truly necessary to advance the Commission's objectives, rather than an annual or biennial update.[107]

31. We reject these arguments because we believe the public interest benefit of a requirement to keep all ownership data up to date within 30 days of a change outweighs the minimal burden on grantees. As stated in the *VoIP Direct Access Further Notice*, "obtaining such updates will help us to ensure that the ownership [of grantees] does not change post-authorization in a manner that evades the purpose of application review."[108] Absent an update requirement, applicants could skirt the more extensive review that applies to applications with reportable foreign ownership simply by delaying the investment by a foreign entity. This could even occur unintentionally as the result of an unexpected investment or buyout by a foreign entity. In either case, the update requirement helps ensure authorization holders with reportable foreign ownership receive an appropriate level of scrutiny in light of their changed ownership, so the Commission could consider, for example, whether the provider should enter a robocall mitigation agreement.[109] We also conclude that requiring updates within 30 days, rather than annually or biennially, is a better way to ensure the Commission has current information, and that providing updated ownership information is relevant to our efforts to eliminate illegal robocalls for all the reasons stated above regarding providing foreign ownership data in applications.[110] Finally, while non-VoIP direct access applicants are not covered by this new rule, we do not believe the burden on interconnected VoIP providers is so large as to affect competition, and in any event do not foreclose imposing this same duty on non-VoIP applicants in the future.

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[103] *See* 47 CFR § 52.15(g)(3)(iv)(A). To further serve the public interest in protecting finite numbering resources from misuse by bad actors at home and abroad, in the *Second Further Notice* we adopt today, we propose to require currently existing interconnected VoIP authorization holders to provide ownership disclosures.

[104] *See* NAAG Reply at 5 ("State AGs support . . . requiring that holders of direct access authorization update the Commission and applicable states within thirty days of any change to the ownership information submitted to the Commission.").

[105] Twilio Comments at 7-8; VON Comments at 5-6; CCA Reply at 4.

[106] Twilio Comments at 7-8; VON Comments at 5-6; CCA Reply at 4.

[107] Twilio Comments at 8 ("If the Commission determines that post-grant ownership updates are necessary, such updates should be limited in scope and narrowly tailored to serve the Commission's goals. The Commission should carefully consider whether such updates are truly needed within 30 days of a change, or whether some other routine, but less frequent reporting period would suffice (e.g., an annual or biennial update.)").

[108] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12921-22, para. 30. No commenter proposed a "materiality threshold" to determine when ownership data updates must be filed, and we therefore decline to adopt one.

[109] *See Enforcement Advisory* at 2 ("Any subsequent undisclosed and unauthorized assignments or transfers of control [by section 214 licensees] may alter the national security and law enforcement risk analyses, including whether and how these risks can be mitigated. Absent proper disclosures to the FCC, the Commission's initial public interest determination may no longer apply, because a non-notified transfer or assignment may introduce a new threat which presents an ongoing and unmitigated risk to national security or law enforcement interests.").

[110] *See supra* paras. 19-23.

32. *Filing procedure.* We require all updated or corrected ownership information to be filed in the Electronic Comment Filing System (ECFS) through the Direct Access intake docket (Inbox 52.15) and via e-mail to DAA@fcc.gov, unless the Bureau specifies another method.[111] We note that the Bureau may request additional documentation as necessary.

33. *State submission requirement.* Interconnected VoIP providers obtaining direct access authorization under the revised rules we issue today also are required to submit updated or corrected ownership information to the states from which the authorization holder has acquired or requested numbers at the time of the ownership change.[112] Such information should be submitted to states in the same manner the providers would submit a correction or update to their original applications.[113]

34. *Executive Branch agencies' review of corrected information.* As proposed in the *VoIP Direct Access Further Notice*,[114] we also delegate authority to the Bureau to direct the Numbering Administrator, pursuant to its applicable procedures, to suspend all pending and future requests for numbers if the updated or corrected ownership information submitted by an authorization holder indicates a material change or discloses new information such that additional investigation is necessary to confirm that the authorization still serves the public interest. In the foreign ownership context, if updated or corrected ownership information leads the Commission to refer the authorization holder to the Executive Branch agencies, the Bureau shall also direct the Numbering Administrator to suspend all pending and future requests for numbers until such review is complete and a determination is made by the Bureau.

35. *Use of numbers after submission of updated or new information.* Finally, we note that authorization holders may continue to use numbers they obtained prior to submitting updated or corrected ownership information to the Bureau unless the Bureau determines that the authorization must be revoked per the formal revocation procedure we adopt below.[115]

3. Certifying Compliance with Other Commission Rules

36. Under our current rules, interconnected VoIP providers seeking to obtain numbers must comply with various obligations that are designed to enhance public safety, prevent access stimulation and intercarrier compensation abuse, ensure that Commission broadband maps are accurate, and ensure that providers actually provide the service they describe.[116] As we do in the robocall context above, we increase our enforcement capabilities and strengthen those rules by requiring interconnected VoIP providers to make certifications regarding their compliance with those rules in their direct access applications.

37. *Public safety certification.* Consistent with our proposal in the *VoIP Direct Access Further Notice*,[117] we revise section 52.15(g)(3) of the Commission's rules to require interconnected VoIP applicants for direct access authorization[118] to certify that they comply with the Communications

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[111] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12922, para. 32.

[112] 47 CFR § 52.15(g)(3)(iv)(A); *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12921-22, para. 30.

[113] *See* 47 CFR § 52.15(g)(3)(iv)(A).

[114] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12921-22, para. 30.

[115] *See infra* Part III.B.3.

[116] 47 CFR § 52.15(g)(3)(i), (iv).

[117] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12915, para. 16.

[118] The 911 obligations found in part 9 of the Commission's rules apply both to two-way interconnected VoIP providers and one-way interconnected VoIP providers. *See* 47 CFR § 9.3. As only two-way interconnected VoIP providers may receive direct access to numbers under 47 CFR § 52.15(g)(3), this certification requirement only applies to two-way interconnected VoIP providers.

Assistance with Law Enforcement Act (CALEA).[119] We also require applicants to provide evidence in their application that demonstrates their compliance with the Commission's part 9 public safety rules and CALEA.[120] We additionally delegate to Bureau or other Commission staff the right to request additional documentation from the applicant to demonstrate compliance with these public safety obligations, where necessary.[121]

38. As with the other certifications we adopt today, this new certification requirement will provide the Commission with additional enforcement abilities should the Bureau find that an authorization holder does not in fact comply with our public safety rules or CALEA. Our requirement to provide evidence of compliance with these obligations merely formalizes the preexisting Bureau practice of requesting such evidence after an application's submission. By requiring this evidentiary showing at the outset, we promote efficiency by ensuring Bureau staff have the relevant documentation when they begin their application review. Additionally, because the ability to provide public safety answering points (PSAPs) with caller location and call-back numbers necessitates two-way interconnection with the public switched telephone network (PSTN), this requirement will help Bureau staff assess whether an applicant actually provides interconnected VoIP service.

39. Several parties support this measure.[122] The Maine Public Utilities Commission suggests that we should additionally require providers to submit the 911-related documentation to state regulatory and public safety agencies.[123] We decline to take this approach because state regulatory agencies vary widely in terms of their jurisdiction over interconnected VoIP providers. While some states treat interconnected VoIP providers like communications service providers for specified purposes,[124] others have statutes expressly limiting or removing their jurisdiction over interconnected VoIP providers altogether.[125] A general requirement to send such documentation to state regulatory agencies would not be tailored appropriately to ensure only those agencies that have an interest in that information would receive it. Tailoring such a requirement to apply only to those states with jurisdiction over interconnected VoIP providers is also undesirable because it would create regulatory asymmetry that is not competitively neutral. We address additional state-related issues in Part III.A.4 below.

40. *Access Stimulation certification.* The *VoIP Direct Access Further Notice* sought comment on possible changes to our direct access authorization rules to help combat Access Stimulation and other forms of intercarrier compensation arbitrage.[126] In April of this year, we adopted a *Second*

[119] 47 U.S.C. § 1001 *et seq.* Our rules already require an applicant for direct access authorization to certify that it complies with "its 911 obligations under 47 CFR part 9." 47 CFR § 52.15(g)(3)(i)(E).

[120] To preserve flexibility and minimize burdens, we decline to prescribe precisely what evidence should be submitted to satisfy this requirement. We note that technical specifications and call-flow diagrams "have been helpful to Commission staff in assessing direct access applicants' compliance with 911 service and CALEA requirements in some cases." *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12915, para. 16. Evidence of 911 service agreements may also be helpful to the Bureau's review.

[121] 47 CFR § 1.745.

[122] Bandwidth Comments at 13; Lumen Comments at 5; Maine Pub. Utils. Comm'n Reply at 6-7 (Me. PUC).

[123] Me. PUC Reply at 6-7. Additionally, Lumen and USTelecom argue that this documentation submission requirement would be unduly burdensome if applied retroactively to existing authorization holders. *See* Lumen Reply at 10-11; USTelecom Reply at 5. We understand these concerns and decline to make this requirement retroactive at this time.

[124] *See, e.g.*, 50 ILL. COMP. STAT. ANN. § 750/60 (West 2023); IND. CODE § 8-1-32.5-6(a) (2023); *id.* § 8-1-32.5-3(b)(4); KY. REV. STAT. ANN. § 160.6131(2)(a)(9) (West 2023).

[125] *See, e.g.*, ARIZ. REV. STAT. ANN. § 40-212(A) (2023); ARK. CODE ANN. § 23-17-411(g)(1)(B)-(C) (West 2023); COLO. REV. STAT. ANN. § 40-15-401(1)(r) (West 2023).

[126] *See VoIP Direct Access Further Notice*, 36 FCC Rcd at 12916-17, para. 17; 47 CFR § 61.3(bbb).

Report and Order in the Access Arbitrage docket which closed perceived loopholes in our Access Stimulation rules that some entities, including interconnected VoIP providers, were exploiting to the detriment of interexchange carriers (IXCs) and their end-user customers.[127] Given the revisions to our Access Stimulation rules adding new requirements for Internet Protocol Enabled Service (IPES) Providers[128]—which include interconnected VoIP providers[129]—we adopt a new certification that cross-references those new rules to help ensure applicants for direct access to numbers are aware of, and comply with them.[130] We thus revise section 52.15(g)(3) of the Commission's rules to require interconnected VoIP providers applying for direct access to numbers to certify that they comply with our Access Stimulation rules found in 47 CFR § 51.914.[131]

41. We adopt this requirement to help alleviate concerns that direct access authorization will be used to evade our Access Stimulation rules when the applicant is directly or indirectly related to an entity suspected of being an access stimulator.[132] This requirement will provide an additional enforcement mechanism if it is violated, including the potential for revocation of the provider's direct access authorization. As with the other certifications we adopt today, we expect the threat of enforcement action related to a false certification to deter applications by those that would violate our rules, including those related to Access Stimulation.[133]

42. Commenters in both the Direct Access and our Access Arbitrage dockets have expressed support for this type of certification requirement as a means to deter interconnected VoIP providers from engaging in schemes to avoid the Access Stimulation rules.[134] Verizon, for example, stated that "IPES providers with direct access should acknowledge and affirmatively agree to observe the Commission's access stimulation rules. Access stimulating IPES providers would face consequences for making false certifications to the Commission."[135] AT&T agreed with Verizon, stating that "[s]uch a requirement will give the Commission an additional arrow in its quiver in the fight against harmful arbitrage schemes and should not place an undue administrative burden on IPES providers."[136] We believe that these benefits

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[127] *See Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Second Report and Order, FCC 23-31, at 2, para. 3 (Apr. 21, 2023) (*Access Arbitrage Second Report and Order*).

[128] *See, e.g.*, 47 CFR §§ 51.914, 61.3(bbb).

[129] *See Access Arbitrage Second Report and Order* at 2, para. 2 & n.1.

[130] *See* Verizon Reply at 2 ("To combat this problem fully, the Commission should amend Parts 51 and 61 of its rules—either instead of or in addition to amending the Part 52 numbering rules and adopting certification requirements—to ensure that VoIP providers are not facilitating and profiting from access stimulation.").

[131] 47 CFR § 51.914.

[132] In our recent *Access Arbitrage Second Report and Order*, we noted that, "[d]espite multiple orders and investigations making clear the Commission will not tolerate access arbitrage, some providers continue to manipulate their call traffic or call flows in attempts to evade our rules. Recently, [local exchange carriers (LECs)] have inserted [IPES] Providers into call paths as part of an ongoing effort to evade our rules and to continue to engage in access stimulation. After inserting an IPES Provider into the call flow, the LEC then claims that it is not engaged in access stimulation as currently defined in our rules." *Access Arbitrage Second Report and Order* at 2, para. 2; *see, e.g.*, AT&T Opposition at 2 (opposing a grant of direct access authorization to a provider that "appear[s] to be closely associated with" a known access stimulator, and stating that "some companies have continued to abuse and exploit loopholes in" the Commission's Access Stimulation rules).

[133] *AT&T Corp. v. Wide Voice LLC*, Bureau ID No. EB-20-MD-005, 36 FCC Rcd 9771, 97712, 9775-76, 9779-84, paras. 6, 13, 21-30 (2022), *aff'd sub nom. Wide Voice LLC v. FCC*, 61 F.4th 1018 (9th Cir. 2023).

[134] *See, e.g.*, AT&T Services, Inc. Reply, WC Docket No. 18-155, at 3 (rec. Oct. 3, 2022); Verizon Comments, WC Docket No. 18-155, at 19 (rec. Sept. 6, 2022); Bandwidth Comments at 9 n.9; Verizon Reply at 2 (supporting a certification requirement for direct access applicants paired with amendments to Parts 51 and 61" of the Commission's rules as a way to "combat [the Access Stimulation] problem fully").

[135] Verizon Comments, WC Docket No. 18-155, at 19 (rec. Sept. 6, 2022).

Verizon and AT&T raise outweigh the concerns from some commenters that certifications that require interconnected VoIP providers to state their compliance with existing rules are duplicative or unnecessary.[137]

43. We decline to adopt additional requirements beyond the certification at this time,[138] as our newly adopted Access Stimulation rules are designed to help address the issues that commenters have noted in this docket.[139] Should we find that more action is necessary to restrict interconnected VoIP providers' engagement in Access Stimulation schemes, we reserve the ability to revisit our conclusion here. We also agree with CCA that many of the suggestions we received in the record "go well beyond the scope of the *Further Notice*, [and] are not specifically related to interconnected VoIP providers directly obtaining telephone numbers."[140]

44. *FCC Form 477 and 499 filings.* Under our rules, interconnected VoIP providers that have qualifying subscribers must file FCC Forms 477 and 499.[141] As proposed in the *VoIP Direct Access Further Notice*, we revise section 52.15(g)(3) of the Commission's rules to require interconnected VoIP providers that must file FCC Forms 477 and 499 to provide evidence that they have complied with these obligations, and any successor filing obligations, when filing a direct access application.[142] Should providers not have evidence of filing these forms, their certification should explain the reasons why. The 2015 *VoIP Direct Access Order* noted that during the procedural review of direct access applications, Bureau staff routinely verify that both FCC Forms 477 and 499 have been filed, if applicable.[143] Our new

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[136] AT&T Services, Inc. Reply, WC Docket No. 18-155, at 3 (rec. Oct. 3, 2022); *see also* AT&T Opposition at 3 ("The Commission's review of [direct access] Applications should ensure that . . . Applicants' requests for additional numbering resources will not promote access arbitrage activities or call congestion."). Other commenters in that docket also supported taking steps to stop IPES Providers from engaging in Access Stimulation. *See, e.g.*, Bandwidth, Inc. et al. Comments, WC Docket No. 18-155, at 3-4 (rec. Sept. 6, 2022); Inteliquent, Inc. Comments, WC Docket No. 18-155, at 3-9 (rec. Sept. 6, 2022); Lumen Comments, WC Docket No. 18-155, at 3-6 (rec. Sept. 6, 2022); USTelecom Comments, WC Docket No. 18-155, at 2 (rec. Sept. 6, 2022).

[137] *See, e.g.*, Lumen Comments at 12; CCA Reply at 2.

[138] *See, e.g.*, AT&T Comments at 6; Bandwidth Comments at 15-16; Lumen Comments at 3-12; Verizon Reply at 3-10.

[139] *See supra* para. 40.

[140] CCA Reply at 5-6.

[141] Interconnected VoIP providers that have one or more revenue-generating end-user customers must file FCC Form 477, a semiannual reporting obligation that, for interconnected VoIP providers, collects data regarding (1) the number of service subscriptions sold to their own end-user customers by census tract and, for each census tract, shall provide the number of subscriptions provided under consumer service plans; and (2) the service characteristics for its subscriptions in each state. FCC, FCC Form 477 Local Telephone Competition and Broadband Reporting Instructions for Filings as of December 31, 2019 and Beyond at 20, 23-24 (May 21, 2020), https://www.reginfo.gov/public/do/DownloadDocument?objectID=109891201; *see* 47 CFR § 1.7001(b)(4). The Commission also requires interconnected VoIP providers to report each year on the FCC Form 499-A the revenues they receive from offering service. *See* 47 CFR § 64.1195; *Wireline Competition Bureau Releases the 2021 Telecommunications Reporting Worksheets and Accompanying Instructions*, WC Docket No. 06-122, Public Notice, 35 FCC Rcd 13671, 13671 nn.1, 2 (WCB 2020); *see also* 47 CFR §§ 54.706(a)(18), 54.708, 54.711, 54.713. FCC Form 499-A is an annual reporting obligation that permits the calculation of the filer's universal service contribution obligation, among other financial obligations, based on its historical revenues from the prior year. *See* Universal Serv. Admin. Co., *Forms to File*, https://www.usac.org/service-providers/contributing-to-the-usf/forms-to-file (last visited July 14, 2023).

[142] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12916, para. 18.

[143] *VoIP Direct Access Order*, 30 FCC Rcd at 6858, para. 39 n.131. As acknowledged in the *VoIP Direct Access Order*, a new interconnected VoIP provider "may not have a Form 477 on file at the time that it seeks to obtain numbers" given that it may be seeking direct access to numbers as part of launching a new service. *Id*. at 6851,

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rule formalizes this inquiry into an application requirement which, again, promotes efficiency and adds another layer of enforcement capability. We note that submission of FCC Forms 477 and 499 filing receipts would constitute *prima facie* evidence of compliance with these rules.[144] We also note that, beginning with data as of December 31, 2022, providers, including interconnected VoIP providers, are required to submit the following data using the Broadband Data Collection (BDC) filing system: fixed and mobile broadband and voice FCC Form 477 subscription data, fixed and mobile BDC broadband availability data, BDC mobile voice availability data.[145]

4. Compliance with State Laws

45. The 2015 *VoIP Direct Access Order* and current rules require an interconnected VoIP provider to acknowledge a duty to comply with state guidelines and procedures adopted under the numbering authority the Commission has delegated to the states.[146] In the *VoIP Direct Access Further Notice*, the Commission asked whether to revise this rule to state that interconnected VoIP providers holding a numbering authorization must comply with state numbering requirements and other applicable requirements for businesses operating in the state.[147] Having considered the record, we now revise section 52.15(g)(3) to make clear that interconnected VoIP applicants and authorization holders that request numbering resources from the Numbering Administrator for a particular state must acknowledge that their direct access authorization is subject to compliance with both state numbering requirements and to the laws, regulations, and registration requirements applicable to them as businesses operating in that state, not merely state requirements specifically issued under Commission delegated numbering authority. Upon the effective date of these new rules, direct access applicants must expressly acknowledge in their applications that they will comply with such laws.[148]

46. One of the original purposes of the requirement to comply with state delegated numbering authority law was to promote competitive neutrality by requiring interconnected VoIP providers with direct access to numbering resources to be subject to the same numbering requirements as carriers getting numbers for that state.[149] Unfortunately, it appears some interconnected VoIP providers have assumed they have no duty to abide by other state requirements because section 52.15(g)(3)(i)(B) focuses solely on delegated numbering authority.[150] That is not the Commission's intent and is inconsistent with the goal of competitive neutrality. The revision we adopt today addresses this unintended consequence and helps keep interconnected VoIP providers on a more equal footing with local exchange carriers (LECs) (which must comply with state general registration requirements pursuant to their certificates of public convenience and necessity and status as businesses operating in the states). It will directly help avoid confusion over the duty to comply with applicable state laws beyond delegated

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para. 25. For providers that do not have eligible subscribers at the time of filing their direct access applications, we expect but do not require such providers to submit evidence of their submissions when they become obligated to do so under our rules.

[144] The FCC Form 477 filing system will no longer be used to collect new FCC Form 477 submissions, and will remain open only for filers to make corrections to existing FCC Form 477 filings for data as of June 30, 2022 and earlier. *Establishing the Digital Opportunity Data Collection*; *Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Order, FCC 22-93 at 6, para. 13 (Dec. 9, 2022).

[145] *Id.*

[146] *VoIP Direct Access Order*, 30 FCC Rcd at 6850, para. 24; 47 CFR § 52.15(g)(3)(i)(B).

[147] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12922-23, para. 33.

[148] *See* Appx. A, § 52.15(g)(3)(ii)(B); *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12922-23, para. 33.

[149] *VoIP Direct Access Order*, 30 FCC Rcd at 6852, para. 28.

[150] Mich. PSC Comments at 2; W. Va. Pub. Serv. Comm'n Reply at 3 (W. Va. Reply).

numbering matters.[151] Equally important, it will discourage interconnected VoIP direct access authorization holders from requesting numbering resources for states where they do not serve end-user customers, a practice that contributes to the exhaust of numbering resources in that state.[152] By clarifying that VoIP direct access authorization holders must also comply with other applicable state laws, such as registration requirements, the new requirement will make it more difficult for interconnected VoIP providers to evade measures that enable states to generally address other consumer-protection issues, including unlawful robocalling.[153]

47. Several state commissions support this requirement.[154] They observe there has been confusion, or at least disagreement, about the extent to which interconnected VoIP providers with direct access to numbering resources must comply with general state-law duties applicable to other businesses obtaining numbers in the states, such as LECs. In Maine, for example, voice service providers must register with the Maine Public Utilities Commission's third-party administrator for the Maine Universal Service Fund and the Maine Telecommunications Education Access Fund.[155] The Maine PUC staff, however, has found it does not always have the information it needs to determine whether interconnected VoIP providers doing business in Maine are contributing to these funds, which it says is required by state law.[156] Other state commissions note similar issues.[157]

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[151] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12923-24, para. 33 (citing *VoIP Direct Access Order*, 30 FCC Rcd at 6850, para. 24) ("[R]equiring interconnected VoIP providers that obtain numbering resources directly from the Numbering Administrator to comply with the same numbering requirements as carriers will help "ensure competitive neutrality among providers of voice services."); La. Pub. Serv Comm's Comments at 4 (La. PSC) ("[G]ranting fixed, interconnected VoIP providers access to numbering resources without compliance with state requirements places such providers in a more favorable position than that occupied by traditional carriers, which still must comply with minimum state standards. Such an unequal result would be contrary to the policy of achieving numbering access parity."); Nat'l Ass'n of Reg. Util. Comm'rs Reply at 4 (NARUC Reply) ("If a carrier is going to profit from access to numbering resources assigned to a state, it should carry the same responsibilities as others using those scarce resources.").

[152] *See* Mich. PSC Comments at 3 (noting significant increases in demand for numbering resources in areas with very low populations since interconnected VoIP providers were allowed direct access to numbering resources); Neb. PUC Comments at 2-3; Pa. PUC Comments at 3-4; W. Va. PSC Reply at 2-3.

[153] For example, state commissions assert that requiring interconnected VoIP direct access authorization holders to comply with state law through their registration requirements will ensure that state authorities have the information needed to identify providers involved in unlawful robocalling. *See, e.g.*, La. PSC Comments at 3-5; Mo. Pub. Serv. Comm'n Comments at 3-4 (Mo. PSC); Me. PUC Reply at 4. The state attorneys general and public utility commissions play essential roles in the nation's battle against illegal robocalls. *See, e.g.*, Press Release, FCC, FCC Launches Formal Robocall Investigation Partnerships with More State Attorneys General (Mar. 28, 2022), https://docs.fcc.gov/public/attachments/DOC-381790A1.pdf; Press Release, FCC, Chairwoman Rosenworcel Announces Latest Additions to State-Federal Partnerships to Combat Robocalls (Feb. 17, 2022), https://docs.fcc.gov/public/attachments/DOC-380426A1.pdf; Press Release, FCC, Chairman Pai Statement on State Attorneys General and Voice Service Providers' Anti-Robocall Principles (Aug. 22, 2019), https://docs.fcc.gov/public/attachments/DOC-359227A1.pdf.

[154] Bandwidth Comments at 17-18; Cal. Pub. Util. Comm'n Comments at 1-3 (Cal. PUC); La. PSC Comments at 1-7; Mich. PUC Comments at 1-3; Mo. PSC Comments at 1-4; Neb. PSC Comments at 2-4; Pa. PUC Comments at 5; Me. PUC Reply at 1-5; NAAG Reply at 6; NARUC Reply at 1-5; W. Va. PSC Reply at 1-6.

[155] Me. PSC Reply at 4-5.

[156] *Id*. at 4. Maine also recently passed a statute that requires interconnected VoIP providers to contribute to a state universal service fund if they use numbers obtained from Maine to provide service. *See* 2023 Me. Legis. Serv. Ch. 144 (H.P. 247) (L.D. 396) (West) ("An Act to Preserve the 207 Area Code and Impede So-called Robocalling"). We take no position here on whether specific state-law requirements raised in state commission comments apply to interconnected VoIP providers with direct access authorizations, but rather note them to show the kinds of concerns raised by the state commissions. The state commission commenters address state requirements such as duties to: (1) register with other state authorities, such as the secretary of state or a tax authority, as an entity doing business in

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48. In light of this record evidence, we disagree with commenters who say there has been no confusion about the scope of the duty to comply with state law or that this revised rule amounts to a new delegation of numbering authority to the states. Our revised rule today concerns state laws, regulations and registration requirements applicable to them as businesses operating in a given state, separate from any Commission delegation of numbering authority. We are not delegating any new numbering authority to the states here. Rather, the purpose is to make plain that direct access applicants must acknowledge that their authorization is contingent on complying not only with state requirements issued under delegated numbering authority, but also with other independently applicable state obligations, such as registration requirements, that would apply to them as businesses operating in the state.

49. We also disagree with commenters who argue that requiring interconnected VoIP providers to acknowledge that their direct access authorization is subject to compliance with applicable state requirements would undermine the Commission's 2004 *Vonage Order* and its preemption of most state regulation of interconnected VoIP service.[158] As explained in the *Vonage Order*, that decision "express[ed] no opinion" on the applicability to an interconnected VoIP provider of a state's "general laws governing entities conducting business within the state, such as laws concerning taxation; fraud; general commercial dealings; and marketing, advertising, and other business practices."[159] The Commission also stated in that order that "as we move forward in establishing policy and rules for . . . IP-enabled services, states will continue to play their vital role in protecting consumers from fraud, enforcing fair business practices, for example, in advertising and billing, and generally responding to consumer inquiries and complaints."[160] Accordingly, even after the *Vonage Order*, the Commission has permitted states to require interconnected VoIP providers to contribute to state universal service funds and pay state fees related to 911/E911 service.[161]

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the state, *see* Mich. PSC Comments at 2 & n.2; Neb. PSC Comments at 3; W. Va. PSC Reply at 3 & n.1; (2) register with or providing contact information to the state public utilities commission, *see* Mich. PSC Comments at 2 & n.2; La. PSC Comments at 3; W. Va. PSC Reply at 3 & n.1; (3) contribute to state universal service funds, 911 funds, or other funds, *see* La. PSC Comments at 3; Neb. PSC Comments at 3; Me. PUC Reply at 4; W. Va. PSC Reply at 3 & n.1; (4) file annual reports of various kinds with the state public utility commission, *see* La. PSC Comments at 3; Terra Nova Telecom Reply at 2-3 (Terra Nova Reply); W. Va. PSC Reply at 3 & n.1; and (5) provide financial data and documentation of the company's ability and plans to provide service in the state, *see* La. PSC Comments at 3; Terra Nova Reply at 2-3).

[157] Mich. PSC Comments at 2 (noting a state requirement for all service providers in the state to register with the State of Michigan Department of Licensing & Regulatory Affairs Corporation Division to do business in the state, and with the Michigan PSC's Intrastate Telecommunications Service Provider Database, but that the PSC has received pushback from interconnected VoIP providers asserting that federal authorization is all that is required to obtain numbering resources in the state); W. Va. PSC Reply at 3-4 (although entities doing business in West Virginia need to register with the Secretary of State and the West Virginia Tax Department, and VoIP providers must register with the PSC, file annual reports, and comply with E911 requirements, some VoIP providers have resisted the registration requirements by asserting they only need to comply with federal registration requirements).

[158] RingCentral et al. Comments at 13 (citing *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004) (*Vonage Order*), *aff'd sub nom. Minn. Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007)); VON Comments at 5; CCA Reply at 3; RingCentral et al. Reply at 12-15; Terra Nova Reply at 5.

[159] *Vonage Order*, 19 FCC Rcd at 22404, para. 1.

[160] *Id*.

[161] *Universal Service Contribution Methodology Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, WC Docket No. 06-122, Declaratory Ruling, 25 FCC Rcd 15651, 15651, 15658, paras. 1, 16 (2010); 47 U.S.C. § 615a-1. VON and Microsoft raised concerns that our revised rule could mistakenly be interpreted by state commissions as expanding the permissible
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50. We also disagree with arguments that the revised rule is too vague because it does not specify the particular state requirements that could apply to interconnected VoIP providers with direct access to numbering resources.[162] Any such list inevitably would risk being incomplete or quickly outdated. The point of our rule revision is to have applicants acknowledge their direct access authorization is subject to compliance with applicable laws, regulations, and registration requirements for businesses operating in the state(s) where the authorization holder seeks to obtain numbers. We note, moreover, that any interconnected VoIP provider obtaining numbering resources from a state pursuant to section 52.15(g)(3)(i)(C) presumably would already be evaluating its potential duties under state law (e.g., registration with a secretary of state or tax authorities, possible obligations under state universal service funds or regarding 911 fees) to an extent that allows it to acknowledge whether it will comply with state law. Our new application requirement therefore should not impose any added burdens on interconnected VoIP applicants beyond their normal preparation to begin dealing with a state and possibly providing service there.[163]

51. *"Minimal contacts."* In order to help minimize numbering exhaust, the Commission asked whether it should adopt a "minimal contacts" requirement that interconnected VoIP providers would have to meet in order to obtain numbering resources in a given state.[164] Having considered the record, we refer this issue to the NANC, as discussed below in Part III.C. The Commission has not explicitly prohibited the use of numbering resources requested for one state to serve customers in other states, whether the entity obtaining the numbers is a LEC or an interconnected VoIP provider holding a direct access authorization. We recognize that a LEC is more likely to have contacts with the state for

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scope of state regulation of interconnected VoIP services. VON *Ex Parte* at 2; *see also* USTelecom *Ex Parte*. To avoid any doubt, we clarify that, as stated in the *VoIP Direct Access Further Notice*, by adopting this revised rule we do not address the statutory classification of interconnected VoIP services as telecommunications or non-telecommunications services, nor do we address, expand or alter, the scope of states' authority to regulate interconnected VoIP service, as reflected in the *Vonage Order* and established Commission policy. *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12923, n.97. In a separate preemption argument in this record, Terra Nova Telecom claims interconnected VoIP services compete with the Commercial Mobile Radio Service (CMRS) and that Congress has preempted state market entry or rate regulation of CMRS under section 332(c)(3) of the Communications Act of 1934, as amended (the Act). Terra Nova submits, therefore, that the Commission should not allow states to impose requirements on interconnected VoIP services that they could not impose on CMRS, such as the kinds of requirements the Louisiana PSC seeks to impose on Terra Nova before issuing it telephone numbers. Terra Nova Reply at 4-5. But Terra Nova points to no authority stating that the scope of preemption is identical for interconnected VoIP services and CMRS, and section 332(c)(3) is specific to CMRS. Terra Nova also takes issue with several requirements it alleges the Louisiana PSC seeks to impose on it as a prerequisite to giving numbers to Terra Nova (which already was granted direct access authority by this Commission). Terra Nova contends that several of these requirements amount to market-entry or public utility-style regulation of the kind preempted by the *Vonage Order*. Terra Nova Reply at 5-6. We lack adequate information to resolve this specific dispute in the context of this general rulemaking.

[162] RingCentral et al. Comments at 13-14 (alleging the *VoIP Direct Access Further Notice* lacks "the scantest of details regarding the content and basis for such proposal"); CCA Reply at 3 (alleging fear of "substantial confusion in light of the vague proposed obligation" regarding state law); RingCentral et al. Reply at 14-15 (alleging the *Further Notice* has a "threadbare discussion of which state requirements would be 'applicable'").

[163] ATIS proposes that we remove the requirement for an interconnected VoIP provider to give 30 days' notice to states of growth numbering requests. All. for Telecom. Ind. Sols. Comments at 4 (ATIS). The West Virginia and Pennsylvania commissions oppose that request. Pa. PUC Reply at 2-3; W. Va. PSC Reply at 1-2. The Michigan commission proposes we adopt a standard format for all 30-day notices to states of numbering requests. Mich. PSC Comments at 3-4. We decline to address these proposals, as our proposed rules did not contemplate changes to the 30-day notice requirements.

[164] *See VoIP Direct Access Further Notice*, 36 FCC Rcd at 12923-24, para. 33. "Minimal contacts" is a phrase used to refer to the amount of contact a provider would need to have with a state before it could obtain numbering resources in that state. No "minimum contacts" requirement exists today.

which it has requested numbering resources, such as physical facilities, a CPCN, and a state registration. At this time, however, we do not have sufficient record evidence to fully assess this issue, and attempting to define "minimal contacts" for interconnected VoIP providers here would risk unintentionally imposing a new requirement that numbering resources requested for a particular state be used to serve at least some customers in that state. Absent such a new requirement, which is outside the scope of this proceeding, a "minimal contacts" requirement would put the Commission into the position of having to evaluate the specific contacts of any direct access authorized interconnected VoIP provider for each particular state in which it seeks numbers, which inevitably would be a complex, provider-specific inquiry, and one for which we lack helpful Commission precedent.[165]

52. *Nomadic interconnected VoIP providers.* The revised state-law acknowledgment requirement we adopt applies to all interconnected VoIP providers requesting numbering resources in a particular state, even if their services are non-fixed or nomadic and not directly linked to the state corresponding to the respective area code.[166] The fact that some interconnected VoIP providers provision non-fixed (or nomadic) services does not alter the applicability of the state-law acknowledgment requirement.[167] Non-fixed or nomadic interconnected VoIP service providers request numbering resources from states and therefore place burdens on each such state's numbering resources just as their fixed-VoIP counterparts do.[168] It would also burden state commissions to determine the precise geographic locations of non-fixed providers each time a numbering request was received.[169] State commissions strongly supported applying the state-law acknowledgment requirement to non-fixed and nomadic interconnected VoIP providers, and we agree with such a requirement.[170]

53. *Directing the Numbering Administrator to deny applications.* We delegate authority to the Bureau to direct the Numbering Administrator to deny requests for numbering resources from an interconnected VoIP provider when the Commission is notified (e.g., by a state commission) that the

[165] The California PUC commented that if "minimal contacts" means having customers in the state and operating authority by the state, it would support a "minimal contacts" requirement. Cal. PUC Comments at 3. Other state public utility commissions supported instituting a "minimal contacts" requirement but did not offer any further detail regarding the standard. La. PSC Comments at 5; Mo. PSC Comments at 4; Pa. PUC Comments at 9; Me. PUC Reply at 2, 5; NAAG Reply at 6; NARUC Reply at 3; W. Va. PSC Reply at 5. The lack of a clear proposed definition, or consensus around any definition, supports our decision not to adopt a definition or standard at this time.

[166] *See* Appx. A, § 52.15(g)(3)(ii)(B); *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12923-24, para. 33.

[167] RingCentral contends that state requirements other than those issued under delegated numbering authority cannot apply to them because nomadic VoIP services "are impossible to segregate into intrastate and interstate components" and therefore are subject to "exclusive federal jurisdiction." RingCentral et al. Comments at 13; RingCentral et al. Reply at 14. RingCentral rests this argument on the *Vonage Order*, but, as noted above, the *Vonage Order* left room for some state-law requirements to apply to interconnected VoIP providers as long as they do not conflict with or undermine federal law. *See supra* para. 49. Nomadic interconnected VoIP applicants would be acknowledging that their direct access authorization is subject to compliance with state laws to the extent such laws apply to them as businesses operating in the state.

[168] Cal. PUC Comments at 2 ("Nomadic VoIP places demands on the numbering system that warrant full oversight to ensure efficient use of public numbering resources."); W. Va. PSC Reply at 4 ("Nomadic VoIP places demands on the state's numbering resources and thus, warrants state oversight in order to ensure efficient use of numbering resources.").

[169] Pa. PUC Comments at 8-9 ("Trying to determine the precise geographical location of non-fixed or nomadic voice services would require an inordinate effort on the part of state commissions and may well prove futile.").

[170] Cal. PUC Comments at 2; Mo. PSC Comments at 4; Pa. PUC Comments at 8-9; NARUC Reply at 4-5; W. Va. PSC Reply at 4. *But see* La. PSC Comments at 4 (stating that differences in the technical nature of nomadic and interconnected VoIP services justify different treatment).

provider is not complying with independently applicable state legal requirements.[171] It is important that there be some clear consequence of not complying with applicable state laws when obtaining numbering resources from a state based on a federal numbering authorization.[172] Our actions here also are consistent with current practice, under which, when a state reports that a provider is not complying with state requirements, the Numbering Administrator may deny that provider's numbering requests. Although we believe that existing practices conform with section 52.15 of the Commission's rules, making the requirement explicit clarifies the process so as to leave no doubt as to these requirements.

5. Ensuring the Accuracy of Application Contents

54. We revise section 52.15(g)(3) of the Commission's rules to require an officer or authorized representative of the applicant to submit a declaration under penalty of perjury, pursuant to section 1.16 of the rules,[173] attesting that all statements in the application and any appendices are true and accurate.[174] We specify that false statements or certifications made to the Commission may result in rejection of an application or revocation of an authorization.[175] Consistent with warnings included in filings for other Commission authorizations[176] and CPNI certifications,[177] we remind applicants that willful false statements are also punishable by fine and/or imprisonment,[178] and/or forfeiture.[179] Requiring a declaration under penalty of perjury will help ensure applications are accurate and that applicants are taking the application process seriously. The new declaration will also dissuade bad actors from filing false information or filing altogether out of fear of committing the crime of perjury and suffering increased punishment.

55. Our rules prohibit any applicant for any Commission authorization from making material false statements or omissions of material information in its dealings with the Commission.[180] Our addition of a declaration under penalty of perjury is consistent with the international section 214 application process, and the authorization process for many other FCC authorizations, in which applicants include a verification executed by an officer or other authorized representative that the information included in the filing is true and accurate.[181] This requirement is also consistent with Robocall Mitigation

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[171] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12923-24, para. 33.

[172] NARUC Comments at 5 ("[I]f the FCC wants compliance [with state law], there must be a consequence if [the direct access applicant of authorization holder] fails to comply. . . . . The possibility of losing access to the desired numbering resources is a strong incentive for carrier compliance."); Neb. PSC Comments at 5 ("Compliance with state requirements should be a baseline for being granted numbering resources.").

[173] 47 CFR § 1.16.

[174] *See VoIP Direct Access Further Notice*, 36 FCC Rcd at 12918, para. 22. No commenter addressed or opposed this requirement.

[175] *See* Pa. PUC Comments at 4. We discuss below the Bureau's authority to reject an application or revoke an authorization if it discovers that an applicant has made a false statement, and its authority to provide applicants or authorization holders the opportunity to cure inadvertently mistaken application information. *See infra* Part III.B.2-3; *see also* 47 U.S.C. § 312(a)(1).

[176] *See, e.g.*, FCC International Section 214 Application, https://licensing.fcc.gov/myibfsdocs/ITCASG-SAMPLE-W.pdf.

[177] *See, e.g.*, *Telecommunications Carriers and Interconnected VoIP Providers Must File Annual Reports Certifying Compliance with Commission Rules Protecting Customer Proprietary Network Information*, EB Docket No. 06-36, Public Notice, DA 23-93 (Feb. 1, 2023).

[178] 18 U.S.C. § 1001.

[179] 47 U.S.C. § 503.

[180] *See* 47 CFR § 1.17(a).

[181] *See* FCC International Section 214 Application, https://licensing.fcc.gov/myibfsdocs/ITCASG-SAMPLE-W.pdf.

Database filings, which must include a declaration under penalty of perjury pursuant to section 1.16 of the Commission's rules.[182] We further note that many direct access applicants already provide this type of declaration voluntarily.

6. Other Issues

56. *Declining to expand direct access to numbers*. Under our existing rules, VoIP direct access applicants must provide interconnected VoIP services rather than one-way VoIP or other types of services that make use of numbers.[183] The Commission sought comment on whether to allow one-way VoIP or other types of service providers to have direct access to numbers.[184] We elect not to do so at this time. The record does not support this expansion of direct access and, indeed, contains some opposition to doing so until the guardrails proposed in the *VoIP Direct Access Further Notice* are adopted and effectively implemented.[185] By avoiding unnecessary or premature expansion of direct access to such providers, we better protect valuable and limited numbering resources from potential bad actors, both because fewer entities will have direct access to numbers and because interconnected VoIP providers engage in commercial agreements with carriers and have obligations and checks that one-way providers may not.[186] Our action is also consistent with the rationale in the 2015 *VoIP Direct Access Order* for limiting direct access authorizations to interconnected VoIP providers. That order found that interconnected VoIP providers are more likely than other VoIP providers to need direct access to numbers because they are more likely to provide service used by consumers to replace "plain old telephone service" (POTS), and because outbound-only VoIP service does not require telephone numbers.[187]

57. *Facilities readiness certification.* The *VoIP Direct Access Order* provided examples of what an applicant could submit to show "facilities readiness" as required by 47 CFR § 52.15(g)(3)(i)(D).[188] We sought comment on whether to revise section 52.15(g)(3) of the direct access rules to explicitly specify the documents that will be allowed to satisfy the "facilities readiness" requirement.[189] Comments on the issue were divided,[190] and, having considered the issue further, we decline to revise our rule. Rather, we conclude that the examples of technical documentation and information that applicants may submit to demonstrate facilities readiness in the *VoIP Direct Access*

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[182] *See* 47 CFR § 64.6305(c)(3)(ii).

[183] *Id.* §§ 52.5(e) (defining "Service provider"), 52.15(g)(3) (specifying authorization process for "provider[s] of interconnected VoIP service"); *VoIP Direct Access Order*, 30 FCC Rcd at 6877, para. 76.

[184] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12529-26, paras. 38-39.

[185] NAAG Comments at 7 ("[B]ecause the need to constrain the rampant misuse of legitimate numbers must be a priority, STATE AGs urge the Commission to refrain from expanding its authorization process for direct access to numbers to one-way VoIP providers or other entities that use numbers until such time that the guardrails identified in the August 2021 Notice can be ordered, implemented, and effectively deployed in order to shore up the current process consistent with the proposals identified by the Commission."); NTCA—The Rural Broadband Ass'n Reply at 5 (NTCA Reply) ("universal service would be *harmed* if direct access were granted to one-way VoIP operators without a corresponding obligation to contribute [to the Universal Service Fund]").

[186] One-way VoIP providers have fewer regulatory obligations than traditional carriers or interconnected VoIP providers. Lumen Comments at 13; NTCA Reply at 4-5.

[187] *VoIP Direct Access Order*, 30 FCC Rcd at 6877, para. 76 n.274.

[188] *Id.* at 6856-57, para. 37.

[189] *See VoIP Direct Access Further Notice*, 36 FCC Rcd at 12917, para. 20.

[190] Bandwidth Comments at 13 ("Applicants should be expected to provide technical documentation (e.g., technical service descriptions) demonstrating a more complete representation of all types of services that they intend to offer with the numbering resources they seek."); VON Comments at 3 ("The Commission provides no evidence or support that collecting this additional information is likely to result in a reduction in the number of illegal robocalls or will prevent bad actors from accessing telephone numbers.").

Order will continue to suffice.[191] This approach preserves the flexibility of interconnected VoIP providers to submit information that is relevant to the unique characteristics of their networks. We also reaffirm our delegation of authority to the Bureau to request additional documentation on a case-by-case basis as necessary.[192]

58. *Know-your-customer certification.* Section 64.1200(n)(3) requires voice service providers to "[t]ake affirmative, effective measures to prevent new and renewing customers from using its network to originate illegal calls, including knowing its customers and exercising due diligence in ensuring that its services are not used to originate illegal traffic."[193] The *VoIP Direct Access Further Notice* sought comment on whether to require direct access applicants to certify that they "'know their customer' through customer identity verification."[194] Comments on this topic were mixed.[195] After considering the record, we decline to adopt a specific know-your-customer certification at this time. As discussed below in the section addressing our referrals to the NANC,[196] interconnected VoIP providers often resell numbers that they have obtained through the direct access process to third-party providers. Additionally, our decision to study the issue of number resale further, our adoption of new certifications as part of interconnected VoIP providers' applications for direct access authorization, and potential future action regarding number resale and indirect access recipient certifications, may accomplish the same objectives as would adopting a know-your-customer certification. We therefore reserve for future determination whether to adopt such a certification in the direct access application context.

B. Application Review and Authorization Oversight

59. In this section, we adopt measures to facilitate greater transparency regarding the review of direct access applications, make explicit our procedures for rejecting applications, and expand the bases on which direct access authorizations may be revoked and adopt a process for such revocations.

7. Codifying the Process for Reviewing Direct Access Applications

60. As proposed, we revise section 52.15(g)(3) of the Commission's rules to formalize the process for reviewing direct access applications.[197] We direct Bureau staff to conduct a due-diligence review of an applicant's direct access application prior to seeking comment on it.[198] This due-diligence review shall include, but is not limited to, determining whether the applicant is the subject of a past or pending Enforcement Bureau inquiry or whether the applicant has reportable foreign ownership. This initial review process is critical to ensure illegal robocallers and other bad actors do not gain access to

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[191] *VoIP Direct Access Order*, 30 FCC Rcd at 6856, paras. 36-37.

[192] *See* 47 CFR § 1.745.

[193] *Id.* § 64.1200(n)(3).

[194] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12914, para. 13; *see also Caller ID Authentication First Report and Order*, 35 FCC Rcd at 3295-96, paras. 127, 130.

[195] *See, e.g.*, EPIC Comments at 7 ("[T]he Commission should not merely implement a Know Your Customer regime for commercial customers, . . . but also require that providers take sufficient steps to continue to monitor those commercial customers for indicators of illegal robocalling."); *id.* at 15-17 ("There has been no evidence to suggest that residential End-Users are a major source of robocalls, and so data collection about them is unlikely to mitigate robocalls . . . ."); SCDCA Comments at 4 ("[T]he Department supports a 'know your customer' certification to help protect against identity thieves using stolen identities to obtain numbers . . . ."); NAAG Reply at 7 (arguing that a broader approach than merely requiring applicants to certify that they know their customer through customer identity verification is necessary); RingCentral et al. Reply at 5-6 (arguing that adopting a know-your-customer certification would "encumber[] the VoIP direct access process").

[196] *See infra* Part III.C.

[197] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12923-24, paras. 34-35.

[198] *See VoIP Direct Access Order*, 30 FCC Rcd at 6858, para. 39.

finite numbering resources. As noted above, we direct the Bureau to withhold placing any application submitted by an applicant with reportable foreign ownership on streamlined processing (that is, withhold issuing an "Accepted-for-Filing Public Notice").[199] Additionally, the Bureau retains the authority to determine, at its discretion, whether to accept an application for non-streamlined filing so that it may further analyze whether a grant is in the public interest during and after the prescribed comment period.[200] Furthermore, if the Bureau finds that an application raises public interest concerns, it may withhold placing it on streamlined processing until those concerns are addressed through applicant supplements or otherwise, even if the application otherwise meets procedural requirements.[201] One commenter generally supported this approach,[202] and no commenter opposed it.

61. The action we take today formalizes this preexisting practice and makes explicit the Bureau's authority in the rules. Specifically, the rules shall state that the Bureau will review direct access applications to ensure that they are complete and appropriate for streamlined treatment before the Bureau issues a public notice accepting the application for filing.[203] By taking this step, we draw on our similar procedure governing review of international section 214 applications,[204] and promote greater transparency and predictability for applicants regarding the process and timing applicable to a potential authorization. We note that applicants must provide additional information as requested by the Bureau during and after its initial review of a direct access application.[205] Such responses must be submitted to the Bureau using the same method for submitting original application materials, unless otherwise directed.[206]

8. Codifying the Processes for Rejecting Direct Access Applications

62. We next revise section 52.15(g)(3) of the Commission's rules to authorize the Bureau to reject an application when it determines the applicant cannot satisfy the qualifications for a direct access authorization or that granting the application would not be in the public interest.[207] We also adopt the proposal to authorize the Bureau, in its discretion, to reject applications submitted by an applicant which it has a reasonable basis to believe has engaged in behavior contrary to the public interest.[208] As described above, we also authorize the Bureau to reject an application if it determines that the applicant made a false or misleading statement.[209] We further conclude that the Bureau may reject applications if, for example, the Commission determines that an applicant with reportable foreign ownership presents

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[199] *See supra* paras. 24-25.

[200] 5 U.S.C. §§ 551-559; *id.* § 706(2)(E); 47 CFR § 52.15(g)(3)(iii)(A)-(D) (listing four bases on which the Bureau may halt a streamlined auto-grant of an application).

[201] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12923, para. 34; Appx. A, § 52.15(g)(3)(v).

[202] Twilio Comments at 7; *see also* Bandwidth Comments at 17 (supporting non-streamlined processing if an application raises concerns about arbitrage or illegal robocalling).

[203] *See* Appx. A, § 52.15(g)(3)(iv).

[204] *See International Section 214 Authorization Order and Notice* at 9, para. 9.

[205] 47 CFR § 1.745.

[206] The majority of commenters supported Commission efforts to fight illegal robocalling and fraud, and staff diligence in reviewing applications and coordination with the Enforcement Bureau is part of ensuring potential robocallers do not gain access to numbering resources. *See, e.g.*, Bandwidth Comments at 7, 10.

[207] *See VoIP Direct Access Further Notice*, 36 FCC Rcd at 12923-24, paras. 34-36; Appx. A, § 52.15(g)(3)(vii). By "reject" we mean either dismiss or deny depending on the specifics of any particular application and the reason for its rejection.

[208] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12924, para. 36. Such behavior would include, for example, knowingly transmitting illegal robocalls or engaging in illegal Access Stimulation.

[209] *See supra* Part III.A.5.

national security, law enforcement, foreign policy, and/or trade policy risks.[210] Next, to improve transparency, we also direct the Bureau to announce rejection decisions, the reasons for the rejection, and whether they are with or without prejudice via public notice.[211] Similar to our action described above regarding codifying the Bureau's review process, this action codifying the Bureau's authority to reject applications makes explicit a practice that already occurs under our current rules. We believe this delegation of authority formalizing these practices leads to greater transparency and predictability.

9. Revocation of Authorization

63. We next adopt procedures concerning the grounds for revocation and/or termination of direct access to numbers authorizations. Specifically, we find that the Commission may revoke and/or terminate direct access to numbers authorizations of interconnected VoIP providers for failure to comply with the Communications Act of 1934, as amended (Act) and its implementing rules, other applicable laws and regulations, and/or where retention of those authorizations no longer serves the public interest.[212] We revise section 52.15(g)(3) of the Commission's rules to specify the grounds on which we can revoke and/or terminate direct access authorizations, namely if:

(1) The authorization holder has failed to comply with the Commission's numbering rules;[213]

(2) The authorization holder no longer meets the qualifications for a direct access authorization (e.g., the authorization holder no longer meets the application certification requirements or the conditions applicable to authorization holders under the Commission's rules);[214]

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[210] *See supra* Part III.A.2.

[211] The record supports this action with no opposition. *See* Bandwidth Comments at 17; NAAG Comments at 5.

[212] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12924-25, para. 37. The Commission's Bureaus and Offices have revoked and/or terminated licenses and authorizations where warranted and within the scope of their authority. *See id.* at 12924, para. 37 n.106; *China Telecom (Americas) Corporation*, GN Docket No. 20-109, Order on Revocation and Termination, 36 FCC Rcd 15966 (2021) (*China Telecom Americas Order on Revocation and Termination*), *aff'd*, *China Telecom (Americas) Corp. v. FCC*, 57 F.4th 256 (D.C. Cir. 2022) (*China Telecom Revocation and Termination*); *China Unicom (Americas) Operations Limited*, GN Docket No. 20-110, File Nos. ITC-214-20020728-00361, ITC-214-20020724-00427, Order on Revocation, 37 FCC Rcd 1480 (2022) (*China Unicom Americas Order on Revocation*) (9th Cir. argued Feb. 15, 2023); *Pacific Networks Corp. and ComNet (USA) LLC*, GN Docket No. 20-111, File Nos. ITC-214-20090105-00006, ITC-214-20090424-00199, Order on Revocation and Termination, 37 FCC Rcd 4220 (2022) (*Pacific Networks/ComNet Order on Revocation and Termination*), *aff'd*, *Pacific Networks Corp. v. FCC*, 2023 WL 5209560 (D.C. Cir. 2023); *WX Communications Ltd.*; *Termination of International Section 214 Authorization*, Order, 34 FCC Rcd 1028 (IB-TAD 2019) (terminating international section 214 authorization for failure to comply with mitigation agreement); *see also, e.g.*, *LDC Telecommunications, Inc*., File No. ITC-214-20080523-00238, Revocation Order, 31 FCC Rcd 11661, 11662, para. 5 (EB-TCD, IB-TAD & WCB-CPD 2016) (*LDC Telecommunications, Inc.*) (revoking the carrier's domestic section 214 authority and international section 214 authorization for failure to pay regulatory fees after the carrier failed to respond to an order to show cause).

[213] *See* 47 CFR pt. 52.

[214] The Commission uses the term "termination" where an authorization is terminated based on the authorization holder's failure to comply with a condition of the authorization, and has determined that the procedures applicable to termination need not mirror the procedures used for revocation of authorizations. *See China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15988, para. 35; *see also id.* at 15989, para. 36 ("[S]ection 558(c)(2) does not grant a substantive right to escape from a condition that terminates a license."); *Atlantic Richfield Co. v. United States*, 774 F.2d 1193, 1200-01 (D.C. Cir. 1985) (holding that the procedural requirements of section 558(c) apply only where "the licensee [may] be able to establish compliance with all legal requirements or . . . change its conduct in a manner that will put its house in lawful order") (internal quotation and citations omitted).

(3) The authorization holder, or officer or authorized representative of the authorization holder, has made a false statement or certification to the Commission; or

(4) Revoking and/or terminating the authorization is in the public interest (e.g., the Commission's assessment of the record evidence, including any filing by the Executive Branch agencies stating that retention of the authorization presents national security, law enforcement, foreign policy, and/or trade policy concerns and/or violates the terms of a mitigation agreement reached with the Executive Branch agencies).[215]

64. We delegate authority to the Bureau and the Enforcement Bureau to determine appropriate procedures and initiate revocation and/or termination proceedings and to revoke and/or terminate an authorization, as required by due process and applicable law[216] and in light of the relevant facts and circumstances, including providing the authorization holder with notice and opportunity to respond.[217]

65. We also delegate authority to the Bureau and the Enforcement Bureau to direct the Numbering Administrator to suspend the authorization holder's access to new numbering resources after either bureau determines that the authorization holder acted willfully; or public health, interest, or safety requires an immediate suspension; or after giving the authorization holder notice and an opportunity to

[215] *VoIP Direct Access Further Notice* at 12924-25, para. 37; *see* Appx. A, § 52.15(g)(3)(viii); *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15966-67, para. 1, *aff'd*, *China Telecom (Americas) Corp. v. FCC*, 57 F.4th 256 ("In this Order on Revocation and Termination (Order), we revoke China Telecom (Americas) Corporation's (CTA) domestic authority and revoke and terminate its international authority, pursuant to section 214 of the Communications Act of 1934, as amended (Act).").

[216] In recent revocation proceedings, the Commission exercised its discretion to "'resolve disputes of fact in an informal hearing proceeding on a written record,'" and reasonably determined that the issues raised in those cases could be properly resolved through the presentation and exchange of full written submissions before the Commission itself. *See China Telecom (Americas) Corp. v. FCC*, 57 F.4th at 268-269; *Pacific Networks Corp. v. FCC*, 2023 WL 5209560, at *4 (citing *China Telecom (Americas) Corp. v. FCC*, 57 F.4th at 268–71); *see Evolving Risks Order and NPRM* at *32, para. 78 & nn.184-185 (citing *Procedural Streamlining of Administrative Hearings Order*, 35 FCC Rcd 10729, 10732-33, para. 11 (2020) and *China Telecom (Americas) Corp. v. FCC*, 57 F.4th at 269)); *id.* at *7, para. 10 ("If revocation or termination may be warranted, the Commission may institute a revocation proceeding to 'provide the authorization holder such notice and an opportunity to respond as is required by due process and applicable law, and appropriate in light of the facts and circumstances.'"); *see also, e.g.*, *LDC Telecommunications, Inc*.

[217] *See, e.g.*, 5 U.S.C. § 558(c); *China Telecom (Ams.) Corp. v. FCC*, 57 F.4th at 268-71 (holding that "given the record in this case," discovery and live hearing procedures, and an opportunity to achieve or demonstrate compliance were not required "by statute, regulation, FCC practice, or the Constitution"); *Pacific Networks Corp. v. FCC*, 2023 WL 5209560, at *4 (rejecting petitioners' argument that the Due Process Clause and the APA require the agency, before it may revoke a section 214(a) authorization, to hold a live evidentiary hearing before a neutral adjudicator with an opportunity for discovery and cross-examination, and holding that "[n]othing in the Due Process Clause, the APA, or the Communications Act" requires the Commission to consult with other agencies, or to proceed by rulemaking in assessing the specific risks posed by these individual carriers); *see China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15985, para. 26, *aff'd, China Telecom (Americas) Corp. v. FCC* ("We find that it is *more than sufficient due process* in this context to provide [China Telecom (Americas) Corporation] with timely and adequate notice of the reasons for revocation and/or termination; opportunity to respond with its own evidence and to make any factual, legal, or policy arguments; access to all of the unclassified evidence the Commission considers; and a written order from the Commission providing its preliminary reasoning for any adverse decision.") (emphasis added); *Pacific Networks/ComNet Order on Revocation and Termination*, 37 FCC Rcd at 4241-42, para. 28, *aff'd*, *Pacific Networks Corp. v. FCC*. *See also Evolving Risks Order and NPRM* at *12-13, paras. 25-26 (proposing to cancel the international section 214 authorizations where authorization holders fail to timely respond to a one-time information request, subject to notice and opportunity to cure the noncompliance).

demonstrate or achieve compliance with our rules.[218] Once either bureau revokes and/or terminates the authorization, the interconnected VoIP provider may no longer obtain additional numbers from the Numbering Administrator.[219] Interconnected VoIP providers that have had their authorizations revoked may reapply for a new authorization if they can demonstrate that they have cured the grounds for the revocation and have taken measures to ensure they will not arise again.[220]

66. As affirmed recently in our *Caller ID Authentication Sixth Report and Order*, where the Commission grants a right or privilege, it unquestionably has the right to revoke or deny that right or privilege in appropriate circumstances.[221] In addition, holders of these and all Commission authorizations have a clear and demonstrable duty to operate in the public interest.[222] The action we take today promotes transparency into our direct access authorization enforcement mechanisms by formalizing in our rules the procedure by which we will revoke such authorizations. This step will put bad actors on notice regarding the consequences they will face if they flout the rules. Our delegation of authority to the Bureaus will permit efficient processing of revocations, allowing the Commission to respond to bad actors in a timely manner.

67. The record overwhelmingly supports these proposals. One commenter, for example, states that "[i]t is important for the Commission to affirm its commitment to invoking this enforcement authority, because complaints under Section 208 cannot be brought against VoIP providers, given their lack of common carrier status. Use of this enforcement authority with respect to VoIP entities will help 'combat access stimulation and other intercarrier compensation abuses . . . .'"[223] Similarly, another commenter states "if a Direct Access grantee is clearly found to be engaged in [intercarrier compensation] arbitrage abuse, the FCC must impose real consequences for such abuses because VoIP providers and other noncommon carrier Direct Access grantees are not subject to Section 208 of the Communications Act."[224]

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[218] 5 U.S.C. § 558(c).

[219] Bandwidth Comments at 17 ("The Commission also should adopt its proposals to direct the Numbering Authority to suspend new number assignments . . . ."). While we do not at this time require an interconnected VoIP provider to return its numbers once the Bureau has revoked its direct access authorization, we refer to the NANC how such a requirement would impact consumers, end-users, and providers, and whether such a requirement would be feasible. *See infra* para. 73. Relatedly, we also do not at this time restrict such providers from accessing numbering databases that may be necessary for providing service, such as routing and porting, for numbers it already has. These databases include, for example, the Local Exchange Routing Guide, Business Integrated Routing and Rating Database System, LIDB Access Routing Guide, Local Calling Area Data Source, Common Language Location Information, and Internet-based Telecommunications Relay Service, *see e.g.*, Letter from Aaron M. Panner, Partner, Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-174 et al., at Attach., Single Source Required Telecom Numbering, Routing, and Porting Products and Services in the Telecommunications Ecosystem (filed Sept. 25, 2020) (listing databases used in the telecommunications ecosystem). Accordingly, we also refer to the NANC the issue of how such a restriction would impact consumers, end-users, and providers. *See infra* para. 73.

[220] At this time, we decline to adopt number reclamation as a consequence of a revocation of direct access authorization. We refer the issue of the impact of number reclamation on consumers and end-users to the NANC. *See infra* para. 73. We therefore note that a revocation of direct access authorization does not obviate an interconnected VoIP provider's obligations under our rules with respect to the numbering resources it still maintains. These obligations include, e.g., filing NRUF reports, making NANP cost-support contributions, and updating the Reassigned Numbers Database. *See* 47 CFR §§ 52.15(f)(5); 52.17; 64.1200(l).

[221] *Caller ID Authentication Sixth Report and Order* at 37, para. 70.

[222] *Id.*

[223] AT&T Comments at 15.

[224] Bandwidth Reply at 4; *see also* AT&T Comments at 4-5; Bandwidth Comments at 17 ("The Commission also should adopt its proposals to revoke authorization if the Commission or state/federal authorities have found the (continued….)

C. North American Numbering Council Referrals

68. *Number use and resale generally.* The *VoIP Direct Access Further Notice* sought comment on whether direct access applicants should certify that the numbers they are applying for will only be used to provide interconnected VoIP services.[225] The record we received regarding this issue was insufficient for us to determine precisely how interconnected VoIP providers are using the numbers they obtain, whether any such uses result in violations of our rules, and whether any further restrictions would have anticompetitive effects or impair neutrality with respect to technology. While the revised certifications and accompanying obligations we adopt herein should substantially aid our efforts to curtail unlawful uses of numbering resources, questions remain as to how numbers obtained by interconnected VoIP providers may continue to facilitate illegal robocalling or access stimulation, as well as how our policies affect number exhaustion in particular area codes.[226] The NANC is entrusted with advising the Commission on numbering policy and technical issues associated with numbering "in the changing world of communications" and must ensure that the NANP administration does not unduly favor or disfavor one technology over another.[227] In light of the limited record on this important issue of number use by interconnected VoIP providers, including number use by direct and indirect customers of such providers and further consideration of additional measures to combat illegal robocalls such as know-your-customer obligations,[228] we therefore direct the Bureau to request that the NANC examine and report on:

(1) how interconnected VoIP providers that obtain direct access to numbers are using those numbering resources today, including, for example, the extent to which they use numbers obtained in a state to serve the customers of that state, the extent to which they use numbers obtained via direct access to provide non-interconnected VoIP service, and the extent to which numbers obtained via direct access are resold to other providers;

(2) those uses in terms of compliance with the Commission's robocalling, Access Stimulation and other rules, area code exhaustion, and other public interest concerns, including potential consumer benefits or competitive harms of increasing the availability of direct access to numbers or placing more limits on the use of numbers obtained via direct access; and

(3) possible options for mitigating any identified adverse impacts on consumers of number disuse, misuse, and resale, and how any Commission-imposed requirements for, or limits on, number use or resale would impact consumers, providers, and competition.

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applicant/grantee fails to comply with applicable rules . . . ."); Mich. PSC Comments at 4 ("The MPSC supports this proposal of not allowing a provider to obtain new numbers from the Numbering Administrator should that authorization be revoked. As the FCC notes, there could be valid reasons for revoking such authorization (due to a national security risk or risk of originating numerous unlawful robocalls) and doing so would also protect the public and preserve the limited pool of numbers."); NAAG Comments at 5 (supporting "rejecting an application or revoking an authorization for direct access to numbers of any applicant or holder that has been found to have originated or transmitted illegal robocalls . . . ."); Twilio Comments at 9 (Twilio "agrees that where a provider no longer satisfies the Commission's requirements or where the provider fails to comply with applicable rules and laws, the Commission has the authority to revoke that provider's authorization."); W. Va. PSC Reply at 4.

[225] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12916, para. 17.

[226] *See* Mich. PSC Comments at 3 (noting significant increases in demand for numbers in areas with very low populations since interconnected VoIP providers were allowed direct access to numbers); Neb. PSC Comments at 2-3 (same); Pa. PUC Comments at 3-4 (same); W. Va. PSC Reply at 2-3 (same).

[227] Charter for the North American Numbering Council, at 1-2 (Sept. 13, 2021); https://docs.fcc.gov/public/attachments/DOC-375774A1.pdf.

[228] *See supra* para. 58.

We additionally require that the NANC examine, in considering how to minimize the adverse impacts on consumers and/or area code exhaustion arising from interconnected VoIP providers obtaining numbers in a state where they serve few or no customers, the efficacy of Commission adoption of a "minimum contacts" requirement to obtain numbering resources in a particular state; and possible options for defining such a standard.

69. *Foreign-originated calls and use of numbers obtained indirectly.* Questions also remain regarding the use of U.S. NANP numbers for calls that originate abroad and terminate in the U.S. market. In the *Fifth Caller ID Authentication Further Notice*, we sought comment on whether we should restrict the use of domestic numbering resources for such calls in order to prevent illegal robocalls, and whether other countries' regulations provide a useful roadmap for our own.[229] We also sought comment on whether we should restrict indirect access to numbers (e.g., numbers obtained on the secondary market) by both interconnected VoIP providers and carriers generally, or only for numbers that would be used in foreign-originated calls.[230]

70. Commenters in that proceeding agreed that some entities are increasingly using numbers obtained, particularly through indirect access, to originate illegal robocalls.[231] TNS recently noted that "numbers may be purchased separately with one provider and linked with outbound calling minutes from a second," which it argued "is a major source of bad actor traffic."[232] Indeed, the success of STIR/SHAKEN "may already be responsible for some bad actors shifting to acquiring batches of real numbers instead of spoofing."[233] Commenters disagreed, however, on whether and what steps should be taken to prevent such abuse,[234] including the appropriate liability standard,[235] and whether restrictions should apply to all providers or solely to interconnected VoIP providers.[236] Commenters urged the

[229] *See Caller ID Authentication Fifth Further Notice* at 85-88, paras. 218-23.

[230] *See id.* at 86, para. 223.

[231] *See id.* at 86-87, para. 222 & n.584 (citing RingCentral et al. Comments, WC Docket No. 13-97 et al., at 3 (rec. Oct. 14, 2021); USTelecom Comments, WC Docket No. 13-97 et al., at 5-6 (rec. Oct. 14, 2021)); USTelecom Comments, CG Docket No. 17-59 et al., at 14 (rec. Aug. 17, 2022) ("Robocallers are often able to obtain these numbers by way of an extensive number distribution and resale market that may also shield bad actors from responsibility.").

[232] TNS, 2022 Robocall Investigation Report 18 (9th ed. 2022).

[233] USTelecom Comments, WC Docket No. 17-97 and DA 22-831, at 1-2 (rec. Oct. 3, 2022).

[234] A number of commenters in the Call Authentication Trust Anchor docket argued that the Commission should take steps to address number misuse. For example, VON agreed with USTelecom that, "at a minimum," providers reselling numbers to other providers should "impose strong contractual obligations" to prevent number misuse and the Commission should encourage number resale best practices. *See* USTelecom Comments, CG Docket No. 17-59 et al., at 14; VON Reply, CG Docket No. 17-59 et al., at 4 (rec. Sept. 16, 2022); *see also* Credit Union National Association et al. Comments, CG Docket No. 17-59 et al., at 6 (rec. Aug. 17, 2022) (arguing that, although a complete ban on number resale would be excessive, it would be reasonable for the Commission to require U.S. number resellers to perform more exacting know-your-customer due diligence in transactions with foreign providers). Others argued no restrictions should be imposed. *See, e.g.*, American Bankers Association Reply, CG Docket No. 17-59 et al., at 4 (rec. Sept. 18, 2022).

[235] EPIC & NCLC Comments, CG Docket No. 17-59 et al., at 13-14 (rec. Aug. 17, 2022) (arguing that providers should be held strictly liable for illegal robocalling that makes use of numbers the providers rent out); *but see* USTelecom Comments, CG Docket No. 17-59 et al., at 14 (arguing that a strict liability standard is not appropriate and providers should instead take "reasonable steps" to prevent misuse).

[236] *See* Telnyx Comments, CG Docket No. 17-59 et al., at 4 (rec. Aug. 17, 2022) (noting that if restrictions are placed only on VoIP number resale, "VoIP service providers will begin to resell numbering resources from non-VoIP providers"); RingCentral Inc. Comments, CG Docket No. 17-59 et al., at 6 (rec. Aug. 17, 2022) (opposing VoIP only restrictions); VON Comments, CG Docket No. 17-59 et al., at 5 (rec. Aug. 17, 2022) (same). *But see*

(continued….)

Commission to proceed cautiously when considering restrictions.[237] Notably, no party in that proceeding addressed the merits of specific foreign restrictions on numbering usage raised in the *Caller ID Authentication Fifth Further Notice* and their applicability to the U.S. marketplace.

71. In light of the complexity of numbering arrangements, the mixed record in this and related proceedings where this issue has arisen, and limited comment on the specific number usage restrictions in place in other countries, we agree with commenters in the Call Authentication Trust Anchor docket who argue that we should proceed cautiously.[238] We therefore direct the Bureau to request that the NANC examine and report on:

(1) the use of numbers obtained on the secondary market;[239]

(2) the use of U.S. NANP numbers for calls that originate abroad and terminate in the U.S. market; and

(3) the specific number usage restrictions already in place abroad, and on the likely effect of similar Commission action on providers, consumers, businesses, and illegal robocallers.

As part of its referral, the Bureau may choose to include direction to investigate issues or proposals related to number misuse it concludes may benefit from focused NANC examination, including proposals raised by commenters in the record of this and other related proceedings.

72. *Supplying numbers to customers on a trial basis.* In the *VoIP Direct Access Further Notice*, we asked whether we should require direct access applicants to certify that they will not supply numbers on a trial basis to new customers (i.e., use of numbers for free for the first 30 days, etc.), a practice that commonly leads to bad actors gaining temporary control over numbers for the purposes of including misleading caller ID information.[240] While some commenters agreed that supplying numbering resources for trial use can facilitate illegal robocalls, they provided no data to support their assertions.[241] Accordingly, we refer this issue to the NANC for further study.[242] Specifically, we direct the Bureau to request that the NANC examine and report on:

(1) the practice of direct access authorization holders supplying telephone numbers to customers on a trial basis;

(2) the use of such "trial basis" numbers to engage in illegal robocalling, spoofing, or fraud;

(Continued from previous page)
EPIC & NCLC Comments, CG Docket No. 17-59 et al., at 14 (placing heightened restrictions on "high-risk" VoIP providers).

[237] *See* Cloud Commc'ns All. Comments, CG Docket No. 17-59 et al., at 15 (rec. Aug. 17, 2022) ("The Commission should proceed cautiously . . . . There are legitimate reasons why foreign offices of U.S. companies or foreign-operated call centers would use U.S. numbers in caller ID."); RingCentral, Inc. Comments, CG Docket No. 17-59 et al., at 4.

[238] *See supra* note 237.

[239] Numbers obtained on the secondary market would include, e.g., numbers obtained from a reseller or a carrier partner. We seek comment in the accompanying *Second Further Notice* regarding whether we should require direct access authorization holders to obtain from a provider to whom they sell, lease, or otherwise transfer numbers, all the same certifications, acknowledgments, and disclosures the number recipient would have had to provide under section 52.15(g)(3) had the recipient applied for direct access to numbering resources. *See infra* Part IV.C.

[240] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12913-14, para. 13.

[241] NAAG Comments at 5; SCDCA Comments at 4; State AGs Reply at 5.

[242] We expect that this, and our other referrals to the NANC concerning number use, will give us a fuller picture regarding the customers' use of numbering resources, and thereby aid our future consideration of whether to impose a know-your-customer certification requirement. *See supra* para. 58.

(3) the effect on authorization holders in the event of a Commission prohibition on providing numbers on a trial basis; and

(4) the effect of supplying telephone numbers to customers on a trial basis on numbering resource exhaust.

73. *Number reclamation*. In the VoIP Direct Access Further Notice, we sought comment on whether we should require an interconnected VoIP provider that has had its direct access authorization revoked to return the numbers that it has already obtained directly.[243] Some commenters expressed concern that reclaiming numbers when direct access authority is revoked could have potential negative impacts on consumers, and that we should have proper procedures in place to mitigate these impacts.[244] In light of the paucity of data submitted in the record, and in order to ensure that number reclamation as a consequence of a revocation of direct access authorization will not have a negative impact on consumers, we direct the NANC to study the benefits, risks, and solutions regarding reclamation of numbers when a direct access authorization is revoked, and the impact to consumers and end-users. Specifically, we direct the Bureau to request that the NANC examine and report on:

(1) the potential impact on consumers, end-users, and providers of number reclamation as a consequence of direct access authorization revocation;

(2) how providers or the Commission could mitigate any identifiable negative impacts for consumers and end-users; and

(3) how to accomplish returning reclaimed numbers to providers with reinstated direct access authorization.

In its analysis, the NANC should additionally describe how interconnected VoIP providers use numbering databases in providing service, and how a restriction on accessing such databases would impact consumers, end-users, and providers.

D. Cost-Benefit Analysis

74. The rule clarifications and formalizations adopted in this *Second Report and Order* generally reflect a mandate from the TRACED Act. We conclude that the expected benefits will exceed the costs, which are minimal. The Commission found in the *Caller ID Authentication First Report and Order* that widespread deployment of the STIR/SHAKEN framework will increase its effectiveness for both voice service providers and their subscribers, producing a potential annual benefit floor of $13.5 billion due to the reduction in nuisance calls and fraud.[245] In addition, the Commission identified many

[243] *See VoIP Direct Access Further Notice*, 36 FCC Rcd at 12925, para. 37. Our rules currently permit state commissions to request that the Numbering Administrator initiate reclamation if, after an investigation, it is satisfied that the service provider has not activated and commenced assignment to end users of their numbering resources within six months. 47 CFR § 52.15(i).

[244] *See* ATIS Comments at 3-4 ("[T]he Commission generally should not require the return of already obtained numbers because of the potential significant negative impacts that such a requirement could have on customers. . . . . If the Commission were to require returns in [cases of national security or originating numerous unlawful robocalls] it would need to consider how to minimize the impact to customers who are using the numbers to provide legitimate services . . . [and] how it would identify new providers to support the numbers previously supported by providers whose authorizations were revoked and what would happen if a provider's authorization was to be reinstated . . . ."); Bandwidth Comments at 6 ("The FCC should ensure it has adequate procedures to take back numbers from grantees that fail to comply with applicable FCC and state rules."); Twilio Comments at 9 ("[T]he Commission should ensure that where . . . a revocation of direct access to numbering resources is warranted, that the interconnected VoIP provider should not be required to return numbers that it has already obtained so as to avoid flash-cut negative impacts on end-user consumers.").

[245] *Caller ID Authentication First Report and Order*, 35 FCC Rcd at 3263, paras. 47-48.

non-quantifiable benefits, such as restoring confidence in incoming calls[246] and ensuring reliable access to emergency and healthcare communications.[247] The rules we adopt in this *Second Report and Order* are intended, consistent with the TRACED Act, to help unlock those benefits. As the Commission has noted, an overall reduction in illegal robocalls will greatly lower network costs by eliminating both the unwanted traffic and the labor costs of handling numerous customer complaints.[248] The certifications and disclosures we adopt place minimal burdens on interconnected VoIP providers, and our formalization of the direct access application review process will ensure efficient use of staff time, imposing appropriately small costs on Commission staff. We therefore conclude that the rules we adopt in this *Second Report and Order* will impose only a minimal cost on direct access applicants while having the overall effect of materially lowering network costs and raising consumer benefits.

E. Legal Authority

75. The *VoIP Direct Access Further Notice* proposed concluding that our authority for adopting the new or revised direct access to numbers application requirements for interconnected VoIP providers arises from section 251(e) of the Act and section 6(a) of the TRACED Act.[249] No commenter opposed these proposals regarding the basis for our legal authority to adopt the requirements described in this *Second Report and Order*. We conclude that section 251(e) of the Act provides sufficient authority for the requirements adopted in this Report and Order and that section 6(a) of the TRACED Act provides both supplemental and independent authority for those requirements specifically related to fighting illegal robocalls.

76. Section 251(e)(1) of the Act grants the Commission "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States."[250] Based on this grant, in the *VoIP Direct Access Order* the Commission concluded that section 251(e)(1) provided it with authority "to extend to interconnected VoIP providers both the rights and obligations associated with using telephone numbers."[251] The Commission also has relied on section 251(e)(1) to require interconnected and one-way VoIP providers to implement the STIR/SHAKEN caller ID authentication framework and allow customers to reach the National Suicide Prevention Lifeline by dialing 988.[252] Consistent with the Commission's well-established reliance on section 251(e) numbering authority with respect to interconnected VoIP providers, we conclude that section 251(e)(1) allows us to further refine our processes and requirements governing direct access to numbers by interconnected VoIP providers.

77. We further conclude that section 6(a) of the TRACED Act provides us with separate, additional authority to adopt our proposals related to fighting illegal robocalls. Section 6(a)(1) gives the Commission authority "to determine how Commission policies regarding access to number resources, including number resources for toll free and non-toll free telephone numbers, could be modified, including by establishing registration and compliance obligations," and to "take sufficient steps to know the identity of the customers of such providers [of voice services], to help reduce access to numbers by

[246] *Id.* at 3263-64, paras. 49-50.

[247] *Id.* at 3265-66, paras. 52-53.

[248] *Id.*

[249] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12926-28, paras. 42-43.

[250] 47 U.S.C. § 251(e)(1).

[251] *VoIP Direct Access Order*, 30 FCC Rcd at 6878, para. 78.

[252] *See Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Report and Order, 35 FCC Rcd 7373, 7394, para. 40 (2020); *Caller ID Authentication First Report and Order*, 35 FCC Rcd at 3260-61, para. 42.

potential perpetrators of violations of section 227(b) of the Communications Act of 1934 (47 U.S.C. 227(b))."[253]

78. The Commission commenced the required proceeding pursuant to the TRACED Act in March 2020,[254] and expanded on those inquiries in the *VoIP Direct Access Further Notice*. Section 6(a)(2) of the TRACED Act states that "[i]f the Commission determines under paragraph (1) that modifying the policies described in that paragraph could help achieve the goal described in that paragraph, the Commission shall prescribe regulations to implement those policy modifications."[255] We conclude that section 6(a) of the TRACED Act, in directing us to prescribe regulations implementing policy changes to reduce access to numbers by potential perpetrators of illegal robocalls, provides an independent basis to adopt certain of the rule changes we are making to the direct access process with respect to fighting unlawful robocalls.

IV. SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

79. In the accompanying *Second Report and Order*, we take steps to strengthen our direct access rules to protect consumers from interconnected VoIP providers who would gain access to, and then misuse, the nation's finite numbering resources. Further, through the NANC referral directives we adopt today, additional reforms will be considered with respect to new direct access applications. By this *Second Further Notice*, we seek comment on the duties of existing direct access authorization holders whose authorizations predate the new application requirements we adopt today. We also seek comment on whether direct access applicants should disclose a list of states in which they seek to provide initial service. Finally, we seek comment on a proposal to minimize harms that may arise from entities that access numbering resources indirectly by holding their direct access authorization holder "partners" accountable for their actions.

F. Updating the Duties of Existing Authorization Holders

80. Part III.A of the *Second Report and Order* focuses on new applications for direct access to numbering resources.[256] In the *VoIP Direct Access Further Notice*, however, the Commission also asked whether some of the proposed new requirements should also apply to existing authorization holders (i.e., interconnected VoIP providers that were granted direct access authorization prior to the effective date of this Report and Order and revised rules). In particular, the Commission asked about requiring such existing authorization holders to certify compliance with E911 and CALEA obligations;[257] to certify they are not subject to a Commission, law enforcement or regulatory agency investigation for failure to comply with any law, rule, or order, including the Commission's rules applicable to unlawful robocalls or unlawful spoofing;[258] and to abide by state numbering requirements and other applicable requirements for businesses operating in the state.[259] There were very limited comments on this issue.[260] Further, the *VoIP*

[253] TRACED Act § 6(a)(1); *see also* 47 U.S.C. § 227(b) (restricting the making of telemarketing calls and the use of automatic telephone dialing systems and artificial or prerecorded voice messages).

[254] *Caller ID Authentication First Report and Order*, 35 FCC Rcd at 3492-96, paras. 123-30.

[255] TRACED Act § 6(a)(2).

[256] *See supra* Part III.A.

[257] *VoIP Direct Access Further Notice*, 36 FCC Rcd at 12915, para. 16 (seeking comment on "whether and how we should obtain these proposed certifications [for E911 and CALEA] from interconnected VoIP providers holding an existing Commission authorization for direct access to numbers").

[258] *Id*. at 12914-15, para. 15 (proposing to adopt a requirement for "a direct access applicant or authorization holder" to provide such a certification).

[259] *Id*. at 12922-23, para. 33 (seeking comment on whether to revise requirement for "interconnected VoIP providers holding a Commission numbering authorization" to clarify the scope of the duty to comply with state law).

[260] *See* USTelecom Reply at 5.

Direct Access Further Notice did not ask about applying other proposed new requirements, also adopted here, to existing interconnected VoIP direct access authorization holders.

81. Given the limited record in response to the *VoIP Direct Access Further Notice* about the applicability of these proposed requirements to existing authorization holders, and in order to allow the Commission to address at one time whether all of the new requirements adopted in the *Second Report and Order* should apply to existing authorization holders, we propose that the new or revised certification, acknowledgment, and disclosure obligations set forth in Part III.A of the *Second Report and Order* should likewise apply to existing interconnected VoIP authorization holders. Specifically, we propose to require existing interconnected VoIP direct access authorization holders to provide the certifications, acknowledgments, and disclosures required by the following sections in Appendix A hereto, specifically sections 52.15(g)(3)(ii)(B)-(F), (I), (K)-(L), (N), and (x)(A), within 30 days after the effective date of an order adopting such rules for existing authorization holders. We seek comment on this proposal.

82. The rationales for imposing each of these certification, acknowledgment, and disclosure obligations on future authorization holders, discussed in detail above, apply equally to existing interconnected VoIP direct access authorization holders. Obtaining this information from existing authorization holders would help the Bureau more effectively oversee the universe of direct access authorization holders by better enabling it to identify bad actors and preserve scarce numbering resources, while also balancing the obligations evenly for all authorization holders. Similarly, we propose to use the new information we require existing authorization holders to submit to determine whether a revocation of authorization, inability to obtain additional numbers, reclamation of unassigned numbers, or enforcement action may be warranted, just as if the information had been provided as part of a new application or an update or correction to their original application. We seek comment on this proposal.

83. With respect to these proposed requirements, we believe a 30 day deadline appropriately balances the strong public interest of the Bureau receiving this information against the burdens we anticipate these requirements may place on existing authorization holders, and seek comment on this conclusion. Do commenters agree that this deadline would strike the right regulatory balance? Would requiring existing authorization holders to provide the newly required certifications, acknowledgments, and other information impose an undue burden that would outweigh the potential benefits? Would requiring existing authorization holders to provide the newly required certifications, acknowledgments, and other information be necessary or appropriate to avoid asymmetrical regulation among interconnected VoIP providers? Alternatively, is this step necessary to narrow the gap in our oversight ability to reach potential bad actors with respect to numbering resources? Would declining to apply the new requirements to existing authorization holders place the Commission at a disadvantage in terms of investigating those authorization holders and enforcing the rules that apply to them? Would relying on Commission enforcement actions against existing authorization holders be as effective as the proposed new requirements in combating unlawful robocalling and addressing the concerns raised regarding foreign ownership of entities with access to numbering resources pertaining to the United States? Are there any legal barriers to requiring existing authorization holders to provide the required information? Are there other factors we should consider?

84. *Executive Branch agencies' review of corrected information.* We propose to delegate authority to the Bureau to direct the Numbering Administrator via public notice to suspend all pending and future requests for numbers if the new information submitted by an existing authorization holder indicates a material change or discloses new information such that additional investigation is necessary to confirm that the authorization continues to serve the public interest. If the new information leads the Commission to refer the authorization holder to the Executive Branch agencies, we propose to authorize the Bureau to direct the Numbering Administrator via public notice to suspend all pending and future requests for numbers until review is complete and a determination is made. We seek comment on whether to use this process. In the alternative, is there another process we should use?

85. *Use of numbers after submission of updated or new information.* To avoid a disruption of service to customers during review of updated or corrected ownership information, we propose to permit

authorization holders to continue to use numbers they obtained pursuant to our current procedures while submitting updated or corrected ownership information to the Bureau, unless and until the Bureau determines otherwise after investigation.[261] We seek comment on this proposal.

G. Disclosure of Initial Service Area in Direct Access Applications

86. We propose to require new interconnected VoIP applicants to provide, in their direct access applications, a list of the states where they initially intend to request numbering resources. This proposal seeks to create parity with the requirement that other providers show authorization to provide service in the area(s) for which numbering resources are requested, which effectively requires them to identify the states where they initially will request numbers.[262] It also would formalize the existing practice of the Bureau asking interconnected VoIP applicants to provide a list of the states where they intend to request numbers. We seek comment on this proposal. Would it place an undue burden on interconnected VoIP providers to provide this information? If so, how, given that all other providers are required to provide this information? Is it consistent with promoting symmetrical regulation? We also seek comment on whether requiring this information will help state commissions be better prepared to address interconnected VoIP provider applications pending at the Commission and consequently prepare for new numbering requests in their states. Is there a better way to help state commissions be aware of applications that may affect the demand on numbering resources in their states from new applicants?

H. Ensuring that Indirect Access Serves the Public Interest

87. We propose to require direct access authorization holders that sell, lease, or otherwise provide telephone numbers obtained via direct access to a voice service provider (an "indirect access recipient") to: (1) obtain from the indirect access recipient all the same certifications, acknowledgments, and disclosures the indirect access recipient would have had to provide under section 52.15(g)(3),[263] had the recipient applied for direct access to numbering resources itself; (2) obtain from the indirect access recipient all subsequent updates or corrections that would be required of a direct access authorization holder under section 52.15(g)(3); (3) retain a copy of all such certifications, acknowledgments, disclosures, and corrections and updates, to be provided to the Commission upon request; and (4) file with the Commission a list of the voice service providers to which the direct access authorization holder sells, leases, or otherwise provides telephone numbering resources that it obtained directly, and update that list within 30 days of adding any new indirect access recipient. We propose to apply these duties on a prospective basis to existing direct access authorization holders that provide telephone numbering resources to indirect access recipients after the effective date of the proposed new rule. We also propose to require future direct access applicants to certify they will abide by these requirements. We seek comment on these proposals.

88. As noted in the accompanying *Second Report and Order*, a key reason for strengthening the direct access application requirements is to enhance the Commission's ability to ensure interconnected VoIP providers comply with regulations targeting illegal robocalls and other important requirements, and provide information to help the Commission address potential issues related to foreign ownership.[264] As also noted above, however, interconnected VoIP providers can obtain numbers indirectly, such as from a competitive LEC that has a direct access authorization.[265] Because interconnected VoIP providers' use of finite telephone numbering resources via indirect means raises the same potential robocalling, access arbitrage, and other public interest issues as use of numbers by providers with direct access, we seek comment on whether it is appropriate for the Commission to apply the same showings as required from

[261] *See supra* Part III.B.3.

[262] *See* 47 CFR § 52.15(g)(2).

[263] *Id.* § 52.15(g)(3).

[264] *See supra* Part III.A.1, 2.

[265] *See supra* paras. 68, 70.

interconnected VoIP providers that obtain numbering resources directly.[266] We believe that by ensuring all interconnected VoIP providers that receive access to numbers, whether directly or indirectly, make the certifications, acknowledgments, and disclosures required in direct access applications, the Commission can improve its ability to protect consumers from entities that evade our robocalling and other rules.[267] We seek comment on this position.

89. Do commenters agree that this process would accrue the benefits to consumers that we describe? If so, would such benefits outweigh the potential burdens on direct access authorization holders and indirect access recipients? What are the negative consequences of this process for consumers, providers, and competition? Would the proposed requirements create a disincentive for direct access recipients to provide numbers to indirect access recipients? If so, is that good or bad for the public interest and consumers? For example, could this process incentivize indirect access recipients to seek direct access? How large is the secondary market for numbers obtained via direct access? Who are the main customers? How are resold numbers being used?

90. We seek comment on the Commission's role to enforce our rules and obligations pertaining to direct access and numbering. What enforcement actions could the Commission take, or what penalties could it impose, on a direct access recipient that fails to obtain, retain, or provide the Commission with the necessary certifications, acknowledgments, and disclosures, or that fails to provide and keep current a list of the indirect access recipients to which it provides numbers? Could or should enforcement include revisiting or revoking the direct access authorization holder's authorization? Would the Commission have authority, if an indirect access recipient were suspected or convicted of illegal robocalling or spoofing, to direct the Numbering Administrator to stop providing telephone numbers to the direct access authorization holder, and/or to prohibit the direct access authorization holder from providing numbers to the indirect access recipient? What other consequences, if any, should we consider for the direct access authorization holder when a recipient on its list is found to have violated the Commission's numbering rules or other laws or regulations? We propose to apply the new duties prospectively, but is there any reason why we should not require existing direct access authorization holders to gather, retain, and provide the required information regarding indirect access recipients to which they have already provided numbering resources? If not, how much time should we give existing authorization holders to provide information regarding these indirect access recipients?

91. What other means should we consider to close the gap in our visibility into the use of numbering resources and related activities of indirect access recipients? How would these proposals address a scenario in which an indirect access recipient provides numbers to another indirect access recipient? Do indirect access recipients provide numbers that they obtained indirectly to other providers? How would or should we hold the direct access authorization holders accountable for indirect access recipients of its numbers that are further along this chain of providers?

92. *Filing process.* Regarding the list of indirect access recipients to which a direct access authorization holder sells, leases, or otherwise provides numbers it obtained directly, we propose requiring direct access authorization holders to submit such list and any required updates to the Commission via the "Submit a Non-Docketed Filing" module in Electronic Comment Filing System (ECFS) established for the VoIP Direct Access proceeding (Inbox—52.15 VoIP Numbering

[266] We simultaneously refer questions to the NANC regarding the use and misuse of numbering resources obtained indirectly in our accompanying *Second Report and Order* above. *See supra* paras. 68-71. We do so to ensure we have a fulsome record should we decide to take action on this issue in the future.

[267] In the Access Arbitrage proceeding, we took steps to strengthen our protection of consumers by requiring that an entity with direct access to numbers is responsible for the actions of a provider it subsequently indirectly assigns some or all of its numbers to. The entity receiving numbers directly is responsible (for purposes of Access Stimulation traffic ratio calculations) for call traffic to and from its OCN regardless of whether that entity subsequently indirectly assigns those telephone numbers to other providers. *See Access Arbitrage Second Report and Order* at 17-21, paras. 28-36.

Authorization Application) and via email to DAA@fcc.gov, our email alias for interconnected VoIP direct access to numbers applications. We believe that this approach will facilitate informed and timely review by interested members of the public and Commission staff, and we seek comment on this proposal. Should the lists of indirect access recipients be kept confidential, subject to a protective order, or otherwise shielded from public access?

I. Legal Authority

93. We tentatively conclude that section 251(e)(1) of the Act, which grants us "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States," provides us with authority to adopt our proposals.[268] We seek comment on this conclusion. In the *VoIP Direct Access Order*, the Commission concluded that section 251(e)(1) provided it with authority "to extend to interconnected VoIP providers both the rights and obligations associated with using telephone numbers."[269] Consistent with the Commission's well-established reliance on section 251(e) numbering authority with respect to carriers and interconnected VoIP providers, we propose concluding that section 251(e)(1) allows us to further refine our requirements governing direct access to numbering resources. We seek comment on this proposal. Consistent with the *VoIP Direct Access Order*, we also propose concluding that refining our application and post-application direct access requirements would not conflict with sections 251(b)(2) or 251(e)(2) of the Act.[270] We seek comment on this proposal.

94. We also tentatively conclude that section 6(a) of the TRACED Act provides us with additional authority to adopt our proposal. Section 6(a)(1) directs that

> [n]ot later than 180 days after the date of the enactment of this Act, the Commission shall commence a proceeding to determine how Commission policies regarding access to number resources, including number resources for toll free and non-toll free telephone numbers, could be modified, including by establishing registration and compliance obligations, and requirements that providers of voice service given access to number resources take sufficient steps to know the identity of the customers of such providers, to help reduce access to numbers by potential perpetrators of violations of section 227(b) of the Communications Act of 1934 (47 U.S.C. 227(b)).[271]

The Commission commenced the proceeding as required by section 6(a)(1) of the TRACED Act in March 2020,[272] and this *Second Further Notice* expands on those inquiries. Section 6(a)(2) of the TRACED Act states that "[i]f the Commission determines under paragraph (1) that modifying the policies described in that paragraph could help achieve the goal described in that paragraph, the Commission shall prescribe regulations to implement those policy modifications."[273] We propose concluding that section 6(a) of the TRACED Act, by directing us to prescribe regulations implementing policy changes to reduce access to

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[268] 47 U.S.C. § 251(e)(1).

[269] *VoIP Direct Access Order*, 30 FCC Rcd at 6878, para. 78.

[270] *See* 47 U.S.C. § 251(b)(2) (imposing on each local exchange carrier the duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission); *id.* § 251(e)(2) ("The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."); *VoIP Direct Access Order*, 30 FCC Rcd at 6879-80, paras. 81-82.

[271] TRACED Act § 6(a)(1); *see also* 47 U.S.C. § 227(b) (restricting the making of telemarketing calls and the use of automatic telephone dialing systems and artificial or prerecorded voice messages).

[272] *Caller ID Authentication First Report and Order*, 35 FCC Rcd at 3492-96, paras. 123-30.

[273] TRACED Act § 6(a)(2).

numbers by potential perpetrators of illegal robocalls, provides an independent basis to adopt the changes we propose to the direct access process with respect to fighting unlawful robocalls, and we seek comment on this proposal. Should we interpret section 6(a) of the TRACED Act as an independent grant of authority on which we may rely here? Section 6(b) of the TRACED Act authorizes imposition of forfeitures on certain parties found in violation "of a regulation prescribed under subsection (a),"[274] which we tentatively conclude supports our proposal to find that section 6(a) of the TRACED Act is an independent grant of rulemaking authority. We seek comment on this position. Should we codify or adopt any regulations to implement the forfeiture authorization in section 6(b) of the TRACED Act, including as to indirect access recipients, and if so, what regulations should we adopt?[275]

J. Promoting Digital Equity and Inclusion

95. The Commission, as part of its continuing effort to advance digital equity for all,[276] 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 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.

V. PROCEDURAL MATTERS

96. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[277] 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."[278] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Second Report and Order* on small entities. The FRFA is set forth in Appendix B.

97. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *Second Further Notice*. The IRFA is set

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[274] *Id.* § 6(b).

[275] *See id.* ("Any person who knowingly, through an employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, is a party to obtaining number resources, including number resources for toll free and non-toll free telephone numbers, from a common carrier regulated under title II of the Act (47 U.S.C. 201 et seq.), in violation of a regulation prescribed under subsection (a), shall, notwithstanding section 503(b)(5) of the Communications Act of 1934 (47 U.S.C. 503(b)(5)), be subject to a forfeiture penalty under section 503(b) of that Act (47 U.S.C. 503(b)). A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by law.").

[276] Section 1 of the Act provides that the Commission "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. 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).

[277] 5 U.S.C. §§ 601–612. The RFA 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).

[278] 5 U.S.C. § 605(b).

forth in Appendix C. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Second Further Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

98. *Paperwork Reduction Act*. This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Specifically, the rules adopted in 47 CFR § 52.15(g)(3)(ii)(B)-(F), (I), (K)-(L), (N), and (x)(A) may require new or modified information collections. All such new or modified information collection 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 the 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. In this document, we describe several steps we have taken to minimize the information collection burdens on small entities.[279]

99. The *Second Further Notice* also may contain proposed new and revised 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.

100. *Ex Parte Presentations—Permit-But-Disclose.* The proceeding this *Second Further Notice* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[280] 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.[281]

101. *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

[279] *See infra* Appx. B at paras. 25-28.

[280] 47 CFR § 1.1200 *et seq.*

[281] *Id.* § 1.49(f).

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.
- 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). https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

102. Pursuant to section 1.49 of the Commission's rules, 47 CFR § 1.49, parties to this proceeding must file any documents in this proceeding using the Commission's Electronic Comment Filing System (ECFS): www.fcc.gov/ecfs.

103. *Accessible Formats*. 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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

104. *Contact Person.* For further information about this proceeding, please contact Mason Shefa, FCC Wireline Competition Bureau, Competition Policy Division, at (202) 418-2494, or mason.shefa@fcc.gov.

VI. ORDERING CLAUSES

105. Accordingly, IT IS ORDERED that pursuant to sections 1, 3, 4, 201-205, 227b-1, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 227b-1, 251, 303(r), and section 6(a) of the TRACED Act, Pub. L. No. 116-105, § 6(a)(1)-(2), 133 Stat. 3274, 3277 (2019), the *Second Report and Order and Second Further Notice of Proposed Rulemaking* hereby IS ADOPTED and Part 52 of the Commission's Rules, 47 CFR part 52, IS AMENDED as set forth in Appendix A. The *Second Report and Order* shall become effective 30 days after publication in the Federal Register, except for 47 CFR § 52.15(g)(3)(ii)(B)-(F), (I), (K)-(L), and (N), and (x)(A), as amended in Appendix A, which shall become effective upon an announcement in the Federal Register of OMB review and an effective date of those rules.

106. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, Reference Information Center, SHALL SEND a copy of this *Second Report and Order and Second Further Notice of Proposed Rulemaking*, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

107. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this *Second 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

Final Rules

For the reasons discussed above, the Federal Communications Commission amends 47 CFR part 52 as follows:

PART 52 – NUMBERING

1. Amend § 52.15 by:

a. Redesignating paragraphs (g)(3)(i) as (g)(3)(ii), (g)(3)(i)(C) as (g)(3)(ii)(G), (g)(3)(i)(D) as (g)(3)(ii)(H), (g)(3)(i)(E) as (g)(3)(ii)(J), (g)(3)(i)(F) as (g)(3)(ii)(K), (g)(3)(i)(G) as (g)(3)(ii)(M), (g)(3)(ii) as (g)(3)(iii), (g)(3)(iii) as (g)(3)(iv), (g)(3)(iii)(A) as (g)(3)(v)(A), (g)(3)(iii)(B) as (g)(3)(v)(B), (g)(3)(iii)(C) as (g)(3)(v)(D), (g)(3)(iii)(D) as (g)(3)(v)(E), (g)(3)(iv) as (g)(3)(x);

b. Adding new paragraphs (g)(3)(i), (g)(3)(ii)(C)-(F), (g)(3)(ii)(I), (g)(3)(ii)(L), (g)(3)(ii)(N), (g)(3)(v), (g)(3)(v)(C), (g)(3)(vi), (g)(3)(vii), (g)(3)(viii), (g)(3)(ix); and

c. Revising paragraphs (g)(3)(ii)(B), (g)(3)(ii)(G), (g)(3)(ii)(J), (g)(3)(ii)(K), (g)(3)(ii)(M), (g)(3)(iii), (g)(3)(iv), (g)(3)(v)(E), (g)(3)(x), and (g)(3)(x)(A) to read as follows:

§ 52.15 Central office code administration.

* * * * *

(g) * * *

(1) * * *

(2) * * *

(3) * * *

(i) *Definition.* The term "foreign carrier" found in this section is given the same meaning as in § 63.09(d) of this chapter.

(ii) * * *

(A) * * *

(B) An acknowledgment that the authorization granted under this paragraph is subject to compliance with applicable Commission numbering rules; numbering authority delegated to the states, and the state laws, regulations, and registration requirements applicable to businesses operating in each state where the applicant seeks numbering resources; and industry guidelines and practices regarding numbering as applicable to telecommunications carriers;

(C) A certification that the applicant will not use the numbers obtained pursuant to an authorization under this paragraph to knowingly transmit, encourage, assist, or facilitate illegal robocalls, illegal spoofing, or fraud, in violation of robocall, spoofing, and deceptive telemarketing obligations under §§ 64.1200, 64.1604, and 64.6300 *et seq.* of this chapter, and 16 CFR 310.3(b);

(D) A certification that the applicant has fully complied with all applicable STIR/SHAKEN caller ID authentication and robocall mitigation program requirements and filed a certification in the Robocall Mitigation Database as required by §§ 64.6301 to 64.6305 of this chapter;

(E) A certification with accompanying evidence that the applicant complies with its 911 obligations under part 9 of this chapter, and that it complies with the provisions of the

Communications Assistance with Law Enforcement Act, 47 U.S.C. 1001 *et seq.* Wireline Competition Bureau (Bureau) or other Commission staff may request additional documentation from the applicant to demonstrate compliance with these public safety obligations, where necessary.;

(F) A certification that the applicant complies with the Access Stimulation rules under § 51.914 of this chapter;

(G) An acknowledgment that the applicant must file requests for numbers with the relevant state commission(s) at least 30 days before requesting numbers from the Numbering Administrators;

(H) * * *

(I) Proof that the applicant has filed FCC Forms 477 and 499, or a statement explaining why each such form is not yet applicable;

(J) A certification that the applicant complies with its applicable Universal Service Fund contribution obligations under part 54, subpart H of this chapter, its Telecommunications Relay Service contribution obligations under § 64.604(c)(5)(iii) of this chapter, its NANP and LNP administration contribution obligations under §§ 52.17 and 52.32 of this chapter, and its obligations to pay regulatory fees under § 1.1154 of this chapter;

(K) A certification that the applicant possesses the financial, managerial, and technical expertise to provide reliable service. This certification must include the name of applicant's key management and technical personnel, such as the Chief Operating Officer and the Chief Technology Officer, or equivalent, and state that neither the applicant nor any of the identified personnel are being or have been investigated by the Federal Communications Commission, law enforcement, or any regulatory agency for failure to comply with any law, rule, or order, including the Commission's rules applicable to unlawful robocalls or unlawful spoofing;

(L) The same information, disclosures, and certifications required by §§ 63.18(h) and (i) of this chapter;

(M) A certification pursuant to §§ 1.2001 and 1.2002 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, *see* 21 U.S.C. 862; and

(N) A declaration under penalty of perjury pursuant to § 1.16 of this chapter that all statements in the application and any appendices are true and accurate. This declaration shall be executed by an officer or other authorized representative of the applicant.

(iii) An applicant for Commission authorization under this section must file its application electronically through the "Submit a Non-Docketed Filing" module of the Commission's Electronic Comment Filing System (ECFS). Each application shall be accompanied by the fee prescribed in part 1, subpart G of this chapter.

(iv) *Public notice and review period for streamlined pleading cycle.* Upon determination by the Bureau that the applicant has filed a complete application that is appropriate for streamlined treatment, the Bureau will assign a docket number to the application and issue a public notice stating that the application has been accepted for filing as a streamlined application. The applicant must make all subsequent filings relating to its application in this docket. Parties may file comments addressing an application for authorization no later than 15 days after the Bureau releases a public notice stating that the application has been accepted for filing, unless the public notice specifies a different filing date. An application under this section is deemed granted by the Commission on the 31st day after the Commission releases a public notice stating that the

application has been accepted for filing, unless the Bureau notifies the applicant that the grant will not be automatically effective.

(v) *Non-streamlined processing of applications.* If an application discloses that the applicant has reportable ownership by a foreign person or entity under paragraph (g)(3)(ii)(L) of this section, the Bureau shall remove the application from streamlined processing. The Bureau may also remove an application from streamlined processing at its discretion for other reasons. The Bureau shall notify the applicant by public notice that it is removing the application from streamlined processing, and shall state the reason for the removal. An application may also receive non-streamlined processing if:

(A) * * *

(B) * * *

(C) An application would, on its face, violate a Commission rule or the Communications Act;

(D) * * *

(E) The Bureau determines that the application requires further analysis to determine whether granting the application serves the public interest.

(vi) *Additional information.* Applicants must provide additional information requested by the Bureau during and after its initial review of a direct access application. Failure to respond to such a request or other official correspondence may result in the rejection of the application without prejudice. Any additional information that the Bureau may require must be submitted in the same manner as the original application filing, unless the Bureau specifies another method.

(vii) *Rejection of applications*. The Bureau may reject an application by announcing the rejection, the reasons for the rejection, and whether the rejection is with or without prejudice via public notice if it determines or has a reasonable basis to believe that:

(A) The applicant cannot satisfy the qualification requirements for a Commission authorization under this paragraph;

(B) The applicant has made a false statement or certification to the Commission;

(C) The applicant has engaged in behavior contrary to the public interest; or

(D) Granting the application would not serve the public interest.

(viii) *Authorization suspension.* The Wireline Competition Bureau or Enforcement Bureau may suspend a direct access authorization holder's access to new numbering resources under 5 U.S.C. 558(c):

(A) After either Bureau determines that the authorization holder acted willfully; or public health, interest, or safety requires an immediate suspension; or

(B) After giving the authorization holder notice and an opportunity to demonstrate compliance with the Commission's rules.

(ix) *Authorization revocation*. The Wireline Competition Bureau or Enforcement Bureau shall determine appropriate procedures and initiate revocation and/or termination proceedings and revoke and/or terminate an authorization, as required by due process and applicable law and in light of the relevant facts and circumstances, including providing the authorization holder with notice and opportunity to respond. Either Bureau may commence such revocation and/or termination proceedings if:

(A) The authorization holder has failed to comply with the Commission's numbering rules;

(B) The authorization holder no longer meets the requirements for a Commission authorization under this paragraph;

(C) The authorization holder, or officer or authorized representative of the authorization holder, has made a false statement or certification to the Commission; or

(D) Revoking and/or terminating the authorization is in the public interest.

(x) *Conditions applicable to all interconnected VoIP provider numbering authorizations.* An interconnected VoIP provider authorized to request numbering resources directly from the Numbering Administrators under this section shall:

(A) Maintain the accuracy of all contact information, certifications, and ownership or affiliation information in its application. If any contact information, certification, or affiliation information submitted in an application pursuant to this section, is no longer accurate, the provider must file a correction with the Commission and each applicable state within thirty (30) days of the change of contact information, certification, or affiliation information. Regarding ownership information, if the holders of equity and/or voting interests in the provider change such that (i) a provider that previously did not have reportable ownership or control information under paragraph (g)(3)(ii)(L) now has reportable ownership or control information, or (ii) there is a change to the reportable ownership or control information the provider previously reported under paragraph (g)(3)(ii)(L), the provider must file a correction with the Commission and each applicable state within thirty (30) days of the change to its ownership or control information. The Commission may use the updated contact information, certifications, or ownership or affiliation information to determine whether a change in authorization status is warranted;

* * * * *

APPENDIX B

Final Regulatory Flexibility Analysis

A. Need for, and Objectives of, the *Second Report and Order*

1. The *Second Report and Order* takes important steps aimed at stemming the tide of illegal robocalls perpetrated by interconnected VoIP providers and protecting the nation's numbering resources from abuse by foreign bad actors by strategically updating the Commission's rules regarding how such providers obtain nationwide authorization for direct access to our nation's limited numbering resources.

2. First, the *Second Report and Order* requires applicants to make robocall-related certifications to ensure compliance with the Commission's rules targeting illegal robocalls.[1] Second, to mitigate the risk of providing bad actors abroad with access to our numbering resources, it requires applicants to disclose and keep current information about their ownership.[2] Third, it requires applicants to certify to their compliance with other Commission rules applicable to interconnected VoIP providers.[3] Fourth, it requires providers requesting numbers from a state's numbering administrator to comply with the state's laws and registration requirements that are applicable to businesses requesting numbers in that state.[4] Fifth, it requires applicants to include a signed declaration that their applications are true and accurate.[5] Sixth, and finally, it formalizes the Bureau's application review, application rejection, and authorization revocation processes.[6]

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. There were no comments raised that specifically addressed the proposed rules and policies presented in the IRFA. Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and took steps where appropriate and feasible to reduce the compliance burden for small entities in order to reduce the economic impact of the rules enacted herein on such entities.

C. Response to Comments by the 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.[7] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the 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 rules adopted herein.[8] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization,"

[1] *See supra* Part III.A.1.

[2] *See supra* Part III.A.2.

[3] *See supra* Part III.A.3.

[4] *See supra* Part III.A.4.

[5] *See supra* Part III.A.5.

[6] *See supra* Part III.B.

[7] 5 U.S.C. § 604(a)(3).

[8] *See id.* § 604(a)(4).

and "small governmental jurisdiction."[9] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[10] 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.[11]

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, at the outset, three broad groups of small entities that could be directly affected herein.[12] 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.[13] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.[14]

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."[15] 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.[16] 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.[17]

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 districts, with a population of less than fifty thousand."[18] U.S. Census Bureau data from the 2017 Census

[9] *Id.* § 601(6).

[10] *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." *Id.*

[11] *See* 15 U.S.C. § 632.

[12] *See* 5 U.S.C. § 601(3)-(6).

[13] *See* SBA, Office of Advocacy, *Frequently Asked Questions, "What is a small business?"* (Mar. 2023), https://advocacy.sba.gov/wp-content/uploads/2023/03/Frequently-Asked-Questions-About-Small-Business-March-2023-508c.pdf.

[14] *Id*.

[15] *See* 5 U.S.C. § 601(4).

[16] 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), 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.

[17] *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.

of Governments[19] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[20] Of this number there were 36,931 general purpose governments (county[21], municipal and town or township[22]) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts[23] with enrollment populations of less than 50,000.[24] 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."[25]

9. *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.[26] 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.[27] By exception, establishments providing satellite television distribution services using facilities

(Continued from previous page)

[18] *See* 5 U.S.C. § 601(5).

[19] *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* U.S. Census Bureau, *About Census of Governments*, https://www.census.gov/programs-surveys/cog/about.html (last updated Nov. 2021).

[20] *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.

[21] *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.

[22] *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.

[23] *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.

[24] 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.

[25] 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.

[26] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[27] *Id.*

and infrastructure that they operate are included in this industry.[28] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[29]

10. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[30] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[31] Of this number, 2,964 firms operated with fewer than 250 employees.[32] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.[33] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[34] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *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[35] is the closest industry with an SBA small business size standard.[36] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[37] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[38] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[39] Of this number, 2,964 firms operated with fewer than

[28] *Id.*

[29] 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.

[30] *See* 13 CFR § 121.201, NAICS Code 517311.

[31] *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.

[32] *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.

[33] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[34] *Id.*

[35] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[36] *See* 13 CFR § 121.201, NAICS Code 517311.

[37] 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.

[38] *Id.*

[39] *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.

250 employees.[40] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.[41] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[42] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *Incumbent Local Exchange Carriers* (*Incumbent LECs*). Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers[43] is the closest industry with an SBA small business size standard.[44] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[45] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[46] Of this number, 2,964 firms operated with fewer than 250 employees.[47] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.[48] Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.[49] 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.

13. *Competitive 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 several types of competitive local exchange service providers.[50] Wired Telecommunications Carriers[51] is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having

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[40] *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.

[41] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[42] *Id.*

[43] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers*," https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[44] *See* 13 CFR § 121.201, NAICS Code 517311.

[45] *Id.*

[46] *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.

[47] *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.

[48] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[49] *Id.*

[50] 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.

[51] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

1,500 or fewer employees as small.[52] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[53] Of this number, 2,964 firms operated with fewer than 250 employees.[54] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers.[55] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[56] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers[57] is the closest industry with an SBA small business size standard.[58] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[59] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[60] Of this number, 2,964 firms operated with fewer than 250 employees.[61] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees.[62] 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.

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.[63] Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and

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[52] *See* 13 CFR § 121.201, NAICS Code 517311.

[53] *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.

[54] *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.

[55] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[56] *Id.*

[57] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers*," https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[58] *See* 13 CFR § 121.201, NAICS Code 517311.

[59] *Id.*

[60] *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.

[61] *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.

[62] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[63] *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.

wireless video services.[64] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[65] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[66] Of that number, 2,837 firms employed fewer than 250 employees.[67] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.[68] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[69] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *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.[70] 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.[71] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[72] Mobile virtual network operators (MVNOs) are included in this industry.[73] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[74] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[75] Of that number, 1,375 firms operated with fewer than 250 employees.[76] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services.[77] Of these providers, the Commission

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[64] *Id.*

[65] *See* 13 CFR § 121.201, NAICS Code 517312.

[66] *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.

[67] *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.

[68] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[69] *Id.*

[70] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers*," https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[71] *Id.*

[72] *Id*.

[73] *Id*.

[74] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[75] *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 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[76] *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.

[77] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

estimates that 202 providers have 1,500 or fewer employees.[78] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Toll Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers[79] is the closest industry with an 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.[80] Mobile virtual network operators (MVNOs) are included in this industry.[81] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[82] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[83] Of that number, 1,375 firms operated with fewer than 250 employees.[84] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services.[85] Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.[86] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *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.[87] 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.[88] 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.[89] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[90] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that

[78] *Id.*

[79] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers*," https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[80] *Id.*

[81] *Id*.

[82] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[83] *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 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[84] *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.

[85] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[86] *Id.*

[87] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications*," https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[88] *Id.*

[89] *Id*.

[90] *See* 13 CFR § 121.201, NAICS Code 517919.

operated for the entire year.[91] Of those firms, 1,039 had revenue of less than $25 million.[92] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

19. In the *Second Report and Order*, we adopt new certifications and disclosures in our direct access application process for all interconnected VoIP provider applicants. Upon the effective date of these rules, we require explicit acknowledgment of compliance with all robocall regulations; implement disclosure and update requirements regarding ownership and control; require certification of compliance with other applicable Commission regulations and certain state law; and add a declaration requirement to hold applicants accountable for the truthfulness and accuracy of their direct access applications.

20. Specifically, we require a direct access applicant to certify that it will use numbering resources lawfully and will not knowingly encourage, assist, or facilitate illegal robocalls, illegal spoofing, or fraud. If the applicant has a foreign owner whose interest exceeds the reporting threshold set forth in section 63.18(h) of our rules, those applications will be placed on a "non-streamlined" processing track. We require applicants for a Commission direct access authorization to disclose information, including the name, address, country of citizenship, and principal business of every person or entity that directly or indirectly owns at least ten percent of the equity and/or voting interest, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those entities to the nearest one percent, consistent with the requirements of international section 214 applicants.[93] Also consistent with section 214, we require an applicant to certify whether it is, or is affiliated with, a foreign carrier, and cross-reference with section 63.18(i) for consistency.[94] A chart or narrative describing the applicant's corporate structure is also required for interconnected VoIP applicants.

21. To ensure ownership information remains up to date, the *Second Report and Order* revises section 52.15(g)(3) to require interconnected VoIP providers that obtain direct access authorization under the revised rules to submit an update to the Commission and each applicable state within 30 days of any change to the ownership information disclosed in their direct access applications. Authorization holders are also required to submit updated or corrected ownership information to the states for which they have acquired or requested numbers at the time of the ownership change and in the same manner the providers would submit a correction or update to their original applications. We also revise section 52.15(g)(3) to require applicants to certify their compliance with the Communications Assistance with Law Enforcement Act (CALEA), and provide evidence in their applications that demonstrates their compliance with both CALEA and the Commission's part 9 public safety rules. A new certification cross-references new access arbitrage rules, thus revising section 52.15(g)(3) to require interconnected VoIP providers applying for direct access to numbers to certify that they will not use numbering resources to evade our access stimulation rules. Interconnected VoIP providers that must file FCC Forms 477 and 499 will now provide evidence that they have complied with these obligations, and any successor filing obligations, when filing a direct access application.

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[91] *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.

[92] *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* U.S. Census Bureau, *Glossary*, https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[93] *See Second Report and Order* at note 80.

[94] 47 CFR § 63.18(i).

22. The *Second Report and Order* further revises section 52.15(g)(3) of our rules to require an officer or authorized employee representative of the applicant to submit a declaration under penalty of perjury, pursuant to section 1.16 of the rules, attesting that all statements in the application and any appendices are true and accurate. All updated or corrected ownership information shall be filed though existing methods such as the Electronic Comment Filing System (ECFS) through the Direct Access intake docket (Inbox 52.15) and via e-mail to DAA@fcc.gov, unless the Bureau specifies another method. The Bureau may request additional documentation as necessary, during and after its initial review of a direct access application.

23. After reviewing the record, we received no concerns about unique burdens from small businesses that would be impacted by the new certifications adopted in the *Second Report and Order*. As such, the Commission does not have sufficient information on the record to determine whether small entities will be required to hire professionals to comply with its decisions or to quantify the cost of compliance for small entities. The Commission, however, anticipates the approaches it has taken to implement the requirements will have minimal or de minimis cost implications because many of these obligations are required to comply with existing Commission regulations.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

24. 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 other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[95]

25. The *Second Report and Order* considered alternatives that may reduce the impact of these rule changes on small entities. Some proposals were not adopted because the requirements already exist under other parts of the Commission's rules. New obligations regarding STIR/SHAKEN caller ID authentication or robocall mitigation specifically for interconnected VoIP providers were not adopted; instead applicants are required to certify compliance with preexisting rule sections. This reduces confusion and maintains accuracy should the Commission decide to revise the robocall-related dockets. We declined to adopt our proposal to require direct access authorization holders to certify on their applications, or inform the Commission if the authorization holder is subject to a Commission or other regulator or law enforcement investigation due to its robocall mitigation plan being deemed insufficient, or due to suspected unlawful robocalling or spoofing, because authorization holders are already required to do so under the Commission's rules.

26. There was not strong record support for certain proposals that require action of the Office of International Affairs (OIA) or the Bureau, so we declined to adopt those finding that it is more efficient to rely on current practices to address these concerns. These include automatic referral of interconnected VoIP providers' direct access applications to the Executive Branch agencies when an applicant has reportable foreign ownership, and developing a list of "Standard Questions" for interconnected VoIP applicants with reportable foreign ownership. We also declined to adopt rules to specify the documents that will be allowed to satisfy the "facilities readiness" requirement in the Commission's current rules. Comments on the issue were divided and we conclude that existing examples of technical documentation are sufficient. Further, after considering the record, we declined to adopt a know-your-customer certification proposal at this time.

27. As discussed above, the new certification requirements in the *Second Report and Order* are minimally burdensome, as they merely require providers to certify that they are compliant with preexisting Commission rules. Our public safety and CALEA documentation submission requirement

[95] 5 U.S.C. § 604(a)(6).

merely formalizes existing Bureau practice of requesting such information from direct access applicants. Our new ownership disclosure requirement tracks requirements already imposed on providers in the section 214 context. For these reasons, we believe that small and other interconnected VoIP providers will not have an issue including these new certifications and disclosures in their direct access authorization applications.

G. Report to Congress

28. The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[96] In addition, the Commission will send a copy of the *Second Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Report and Order* (or summaries thereof) will also be published in the Federal Register.[97]

[96] *Id.* § 801(a)(1)(A).

[97] *See id*. § 604(b).

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] 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*). 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 *Second Further Notice*. 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).[2] In addition, the *Second Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the TRACED Act, Congress directed the Commission to examine whether and how to modify its policies to reduce access to numbers by potential perpetrators of illegal robocalls.[4] Consistent with Congress's direction, the *Second Further Notice* proposes to update our rules regarding direct access to numbers by providers of interconnected VoIP services to help stem the tide of illegal robocalls. Today, widely available VoIP software allows malicious callers to make spoofed calls with minimal experience and cost. Therefore, as we continue to refine our process for allowing VoIP providers direct access to telephone numbers, we must account both for the benefits of competition and the potential risks of allowing bad actors to leverage access to numbers to harm Americans.

3. The Commission first began to allow interconnected VoIP providers to obtain numbers for customers directly from the Numbering Administrator rather than relying on a carrier partner in 2015.[5] Based on our experience since that time, the *Second Further Notice* proposes to adopt clarifications and guardrails to better ensure that VoIP providers that obtain the benefit of direct access to numbers comply with existing legal obligations and do not facilitate illegal robocalls, pose national security risks, or evade or abuse intercarrier compensation requirements.

4. First, we seek comment on a proposal to apply the new application requirements adopted in *the Second Report and Order* to existing authorization holders whose authorizations predate the effective date of those new requirements. Second, we seek comment on whether direct access applicants should disclose a list of states in which they seek to provide initial service. Third, we seek comment on our proposal to minimize harms that may arise from bad actors that access numbering resources indirectly (i.e., without a direct access authorization), by requiring the direct access authorization holders that supply them with numbering resources to obtain from them the same certifications, acknowledgments, and disclosures required of direct access applicants.

B. Legal Basis

5. The proposed action is authorized pursuant to sections 1, 3, 4, 201-205, 227b-1, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 227b-1,

[1] *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).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id*.

[4] *See* TRACED Act § 6(a)(1)-(2).

[5] *See Numbering Policies for Modern Communications et al.*, WC Docket No. 13-97 et al., Report and Order, 30 FCC Rcd 6839 (2015) (*VoIP Direct Access Order*), *appeal dismissed*, *NARUC v. FCC*, 851 F.3d 1324 (D.C. Cir. 2017).

251, 303(r), and section 6(a) of the TRACED Act, Pub. L. No. 116-105, § 6(a)(1)-(2), 133 Stat. 3274, 3277 (2019).

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, if adopted.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[8] 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.[9]

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, at the outset, three broad groups of small entities that could be directly affected herein.[10] 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.[11] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.[12]

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."[13] 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.[14] Nationwide, for tax year 2020, there

[6] *See* 5 U.S.C. § 603(b)(3).

[7] *See id*. § 601(6).

[8] *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."

[9] *See* 15 U.S.C. § 632.

[10] *See* 5 U.S.C. § 601(3)-(6).

[11] *See* SBA, Office of Advocacy, *Frequently Asked Questions, "What is a small business?"* (Mar. 2023), https://advocacy.sba.gov/wp-content/uploads/2023/03/Frequently-Asked-Questions-About-Small-Business-March-2023-508c.pdf.

[12] *Id*.

[13] *See* 5 U.S.C. § 601(4).

[14] 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), 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.

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.[15]

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."[16] U.S. Census Bureau data from the 2017 Census of Governments[17] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[18] Of this number there were 36,931 general purpose governments (county[19], municipal and town or township[20]) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts[21] with enrollment populations of less than 50,000.[22] 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."[23]

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[15] *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.

[16] *See* 5 U.S.C. § 601(5).

[17] *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* U.S. Census Bureau, *About Census of Governments*, https://www.census.gov/programs-surveys/cog/about.html (last updated Nov. 18, 2021).

[18] *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.

[19] *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.

[20] *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.

[21] *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.

[22] 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.

[23] 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.

10. *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.[24] 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.[25] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[26] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[27]

11. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[28] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[29] Of this number, 2,964 firms operated with fewer than 250 employees.[30] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.[31] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[32] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *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[33] is the closest industry with an SBA small business size standard.[34] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[35]

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[24] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[25] *Id.*

[26] *Id.*

[27] 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.

[28] *See* 13 CFR § 121.201, NAICS Code 517311.

[29] *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.

[30] *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.

[31] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[32] *Id.*

[33] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[34] *See* 13 CFR § 121.201, NAICS Code 517311.

[35] 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),
(continued….)

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[36] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[37] Of this number, 2,964 firms operated with fewer than 250 employees.[38] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.[39] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[40] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Incumbent Local Exchange Carriers* (*Incumbent LECs*). Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers[41] is the closest industry with an SBA small business size standard.[42] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[43] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[44] Of this number, 2,964 firms operated with fewer than 250 employees.[45] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.[46] Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.[47] 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.

(Continued from previous page)
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.

[36] *Id.*

[37] *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.

[38] *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.

[39] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[40] *Id.*

[41] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[42] *See* 13 CFR § 121.201, NAICS Code 517311.

[43] *Id.*

[44] *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.

[45] *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.

[46] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[47] *Id.*

14. *Competitive 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 several types of competitive local exchange service providers.[48] Wired Telecommunications Carriers[49] is the closest industry with an 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.[50] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[51] Of this number, 2,964 firms operated with fewer than 250 employees.[52] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers.[53] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[54] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers[55] is the closest industry with an SBA small business size standard.[56] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[57] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[58] Of this number, 2,964 firms operated with fewer than 250 employees.[59] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or

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[48] 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.

[49] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[50] *See* 13 CFR § 121.201, NAICS Code 517311.

[51] *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.

[52] *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.

[53] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[54] *Id.*

[55] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[56] *See* 13 CFR § 121.201, NAICS Code 517311.

[57] *Id.*

[58] *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.

[59] *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.

fewer employees.[60] 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.

16. *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."[61] 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.[62] Based on industry data, only six cable system operators have more than 677,000 subscribers.[63] 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.[64] 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.

17. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition 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[65] is the closest industry with an SBA small business size standard.[66] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[67] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[68]

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[60] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[61] 47 U.S.C. § 543(m)(2).

[62] *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 49.8 million. *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 80, para. 218, Fig. II.E.1. (2022) (2022 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).

[63] 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 (Apr. 2022).

[64] 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).

[65] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[66] *See* 13 CFR § 121.201, NAICS Code 517311.

[67] *Id.*

[68] *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.

Of this number, 2,964 firms operated with fewer than 250 employees.[69] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.[70] Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.[71] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Wireless Telecommunications Carriers (except Satellite*). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[72] 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.[73] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[74] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[75] Of that number, 2,837 firms employed fewer than 250 employees.[76] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.[77] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[78] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *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."[79] 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.[80] U.S. Census Bureau data for 2017 show that 275

[69] *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.

[70] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[71] *Id.*

[72] *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.

[73] *Id.*

[74] *See* 13 CFR § 121.201, NAICS Code 517312.

[75] *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.

[76] *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.

[77] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[78] *Id.*

[79] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications*," https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[80] *See* 13 CFR § 121.201, NAICS Code 517410.

firms in this industry operated for the entire year.[81] Of this number, 242 firms had revenue of less than $25 million.[82] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.[83] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[84] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

20. *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.[85] 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.[86] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[87] Mobile virtual network operators (MVNOs) are included in this industry.[88] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[89] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[90] Of that number, 1,375 firms operated with fewer than 250 employees.[91] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services.[92] Of these providers, the Commission

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[81] *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.

[82] *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* U.S. Census Bureau, *Glossary*, https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[83] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[84] *Id.*

[85] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers*," https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[86] *Id.*

[87] *Id*.

[88] *Id*.

[89] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[90] *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 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[91] *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.

[92] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022),

https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

estimates that 202 providers have 1,500 or fewer employees.[93] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *Toll Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers[94] is the closest industry with an 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.[95] Mobile virtual network operators (MVNOs) are included in this industry.[96] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[97] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[98] Of that number, 1,375 firms operated with fewer than 250 employees.[99] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services.[100] Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.[101] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

22. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers[102] 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.[103] Mobile virtual network operators (MVNOs) are included in this industry.[104] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer

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[93] *Id.*

[94] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers*," https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[95] *Id.*

[96] *Id*.

[97] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[98] *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 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[99] *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.

[100] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[101] *Id.*

[102] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers*," https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[103] *Id.*

[104] *Id*.

employees.[105] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[106] Of that number, 1,375 firms operated with fewer than 250 employees.[107] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services.[108] Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees.[109] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

23. *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.[110] 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.[111] 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.[112] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[113] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[114] Of those firms, 1,039 had revenue of less than $25 million.[115] 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

24. If adopted, the proposals in the *Second Further Notice* may create new or additional reporting or recordkeeping and/or other compliance obligations for small entities. Specifically, the

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[105] *See* 13 CFR § 121.201, NAICS Code 517911(as of 10/1/22, NAICS Code 517121).

[106] *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 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[107] *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.

[108] Fed.-State Joint Bd. on Universal Serv., Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[109] *Id.*

[110] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications*," https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[111] *Id.*

[112] *Id.*

[113] *See* 13 CFR § 121.201, NAICS Code 517919.

[114] *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.

[115] *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* U.S. Census Bureau, *Glossary*, https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

Second Further Notice proposes to apply the new application requirements we adopt in the *Second Report and Order* to existing authorization holders whose authorizations predate the effective date of those new requirements.[116] This proposal, if adopted, would impose new reporting and compliance obligations on existing authorization holders. The *Second Further Notice* also proposes requiring direct access applicants to disclose a list of states in which they seek to provide initial service, formalizing the existing practice of the Bureau.[117] Additionally, the *Second Further Notice* seeks comment on a proposal to minimize harms that may arise from bad actors that access numbering resources indirectly (i.e., without a direct access authorization), by requiring the direct access authorization holders that supply them with numbering resources to obtain from them the same certifications, acknowledgments, and disclosures required of direct access applicants.[118]

25. The Commission anticipates some of the approaches proposed to implement the requirements in the *Second Report and Order* on existing direct access authorization holders will have minimal or de minimis cost implications because many of these obligations are required to comply with existing Commission regulations. At this time however, the Commission is not in a position to determine whether, if adopted, proposals and the matters upon which we seek comment will require small entities to hire professionals to comply, and cannot quantify the cost of compliance with the potential rule changes discussed herein. We anticipate the information we receive in comments including where requested, cost and benefit analyses, will 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 *Second Further Notice*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

26. 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 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."[119]

27. The Commission considered the possibility that burdens may be imposed on interconnected VoIP service providers (small or large) if we adopt rules that propose to strengthen requirements for existing direct access authorization holders. The Commission welcomes comments on any of the issues raised in the *Second Further Notice* that will impact small providers. In particular, the *Second Further Notice* considered and seeks comment on whether requiring existing direct access authorization holders to meet the new requirements of the *Second Report and Order* is necessary, or would be unduly burdensome, and whether the proposed 30-day timeframe for compliance is sufficient.[120] The *Second Further Notice* also requests comment on possible burdens associated with requiring direct access applicants to provide their initial proposed service area and the states where they intend to provide service and whether better options exist.[121] In addition, the *Second Further Notice* seeks comment on the potential burdens and impact of requiring direct access authorization holders that sell, lease, or otherwise

[116] *See Second Further Notice*, paras. 80-85.

[117] *See id.* para. 86.

[118] *See id.* paras. 87-92.

[119] 5 U.S.C. § 603(c)(1)-(4).

[120] *Second Further Notice*, paras. 80-85.

[121] *Id*. para. 86.

provide telephone numbers to an interconnected VoIP provider to obtain certifications, acknowledgments, and disclosures from them as if they were applying for a direct access authorization.[122]

28. The *Second Further Notice* proposes that authorization holders be allowed to continue to use numbers they obtained prior to submitting updated or corrected ownership information to the Bureau unless the Bureau determines that the authorization must be revoked per the formal revocation procedure we adopt in the *Second Report and Order*.[123] Alternatively, we seek comment on whether this step is necessary to narrow the gap in our oversight ability to reach bad actors with respect to numbering resources, and other factors the Commission should consider to enforce these rules.[124]

29. To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions that have been proposed in the *Second Further Notice*, and to better explore options and alternatives, the Commission seeks comment on whether any of the burdens associated with the filing, recordkeeping and reporting requirements described above can be minimized for small entities. Additionally, the Commission seeks comment on whether any of the costs associated with any of the proposed requirements to eliminate unlawful robocalls can be alleviated for small entities. The Commission expects to more fully consider the economic impact and alternatives for small entities based on its review of the record and any comments filed in response to the *Second Further Notice* and this IRFA.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

30. None.

[122] *Id*. paras. 87-92.

[123] *Id.* para. 86.

[124] *Id*.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Numbering Policies for Modern Communications*, WC Docket No. 13-97, *Telephone Number Requirements for IP-Enabled Service Providers*, WC Docket No. 07-243, *Implementation of the TRACED Act Section 6(a) – Knowledge of Customers by Entities with Access to Numbering Resources,* WC Docket No. 20-67, *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-115, Second Report and Order and Second Further Notice of Proposed Rulemaking (September 21, 2023).

At the Federal Communications Commission we are combing through our rules and looking for ways to cut off illegal robocalls so those behind them can no longer reach us with their junk schemes. Today, we update our numbering policies to make it harder for these scam artists when they use Voice over Internet Protocol—or VoIP—services.

It was eight years ago that this agency decided to allow interconnected VoIP providers to obtain telephone numbers directly from our numbering administrator. Before that, they could only get numbers by making a request through a traditional carrier. In the intervening years, we have seen benefits from simplifying this system. But now we are reaping some unintended consequences. Too often the providers picking up these numbers en masse are the same folks using VoIP technology to facilitate robocalls. So in the interest of curbing these bad actors, we are adopting new guardrails. We are putting conditions on direct access to numbering resources to make sure we do not hand out numbers to perpetrators of illegal robocalls. This will safeguard our numbering resources, make life harder for those who want to send us junk calls and a little easier for all of us who don't like getting them.

For their work on this proceeding, I'd like to thank the Robocall Response Team and staff, including Callie Coker, Ty Covey, Lynne Engledow, Trent Harkrader, Heather Hendrickson, Edward Krachmer, Jodie May, Albert Lewis, Terri Natoli, Margoux Newman, Jordan Reth, Zach Ross, Michelle Sclater, Mason Shefa, Christi Shewman, Gil Strobel, and Raphael Sznajder of the Wireline Competition Bureau; Loyaan Egal, Jessica Manuel, and Daniel Stepanicich of the Enforcement Bureau; John Evanoff, David Furth, and Debra Jordan of the Public Safety and Homeland Security Bureau; Cameron Duncan, Jennifer Saulhus, and Joel Taubenblatt of the Wireless Telecommunications Bureau; Jerusha Burnett and Alejandro Roark of the Consumer and Governmental Affairs Bureau; Denise Coca, Francis Gutierrez, Gabrielle Kim, David Krech, Arthur Lechtman, Ethan Lucarelli, and Thomas Sullivan of the Office of International Affairs; Guilia McHenry, Mark Montano, Eugene Kiselev, Eric Ralph, Stacy Jordan, and Pramesh Jobanputra of the Office of Economics and Analytics; Terry Cavanaugh, Michele Ellison, Richard Mallen, Anjali Singh, Royce Sherlock, and Chin Yoo of the Office of General Counsel; and Joycelyn James, Joy Ragsdale, and Chana Wilkerson of the Office of Communications Business Opportunities.

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

In the Matter of	)	
	)	
Allocation of Spectrum for Non-Federal Space Launch Operations	)	ET Docket No. 13-115
	)	
	)	
Amendment of Part 2 of the Commission's Rules for Federal Earth Stations Communicating with Non-Federal Fixed Satellite Service Space Stations; and	)	RM-11341
	)	
	)	
Federal Space Station Use of the 399.9-400.05 MHz Band	)	

SECOND REPORT AND ORDER AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: September 21, 2023 **Released: September 22, 2023**

Comments Date: [30 days after date of publication in the Federal Register]
Reply Comments 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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I. INTRODUCTION

1. The United States has a long and proud history of space exploration and development. The Federal government took the lead, with the National Aeronautics and Space Administration (NASA) and other Federal agencies launching both manned and unmanned spaceflights to conduct various missions. However, the private sector now plays an increasingly vital role in these efforts, serving both commercial and government interests. To facilitate growth of the commercial space industry, the Commission has worked diligently to ensure commercial space launch companies have access to the necessary radio spectrum to communicate reliably with their launch vehicles before, during, and after takeoff. Yet there is still room for improvement, to enhance and streamline access to the necessary spectrum for commercial space launches.

2. Today, we take further steps towards establishing a spectrum allocation and licensing framework that will provide regulatory certainty and improved efficiency for commercial space launch operations. These steps will promote continued innovation and investment in the United States commercial space launch industry. Specifically, we adopt a new secondary allocation in the 2025-2110 MHz band for non-Federal space operations, remove the restriction on use of the 2200-2290 MHz secondary non-Federal space operation allocation to four specific sub-channels to make the entire 2200-2290 MHz band available, add a non-Federal secondary mobile allocation to the 2200-2290 MHz band, and adopt licensing and technical rules for space launch operations. Additionally, we amend the allocation for the 399.9-400.05 MHz band to permit the deployment of Federal space stations. We also seek further comment on whether to adopt licensing and operating rules for payload activities as well as on modifying our existing 2360-2395 MHz space launch rules and on possible additional licensing provisions for sub-orbital launch vehicles. These actions will encourage the continued development of a robust U.S. commercial space sector to the benefit of national interests in security, prosperity, and science.

II. BACKGROUND

3. Commercial space launch entities continue to proliferate and are increasingly involved in all aspects of U.S.-based space activities, including transportation of cargo and people into space, orbital launches to place satellites into space, and suborbital launches. Prior to 2017, the Federal Aviation Administration (FAA) had never licensed more than 20 launch and reentry operations within a given year, yet there were 74 such operations licensed in 2022 and there are projected to be over 100 launch and

reentry operations per year from 2024 onward.[1] Many of these launches will continue to utilize Federal spaceports, but commercial entities have also established non-Federal spaceports for the exclusive use of one launch provider or for any commercial launch licensed by the FAA.[2]

4. Five frequency bands have commonly been used for communications with and tracking of space launch vehicles: 420-430 MHz, 2025-2110 MHz, 2200-2290 MHz, 2360-2395 MHz, and 5650-5925 MHz.[3] The 420-430 MHz band has been used for sending flight termination commands to the launch vehicle, if necessary, during the launch. The flight termination signal link must be extremely reliable to avoid endangering lives from a launch vehicle that has gone astray. The 2025-2110 MHz band has been used during some space launches to send control signals to guide the launch vehicle boosters to a controlled landing so that they may be reused. The 2200-2290 MHz band has been used to send telemetry data from the launch vehicle to the controllers on the ground. Telemetry is diagnostic information, transmitted from the launch vehicle to ground controller stations during the flight, which allows the ground controller station to track the performance of the launch vehicle. Three frequencies in the 2360-2395 MHz band are available for telemetering and associated telecommand operations of expendable and reusable launch vehicles.[4] The 5650-5925 MHz band has been used to support launch vehicle radar tracking. Oftentimes, a transponder is placed on the launch vehicle that transmits a signal in this band in response to the radar tracking signal to allow more accurate tracking of the launch vehicle.

5. An allocation indicates an entry in the Table of Frequency Allocations[5] of a given frequency band for the purpose of its use by one or more terrestrial or space communications services under certain conditions.[6] Spectrum allocations in the U.S. Table may be established for Federal use, non-Federal use, or shared Federal/non-Federal use, and can be either primary or secondary. Stations of a service with a secondary allocation are entitled to protection from stations operating without an allocation but may not cause harmful interference to, and must accept interference from, stations of a primary service.[7]

6. Because several of the frequency bands used to support commercial space launches do not have provisions in the Table of Allocations for non-Federal access to the allocations, the Commission cannot license commercial entities to use these bands on an interference-protected basis during space launches.[8] Instead, the Commission grants space launch providers special temporary authority (STA)

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[1] *See* Federal Aviation Administration, *Licenses, Permits, and Approvals* (last visited July 28, 2023), https://www.faa.gov/space/licenses.

[2] *See* Federal Aviation Administration, *Active Licenses*, https://www.faa.gov/data_research/commercial_space_data/licenses/ (last visited July 28, 2023); Federal Aviation Administration, *U.S. Spaceports* (June 2020), https://www.faa.gov/space/additional_information/faq/media/Spaceport_Map_June_2020.pdf.

[3] *Amendment of Part 2 of the Commission's Rules for Federal Earth Stations Communicating with Non-Federal Fixed Satellite Service Space Stations*, ET Docket No. 13-115, Notice of Proposed Rulemaking and Notice of Inquiry, 28 FCC Rcd 6698, 6727-28, 6730, paras. 76, 79, 85 (2013) (*NPRM*). Launch vehicles, commonly known as rockets, are used for delivering payloads, such as satellites and spacecraft, into space. The Commission's rules define spacecraft as "a man-made vehicle which is intended to go beyond the major portion of the Earth's atmosphere." 47 CFR § 2.1.

[4] 47 CFR § 2.106 footnote US276; 47 CFR § 87.303(d)(1).

[5] The Table of Frequency Allocations comprises the International Table and the United States Table of Frequency Allocations (U.S. Table). The International Table is described in 47 CFR § 2.104 and the U.S. Table is described in 47 CFR § 2.105.

[6] *See, e.g.,* ITU Radio Regulations, Vol. 1, No. 1.16 (2020); 47 CFR § 2.1.

[7] 47 CFR § 2.105(c)(2).

[8] NTIA regulates the use of spectrum with Federal allocations and the Commission regulates use of spectrum with non-Federal allocations. Generally, if there is no non-Federal radio service allocation for a frequency band, non-

(continued….)

under the Part 5 experimental licensing rules to use these frequencies.[9] These STAs allow the space launch providers to use the spectrum allocated for Federal use on a non-interference basis. To enable successful coexistence during launches, the Commission coordinates use of the spectrum with the National Telecommunications and Information Administration (NTIA), which consults with affected Federal agencies. These experimental STAs are valid for a single launch and expire after six months. The STAs have included pre-launch communications operations and communications with the space launch vehicle and payload during orbital and reentry phases of the operations. These STAs are issued with the condition that any future launches by the grantees would be considered on a case-by-case basis and that there is no expectation that experimental STAs for future launches would be approved.

7. Seeking to improve this situation by providing greater clarity and predictability for commercial space launch providers, the Commission began this proceeding in 2013 with a Notice of Proposed Rulemaking (*NPRM*) and Notice of Inquiry (*NOI*).[10] The *NPRM* proposed to provide a primary allocation of spectrum in the 420-430 MHz, 2200-2290 MHz, and 5650-5925 MHz bands for use during commercial space launches.[11] For the 420-430 MHz band, the *NPRM* sought comment on adding a primary non-Federal Aeronautical Mobile allocation to the U.S. Table to permit commercial entities to transmit self-destruct signals (*i.e.*, flight termination signals) from ground controllers to launch vehicles, when necessary.[12] For the 2200-2290 MHz band, the *NPRM* sought comment on alternative proposals to either add a primary non-Federal Space Operation allocation to the U.S. Table or add this allocation as a footnote to the U.S. Table.[13] In both of these proposals, the allocation would restrict use of the band to the 2207-2219 MHz, 2270.5-2274.5 MHz, and 2285-2290 MHz portions of the band, and use of the band would be limited to channels with bandwidth of less than 5 MHz.[14] For the 5650-5925 MHz band, the *NPRM* sought comment on alternative proposals to either add a primary Non-Federal Radiolocation allocation to the U.S. Table or add this allocation as a footnote to the U.S. Table.[15] In both of these proposals, the allocation would restrict use of the band to transmission of radar signals to track launch vehicles.[16]

8. The *NPRM* also addressed a 2012 NTIA request to change a footnote in the U.S. Table to enable Federal space stations to operate in the 399.9-400.05 MHz Mobile Satellite Service (MSS) band.[17] The footnote restricts Federal earth stations in the band to communicating only with non-Federal space stations. According to NTIA, removing this restriction will allow some applications to be shifted from

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Federal stations may not operate in that band. However, the Commission may authorize non-Federal users to use Federal frequencies on a non-interference basis in bands with only Federal allocations after coordination with NTIA. *See* 47 CFR § 2.102(c).

[9] 47 U.S.C. §§ 301, 303, 307, 308, 309.

[10] *Amendment of Part 2 of the Commission's Rules for Federal Earth Stations Communicating with Non-Federal Fixed Satellite Service Space Stations*, ET Docket No. 13-115, Notice of Proposed Rulemaking and Notice of Inquiry, 28 FCC Rcd 6698 (2013) (*NPRM*).

[11] *NPRM*, 28 FCC Rcd at 6727-31, paras. 76-87 (2013).

[12] *NPRM*, 28 FCC Rcd at 6727-28, para. 78.

[13] *NPRM*, 28 FCC Rcd at 6728, para. 79. The Space Operation Service is a radiocommunication service concerned exclusively with the operation of spacecraft, in particular space tracking, space telemetry, and space telecommand. 47 CFR § 2.1.

[14] *NPRM*, 28 FCC Rcd at 6728, para. 79.

[15] *NPRM*, 28 FCC Rcd at 6731, para. 87.

[16] *Id.*

[17] *See* Letter from Karl B. Nebbia, Associate Administrator, Office of Spectrum Management, NTIA, U.S. Department of Commerce, to Julius P. Knapp, Chief, Office of Engineering and Technology, July 10, 2012, ET Docket 13-115 (*NTIA US319 Letter*).

the Argos satellite system operated by the National Oceanic and Atmospheric Administration (NOAA) to a new satellite network in the 399.9-400.05 MHz band.[18]

9. The *NOI* sought comment broadly on the future spectrum needs of the commercial space sector.[19] The Commission received fifteen comments and four reply comments in response to the *NPRM* and *NOI*.[20]

10. The Commission's next step in this proceeding was in 2021, when it issued a Report and Order (*R&O*) and Further Notice of Proposed Rulemaking (*FNPRM*).[21] The *R&O* adopted a non-Federal allocation for the 2200-2290 MHz band for use during commercial space launches.[22] As advised by NTIA, the allocation was made secondary rather than primary.[23] The allocation was added as a footnote to the U.S. Table, US96, that limits use of the allocation to pre-launch testing and space launch operations, requires coordination with NTIA prior to each launch, and limits non-Federal use to the 2208.5-2213.5 MHz, 2212.5-2217.5 MHz, 2270-2275 MHz, and 2285-2290 MHz portions of the 2200-2290 MHz band.[24] Use of the allocation is not restricted to Federal launch ranges.[25]

11. The *FNPRM* sought comment on a number of proposals to clarify and enhance non-Federal access to the spectrum necessary for commercial space launches. The *FNPRM*:

- sought comment on the definition of space launch operations;[26]
- sought comment to refresh the record on the allocations for the 420-430 MHz and 5650-5925 MHz bands that were proposed in the *NPRM*, given that the apparent need for access to these bands has diminished since the *NPRM* was issued in 2013;[27]
- sought comment on whether to add a co-primary non-Federal space operation (Earth-to-space) allocation for the 2025-2110 MHz band to the U.S. Table without any restriction on where licensed launches may occur;[28]
- sought comment on whether to enhance the allocation for the 2200-2290 MHz band by adding a secondary Mobile Service allocation as a footnote to the U.S. Table, removing the restriction limiting use of the band to the four identified subbands, and

[18] *Id.*

[19] *Space NPRM,* 28 FCC Rcd at 6731-32, paras. 88-90.

[20] We received comments from the Aerospace and Flight Test Radio Coordinating Council (AFTRCC), Aerospace Industries Association, Bigelow Aerospace, LLC (Bigelow), Boeing Company (Boeing), Commercial Spaceflight Federation (CSF), Comsearch, EchoStar Satellite Operating Corp. and Hughes Network Services, LLC (EchoStar), Fixed Wireless Communications Coalition (FWCC), Lockheed Martin Corp. (Lockheed), Marcus Spectrum Solutions (Marcus), New Mexico Spaceport Authority (NMSA), Orbital Sciences Corporation (now Northrop Grumman), Satellite Industry Association, Space Exploration Technologies (SpaceX), and XCOR Aerospace. We received reply comments from Boeing, Engineers for the Integrity of the Broadcast Auxiliary Services Spectrum, FWCC, and the Satellite Industry Association.

[21] *Amendment of Part 2 of the Commission's Rules for Federal Earth Stations Communicating with Non-Federal Fixed Satellite Service Space Stations*, ET Docket No. 13-115, Report and Order and Further Notice of Proposed Rulemaking, 36 FCC Rcd 7764 (2021) (*R&O and FNPRM*).

[22] *R&O and FNPRM*, 36 FCC Rcd at 7769-80, paras. 11-36.

[23] *Id.* at para. 20.

[24] *Id.* at para. 22.

[25] *Id.* at paras. 29-31.

[26] *Id.* at para. 60-65.

[27] *Id.* at paras. 38-41, 55-59.

[28] *Id.* at paras. 42-48.

upgrading the allocation from secondary to primary;[29]

- sought comment on proposed service rules for the 420-430 MHz, 2025-2110 MHz, 2200-2290 MHz, and 5650-5925 MHz bands, including licensing and technical rules and coordination procedures, for use of the spectrum for commercial space launch operations;[30]
- sought comment on authorizing communications between space launch vehicles and other space stations, including satellites;[31]
- sought comment on expanding Federal use of the non-Federal FSS and MSS bands;[32]
- sought comment to refresh the record on enabling more robust Federal use of the 399.9-400.05 MHz band;[33] and
- sought comment broadly on the future needs of the commercial space industry.[34]

12. The Commission received 29 comments and 21 reply comments in response to the *FNPRM*.[35]

III. SECOND REPORT AND ORDER

A. Non-Federal Allocations for the 420-430 MHz, 2025-2110 MHz, 2200-2290 MHz, and 5650-5925 MHz Bands

13. In this Report and Order, we continue our efforts to provide regulatory certainty and additional spectrum to promote innovation and investment in the United States commercial space launch industry. Taking into account the record, we find sufficient support and justification for adopting an allocation for the 2025-2110 MHz band and expanding the previously adopted 2200-2290 MHz band allocation. Given that use of the 420-430 MHz, 2360-2395 MHz, and 5650-5925 MHz bands remains limited, we are not convinced there is need for new allocations for any of these bands at this time.

14. *Allocation for the 420-430 MHz band.* The 420-430 MHz band is used during launches from Federal launch sites to transmit a flight termination signal to a launch vehicle, resulting in its self-destruction if necessary.[36] The initial *NPRM* received minimal feedback, with most commenters

[29] *Id.* at paras. 49-54.

[30] *Id.* at paras. 60-138.

[31] *Id.* at para. 145.

[32] *Id.* at paras. 146-51.

[33] *Id.* at paras. 152-56.

[34] *Id.* at para. 157.

[35] We received comments from AFTRCC, Aerospace Industries Association, Astroscale U.S. Inc., Axiom Space Inc., Atmos Space, Sierra Space Corp., Scout Inc. (Industry Participants), Axiom Space, Inc. (Axiom), BlackSky Global LLC (BlackSky), Boeing, CTIA, Department of Commerce (DoC), Department of Defense (DoD), EchoStar, EIBASS, Industry Coalition Response (ICR), Iridium Communications Inc. (Iridium), Myriota PTY. LTD. (Myriota), NASA, National Association of Broadcasters (NAB), NCTA, NTIA, Relativity Space, Inc. (Relativity), Rocket Lab USA, Inc. (Rocket), Satellite Industry Association (SIA), Society of Broadcast Engineers, Inc. (SBE), Spaceflight Inc., SpaceX, T-Mobile USA, Inc. (T-Mobile), United Launch Alliance, LLC (ULA), Verizon, Virgin Galactic Holdings, Inc. (Virgin Galactic), and Wi-Fi Alliance. We received reply comments from AFTRCC, Astra Space, Inc., AT&T, Axiom, Boeing, Consortium for the Execution of Rendezvous and Servicing (CONFERS), CTIA, EIBASS, Fleet Space Technologies Pty. Ltd., Globalstar Inc., Industry Participants, Momentus Inc., Myriota, Northrop Grumman, Open Technology Institute at New America and Public Knowledge, Spaceflight Inc., SpaceX, TechFreedom, T-Mobile, ULA, and Verizon.

[36] This signal is sent if the launch vehicle strays off course and poses a danger to a populated area.

disagreeing that an allocation is necessary. However, commenters did highlight that the need for an allocation for the band may change as launches begin occurring outside Federal ranges. Therefore, the *FNPRM* sought further comment on whether to adopt a primary non-Federal Aeronautical Mobile allocation for this band.

15. While there was support on the record for adding this allocation, commenters differed in their suggested use of the band. Boeing suggest that the Commission restrict use of the band to only pre-launch testing and launches to prevent ancillary uses from interfering with safety-of-life transmissions.[37] The United Launch Alliance (ULA), the Aerospace Industries Association (AIA), and the Industry Coalition Response (ICR), however, support flexible use of the band beyond the proposed self-destruct transmissions.[38] Further, AIA suggests that the allocation maintain flexibility as operations change and coordinated use of the band be managed by a third-party.[39] ULA also claims that there are other flight-termination solutions that are already being put in place.

16. Federal incumbents in the band also had differing opinions on adding the allocation to the band. NASA supports the allocation, if use of the band is limited and Federal incumbents are properly protected.[40] The Department of Defense (DoD) does not oppose adopting such an allocation; however it recognizes that high power radar systems across the country could interfere with the reception of termination signals.[41]

17. We conclude not to adopt a primary non-Federal Aeronautical Mobile allocation for the 420-430 MHz band. The FCC has not received any STAs to use this band during space launches, as most current launch facilities have Federal systems in place for flight-termination purposes. Additionally, as ULA correctly observes, alternative flight-termination solutions for errant launches are already being implemented. For these reasons, and in light of the present and potential future limitations on use of the band raised by commenters, we are not adopting the proposed allocation.

18. *Allocation for the 2025-2110 MHz band.* The 2025-2110 MHz band is currently allocated for both Federal and non-Federal fixed and mobile uses. The Broadcast Auxiliary Services (BAS) make up most of the non-Federal use of the band and share the band with the Cable Television Relay Service (CARS) and the Local Television Transmission Service (LTTS). The band is also allocated on a primary basis for Federal space operation, Earth exploration satellite, and space research uses.[42] While Federal use of the band is allocated on a co-primary basis, Federal use must not constrain BAS, CARS, and LTTS deployment.[43] The 2025-2110 MHz band also includes primary Federal fixed and mobile allocations with use restricted to the military services, in order to facilitate relocation of military operations from the 1755-1780 MHz band.[44] Federal use of the band has continued to increase, but coordination with non-Federal users has been successful. This success is due in large part to the memorandum of understanding (MOU) created by broadcast incumbents and the Federal users.[45] The Commission has issued many STAs in this band allowing space launch operations to transmit control signals to launch vehicles. The *FNPRM* sought comment on adding a co-primary non-Federal space

[37] Boeing Comments at 6.

[38] ULA Comments at 25; AIA Comments at 1-2; Northrop Reply at 13; ICR Comments at 2-3.

[39] AIA Comments at 1-2.

[40] NTIA/NASA Comments at 11.

[41] NTIA/DoD Comments at 20.

[42] 47 CFR § 2.106.

[43] 47 CFR § 2.106 footnotes US92, US346.

[44] 47 CFR § 2.106 footnote US92.

[45] *See* Society of Broadcast Engineers, *DoD, Broadcasters Agree on Spectrum Sharing Arrangement for Select Military Bases* (Nov. 21, 2022), https://sbe.org/dod-spectrum-sharing/.

operation (Earth-to-space) allocation to the 2025-2110 MHz band, in order to provide the space launch industry's increased use of the band with regulatory certainty.[46]

19. In the *FNPRM*, we recognized that the 2200-2290 MHz band was allocated for Space Operations under restrictions intended to facilitate coordination with existing Federal users.[47] We therefore sought comment on the necessity for similar restrictions to be included in the proposed 2025-2110 MHz allocation.[48] There was overwhelming support on the record for adopting the proposed allocation.[49] While there was disagreement on the type of restrictions that should be adopted, all commenters were in agreement that any potential space launch operations in the band must be coordinated with all incumbents.[50] Boeing supports allocating operations to the entire band but suggests restricting those operations to only telecommand uplink transmissions from ground control stations to space launch vehicles.[51] The National Association of Broadcasters (NAB), DoD, and NCTA also support allocating the band strictly for telecommand uplink transmissions from ground controller stations to space launch vehicles.[52] NASA supports allowing space launch providers to transmit command signals to launch vehicles for recovery and retrieval purposes.[53] SpaceX claims that commercial launch operations need spectrum for uplink operations, which are generally performed in the 2025-2110 MHz band.[54] However, SpaceX also believes the allocation should be expanded to cover the recovery of vehicles and communications involving cargo and crew delivery to inhabitable space stations.[55] Companies such as Spaceflight, Axiom, Astroscale, and Sierra Space suggest that spacecraft engaged in rendezvous and proximity operations (RPO) and spacecraft whose primary purpose is to deploy other spacecraft (described as "payload deployment operations") be among the operations included in the allocation of the band. Spaceflight argues that an allocation for these services, which currently operate without any official allocation, would alleviate them from having to undergo the burdensome and repetitive STA process.[56] However, Boeing believes that a second *FNPRM* can better address the potential to expand the types of operations authorized under this proposed allocation.[57]

20. Most of the proposed restrictions on use of the proposed allocation came from broadcast interests. NAB and the Society of Broadcast Engineers (SBE) express concern for further increasing use of a band that is crucial for broadcast auxiliary services.[58] To address these concerns, NAB, SBE, and the Engineers for the Integrity of Broadcast Auxiliary Services Spectrum (EIBASS) believe commercial space launch entities should be subject to the coordination criteria established in the SBE-DoD MOU.[59]

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[46] *FNPRM*, 36 FCC Rcd 7784, at para 48.

[47] *FNPRM*, 36 FCC Rcd 7784, at para 48.

[48] *Id.*

[49] ULA Comments at 26; Boeing Comments at 3; Relativity Comments at 3; ICR Comments at 1; Rocket Labs Comments at 1.

[50] ULA Comments at 26; SpaceX Comments at 4-5; Aerospace Industries Association Comments at 1; Society of Broadcast Engineers Comments at 15-16; NCTA Comments at 6.

[51] Boeing Comments at 6.

[52] NAB Comments at 6-7; NTIA/DoD Comments at 20-22; NCTA Comments at 6.

[53] NTIA Comments at 11.

[54] SpaceX Reply at 6-7.

[55] SpaceX Comments at 4-5.

[56] Spaceflight Comments at 8-9.

[57] Boeing Reply at 3-4.

[58] SBE Comments at 1; NAB Comments at 3.

[59] BAS Comments at 7; EIBASS Comments at 4-5; SBE Comments at 15-16.

As EIBASS points out, the MOU's 0.5 dB noise threshold degradation metric will require any newcomer to ensure they will not cause interference before operating.[60] SpaceX supports using this criterion, so long as it facilitates coordination efforts in the band.[61] SBE claims that as part of this coordination, its frequency and local market coordinator should be involved in frequency coordination studies.[62] NCTA supports using SBE's database of BAS facilities for frequency coordination studies.[63] EIBASS suggests that any space launch site within 100 miles of an ENG-RO site should require an engineering study and that this study be provided to the BAS licensee.[64] As part of this coordination, SBE and NAB propose for space launch operations in the band to be limited to specified geographic sites and pre-licensing coordination.[65] NCTA supports the limited site restriction, because a fixed site approach would simplify coordination.[66] EIBASS, however, believes an uplink licensee should be allowed to operate anywhere if it can meet the protection criteria.[67] SpaceX agrees that demonstrating protection of incumbents through MOU criteria undermines the need for specified launch sites or pre-licensing coordination, adding that a fixed site approach risks slowing down innovation without any clear benefit.[68] The ULA and Boeing claim that the dynamic nature of space launches renders pre-licensing coordination highly unlikely.[69] Comments from Federal users generally did not address a fixed site approach, but DoD recognized the nature of the congested band may result in such an approach being necessary.[70]

21. According to NTIA, given the important missions of Federal agencies in the band it is important for all Federal users to maintain priority and for all commercial launches to remain subject to prior coordination.[71] DoD notes that their operations for space and terrestrial systems operate with restrictions to protect BAS and CARS licensees and that the continuing relocation of DoD operations from the AWS-3 band will further increase the density of spectrum use in the band.[72] DoD recommends that non-Federal space operations be established on a secondary basis instead of creating a primary allocation.[73] If a primary allocation for commercial space operations is adopted, DoD recommends that a footnote be adopted placing the same types of restrictions on these operations as apply to the Federal allocations in the band. NOAA states that limiting non-Federal allocations in the band to a secondary basis is critical to ensuring protection of existing Federal operations and NASA also does not support

[60] EIBASS Reply at 1-2.

[61] SpaceX Reply at 4.

[62] SBE Comments at 15-16.

[63] NCTA Comments at 6.

[64] EIBASS Reply at 3.

[65] SBE Comments at 17; NAB Comments at 5.

[66] NCTA Comments at 6.

[67] EIBASS Reply at 3.

[68] SpaceX Reply at 4.

[69] ULA Reply at 5-6; Boeing Comments at 18-19.

[70] NTIA/DoD Comments at 22.

[71] NTIA Comments at 4.

[72] NTIA/DoD Comments at 21. Federal operations in the AWS-3 uplink band (1755-1780 MHz) have been relocated and the band has been auctioned to make the band available for commercial services. *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695- 1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands,* Report and Order, 29 FCC Rcd 4610, 4629, para. 37 (2014); Auction 97: Advanced Wireless Services (AWS-3), https://www.fcc.gov/auction/97.

[73] NTIA/DoD Comments at 21.

providing a primary allocation for commercial space operations.[74]

22. We conclude that adopting a non-Federal secondary allocation for space launch operations with the same coordination requirements that currently apply to Federal users will sufficiently address the regulatory needs of the commercial space launch industry while ensuring the protection of incumbents. This spectrum is regularly used by commercial space launch providers and granting regulatory certainty will boost investment and promote innovation in this industry. Adopting this allocation will eliminate the time and expense required for seeking STAs, which also often lapse due to the need to reschedule launches, thus requiring multiple STAs per launch.[75] Based on our experience with STAs in this band, we believe the existing coordination requirements, already proven to facilitate frequency re-use and coordination, will sufficiently protect incumbents and readily grant launch providers access to spectrum. We appreciate the concerns raised by the Federal agencies and are following their suggestion to adopt a secondary allocation instead of a primary allocation as proposed. While Federal space operations have primary allocation status, the restrictions on Federal operations to protect the long-established BAS and CARS licensees in the band in effect relegate the Federal space launch activities as secondary to these Commission licensees. As the commercial space launch providers will also have to coordinate with these terrestrial licensees, a secondary allocation appears to be more appropriate at this time.[76] The coordination framework currently in place for Federal space operations has permitted a high degree of spectrum efficiency and reuse for non-Federal and Federal operations.[77] Adopting a secondary non-Federal Space Operation allocation for the 2025-2110 MHz band will allow us to develop effective rules for the space launch industry, no longer requiring the lengthy experimental rules process. Hence, we are implementing this secondary non-Federal Space Operation (Earth-to-space) allocation to the 2025-2110 MHz band in the U.S. Table. This allocation will be limited to space launch telecommand transmissions and will require commercial space launch providers to coordinate with non-Federal terrestrial licensees (*i.e.*, BAS, LTTS, and CARS) and NTIA.

23. While there was support on the record for making the band available for use for on-orbit service (OOS) and RPO,[78] we agree with Boeing that the increased use of the band from the ongoing relocation of Federal operations provides reason to exercise caution in authorizing any additional non-Federal space operations.[79] We therefore will address these operations through separate action, taking into account also the record developed in response to our Notice of Inquiry on In-space Servicing, Assembly, and Manufacturing.[80] We also do not agree with NAB and SBE that space launch operations in the band should be limited to specified geographic sites because the coordination requirement we are adopting will ensure BAS, LTTS, CARS licensees in all geographic areas are protected from harmful interference.[81]

24. *Allocation for the 2200-2290 MHz Band.* The 2200-2290 MHz band is used for launch telemetry—*i.e.*, sending diagnostic information from the space launch vehicle to ground controller

[74] NTIA/NOAA Comments at 27; NTIA/NASA Comments at 11.

[75] ULA Comments at 13.

[76] While we are adopting a secondary non-Federal Space Operation allocation for this band at this time, we remain open to the possibility of upgrading the allocation to primary status at a later date as the commercial space launch industry continues to develop and we gain experience with the licensing framework and coordination process we are adopting.

[77] SBE Comments at 8-10.

[78] Axiom Comments at 3; Astroscale U.S. Inc., Axiom Space Inc., Atomos Space, Sierra Space Corp., Scout Inc. Comments at 6 (RPO Proponents); Momentus Inc. Reply at 1-2.

[79] Boeing Reply at 3-5.

[80] *Facilitating Capabilities for In-space Servicing, Assembly, and Manufacturing*, IB Docket No. 22-272, Notice of Inquiry, FCC 22-66 (2022).

[81] SBE Comments at 17; NAB Comments at 5; EIBASS Reply at 4.

stations during the launch to allow tracking of the performance of the launch vehicle. The 2200-2290 MHz band is heavily used by DoD and other Federal agencies and has primary Federal Space Operation, Earth Exploration Satellite, Fixed, Mobile, and Space Research allocations.[82] The *R&O* added a non-Federal secondary Space Operation (space-to-Earth) allocation to the band.[83] Use of this allocation is limited by an Allocation Table footnote to pre-launch testing and space launch operations and coordination with NTIA is required prior to each launch.[84] In addition, non-Federal space operations are restricted to the 2208.5-2213.5 MHz, 2212.5-2217.5 MHz, 2270-2275 MHz, and 2285-2290 MHz portions of the band.[85]

25. The *FNPRM* proposed to remove the restriction on non-Federal use of the new Space Operation allocation to the four sub-bands.[86] The *FNPRM* noted that recent space launches that have accessed this band for telemetry using STAs have used different portions of the band than these four sub-bands. As these other channels had been successfully coordinated with NTIA, the *FNPRM* explained that it may be possible to offer additional flexibility to launch operators rather than maintaining this limitation. Because of the heavy use that Federal agencies make of this band, the *FNPRM* cautioned that use of this band for launches will still need to be coordinated with NTIA on a launch-by-launch basis. The *FNPRM* also sought comment on whether non-Federal use of the band should continue to be limited to channels with a necessary bandwidth of 5 megahertz.[87]

26. The *FNPRM* also sought comment on upgrading the secondary Space Operations allocation to a primary allocation noting that this would place commercial launch operators on an equal footing with other users of the band and provide greater certainty to incentivize investment as the commercial space industry continues to expand with more frequent launches, privately developed launch facilities, and manned space flights.[88] The *FNPRM* explained that even if the primary allocation is adopted, individual launches would still have to be coordinated with NTIA because of the heavy existing Federal use of the band.

27. The *FNPRM* also sought comment on adding a secondary Mobile allocation to the 2200-2290 MHz band.[89] The *FNPRM* noted that both the International Table and the Federal Table include a Mobile Service allocation for this band allowing aeronautical mobile use. According to the *FNPRM*, adding a Mobile allocation would harmonize the allocation status and the applicable service rules of the 2200-2290 MHz and 2360-2395 MHz bands as three frequencies in the 2360-2395 MHz band are available for both Federal and non-Federal use for telemetry and telecommand of launch and reentry vehicles under a Mobile allocation and our Part 87 rules.[90] The *FNPRM* also asked whether use of the Mobile allocation should be subject to the same restrictions that apply to the non-Federal Space Operations allocation for the band and whether it should be subject to the same restrictions that apply to Federal users—*i.e.*, should it be restricted to line-of-sight use only, exclude flight testing of manned

[82] 47 CFR § 2.106.

[83] *R&O and FNPRM*, 36 FCC Rcd at 7772-76, paras. 17-25; 47 CFR § 2.106, US96. Non-Federal space stations in the space research, space operations, and Earth exploration satellite service my use the band to transmit to NASA's Tracking and Data Relay Satellite System. 47 CFR § 2.106 footnote US303.

[84] 47 CFR § 2.106 footnote US96.

[85] *Id*.

[86] *R&O and FNPRM*, 36 FCC Rcd at 7786, paras. 52.

[87] *R&O and FNPRM*, 36 FCC Rcd at 7786, paras. 53.

[88] *R&O and FNPRM*, 36 FCC Rcd at 7787, paras. 54.

[89] *R&O and FNPRM*, 36 FCC Rcd at 7785, paras. 49-50.

[90] 47 CFR § 2.106 footnote US276; 47 CFR § 87.303(d)(1).

aircraft, and prohibit the introduction of high-density mobile systems.[91]

28. The *FNPRM* noted that use of the secondary Space Operation allocation for the band is limited compared to what would normally be permitted under a Space Operation allocation.[92] The Space Operation Service is defined in the Commission's rules as being "concerned exclusively with the operation of spacecraft, in particular space tracking, space telemetry, and space telecommand."[93] The *FNPRM* sought comment on whether a greater range of non-Federal space operations should be permitted under the Space Operation allocation in this band. The *FNPRM* explained that expanding the scope of this allocation could be especially useful for some types of missions involving communication between spacecraft during orbital and suborbital missions.

29. Comments from the commercial space industry overwhelmingly support removal of the restrictions on non-Federal use of the band for launch operations. ULA and SpaceX claim removing the restrictions on access to the 2200-2290 MHz band will facilitate commercial space use and promote innovation in the industry without increasing the risk of harmful interference to Federal users.[94] Boeing explains that expanded access to the band will not lead to increased risk of interference, because non-Federal launches would still be required to coordinate with Federal operators.[95] ULA notes that space launch operations outside of the four sub-bands have been successfully coordinated with NTIA.[96] Further, ULA believes that the Commission should open the 2230-2235 MHz and 2253-2258 MHz sub-bands with at least one of the allocated sub-bands allowing for a contiguous 20 megahertz bandwidth.[97] Additionally, ULA claims its vehicles transmit on channels and with a bandwidth not included in the current allocation.[98] Similarly, SpaceX believes access to the entire band without any bandwidth limitations will facilitate use of the band by space launch providers. SpaceX claims to use only one of the four sub-bands for its launches because the rest do not fully support telemetry applications. Northrop Grumman claims its space launch and cargo delivery vehicles use spectrum outside the four sub-bands for critical operations with the International Space Station (ISS). These operations include space-to-space communications, rendezvous, and docking with the ISS. Therefore, Northrop Grumman believes the Commission should provide operators with unrestricted use of the 2200-2290 MHz band along with greater flexibility on the types of operations allowed in the band. Axiom urges that use of the allocation be expanded to include payload deployed from a launch vehicle because it plans to send TT&C to a module docking with the ISS.[99]

30. While most of the commercial space industry commenters supported removing restrictions on use of the band, Boeing expressed some reservations. Boeing believes that additional space operations are best left to a second *FNPRM* for further consideration.[100] Boeing notes that extensive coordination and heavy use of the band has resulted in Federal agencies' apprehension towards permitting additional space operations in the non-Federal allocation.[101] Boeing also does not believe a

[91] *R&O and FNPRM*, 36 FCC Rcd at 7785, paras. 50; 47 CFR § 2.106 footnote 5.391.

[92] *R&O and FNPRM*, 36 FCC Rcd at 7786, paras. 51.

[93] 47 CFR § 2.1.

[94] SpaceX Comments at 5-6; ULA Comments at 3.

[95] Boeing Comments at 4.

[96] ULA Reply at 4; ULA Comments at 28.

[97] ULA Comments at 29.

[98] ULA Comments at 27.

[99] Axiom Comments at 3.

[100] Boeing Reply at 5.

[101] Boeing Comments at 3-4.

primary allocation is necessary citing the already intensive use of the band.[102] Furthermore, Boeing believes the secondary allocation already provides the necessary interoperability with Federal operations and grants non-Federal launches full interference protection.[103]

31. Federal agencies such as NASA, DoD, and the Department of Commerce (DoC) strongly oppose any changes to the restrictions on non-Federal use of the band. DoD and DoC highlight the heavy use and coordination already required by Federal operations as sufficient reason for rejecting any expansion of non-Federal use of the allocation.[104] DoD claims that limiting non-Federal use to the four sub-bands establishes predictable frequencies that facilitate coordination with non-Federal users.[105] NTIA states that expanding the scope of non-Federal use of the band would worsen coordination efforts in an already heavily congested band.[106] Additionally, many of these Federal agencies heavily oppose any of the expanded use cases that non-Federal users such as Northrop Grumman and Axiom support.[107] The Federal agencies also did not support upgrading the secondary non-Federal Space Operation allocation to primary status.[108] However, as Boeing and Northrop Grumman note, NTIA and NASA have acknowledged an exception can be made in the 2200.2-2206.2 MHz band for non-Federal communications supporting ISS operations.[38]

32. We conclude that it is appropriate to provide commercial space launch operators with access to a greater portion of the 2200-2290 MHz band beyond the four sub-bands currently provided. As noted above, most of the STAs that the Commission has issued for space launch telemetry in this band have regularly included use of channels that are outside of these four sub-channels.[109] As all of these STAs have been coordinated with NTIA this indicates that coordination of use of channels outside of these sub-bands is achievable and that limiting use of 2200-2290 MHz for commercial space launches to these sub-bands does not fully meet the needs of the commercial space launch industry. Therefore, we are removing the restriction of use of the non-Federal space operation allocation to the four sub-bands.

33. However, we will not upgrade the secondary non-Federal Space Operation allocation for the 2200-2290 MHz band to a primary allocation. When we adopted the current secondary allocation for the band, we noted that this would accomplish many of the goals the Commission had sought to accomplish with the proposed primary allocation such as enabling the Commission to adopt service rules and issue spectrum authorizations, reduce the uncertainty of the launch-by-launch STA process, and permit the development of well-defined technical rules that licensees can design equipment to comply with.[110] The Commission noted that even if it had adopted a primary non-Federal allocation for this band, individual launches would still need to be coordinated because of the heavy existing Federal use of the band. We continue to believe for these same reasons that the current secondary allocation will meet the needs of the commercial space industry. We are cognizant of the complications of sharing this band with the large number of Federal operations and the expressed preference of Federal agencies to maintain the

[102] Boeing Reply at 6.

[103] Boeing Comments at 4.

[104] NTIA/DoD Comments at 22; NTIA/DoC Comments at 26-27.

[105] NTIA/DoD Comments at 22.

[106] NTIA Comments at 3-5.

[107] Axiom Comments at 3; Northrop Grumman Reply at 22-23.

[108] NTIA/NASA Comments at 9.

[109] *See, e.g.*, Space Exploration Technologies Corp, Special Temporary Authorization, OET Experimental Licensing System File Nos. 0729-EX-ST-2023, 0673-EX-ST-2023, 0659-EX-ST-2023, 1895-EX-ST-2020, 0126-EX-ST-2021, 0249-EX-ST-2021; Rocket Lab USA Inc. Special Temporary Authorization, OET Experimental Licensing System File No. 1688-EX-ST-2022; Northrop Grumman Systems Corp. Special Temporary Authorization, OET Experimental Licensing System File No. 0916-EX-ST-2022.

[110] *R&O and FNPRM*, 36 FCC Rcd at 7774, para. 20.

current secondary allocation. In recognition of the need to work closely with our Federal partners in managing the use of these band, we find that maintaining the current secondary allocation as advised by NTIA is appropriate at this time.

34. We will add a secondary Mobile allocation to the band. Providing this Mobile allocation will facilitate the Commission adopting technical rules for space launch telemetry that follow the same approach that NTIA applies to Federal launches. NTIA treats telemetry systems during the first stage of a launch as an aeronautical mobile system and the second and later stages as a space operation system.[111] Because many launch vehicles are used for both Federal and non-Federal launches and many non-Federal launches occur at Federal launch facilities, we believe it is important to have the flexibility to adopt technical rules that are in harmony with the technical standards applied to Federal launches. The secondary Mobile allocation we are adopting for this band will be subject to the same restrictions as the non-Federal Space Operation allocation in the band. The non-Federal Mobile allocation will be restricted to use during pre-launch testing and space launch operations and subject to coordination for each launch. The only opposition to adding a Mobile allocation to the band came from Boeing, who expressed concern that adopting the Mobile allocation would prompt interest in making the band available for 5G and other future mobile services.[112] Given the heavy restrictions on non-Federal use of this band we do not agree with Boeing that it will be considered a candidate for commercial mobile use.

35. We will not remove the current limitation on use of the non-Federal Space Operation allocation to pre-launch testing and space launch operations at this time. The heavy use of the band by Federal agencies necessitates that we take a cautious approach to making provisions for additional use cases of this band. While several commenters such as Northup Grumman and Axiom expressed interest in using this band for on-orbit activities, the record is sparse as to the technical details of these types of operations. We do not currently have the information needed to reach a conclusion as to the impact of these operations on Federal users of the band

36. *Allocation for the 5650-5925 MHz Band.* The 5650-5925 MHz band is used for radar tracking of launch vehicles. During a launch, a radar transponder located on the launch vehicle is typically used to transmit tracking information down to the tracking station. A primary Federal allocation limits use of radiolocation services to military operations.[113] Prior space launches that have used this band have relied on Federal facilities to provide tracking for launches occurring at Federal ranges. The band is also used by Unlicensed National Information Infrastructure (U-NII) devices operating under the Commission's Part 15 rules.[114] The 5850-5925 MHz portion of the band has a primary non-Federal Mobile allocation limited to the Intelligent Transportation System radio service.[115] While commercial use of the band remained limited at the time, the *FNPRM* sought comment on whether to adopt a non-Federal Radiolocation allocation for the 5650-5925 MHz band by adding a footnote to the U.S. Table.

37. Of the few comments addressing this topic, there was no consensus on the record for adopting this allocation. The few comments in support of the allocation did not address any of the *FNPRM*'s questions regarding the band, with most expressing their support in a blanket statement covering other proposed allocations.[116] AIA suggests that operations authorized within the allocation remain flexible as the needs of the commercial space launch industry change.[117] However, Boeing

[111] NTIA Manual § 8.2.44.

[112] Boeing Comments at 6.

[113] 47 CFR § 2.106 footnote G2.

[114] 47 CFR § 15.407.

[115] 47 CFR § 2.106 footnote NG160.

[116] Relativity Space Comments at 3; Industry Coalition Response Comments at 2; and Rocket Lab USA Comments at 1.

[117] AIA Comments at 1.

believes that the band should be restricted to launch vehicle tracking.[118] Further, it suggests that an *FNPRM* could seek comment if tracking vehicles that are in orbit for extended periods of time could be permitted.[119] NASA and DoD support the allocation, with NASA suggesting operations be limited to tracking only and DoD suggesting any co-primary allocation be restricted to ensure new users do not constrain Federal users.[120] Northrop Grumman claims it relies on the band for critical tracking operations and support the allocation, regardless of the lack of interest on the record.[121] The Wi-Fi Alliance opposes the allocation and believe the lack of interest on the record should result in its rejection.[122] Additionally, Wi-Fi Alliance claims that expanding radar operations in the band would be complex and any potential allocation should heavily restrict operations to parallel current Federal use of the band.[123] The Wi-Fi Alliance also suggest that because the band is available to U-NII devices that currently detect and avoid radar patterns specified by Federal users, any allocation should ensure that non-Federal radar applications comply with Federal radar criteria that serves as the basis for U-NII devices' dynamic frequency selection capability.[124]

38. Based on the record, we conclude not to adopt a non-Federal Radiolocation allocation for the 5650-5925 MHz band. While there was support for adding the allocation from some commercial space launch entities, interest in using the band remains low. Commenters failed to provide information on the number of launches likely to need access to this band in the future or other information requested in the *FNPRM*. In recent years only a small number of launches have obtained access to this band for radar transponders using STAs. As there has been limited use of this band in the past and we have no reason to believe this will change in the future, there is no clear need to adopt this allocation. If space launch operators need access to this band for radar transponders, they may continue to use the STA process.

B. Licensing and Technical Rules for Space Launch Operations

39. In this section, we adopt rules for the new commercial Space Launch Services. We establish rules that flexibly, efficiently, and effectively support the evolving spectrum requirements of commercial space launch operations while continuing to protect vital Federal operations in the 2025-2110 MHz and 2200-2290 MHz bands. We install a licensing framework that will grant nationwide, non-exclusive licenses to non-Federal entities that conduct space launch operations in the 2025-2110 MHz and 2200-2290 MHz bands. We also add a new Part 26 to the Commission's rules that codifies the rules we adopt today for space launch operations, as well as any related rules that we may adopt in the future for other types of space activities. In addition, we adopt rules defining the scope of the service we establish today, as well as the types of entities that will be eligible to hold licenses in the new commercial Space Launch Services. Finally, we adopt specific licensing rules governing shared frequency use, authorized bandwidth, license term and renewal, application processing rules, and coordination requirements, as well as technical rules that will foster interoperability of equipment used for non-Federal and Federal launches and rules regarding equipment authorization. In doing so, we recognize that licensee pre-launch coordination with NTIA may necessitate additional requirements and limitations on non-Federal launch operations in specific instances, in addition to those we establish here.

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[118] Boeing Comments at 6.

[119] *Id.*

[120] NTIA/NASA Comments at 13; NTIA/DoD Comments at 23.

[121] Northrop Grumman Reply at 12.

[122] Wi-Fi Alliance Comments at 2.

[123] Wi-Fi Alliance Comments at 6.

[124] Wi-Fi Alliance Comments at 5-6. Dynamic Frequency Selection (DFS) is the process of detecting radar signals that must be protected against interference from 5 GHz (802.11a/n/ac/h) radios. DFS is required only in the 5650-5850 MHz portion of the band.

1. Licensing Rules for Space Launch Operations

a. Creation of New Rule Part 26

40. The Commission sought comment in the *FNPRM* on which rule parts should apply to different elements of space launch operations, and how to integrate provisions from those rule parts into a commercial space launch service.[125] The *FNPRM* identified Parts 87 (Aeronautical Mobile) and 25 (Satellite) as rule Parts that might be applicable to commercial space launch operations.[126] The Commission sought comment on whether to integrate all rules for commercial space launch operations into a new standalone rule part, or whether to integrate those rules into one or more subparts within existing rule parts.[127] We create a new rule Part 26 for the new commercial space launch service we adopt today. We agree with commenters who argue that a standalone rule part is more efficient and flexible than regulating commercial space launch operations under existing rule parts.[128]

41. The record regarding the question of where to incorporate the rules for space launch operations is mixed, due largely to varying opinions as to the activities that should be included in a space launch operation. While Boeing and NASA advocate for organizing rules for commercial space launches into a new subpart under Part 87,[129] several other commenters do not support applying existing rule parts to space launch operations, instead preferring other approaches that would provide greater clarity and flexibility with respect to space-related operations. SpaceX, which supports licensing all space operations under a single authorization, argues for the creation of a single set of rules under a new Part 26.[130] TechFreedom also supports the creation of a new Part 26, arguing that placing space spectrum uses in a single rule part will ease coordination and spectrum choices by new entrants.[131] Relativity argues that applying Part 87 and/or Part 25 rules to space launch or reentry activities would be overly burdensome and costly to the industry.[132] Still others in the record note that there are space services that cannot be considered as part of a space launch and likely do not fall under either Part 87 or Part 25. These commenters argue that space-related services, such as OOS and RPO operations, as well as operations that transport passengers to space, have distinct licensing needs that should be accommodated.[133]

42. We find that locating rules into a new part will provide greater clarity and ease of reference regarding commercial space launch operations. Establishing a rule part specific to these operations rather than placing rules in existing rule parts appears more appropriate given that launch operations, while having elements applicable to Parts 87 and 25 depending on the launch, do not fall

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[125] *FNPRM*, 36 FCC Rcd at 7789-92, paras. 60-65.

[126] *FNPRM*, 36 FCC Rcd at 7790-92, paras. 61-64. The *FNPRM* also sought comment regarding whether Part 90 could serve as an appropriate location for rules regarding 5650-5925 MHz band radiolocation services. As we are not adopting rules for that band in this *2nd R&O*, we do not discuss the applicability of Part 90 here.

[127] *FNPRM*, 36 FCC Rcd at 7792, para. 65.

[128] SpaceX Comments at 7-9.

[129] Boeing Comments at 3; Boeing Reply at 10-11; NTIA/NASA Comments at 13.

[130] SpaceX Comments at 9-11 (asserting that although definitions appropriate for space launch are similar to those applicable to Part 25, launch activities go beyond those found in that rule part).

[131] TechFreedom Reply at 9-10.

[132] Relativity Comments at 4.

[133] Virgin Galactic Comments at 2 (asserting that its service offering—transporting humans to suborbital space—presents different spectrum needs and considerations than Part 87 commercial airlines, Part 25 space stations, and other types of space operations); SpaceFlight, Inc. Reply at 9 (asserting that OOS operations have distinct licensing needs from the kind of satellite operations that are licensed under Part 25 and that OOS can best be viewed and understood from a licensing perspective as a hybrid between traditional launch and satellite service); Industry Participants Comments at 5 (agreeing that OOS and RPO services should be viewed as a hybrid between traditional launch/reentry and satellite services).

completely under either one. Creating a new rule part is also forward-looking; as discussed *infra*, while the rules we are adopting here are specific to launch operations, we are seeking additional comment on measures that we can take to facilitate more routine licensing for certain payload and space operations.[134] The use of a standalone rule part therefore could be used to accommodate rules relating to other types of space activities to the extent the Commission adopts rules regarding such operations. Accordingly, we find it appropriate to establish a new Part 26.

43. *Issues Overlapping with ISAM Proceeding*. In the 2021 *FNPRM* the Commission asked multiple questions related to payload communications in the context of space launch operations.[135] For example, we sought comment on whether payload operations, currently addressed through experimental licensing, should be addressed in Part 25 of the Commission's rules.[136] Because these newer commercial operations were not considered when many of our rules were first adopted, we sought comment on any modifications to the current Part 25 rules (*e.g.*, default rules, bond requirements, fees, etc.) that may facilitate licensing and whether a streamlined process along the lines of the recently adopted process for small satellites would be appropriate for such operations. We also asked if there are other licensing models that can be better suited for the needs of these payload operations. In response many commenters in this proceeding raised issues related to space operations such as on-orbit servicing (OOS), rendezvous, proximity space operations (RPO), Earth-escape operations, and lunar orbit missions, to name a few.[137] Several of the leading industry operators for these types of activities, while urging the Commission to develop rules to better account for such space activities, suggested that these issues should be considered in a further notice of proposed rulemaking.[138]

44. We note that many of the same operators that have commented on the need for spectrum allocation and licensing procedures for novel payload activities in this proceeding have also responded to our August 2022 Notice of Inquiry in the ISAM proceeding.[139] ISAM refers to a set of capabilities that are used on-orbit, in transit, or on the surface of space bodies. Within the category of ISAM, "servicing" includes activities such as use of one spacecraft to inspect another, to dock with other spacecraft and provide support such as maintaining the station in its orbital location in order to extend the period of operations, or to repair or modify a spacecraft after its initial launch. These activities typically include the process of maneuvering close to and operating in the near vicinity of the "client" spacecraft, a set of activities often referred to as rendezvous and proximity operations (RPO). "Servicing" also involves transport of a spacecraft from one orbit to another and debris collection and removal.[140] While we acknowledge that this industry is advancing rapidly, and we recognize the importance and benefit of in-space services that could extend the life of satellites, reduce orbital debris, and more, we agree with commenters that the Commission should not attempt to shoehorn these activities into a space launch licensing regime,[141] nor is it necessarily appropriate to attempt to fit these operations into rules "designed for a previous space age."[142] Accordingly, we will continue to expand the record on these in-space

[134] *See infra* Section IV.B (Space Operations).

[135] *See FNPRM*, 36 FCC Rcd at 7815-17, paras. 139-45.

[136] *See FNPRM*, 36 FCC Rcd at 7816, para. 142.

[137] *See, e.g.*, Rocket Lab Comments at 2; Axiom Space Comments at 2-3; Industry Participants Comments at 5; Industry Participants Reply at 4; Spaceflight Reply at 3-4; CONFERS Reply at 2; Momentus Reply at 1-2; BlackSky Comments at 2-4.

[138] *See, e.g.*, Industry Participants Reply at 3, 5-7; CONFERS Reply at 3; Spaceflight Comments at 8-9.

[139] *See* Comments filed in the FCC's Electronic Comments Filing System (ECFS) for Dockets 22-271, 22-272, http://apps.fcc.gov/ecfs.

[140] *ISAM NOI* at 2 para. 4.

[141] *See* Industry Participants Reply at 6.

[142] CONFERS Reply at 3.

operations through our ISAM proceeding and welcome continued comment and dialogue from the regulated community as we seek to develop short and long-term regulatory procedures for these operations.

b. Scope of Service

45. In the *FNPRM*, the Commission sought comment on how to define certain key terms for purposes of licensing commercial space launch operations, including "space launch operations," "space launch vehicle," and "reentry vehicle."[143] The Commission also sought comment on an appropriate scope for the commercial use of the 2200-2290 MHz and 2025-2110 MHz bands.[144] Below, we first define the key elements of a space launch, and use those definitions to frame and articulate the applicable scope of the commercial space launch service.

46. *Space Launch-related Definitions.* In requesting comment on how to define non-Federal "space launch operations," the *FNPRM* noted that the STAs that have previously been granted have included telemetry from the launch vehicle and the payload, during the initial space launch, recovery of the booster, and the orbital and re-entry phases for operations such as cargo and crew delivery to and from the ISS.[145] We asked whether it would serve the public interest to include all of these operations in the definition of "space launch operations," and whether there is a need to either limit the definition or further expand the definition to other space operations.[146]

47. Commenters are divided on whether "space launch operations" should encompass payload and expanded in-orbit operations, such as rendezvous and proximity operations, ISS docking, and space-to-space links. SpaceX advocates to include all operations that fall under our Part 2 definition of Space Operation Service.[147] A coalition of industry members recommend that we develop rules that would apply through every phase of space flight,[148] while Rocket Lab and ULA similarly ask us for regulations that apply consistently over all mission phases.[149] Further, Virgin Galactic supports the inclusion of a separate definition for spaceflight operations.[150] Conversely, Boeing believes that activities ancillary to a launch should not be included in the definition of "space launch operations."[151] NTIA likewise states that including in-orbit operations to a definition of "space launch operations" would put unacceptable strain on the bands at issue and advises that space launch operations are fundamentally for a short duration.[152] Aerospace and Flight Test Radio Coordinating Council (AFTRCC) agrees with Boeing and NTIA on these points.[153]

48. While we seek to implement rules that will provide greater certainty and streamline access and use of the 2200-2290 MHz and 2025-2110 MHz bands, we also remain cognizant that the two bands are already heavily encumbered and that there is a need to proceed cautiously regarding access to

[143] *FNPRM*, 36 FCC Rcd at 7789, para. 60.

[144] *FNPRM*, 36 FCC Rcd at 7792-93, paras. 66-71.

[145] *FNPRM*, 36 FCC Rcd at 7789, para. 60.

[146] *FNPRM*, 36 FCC Rcd at 7789, para. 60.

[147] SpaceX Comments at 6. Section 2.1 defines Space Operation Service as "[a] radiocommunication service concerned exclusively with the operation of spacecraft, in particular space tracking, space telemetry, and space telecommand." 47 CFR § 2.1(c).

[148] Astra et al. Comments at 2.

[149] Rocket Lab Comments at 2; ULA Reply at 6-7.

[150] Virgin Galactic Comments at 6-7.

[151] Boeing Comments at 5.

[152] NTIA Comments at 4.

[153] AFTRCC Reply at 9.

the bands for activities that go beyond the operations of a launch vehicle. Accordingly, we find that it is appropriate at this juncture to limit the definition of commercial space launch operations to activities associated only with the launch and recovery or reentry of a launch vehicle, and exclude payload and other on-orbit communications.[154] We conclude that the inclusion of payload and on-orbit operations, such as rendezvous and proximity operations, ISS docking, and space-to-space links, are outside of what can fairly be considered "space launch operations." We agree with Boeing that such ancillary operations are outside the scope of the launch operations addressed in the *FNPRM*.[155] We therefore decline to extend the concept of commercial space launch beyond the operations of a launch vehicle itself.[156] Because it is not clear from the record that the bands at issue can support streamlined authorization and access for payload and on-orbit operations today, we are seeking further comment on these issues in the *Second Further Notice of Proposed Rulemaking* (*Second FNPRM*) and through our ISAM proceeding, noted above.[157]

49. Instead, we find it appropriate to adopt a definition of "space launch operations" that is specific to launch vehicle operations. We define non-Federal "space launch operations" as any activity that places a launch vehicle, whether an expendable launch vehicle or a reusable launch vehicle or a reentry vehicle used for launch, and any payload or human being from Earth in a suborbital trajectory in Earth orbit, or otherwise in outer space, including pre-launch testing and recovery or reentry of the launch vehicle. We find it appropriate to broadly define "space launch operations" instead of including in the definition an exhaustive list of permissible operations or defining a launch by stages given that operations may vary from launch to launch. This definition is similar to the broad definition that the Commercial Space Launch Act, as amended, and the FAA's commercial space transportation rules apply to "launch."[158]

50. Next, we adopt definitions for "launch vehicle" and its different forms as they apply to the "space launch operation" definition and describe the permissible scope of commercial space launch operations. In the *FNPRM*, the Commission sought comment on whether and how to define "launch vehicle" for space launch operations purposes.[159] SpaceX and TechFreedom advocate for the Commission to make use of its existing Part 2 definition of "spacecraft."[160] NASA disagrees, arguing that a launch vehicle does not constitute a spacecraft, making the Commission's Part 2 definition inapplicable.[161]

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[154] However, as noted, we are seeking additional comment regarding certain in-orbit operations in Section IV.B (Space Operations) and have opened the ISAM proceeding through our NOI.

[155] *See* Boeing Comments at 5.

[156] The "Space Operation Service" definition includes "space tracking," "space telemetry," and "space telecommand," all of which are defined terms that include on-orbit operations. *See* 47 CFR § 2.1(c).

[157] *See infra* Section III.B.1.a. We note that entities may continue to seek authorization for use of the 2200-2290 MHz and 2025-2110 MHz bands for such operations through the use of STAs.

[158] The Commercial Space Launch Act, as amended, provides that "…launch means to place or try to place a launch vehicle or reentry vehicle and any payload or human being from Earth—(A) in a suborbital trajectory; (B) in Earth orbit in outer space; or (C) otherwise in outer space, including activities involved in the preparation of a launch vehicle or payload for launch, when those activities take place at a launch site in the United States." 14 U.S.C. § 50901(7). The Commercial Space Launch Act, which directs the Department of Transportation and, by delegation, the FAA to oversee launch and reentry of launch and reentry vehicles, is codified at 51 U.S.C. Chapter 509. The same definition is found in the FAA's rules. *See* 14 CFR § 401.7.

[159] *FNPRM*, 36 FCC Rcd at 7789, para. 60.

[160] SpaceX Comments at 10; TechFreedom Reply at 8-10. "Spacecraft" is defined as "[a] man-made vehicle which is intended to go beyond the major portion of the Earth's atmosphere." 47 CFR § 2.1(c). *See also* 47 CFR § 25.103.

[161] NTIA/NASA Comments at 13.

51. We agree with NASA that the term "spacecraft" is not appropriate.[162] The term would not cover certain launch operations, such as first stages that do not go beyond the major portion of Earth's atmosphere or suborbital launches, but yet would encompass other activities, such as on-orbit missions, that we are not including as part of a launch operation at this juncture. Instead, in line with our definition of "space launch operations," we define "launch vehicle" more specifically as a vehicle built to place a payload or human beings from Earth in a suborbital trajectory, in Earth orbit, or otherwise in outer space.

52. In seeking comment regarding the appropriate definition for "launch vehicle," the *FNPRM* asked whether we should draw on the definitions of "expendable launch vehicle" and "reusable launch vehicle" under Part 87,[163] and also sought comment on whether there should be any distinction between a "launch vehicle" and a "reentry vehicle" for space launch purposes.[164] Few commenters addressed these issues. SpaceX and Relativity urge the Commission to avoid drawing distinctions that may become technologically outdated,[165] while NASA states that the existing Part 87 definitions for "expendable launch vehicle" and "reusable launch vehicle" are appropriate.[166] As implied in our definition for "space launch operations," we find that a launch vehicle could be an "expendable launch vehicle," a "reusable launch vehicle," or a "reentry vehicle" used for launch. Accordingly, it is necessary to define those terms. While section 87.5 of the Commission's rules provides definitions for "expendable launch vehicle" and "reusable launch vehicle" in the context of launches administered under Part 87, these definitions describe such launch vehicles as "booster rockets."[167] Because the Part 87 definitions may not adequately capture the launch vehicles that are in use today (or in the future), we instead find it appropriate to adapt definitions for launch vehicles using definitions from the FAA's commercial space transportation rules.[168] We define "expendable launch vehicle" as a launch vehicle whose propulsive stages are used only once, and "reusable launch vehicle" as a launch vehicle that is designed to return to Earth substantially intact and may be launched more than one time or that contains vehicle stages that may be recovered by a launch operator for future use. Because it is feasible for commercial operators to conduct operations with a vehicle that cannot be solely described as a reusable launch vehicle (for example, the vehicle has the ability to be used for purposes other than launch), we find it appropriate to also include "reentry vehicle" and to adopt a definition similar to the FAA's definition of "reentry vehicle" as a vehicle designed to return from Earth orbit or outer space to Earth substantially intact.[169] We note that because "reentry vehicle" under this definition could be applicable to either a launch vehicle or spacecraft designed to be capable of reentry, we specify that a reentry vehicle is regarded as a launch vehicle in the context of a space launch operation only to the extent that it is being used for launch

[162] *See* NTIA/NASA Comments at 13.

[163] *FNPRM*, 36 FCC Rcd at 7789, para. 60 n.169.

[164] *FNPRM*, 36 FCC Rcd at 7789, para. 60.

[165] SpaceX Comments at 10; Relativity Comments at 4.

[166] NTIA/NASA Comments at 13.

[167] *See* 47 CFR § 87.5 (defining "expendable launch vehicle" as "[a] booster rocket that can be used only once to launch a payload, such as a missile or space vehicle" and "reusable launch vehicle" as "[a] booster rocket that can be recovered after launch, refurbished and re-launched").

[168] *See* 14 CFR § 401.7 (defining "expendable launch vehicle" as "…a launch vehicle whose propulsive stages are flown only once" and "reusable launch vehicle" as "…a launch vehicle that is designed to return to Earth substantially intact and therefore may be launched more than one time or that contains vehicle stages that may be recovered by a launch operator for future use in the operation of a substantially similar launch vehicle").

[169] *See* 14 CFR § 401.7 (defining "reentry vehicle" as "…a vehicle designed to return from Earth orbit or outer space to Earth substantially intact. A reusable launch vehicle that is designed to return from Earth orbit or outer space to Earth substantially intact is a reentry vehicle.").

purposes.[170]

53. *Permissible operations.* In the *FNPRM,* we noted that the *Report and Order* limited non-Federal use in the 2200-2290 MHz band to telemetry and tracking operations of launch vehicles during pre-launch testing and launch operations.[171] Because the 2200-2290 MHz allocation was originally limited to the 2208.5-2213.5 MHz, 2212.5-2217.5 MHz, 2270-2275 MHz, and 2285-2290 MHz sub-bands, the *FNPRM* sought comment on whether we should remove any presumptive limitation to the four sub-bands in the service rules to the extent that we permit use beyond the original four sub-bands.[172] Further, the *FNPRM* also proposed to restrict the commercial launch use of the 2025-2110 MHz band to telecommand uplink transmissions from the ground controller stations to the space launch vehicle.[173] Noting the heavy usage of this band by BAS, CARS, and LTTS operations, as well as by Federal entities for space operations, Earth exploration satellite, space research, fixed, and mobile uses, the *FNPRM* asked whether it is feasible to accommodate uses in addition to the space launch telecommand uses.[174]

54. We will clarify in our service rules that the use of the entire 2200-2290 MHz band is permissible for all launch vehicle-to-ground communications associated with telemetry and tracking operations, and the 2025-2110 MHz band is available for all ground-to-launch vehicle telecommand uses necessary to support space launch operations. As discussed above in Section III.A., we are revising Footnote US96 to enable use of the entire 2200-2290 MHz band. Accordingly, we find that it is necessary to also make clear in our service rules, in addition to the changes made to Footnote US96, that space launch telemetry activities are permitted throughout the band.

55. Further, given that the 2025-2110 MHz band is heavily used, we find it necessary to limit the band to telecommand operations.[175] As noted, certain commenters advocate for a broad range of permissible uses in this band, including those that do not fall under the definition of "space launch operations" above.[176] NTIA, however, supports limiting commercial space launch use of the band to telecommand transmissions from the ground controller stations to the launch vehicle.[177] While other commenters, such as the Society of Broadcast Engineers (SBE) and Engineers for the Integrity of Broadcast Auxiliary Services Spectrum (EIBASS), do not speak specifically as to whether to permit uses beyond telecommand activities, they do warn of the difficulties with managing use and avoiding interference among the users of the band.[178] Given the increasingly heavy use of the 2025-2110 MHz band and the importance in ensuring that incumbent operations are adequately protected, we find that we should not expand space launch uses beyond telecommand for this band.

56. Permissible uses for the 2200-2290 MHz and 2025-2110 MHz bands, therefore, will be limited to telemetry, tracking, and command activities for space launch operations. Telemetry, tracking, and command necessary to support space launch operations may include, but are not limited to: (1) pre-launch testing, such as pre-flight checks, ground testing, and telemetry; (2) vehicle tracking, including the

[170] While there are no mentions in the record of reentry vehicles that are also used as launch vehicles, we seek to avoid adopting a "launch vehicle" definition that may be rendered obsolete by future industry developments. *See* Relativity Comments at 4.

[171] *FNPRM*, 36 FCC Rcd at 7792, para. 67.

[172] *FNPRM*, 36 FCC Rcd at 7792, para. 67.

[173] *FNPRM*, 36 FCC Rcd at 7793, para. 69.

[174] *FNPRM*, 36 FCC Rcd at 7793, para. 69.

[175] We note that as in the case with Federal space operations using this band, non-Federal space launch operations must protect BAS, CARS, and LTTS operations, as well as any previously granted Federal space launch operations.

[176] *See, e.g.*, SpaceX Comments at 6; Spaceflight Comments at 3.

[177] NTIA/NASA Comments at 13.

[178] *See generally* SBE Comments; EIBASS Comments.

transmission of parameter data from a launch vehicle to ground; (3) telecommand signals for propulsive maneuvering of a launch vehicle and separation of payload from launch vehicle; and (4) telecommand signals for propulsive maneuvering of a reentry vehicle for return and recovery.

57. We emphasize that these telemetry, tracking, and command communications are authorized only during space launch operations as we have defined above. This includes preparation for launch, launch of the launch vehicle, the launch vehicle's flight path, release of payload, and recovery or reentry of the launch vehicle.[179] On-orbit communications after a launch vehicle separates from its payload are outside the scope of the service we adopt today. We recognize that there may be circumstances where telemetry, tracking, or command activities may be necessary for the incidental orbital period of a launch vehicle before or after it has separated from its payload. We will allow such incidental use only to the extent necessary to successfully complete a launch operation. However, incidental use must be limited only to the extent necessary, and communications on these frequencies that are not related to space launch operations as defined are not permitted.

58. *Launch Vehicle-Satellite Communications*. In the April 2021 *FNPRM* we sought comment on the possibility of authorizing communications between space launch vehicles and satellite systems used for data relay, noting that radios designed as earth stations for communications with the Globalstar or Iridium satellite systems have been used on space launch vehicles in order to utilize those systems for data relay, including for TT&C purposes.[180] Given this, we asked whether these types of operations should continue to be licensed on an experimental basis. In response to these questions, Globalstar asserted that authorization for these types of operations in the L-band at 1610-1626 MHz should continue on an experimental basis only, given the limited number of launch vehicle customers and limited nature of the message traffic.[181] Several other commenters generally voiced support for allowing such operations, while others noted concerns.[182] We agree with Globalstar that currently the experimental licensing process serves as an adequate mechanism for licensing these types of communications. As Globalstar points out, current demand for these operations is limited.[183]

c. Eligibility

59. In the *FNPRM*, the Commission sought comment about the appropriate eligibility criteria for holding commercial space launch licenses.[184] The Commission proposed to use the supplemental eligibility criteria for Part 87 flight test stations as a model for eligibility criteria.[185] Under that model, commercial space launch license applicants would need to qualify as either: (1) an operator or manufacturer of a commercial space launch or reentry vehicle or space launch or reentry vehicle components; (2) a parent corporation or its subsidiary if either corporation is an operator or manufacturer of a space launch or reentry vehicle or space launch or reentry vehicle components; or (3) an educational institution or a person primarily engaged in the design, development, modification, and flight test evaluation of a launch or reentry vehicle or launch or reentry vehicle components.[186]

60. After reviewing the record, we adopt a modified version of the Part 87 model and *FNPRM* proposal. Specifically, in order to be eligible to hold a commercial space launch license, an applicant must qualify as one of the following: a non-Federal entity that conducts space launch

[179] Boeing Comments at 6.

[180] *See FNPRM*, 36 FCC Rcd at 7817, para. 145.

[181] Globalstar Reply at 1-4.

[182] *See* NASA Comments "Enclosure" at 5; SpaceX Comments 4-6; *but see, e.g.*, NAB Comments at 2.

[183] Globalstar Reply at 3.

[184] *FNPRM*, 36 FCC Rcd at 7793-94, paras. 72-73.

[185] *FNPRM*, 36 FCC Rcd at 7793, para. 72 (citing 47 CFR § 87.301).

[186] *FNPRM*, 36 FCC Rcd at 7793, para. 72 (citing 47 CFR § 87.301).

operations, or a parent of such entity or a subsidiary of such entity if either conducts space launch operations. Commenters expressed unanimous support for providing eligibility for commercial space launch licenses to those individuals and entities that conduct space launch operations.[187]

61. We decline to extend eligibility at this time to educational institutions and persons engaged in the design, development, modification, and flight test evaluation of a launch or reentry vehicle or launch or reentry vehicle components, as proposed in the *FNPRM*.[188] Commenters expressed concerns over extending eligibility in this fashion, arguing, for example, that such operations would be difficult to monitor and control.[189] While NAB and Boeing do not object to allowing vehicle manufacturers eligibility, given the congested nature of the bands at issue, we opt to limit eligibility for permanent authorization at this time to only those entities that conduct commercial space launch operations, as recommended by NTIA/NASA. We may revisit our eligibility criteria in the future, if needed.

62. We also decline to require commercial space launch license applicants to include a separate certification with their application to establish eligibility.[190] As Boeing observed, license applicants using Form 601 already must certify as to their eligibility to hold the license for which they are applying.[191] General Certification Statement 7 on Form 601 requires the applicant certify that "it has reviewed the appropriate Commission Rules defining eligibility to hold the requested license(s), and is eligible to hold the requested license(s)."[192] We conclude that requiring a separate eligibility certification would be a superfluous requirement for license applicants.

d. Shared Frequency Use and Cooperative Use of Facilities

63. Consistent with our decision to allocate the 2025-2110 MHz band for commercial space launch operations on a secondary basis and modify our previous allocation of the 2200-2290 MHz band,[193] we adopt our proposal to provide non-Federal space launch operators access to both bands on a shared, non-exclusive basis.[194] We understand that these allocations will be used by space launch operators to conduct telemetry, tracking, and command operations of launch vehicles during pre-launch testing and space launch operations and that they will more than often be working with the same launch site operators given the finite number of suitable launch sites. As we noted in the *FNPRM*, given the potential for many different launch vehicle operators to use a given launch facility, authorizing commercial space operations on a shared and cooperative basis appears to be a reasonable approach for providing spectrum access to multiple space launch entities.[195] We find therefore that providing access on a shared, non-exclusive basis will offer the burgeoning commercial space launch industry a more predictable, collaborative, and flexible means of gaining access to spectrum, one that will provide greater regulatory certainty and foster continued growth in this sector.

64. Our decision is supported by the record in this proceeding as the majority of commenters filed in support of spectrum sharing on a non-exclusive basis through the use of coordination techniques.

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[187] *See, e.g.*, Boeing Comments at 9-10; NTIA/NASA Comments at 14; NAB Comments at 2.

[188] *FNPRM*, 36 FCC Rcd at 7793-94, para. 72.

[189] NTIA/NASA Comments at 14; NAB Comments at 2.

[190] *FNPRM*, 36 FCC Rcd at 7794, para. 73.

[191] Boeing Comments at 9-10.

[192] *See* FCC Form 601 at 6, *available at* https://www.fcc.gov/sites/default/files/fcc-form-601-main-schedule-a.pdf.

[193] *See supra* at Section III.A.

[194] *See FNPRM*, 36 FCC Rcd at 7794, para. 74.

[195] *See FNPRM*, 36 FCC Rcd at 7794, para. 74. We note that, in this context, shared use status, while non-exclusive, does not mean that a licensee will be required to accept interference as we will require licensees to submit their launch operations to post-license coordination to protect co-frequency Federal and non-Federal users against harmful interference.

SpaceX suggested that to promote and support commercial spectrum for space operations, the Commission should grant licenses on a shared, coordinated, non-exclusive, and nationwide basis.[196] Astra states that the intermittent nature of space launch operations facilitates spectrum sharing and promotes non-exclusive licenses.[197] SIA advocated for a licensing framework modeled after the former 3650-3700 MHz fixed operations licensing model where launch operators would obtain nationwide, non-exclusive licenses for shared spectrum use with spectrum deconfliction and third-party frequency coordination facilitating spectrum sharing in addition to mandatory post-licensing spectrum coordination with NTIA and other co-frequency non-launch operators.[198] ULA also advocates for the use of the 3650-3700 MHz licensing model to grant non-exclusive nationwide licenses to users who agree to share the spectrum and use a third-party frequency coordinator like AFTRCC, prior to registering and operating a given site, with coordination occurring with NTIA, government AFCs, and co-frequency non-launch operators.[199] Boeing supports non-Federal space launch licensees sharing spectrum on a non-exclusive basis and expects licensees to coordinate and to be protected from harmful interference from other users.[200]

65. We received few responses to the question raised in the *FNRPM* regarding whether the Commission should adopt a non-discrimination policy for all space launch operations similar to the rule imposed by the Part 87 rules on access to flight test facilities.[201] None of these commenters support imposing such a requirement. Boeing asserts that the non-discrimination rules for Part 87 flight test stations are irrelevant to space launch licenses because space launch communications equipment will not be shared unless various commercial entities contractually agree on sharing arrangements.[202] Boeing argues that this will be true regardless of whether the communications facilities are positioned at Federal

[196] SpaceX Comments at 12. SpaceX states that shared nationwide licensing can be achieved with post-licensing coordination and de-confliction. SpaceX Reply at 4. SpaceX asserts that this will remove the need for competitive bidding and facilitate launch operations. SpaceX Comments at 12.

[197] Astra Reply at 3-4.

[198] SIA Comments at 3-4, 8-9. SIA asserts that the use of non-exclusive licenses to permit spectrum sharing for launch and reentry operations meets the policy objectives of Section 309(j) of the Communications Act of promoting economic growth and enhancing telecommunication offerings just like 3650-3700 MHz where the Commission chose not to auction spectrum because it was in the public interest to share the spectrum. SIA Comments at 9-11; *see also discussion infra* at Section III.B.1.h (Application Process).

[199] ULA Comments at 2-4. ULA asserts that launches depend on a myriad of variable factors so pre-license grant coordination is unnecessary, but post-license grant deconfliction and coordination will be required. ULA Comments at 4-6.

[200] Boeing Comments at 10. Several other commenters also suggested that coordination would facilitate spectrum sharing. Spaceflight indicated that coordination techniques (*i.e.*, low duty cycles, predictable transmission times, and location) will make sharing possible and that granting deployment service and launch service operators equal access to the bands will ensure deployment services remain viable. Spaceflight Comments at 5. AIA supports shared frequency slots, with wider bandwidths, on a temporary basis where sharing will last months not years. AIA Comments at 2.

[201] *See FNPRM*, 36 FCC Rcd at 7794-95, paras. 75-76. The *FNPRM* sought comment on the practices involving ground stations at Federal ranges and FAA-licensed sites and whether the Commission should adopt rules providing for non-discriminatory access to these facilities by non-Federal space launch entities to support the existing and future needs of commercial space launch entities. In the context of flight test operations, a Part 87 rule enables the shared use of facilities, which reduces costs to licensees and promotes efficient use and competition in the aviation industry. Specifically, under section 87.307, the Commission licenses only one flight test land station per airport, but it requires that these stations be made available without discrimination, on a cooperative maintenance basis, to anyone eligible for a flight test station license. 47 CFR § 87.307. Section 87.307 permits additional flight test land stations if an applicant can demonstrate that sharing of an existing flight test land station is not possible and that the addition of another land station will not result in significant degradation of the reliability of the existing station. *See* 47 CFR § 87.307(d).

[202] Boeing Comments at 10.

or non-Federal launch facilities and that therefore the Commission's non-discrimination rules for Part 87 flight test stations should not be adopted for space operations.[203] We agree with Boeing that the cooperative use of space launch facilities are more appropriately addressed through the use of private contractual arrangements and will not impose a non-discrimination policy in this context. Moreover, because we grant licenses on a shared, non-exclusive basis at a nationwide level,[204] we will not be issuing only a single site-based authorization per launch site, which, as SpaceX points out, obviates the need for the Commission to adopt a non-discrimination requirement because launch vehicle operators will have other sites around the country to choose from.[205]

e. Licensing

66. In the *FNPRM*, the Commission indicated that its goals in licensing space launch operations are two-fold: (1) to encourage innovations and investments in the U.S. space commerce; and (2) to ensure a regulatory environment conducive to the establishment of a competitive U.S. commercial space launch sector while protecting Federal and other users in the bands.[206] To meet these goals and to facilitate the shared spectrum access approach discussed above, we will issue space launch licenses on a nationwide, non-exclusive basis.

67. The Commission sought comment on various licensing models with the aim of providing regulatory certainty in the marketplace while minimizing administrative burdens and duplicative regulations.[207] Specifically, the Commission asked commenters whether it should consider applying a site-based licensing model in a shared use situation as fixed, well-defined areas of operation can simplify coordination during the application process for services requiring frequency coordination, and facilitate intensive spectrum sharing.[208] The Commission also suggested that a site-based approach would enable stakeholders to identify quickly licensees in the band and their specific areas of operation in the event interference issues arise thus allowing parties to resolve such issues in the shortest timeframe practicable.[209]

68. The Commission also sought comment on other licensing models that may be suitable in the space launch operations context.[210] Among other things, the Commission asked whether it should consider a new approach combining various aspects of space-based services and aeronautical service licensing rules or whether it would be appropriate to license space launch vehicles similar to space stations and their communicating ground/earth stations on a single or multiple site basis.[211] In addition to inquiring about conditioning ground/earth station operations on the filing of a certification that any required frequency coordination has been satisfactorily completed prior to a space launch, the Commission asked whether it could license space launch operations in a manner similar to previous licensing models applicable to certain wireless services such as the 3650-3700 MHz band.[212] In doing so, the Commission sought to provide space launch operators access to various spectrum bands on a non-exclusive, yet protected, basis, subject to measures designed to promote shared use of spectrum, such as a

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[203] *Id.*

[204] We discuss the granting of nationwide, non-exclusive licenses in further detail below. *See discussion infra* at Section III.B.1.e (Licensing).

[205] SpaceX Comments at 12 n.27 with accompanying text.

[206] *See FNPRM*, 36 FCC Rcd at 7795, para. 77.

[207] *Id.*

[208] *See FNPRM*, 36 FCC Rcd at 7795, para. 78.

[209] *See FNPRM*, 36 FCC Rcd at 7795, para. 78.

[210] *See FNPRM*, 36 FCC Rcd at 7795-96, para. 79.

[211] *See FNPRM*, 36 FCC Rcd at 7795-96, para. 79.

[212] *See FNPRM*, 36 FCC Rcd at 7795-96, para. 79.

registration and frequency coordination requirement prior to each launch.[213] The *FNRPM* also considered ways to reduce potential administrative burdens and streamline the information that would be needed for initial licensing and then registration and coordination prior to a planned launch.[214]

69. As discussed above, we find that space launch access to spectrum on a shared basis is appropriate and we find that permitting such access on a nationwide basis similar to the licensing mechanism established for the 3650-3700 MHz band is also warranted. There is wide support in the record for licensing commercial space launch operations on a nationwide, non-exclusive basis covering related launch vehicles across multiple launch sites.[215] We find that such an approach will give certainty to licensees and provide the efficiencies of scale and scope that will spur innovation, investment, and rapid deployment of space launch services.

70. We also agree with commenters who assert that a licensing framework based on nationwide, non-exclusive licenses offers a number of distinct advantages over a site-based licensing regime. As Boeing points out, a nationwide approach in parallel with a real time coordination database will provide the benefits of a site-based licensing scheme without the added complexity given that any changes in launch operations can be easily updated in the database and resolved after all other users are informed.[216] SpaceX advocates against a licensing scheme that grants only a single authorization per launch site because multiple providers may each need access to spectrum and a shared, non-exclusive nationwide authorization would cover all spectrum bands and all phases of a commercial space operation, including operations outside the United States.[217] While Astra suggests that a site-based licensing approach would be an improvement over the cumbersome STA licensing process, it also asserts that a site-based approach fails to acknowledge that space launch operations do not consist of a single "site" but instead use multiple sites, each of which is integral to a successful launch.[218] Astra argues therefore in favor of a single, nationwide license that will relieve the administrative burden on space launch operators by covering the full range of facilities used by a space launch operator, including all ground stations, radars for launch vehicle tracking, and the launch vehicle itself, as well as all the stages of launch and frequency bands to be used, with the expectation that the license will be valid for an unlimited number of launches during the license period.[219] Moreover, Astra asserts that maintaining all of an operator's sites under a single nationwide license not only eases the administrative burden but would also enable other interested parties to understand all of the sites that are authorized for use by a particular launch operator.[220] In short, the record shows that a single nationwide, non-exclusive license offers greater administrative and regulatory efficiencies than either a site-based licensing regime or the arduous STA

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[213] *See FNPRM*, 36 FCC Rcd at 7796, para. 79.

[214] *See FNPRM*, 36 FCC Rcd at 7795-96, paras. 79-80.

[215] *See* ULA Comments at 1-2; Boeing Comments at 11-12; SpaceX Comments at 12; SIA Comments at 3-4; AIA Comments at 1; Northrop Grumman Reply at 6-8; Astra Reply at 3-4; Momentus Reply at 1-2. As discussed *infra* at Section III.B.1.h (Application Process), assigning spectrum through nationwide, non-exclusive licenses would not result in mutually exclusive applications and thus these spectrum licenses are not subject to the competitive bidding requirements of section 309(j) of the Communications Act.

[216] Boeing Comments at 12. Boeing also opposes issuing licenses specific to a particular launch vehicle or transmitting station because it would be cumbersome to apply this approach to launch vehicles that, for the most part, are not reusable. Boeing Comments at 12.

[217] SpaceX Comments at 12-13. To support the use of a single, comprehensive license, SpaceX pointed out that the Commission recognized that "not all operators will seek authorization for all of the bands at issue," and "even where an applicant seeks multiple frequency bands, the applicant may not have the same site or area of operation for each of the bands." SpaceX Comments at 13.

[218] Astra Reply at 3-4.

[219] Astra Reply at 3-4.

[220] Astra Reply at 3-4.

process, particularly as the volume of commercial space launch activities continues to grow.

71. Nationwide licensing offers the advantages of a simpler, more streamlined application process that shifts the burden of information collection from the licensing stage to post-licensing site registration and per-launch coordination with the relevant Federal and non-Federal entities.[221] Moreover, nationwide, non-exclusive licensing offers space launch operators the benefit of only having to file a single license to cover a range of different launch sites shared by multiple co-frequency operators, a far more straightforward process than the site-by-site STA process. We agree with SpaceX that granting a series of authorizations by site, frequency band, and mission phase would create unnecessary burdens and that structuring the license in a comprehensive way enables each launch provider to have a "single, all-in-one authorization" to cover all of its activities thereby obviating the need for multiple licenses to cover different launch sites, different recovery sites, and different launch vehicles.[222]

72. From an operational standpoint, nationwide licensing offers space launch operators the flexibility to accommodate future expansion in the space launch industry as more launch sites (Federal or non-Federal) are constructed, new and improved launch vehicle technologies are introduced, and the number of licensees operating in the bands continues to grow. As ULA notes, nationwide licensing affords space launch operators the operational flexibility to launch from any U.S. launch site to account for the multitude of variables, including weather delays, payload changes, orbital-path and/or destination shifts, and other "uncontrollable" factors that can affect the location and timing of launches.[223] Such flexibility is critical as launch vehicle operators are not always the same entity as the launch site operator, with variability from launch-to-launch in terms of the entities involved on any given launch on any given date and time.

73. Prospectively, nationwide, non-exclusive licensing also could provide us with a strong foundation to build upon as we develop a regulatory scheme that will accommodate space-to-space communications through the record being developed by the *Second FNPRM*.[224] With the input of Federal and non-Federal stakeholders, we anticipate that we will develop a record to determine the best path forward for licensing on-orbit services, including RPO and OOS. As discussed in further detail below, we would pair a nationwide licensing scheme with post-licensing coordination to ensure cooperation with and avoid harmful interference to co-frequency entities.[225] Post-licensing coordination under this framework would permit non-Federal licensees who are sharing the frequency bands to address specific areas of operation associated with each specific launch (launch site location and corresponding stations, launch vehicle, in-flight trajectories or coordinates, etc.) in a manner similar to existing coordination processes.

74. We conclude that the 3650-3700 MHz licensing framework that authorized nationwide, non-exclusive licenses for terrestrial operations on a cooperative shared basis offers a suitable template to license commercial space launch operations in a similar streamlined fashion.[226] We base this conclusion on the unique nature of the service, including the variability of launches. We agree with SIA that a modified version of the 3650-3700 MHz licensing model would provide a good licensing framework for space launch operators to obtain nationwide, non-exclusive licenses for shared spectrum use.[227] We also

[221] *See* SIA Comments at 8-9.

[222] SpaceX Comments at 13. Although SpaceX advocates for a single authorization that would cover all mission operations, such as launch, recovery, and orbital operations, the licensing mechanism we adopt here is limited to space launch activities at this juncture.

[223] *See* ULA Comments at i, 2-4.

[224] *See discussion infra* at Section IV.B (*Second FNPRM*).

[225] *See discussion infra* at Section III.B.1.i (Frequency Coordination).

[226] *See* SIA Comments at 3-4; ULA Comments at 2-4.

[227] SIA Comments at 3-4.

agree with ULA that we should apply elements of the 3650-3700 MHz licensing framework, including the requirement that operators can obtain a nationwide license only if they agree to cooperate with and avoid harmful interference to co-frequency licensees and cannot commence operations until they register the sites affiliated with their launch service.[228] In the 3650-3700 MHz proceeding, the Commission indicated that nationwide, non-exclusive licenses would serve as a prerequisite for registering individual fixed and base stations, *i.e*., a licensee cannot operate a fixed or base station before registering it under its license and must delete registrations for unused fixed or base stations to facilitate proper coordination.[229]

75. Like the 3650-3700 MHz licensing regime, any space launch operator interested in obtaining a nationwide, non-exclusive license can do so on the condition that they agree to cooperate with and avoid harmful interference to co-frequency entities and complete coordination efforts to avoid in-band interference, including providing the information necessary to conduct coordination via site registration.[230] All commercial space launch licensees in the band will have equal rights to the use of the spectrum as long as they comply with all applicable licensing, service, and operating rules but all the licensees will have a mutual obligation to cooperate and avoid causing harmful interference to other users in the band. Applicant qualification for non-exclusive nationwide wireless licenses in the space launch service will be assessed in accordance with FCC Form 601 and Commission rules.[231] There will be no limit to the number of non-exclusive nationwide wireless licenses that may be granted for the spectrum allocated to commercial space launch services, and these licenses will serve as a prerequisite for registering launch sites and operational parameters, space launch vehicle stations, individual ground/earth stations, and itinerant stations needed to support a launch.[232] We note that the registration process will be streamlined to the extent possible[233] and will be done electronically through the Universal Licensing

[228] ULA Comments at 2-4.

See Wireless Operations in the 3650-3700 MHz Band, ET Docket No. 04-151; *Rules for Wireless Broadband Services in the 3650-3700 MHz Band*, WT Docket No. 05-96; *Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, ET Docket No. 02-380; *Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band*, ET Docket No. 98-237, Report and Order and Memorandum Opinion and Order, 20 FCC Rcd 6502 (2005) (*3650-3700 MHz R&O*); *see also* 47 CFR § 90.1307 (Licensing).

[230] *See 3650-3700 MHz R&O*, 20 FCC Rcd at 6512-13, para. 30.

[231] 47 CFR §§ 1.913-1.917. FCC Form 601 - *Application for Authorization in the Wireless Radio Service*.

[232] We will not require a space launch operator to obtain a construction permit before obtaining a space launch license. Given the variable nature of space launch operations and the fact that a space launch operator might not have ground facilities, we are not imposing a build-out or construction requirement. Space launch licensees will include both site owners/operators and launch vehicle operators, with the majority being commercial launch vehicle operators many of whom are using Federal launch facilities or FAA-certified sites that are already in existence. Moreover, like the 3650-3700 MHz model, we are allowing licensees to determine their individual business needs with respect to facility access, and by adopting a nationwide, non-exclusive licensing scheme instead of a site-based, exclusive licensing approach, we are providing launch vehicle operators, many of whom do not own their own launch sites, with operational flexibility and the ability to access a wide range of launch facilities around the country. With regard to the construction permit requirement of section 319(d) of the Communications Act, the radios on launch vehicles will be mobile stations so their operators will be exempt from needing a construction permit. *See* 47 U.S.C. § 319(d). To the extent that launch site operators are subject to Section 319(d) given their non-common carrier status, we find that a waiver of the construction permit requirement is warranted and would serve the public interest, convenience, and necessity by, among other things, expediting the provision of space launch communications services and promoting innovation and investment in the United States commercial space launch industry.

[233] Licensees will be required to provide information necessary for identification and location of fixed, base, and itinerant stations (*e.g*., latitude and longitude) as well as mobile stations associated with the launch vehicle and technical information on each station's operation to facilitate interference analysis (*e.g*., bandwidth, frequency and antenna characteristics).

System (ULS) as suggested by several commenters.[234] The initial filing date for these commercial space launch licenses, along with directions on how to use the ULS, will be announced in a future Wireless Telecommunications Bureau (WTB) Public Notice. We note that in order to keep the ULS licensing and registration database for space launch services accurate and up-to-date, we delegate to the WTB the authority to adopt rules regarding the reporting of database information including reporting of any license or secondary markets transactions. The WTB will issue a Public Notice seeking comment on these issues, as appropriate.[235]

76. As stated above, we are hereby creating a new rule Part 26 that will set forth the licensing, operation, and service rules for the space launch service. With respect to their regulatory status under the Communications Act, space launch service licensees operating in these shared use bands will be providing services on a non-common carrier basis[236] after they obtain their licenses and register the launch site and corresponding fixed, base, and itinerant stations as well as mobile stations associated with the launch vehicle to comply with post-license grant coordination requirements. Consistent with the non-exclusive nature of the licensing scheme we are adopting here, we will not impose any spectrum aggregation limits, either in-band or out-of-band, or eligibility restrictions other than the eligibility criteria discussed above in section III.B.1.c above and statutory foreign ownership restrictions.[237] All potential space launch service providers will have equal access to these bands and by opening this spectrum to as wide a range of eligible applicants as possible, we aim to encourage new entry and investment as well as entrepreneurial efforts to develop new launch-related technologies and services, while helping to ensure efficient spectrum use. We further believe that this approach will promote economic opportunity and competition in the subject bands. We will not impose a performance or build-out requirement because space launch sites and launch vehicles may vary from launch to launch, making specific construction requirements impractical. Of course, any interested party is free to, depending on the site, construct facilities and may operate according to its particular business plan at any time, as long as it has a valid wireless license, registers its stations, and complies with coordination requirements as well as other applicable rules. However, we strongly expect space launch service providers to consult with NTIA in advance of commencing construction on a new launch site. We conclude such a consultation is in the provider's best interest, as providers will have the information needed from NTIA to make an informed decision about whether to proceed with construction at a given site. Although we do not impose a performance requirement, we will require that space launch licensees delete registrations for unused sites and unused fixed, base, itinerant, and mobile stations in order to maintain ULS database integrity and facilitate efficient coordination between licensees.

77. Any eligible party may apply at any time for a license in these frequency bands regardless of the presence of other licensees in the geographic area where it intends to use the spectrum

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[234] *See* Boeing Comments at 9, 15; SBE Comments at 7; EIBASS Comments at 4; Boeing Reply at 10-11; EIBASS Reply at 1-2.

[235] Any delegations in this Order to WTB to adopt rules or procedures are subject to the requirements of the Administrative Procedures Act. *See, e,g*., *infra* paras. 75, 98 and Appendix A (adopting 47 CFR § 0.331(g)).

[236] Regulatory status as a common carrier or non-common carrier depends on the services provided pursuant to the Communications Act. Section 153 of the Communications Act defines the term "common carrier" as "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act [47 USCS §§ 151 et seq.]; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier." See 47 U.S.C. § 153.

[237] Sections 310(a) and 310(b) of the Communications Act, as modified by the Telecommunications Act of 1996, impose foreign ownership and citizenship requirements that restrict the issuance of licenses to certain applicants. 47 U.S.C. § 310(a), (b). We note that under the Act, an applicant requesting authorization for services other than broadcast, common carrier, aeronautical en route, or aeronautical fixed services would be subject to only section 310(a), which states "[t]he station license required under this Act shall not be granted to or held by any foreign government or the representative thereof." 47 U.S.C. § 310(a).

and licensees may assign or transfer their non-exclusive nationwide authorizations, upon application to and prior approval from the Commission.[238] However, our decision to license the space launch services on a non-exclusive nationwide basis obviates the need to adopt partitioning and disaggregation provisions because partitioning and disaggregation is only pertinent in geographic licensing settings where the licensee has *exclusive* use of a particular area. For similar reasons, we need not make our spectrum leasing rules applicable to licensees because the non-exclusive licensing scheme we employ here, coupled with the required post-license coordination, permits a high degree of access and spectrum re-use in these bands by multiple users, while minimizing the likelihood of harmful interference. Accordingly, the spectrum leasing arrangements described in the *Secondary Markets Report and Order* are not applicable,[239] and we do not see a need to apply those spectrum leasing rules and policies to this spectrum at this time.

f. Authorized bandwidth

78. In the *FNPRM*, the Commission proposed to grant licenses for commercial space launch operations using a 5 megahertz bandwidth for the 2200-2290 MHz band and sought comment on the appropriate bandwidth for the 2025-2110 MHz band.[240] The Commission also sought comment on whether to permit licensees to use larger bandwidths upon adequate justification, and also on whether to authorize operations using a range of bandwidths instead of a fixed bandwidth of 5 megahertz.[241] After reviewing the record, as well as the space launch operations the Commission has licensed on experimental bases to date, we will issue licenses of any bandwidth a licensee chooses, up to 5 megahertz, for both bands. In the event a licensee requires a bandwidth greater than 5 megahertz, we will authorize a bandwidth exceeding 5 megahertz upon adequate justification for why such bandwidth is necessary for space launch operations in a particular launch. For purposes of such requests, licensees must demonstrate that the bandwidth requested is that which is necessary to accomplish the specific telemetry, tracking, or command operation(s) at issue. This framework is similar to our licensing of the 2360-2395 MHz band space launch telemetry and telecommand operations, which are licensed on a range of bandwidths capped at 5 megahertz, with larger bandwidths available on a case-by-case basis.[242]

79. Given that the majority of requests for experimental licenses for the 2200-2290 MHz band to date have requested bandwidths smaller than 5 megahertz,[243] we find it appropriate to impose a 5 megahertz maximum bandwidth limitation. In light of the existing usage of this band, we find it appropriate to limit the authorized bandwidth to only that which is generally necessary for a launch. We note that the limit for federal space launches using the 2200-2290 megahertz band is 5 megahertz,[244] and NASA supports applying a 5 megahertz maximum bandwidth to non-federal launch operations as well.[245] While there was limited discussion in the record regarding the appropriate bandwidth limit for the 2025-2110 MHz band, NOAA notes that federal entities are limited to a maximum bandwidth of 5 megahertz in both the 2025-2110 MHz and 2200-2290 MHz bands in order to reduce congestion and to ensure

[238] *See* FCC Form 603.

[239] *See Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604, 20643-44 (2003) (*Secondary Markets Report and Order)* (spectrum leasing policies apply to services in which licensees hold exclusive use rights with respect to the spectrum).

[240] *FNPRM*, 36 FCC Rcd at 7796-97, paras. 81-82.

[241] *FNPRM*, 36 FCC Rcd at 7796-97, para. 81.

[242] 47 CFR § 87.303(d)(3) (authorizing bandwidths of 1, 3, or 5 megahertz for the 2345-2395 MHz band, but permitting larger bandwidths on a case-by-case basis).

[243] *FNPRM*, 36 FCC Rcd at 7796, para. 81.

[244] *See* NTIA Manual § 8.2.41.

[245] NTIA/NASA Comments at 9.

compatibility with existing operations.[246] We conclude that it would be appropriate to apply a 5 megahertz limit to non-federal uses of the 2025-2110 MHz band for these reasons as well. While some industry commenters advocated for an authorized bandwidth exceeding 5 megahertz,[247] we find that a 5 megahertz limit for both the 2025-2110 MHz band and the 2200-2290 MHz band will help to lessen impacts to other users in these bands, and put commercial space launch operators on par with federal entities as well as those using the 2360-2395 MHz band for launch operations. And as explained below, we are allowing licensees to exceed the 5 megahertz bandwidth to the extent they can demonstrate such additional bandwidth is necessary for a given launch.

80. Further, we find that allowing licensees to choose their own bandwidth, up to 5 megahertz, will provide licensees with the flexibility to undertake a variety of commercial space launch activities, including future industry developments. No commenters opposed this approach, while NASA supports allowing non-federal users to use any bandwidth up to and including 5 megahertz, noting that the narrower emissions will be easier to coordinate with existing Federal users.[248] For those reasons, we will allow licensees to choose a bandwidth of any size, up to 5 megahertz.

81. While we find that we should impose a maximum bandwidth of 5 megahertz as a means to help lessen the impact of commercial space launch operations on these bands, we are aware that there may be instances when wider bandwidths may be necessary for a given launch. We therefore find it appropriate to permit commercial space launch operators to use bandwidths exceeding 5 megahertz on a case-by-case basis. Several commenters advocate for bandwidths exceeding 5 megahertz. United Launch Alliance states that allowing bandwidths greater than 5 megahertz will reduce operation costs and provide needed spectrum.[249] Boeing argues that larger bandwidths will provide significant benefits to commercial space launch operators.[250] The AIA also supports mechanisms that would permit access to wider bandwidths in certain circumstances.[251] Conversely, NASA argues that authorized bandwidth should be capped at 5 megahertz, arguing that the same restriction applies to Federal users in the 2200-2290 MHz range.[252] However, bandwidths exceeding 5 megahertz in the 2200-2290 MHz band are available to Federal users upon adequate justification.[253] In addition, commercial launches in the 2200-2290 MHz range using bandwidths exceeding 5 megahertz have been successfully coordinated with NTIA in the past.[254] Similarly, as noted, although launch operations in the 2360-2395 MHz band have a limit of 5 megahertz, our rules permit applicants to seek authorization for wider bandwidths.[255]

82. Accordingly, for those commercial space launch operators seeking authorizations for bandwidths exceeding 5 megahertz in the 2200-2290 MHz and 2025-2100 MHz bands, we will apply the NTIA framework for such requests.[256] Specifically, the requesting space launch operator shall submit a

[246] NTIA/NOAA Comments at 27.

[247] ULA Comments at 28; SpaceX Comments at 16; AIA Comments at 1-2.

[248] NTIA/NASA Comments at 9, 14.

[249] ULA Comments at 28.

[250] Boeing Comments at 20.

[251] AIA Comments at 2.

[252] NTIA/NASA Comments at 13.

[253] *See* NTIA Manual § 8.2.4.1.

[254] *See, e.g.*, Space Exploration Technologies Corp., Special Temporary Authorization, Call Sign WG9XHP, ELS File Nos. 1895-EX-ST-2020, 0126-EX-ST-2021, 0249-EX-ST-2021.

[255] 47 CFR § 87.303(d)(3). Applications for greater bandwidths are considered in accordance with the provisions of 47 CFR § 87.135.

[256] *See* NTIA Manual § 8.2.41. Section 87.303(d)(3) provides that applications for bandwidths greater than 5 megahertz may be submitted for the 2360-2395 MHz band, but does not specify a framework for those requests.

justification as part of the registration process for a launch on why the requested bandwidth is necessary for the specific TT&C space launch operation, including an explanation of why the operator's requirements cannot be satisfied using a bandwidth of 5 megahertz or less. The applicant's justification will be carefully assessed to determine whether a request for bandwidth in excess of 5 megahertz for a given launch will be granted. Such requests will not be routinely granted given the goal of limiting impacts to other users in the band. As discussed below, all launch operations must be coordinated; we note that, given the heavy usage of these bands, it may be difficult to successfully coordinate operations involving requests for bandwidths greater than 5 megahertz.

g. License Term and Renewal

83. We adopt a ten-year license term for commercial space launch operations. In the *FNPRM*, the Commission tentatively concluded that a ten-year term would provide sufficient certainty and flexibility for space launch providers.[257] The Commission has applied ten-year license terms to similar services, such as Part 87 aviation,[258] Part 90 radiolocation,[259] and Part 90 telemetry and remote control operations.[260] More generally, ten-year license terms are common among the Commission's various wireless services.[261] Several commenters support our ten-year term proposal.[262] Boeing, for example, agrees that a ten-year license term would appropriately balance the need for continued Commission oversight with the goal of minimizing unnecessary administrative burdens.[263]

84. SpaceX and Astra advocate for 15-year license terms. More specifically, SpaceX advocates for parity with space stations and earth stations, which are licensed for up to15-year terms, and argues that operations at a given launch site will take place for an extended period of time.[264] Astra argues that a 15-year license term will provide space launch providers with greater operational certainty.[265] We do not agree that a longer 15-year term is necessary for commercial space launch operations. Regarding space stations and earth stations, the operation of satellite communications under Part 25 presents a distinct set of factors from space launch considerations, including the scope and extent of deployment.[266] Although the Commission has also adopted 15-year license terms under certain

[257] *FNPRM*, 36 FCC Rcd at 7797, para. 83.

[258] 47 CFR § 87.27.

[259] 47 CFR § 90.149(a).

[260] *See* 47 CFR § 90.20(d)(34), (91), (92) (authorizing telemetry and remote control operations on certain Public Safety Pool frequencies); 47 CFR § 90.149(a) (ten-year term for all services authorized under Part 90, including the Public Safety Pool).

[261] *See, e.g.*, 47 CFR § 24.15 (ten-year term for Personal Communications Services); 47 CFR § 27.13(a) (ten-year term for Wireless Communications Services); 47 CFR § 27.13(b) (ten-year term for 700 MHz Services); 47 CFR § 27.13(g), (i), (j) (ten-year term for Advanced Wireless Services); 47 CFR § 95.1912 (ten-year term for 218-219 MHz Service); 47 CFR § 95.1705 (ten-year term for General Mobile Radio Service).

[262] ULA Comments at 13-14; Boeing Comments at 13; SIA Comments at 8-9.

[263] Boeing Comments at 19.

[264] SpaceX Comments at 16-17.

[265] Astra Reply at 8.

[266] For example, while the Commission agreed that a 15-year license term with respect to the 2 GHz Mobile Satellite Service band would provide increased certainty, the longer license term was largely adopted to allow operators to attract the extremely large amount of capital necessary to deploy a global system, and to also accommodate the lifespan of the satellites providing service—factors that are not applicable to a space launch operation. *See The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, IB Docket No. 99-81, Report and Order, 15 FCC Rcd 16127, 16175-16176, paras 101-103 (2000). The Commission also indicated that the longer license term in that instance could also serve to assure continuity of service to consumers, to reduce the burden associated with the grant of ad hoc extensions, and to acknowledge the great expense of procuring the initial license. *Id.* at 16177, para. 105.

circumstances for non-satellite wireless services, it has done so to address circumstances not present here, such as the complexities surrounding 5G deployment, relocation and repacking of incumbent operations, and support for network expansion and densification.[267] We instead agree with SIA that a ten-year term is sufficient to provide launch operators with the certainty of a longer license term, and will encourage launch operators to make long-term investments.[268] And while we seek to provide commercial space launch operators with as much certainty as possible, we also find it necessary to set timeframes that will enable us to adequately verify that licensees are operating within their authorized parameters. Given the congested nature of the bands at issue, we conclude that such review should take place after ten years, not 15.

85. Given the heavy use of these bands, we also find it appropriate to require space launch operators to demonstrate that they qualify for license renewal. In the *FNPRM*, the Commission sought comment on whether to require commercial space launch licensees to make a renewal showing, such as certifying that they are operating consistent with their initial application for authorization or that they have complied with the required coordination.[269]

86. In 2017, the Commission harmonized the renewal processes for numerous Wireless Radio Services (WRS).[270] The Commission determined that a site-based WRS licensee would meet our renewal standard if it could certify that it is continuing to operate consistent with its most recently filed construction notification (or most recent authorization, when no construction notification is required), and make certifications regarding permanent discontinuance and substantial compliance with Commission rules and policies.[271] The Commission also provided that, for geographic-based licenses to qualify for renewal at the end of an initial license term, the licensee must show that it timely constructed to any level(s) required by the service-specific rules for either provision of service to the public or for the licensee's private and internal needs, and, thereafter, consistent with the Commission's permanent discontinuance rules, continuously provided service or operated at or above the required level(s) for the remainder of the license term.[272] The *WRS Order* does not apply to Wireless Radio Services that are licensed by rule or on a "personal" basis or that have no construction/performance obligation.[273]

87. Because launch operations are dissimilar to most other wireless services, we do not find it appropriate to apply to commercial space launch licensees the same renewal standards that are applied to geographic-based or site-based WRS licensees. Instead, a commercial space launch licensee will be entitled to renewal if it remains otherwise qualified and can certify that (1) it has operated and is continuing to operate consistent with Commission rules and the terms of its existing authorization, and (2)

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[267] *See 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, 6029, paras. 116-17 (2021); *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, 2384-85, paras. 90-91 (2020).

[268] SIA Comments at 8-9.

[269] *FNPRM*, 36 FCC Rcd at 7798, para. 85.

[270] See Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and JOI to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Services, WT Docket No. 10-112, Second Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Red 8874 (2017) (WRS Renewal Reform 2nd R&O and FNPRM).

[271] *WRS Renewal Reform 2nd R&O and FNPRM,* 32 FCC Red 8874, 8882, para. 19.

[272] *WRS Renewal Reform 2nd R&O and FNPRM,* 32 FCC Red 8874, 8878, para. 10; 8883-86, paras. 19-24. For subsequent renewals, the licensee was required to demonstrate that it continuously provided service to the public or operated under the license to meet the licensee's private, internal communications needs, at or above the level required to meet the final construction requirement during the initial term of the license.

[273] *WRS Renewal Reform 2nd R&O and FNPRM,* 32 FCC Red 8874, 8880, para. 13.

it has complied with the required coordination throughout its license term.[274] Given the nature of space launch operations (for example, there may be significant periods of time between launches), we will not apply discontinuance of operations rules.

88. Most of those commenting on this issue support a presumptive renewal expectancy and oppose renewal showings.[275] Commenters that oppose the use of a renewal showing claim that one is not necessary given the non-exclusive nature of the band, which, commenters claim, prevents spectrum warehousing by itself.[276] While we agree that a non-exclusive band presents different considerations from an exclusive licensing regime, we conclude that imposing this requirement will aid the Commission in verifying that space launch entities are operating within licensed parameters, thereby helping to manage use and prevent interference within congested bands. As noted in the *FNPRM*, we conclude that requiring a renewal showing from commercial space launch entities would facilitate efficient spectrum use by ensuring that licensees use the spectrum productively, collaboratively, and in compliance with Commission rules.[277] For that reason, we adopt the aforementioned renewal standard.

h. Application Process

89. ***Background.*** The *FNPRM* sought comment on the application process to be used to assign commercial space launch licenses.[278] The Commission also sought comment on whether assignment of space launch operations licenses is subject to Section 309(j) of the Communications Act[279] but noted that the shared, non-exclusive licensing it was proposing for the spectrum bands at issue would not result in mutually exclusive applications and thus would not be subject to such competitive bidding requirements.[280] The Commission stated that it aimed to establish an application framework that would increase the regulatory certainty while reducing the administrative burden on space launch operators and sought comment on whether applicants should seek authorizations by either filing an FCC Form 601 and applicable schedules through ULS or to use aspects of Form 312 and Schedule S through the International Communications Filing System (ICFS).[281]

90. The *FNPRM* asked commenters to weigh in on the appropriate type of licensing scheme, including site-based licensing or a nationwide non-exclusive licensing application process that would be coupled with a planned launch coordination registration.[282] In addition to asking about the most efficient and effective way to license space launch operations that will provide operators with substantial benefits

[274] Commercial space launch licenses will be subject to the standard electronic filing requirements applicable to renewal applications set forth in section 1.949(a) of the Commission's rules. *See* 47 CFR § 1.949(a).

[275] Boeing Comments at 13 (advocating for presumptive renewal expectancy and no built out or minimum usage requirements); Northrop Grumman Reply at 17-18 (urging traditional, routine renewal process); Astra Reply at 8 (renewal showing not needed).

[276] Northrop Grumman Reply at 17-18; Astra Reply at 8.

[277] *FNPRM*, 36 FCC Rcd at 7798, para. 85.

[278] *See FNPRM*, 36 FCC Rcd at 7798, para. 86.

[279] Specifically, Section 309(j) of the Communications Act requires that the Commission assign initial licenses through the use of competitive bidding when mutually exclusive applications for such licenses are accepted for filing, except in the case of certain specific statutory exemptions. *See* 47 U.S.C. § 309(j)(1), (2). Section 765(f) of the Communications Act also states that "[n]otwithstanding any other provision of law, the Commission shall not have the authority to assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services." 47 U.S.C § 765f. We note that the Commission's authority to assign licenses through competitive bidding expired on March 9, 2023.

[280] *See Implementation of Section 309(j) of the Communications Act — Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2351, para. 13 (1994).

[281] *See FNPRM*, 36 FCC Rcd at 7798-99, para. 87.

[282] *See FNPRM*, 36 FCC Rcd at 7799-7800, paras. 88-91.

in terms of flexibility and efficiency, and facilitate rapid implementation of the service, the Commission sought comment on how to allow applicants to request authorization covering all launches within their license terms.[283]

91. *ITU Process.* The *FNPRM* noted that the International Telecommunication Union (ITU) Radio Regulations are treaty provisions binding on the United States, and require that no transmitting station may be established or operated by a private person or by any enterprise without a license by or on behalf of the government of the country to which the station in question is subject.[284] Because space launch operations could cause harmful interference in other countries, the Commission sought comment on its proposal to require applicants to submit appropriate draft documentation for submission to the ITU and whether there are other alternatives, including bi-lateral coordination with affected countries, to coordinate and minimize harmful interference from any FCC authorized space launch operation.[285] The *FNPRM* also sought comment more generally on the ITU process as it relates to space launch vehicle licensing and operations.[286]

92. *Space Launch Vehicle Operations with Earth Stations Outside the United States.* In the *FNPRM* we noted that launch vehicle flight paths commonly extend downrange beyond the United States, which would require the launch vehicle to communicate with earth stations outside the U.S., particularly in the 2025-2110 MHz and 2200-2290 MHz bands. We sought comment on the best way to authorize the use of the relevant spectrum bands to account for these operations. We also sought comment on the role that ITU coordination should have in a licensing approach that would address the need for down-range communications during launch.

93. *Operations Inside the United States with non-United States Space Launch Vehicles.* We also sought comment on the inverse situation: how the Commission should authorize U.S.-licensed earth station operations communicating with space launch vehicles originating from a non-U.S. launch site and not otherwise licensed to communicate with earth stations in the United States.[287] We sought comment on whether to adopt a process for ground station operators to request communications with these launch vehicles and noted the Part 25 rule allowing U.S.-based earth station operators to apply for authority to communicate with non-U.S.-licensed space stations.[288]

94. ***Discussion.*** As an initial matter, we conclude that it serves the public interest and the Commission's policy objectives to promote innovation and investment in the United States commercial space launch industry by assigning non-exclusive nationwide licenses for the space launch services which will not result in mutually exclusive applications and therefore will not be subject to the competitive bidding requirements of section 309(j) of the Communications Act.[289] Consistent with our decision to

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[283] *See FNPRM*, 36 FCC Rcd at 7799-7800, para. 89.

[284] *See FNPRM*, 36 FCC Rcd at 7800, para. 92, citing International Telecommunication Union (ITU) Radio Regulations, No. 18.1 (2015).

[285] *See FNPRM*, 36 FCC Rcd at 7800, para. 92.

[286] *See FNPRM*, 36 FCC Rcd at 7800-01, para. 93.

[287] *See FNPRM*, 36 FCC Rcd at 7801-02, para. 96.

[288] *See, e.g.*, 47 CFR § 25.137. *See also Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, IB Docket No. 96-111, Report and Order, 12 FCC Rcd 24094 (1997) (DISCO II).

[289] Our decision herein to adopt a licensing scheme that avoids mutual exclusivity comports with the competitive bidding approach set forth in the Commission's Balanced Budget Act proceeding. In the *BBA Report and Order*, the Commission established a framework for exercise of the Commission's auction authority, as expanded by the Balanced Budget Act. *See Implementation of Section 309(j) and 337 of the Communications Act of 1934 as Amended*, WT Docket No. 99-87, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 22709, 22718-22723 (2000) (*BBA Report and Order*). The *BBA Report and Order* affirmed that, in identifying

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adopt a non-exclusive nationwide licensing scheme, we will adopt an application process modeled after the 3650-3700 MHz licensing framework to permit space launch operators access to various spectrum bands on a non-exclusive basis, subject to measures designed to promote shared use of spectrum, that will impose a post-license grant frequency coordination and registration requirement prior to each launch.

95. *Application Form and Licensing Database.* Building on our decision to utilize a modified version of the 3650-3700 MHz licensing model, we will require space launch operators to apply for and obtain a nationwide, non-exclusive license in ULS. Once licensed, space launch operators, working through a third-party coordinator, must coordinate each launch with NTIA and other non-Federal users, as discussed *infra*. After that per-launch, per-site coordination process has been successfully completed, space launch operators must then register in ULS the technical and operating parameters associated with the coordinated launches. Only after the final technical parameters of a given launch are registered under their license can space launch operators commence their launch service subject to the condition that they re-coordinate a launch if operational details change and agree to maintain and update those registered sites and stations, including deleting any unused or superceded launch site or station information to facilitate coordination. The information required for the application, coordination and registration processes will be identified in a Public Notice.[290]

96. A number of commenters weighed in on the use of a common database to receive applications for launch operators seeking authorization to provide commercial space launch services and to register terrestrial sites and associated stations.[291] Some suggested supplementing applications with an online registration portal to monitor the review of license applications.[292] Several commenters advocated for the use of the Commission's existing licensing databases, Universal Licensing System (ULS) or International Communications Filing System (ICFS), and their associated forms and schedules.[293] We agree with Boeing that requiring applicants to file FCC Form 601 and its associated schedules through the ULS would be expedient and administratively efficient[294] and note that the 3650-3700 MHz band upon which we are basing our licensing approach has been successfully administered through ULS. We

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which classes of licenses should be subject to competitive bidding, the Commission must pursue the public interest objectives set forth in Section 309(j)(3). *Id*. Although the Balanced Budget Act did not amend Section 309(j)(3)'s directive to consider certain public interest objectives in identifying classes of licenses and permits to be issued by competitive bidding, pursuant to that statute, Section 309(j)(1) did include a reference to the Commission's obligation to avoid mutual exclusivity under Section 309(j)(6)(E), which directs the Commission to use engineering solutions, negotiation, threshold qualifications, service regulations, or other means to avoid mutual exclusivity where it is in the public interest to do so. *See* 47 U.S.C. §§ 309(j)(1), 309(j)(3).309(j)(6)(E). Accordingly, the *BBA Report and Order* affirmed that the Commission has a continuing obligation to attempt to avoid mutual exclusivity by the methods prescribed in Section 309(j)(6) only when doing so furthers the public interest goals set forth in Section 309(j)(3). *See BBA Report and Order*, 15 FCC Rcd at 22718-22723.

As a general matter, in determining whether to assign licenses through the use of competitive bidding, the Commission consistently has concluded that its obligation to avoid mutual exclusivity does not preclude it from adopting licensing processes in the non-exempt services that result in the filing of mutually exclusive applications where it determines that such an approach would serve the public interest. *Id.* In adopting the appropriate licensing scheme for any particular spectrum band, the Commission has interpreted its statutory obligation in a manner consistent with the opinion of the U.S. Court of Appeals for the D.C. Circuit which stated, "Section 309(j)(6)(E) imposes an obligation only to minimize mutual exclusivity 'in the public interest' and 'within the framework of existing policies.'" *See Benkleman Telephone Co. et al v. FCC*, 220 F.3d 601,606 (D.C. Cir. 2000), petition for rehearing on other grounds pending (citing *DIRECTV, Inc. v. FCC*, 110 F.3d 816, 828 (D.C. Cir. 1997)).

[290] *See discussion supra* at Section III.B.1.e (Licensing).

[291] *See* ULA Comments at 2-4; Boeing Comments at 15; ICR Comments at 3-4; SpaceX Comments at 13; Northrop Grumman Reply at 17-18; Boeing Reply at 10-11; Industry Participants Reply at 9; Spaceflight Reply at 10.

[292] *See* Boeing Reply at 10-11; ICR Comments at 3-4.

[293] *See* Boeing Comments at 15; SpaceX Comments at 13.

[294] *See* Boeing Comments at 15.

therefore decline to use Form 312 and Schedule S and ICFS at this time. While several commenters urged us to consider using FCC Form 312 and Schedule S in the ICFS system in line with Part 25 authorizations,[295] we agree with Boeing that Form 312 and Schedule S would require significant revisions to accommodate space launch licenses, changes that would be difficult to implement with the older ICFS software.[296] We also find using the ULS database to field applications is consistent with our decision to create a new rule Part 26 for the space launch service rather than shoehorning a unique and fast developing service into existing rule parts like Part 87, Part 90, or Part 25.

97. *Filing requirements and station registration to facilitate post-licensing coordination with frequency coordinators and NTIA/DoD*. Having identified the appropriate application intake process, we now turn to the information that applicants will have to provide to obtain a nationwide, non-exclusive license to operate space launch services in the frequency bands at issue. We received only a few comments regarding the information that applicants should provide in an application. Northrop Grumman suggested that a nationwide license application would require identification of all relevant frequencies, technical parameters, launch sites, and ground stations.[297] Northrop Grumman also asserts that each application would be subject to FCC public notice and approval processes and requirements, along with NTIA coordination.[298] SBE suggested that each applicant should demonstrate that it has previously coordinated its proposed operations with the SBE frequency coordinator; that it has ascertained that its proposal will not constrain, preclude, nor interfere with incumbents in the band; and that a technical showing shows that its proposed operation will not create more than 0.5 dB increase in the noise threshold of a receiver at a fixed or temporary fixed Electronic News Gathering (ENG) receive site.[299] We find that these comments have merit, but that technical data such as frequencies would be most useful for coordinating and registering specific launches. For purposes of applying for the nationwide, non-exclusive license, we find that it is only necessary for launch providers to provide administrative information and later register data associated with a specific launch operation, such as the name of the launch sites and their latitude, longitude, address, corresponding stations, and area of operation for mobile stations. Indeed, data such as frequencies and technical parameters will vary from launch to launch and are not necessary for assessing an application for a nationwide, non-exclusive license.

98. We will delegate to the WTB the authority to further review and refine the filing process. As stated previously,[300] the initial filing date for these commercial space launch applications, along with directions on how to use the ULS, will be announced in a future WTB Public Notice.[301] Correspondingly,

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[295] *See* SpaceX Comments at 13; Northrop Grumman Reply at 17-18.

[296] *See* Boeing Comments at 15. Moreover, as Industry Participants and Spaceflight point out, operators of on-orbit servicing (OOS) and rendezvous and proximity operations (RPO) would face challenges using Schedule S because the form is outdated (operators often request waiver of the form) and it is difficult to accurately represent novel systems with the form, particularly since OOS and RPO use spectrum very differently than most satellite missions under Part 25. *See* Industry Participants Reply at 9; Spaceflight Reply at 10. While we acknowledge the concerns raised regarding the use of ICFS and its corresponding forms and schedules to cover authorizations for on-orbit services, we must reiterate that the licensing mechanism and application process we adopt here is limited to space launch activities at this juncture.

[297] Northrop Grumman Reply at 8-9.

[298] *Id*.

[299] SBE Comments at 18.

[300] *See discussion supra* at Section III.B.1.e (Licensing).

[301] We find space launch services to be a new wireless radio service that would be subject to existing application fees under the 3-tiered schedule found in Section 1.1102 of the Commission's rules. Specifically, we find that applications in this new wireless radio service are deemed "site-based" pursuant to Section 1.1102(b)) for purposes of application fees. *See* 47 CFR § 1.1102(b). Section 1.1102(b) defines site-based licensed services as services for which an applicant's initial application for authorization generally provides the exact technical parameters of its planned operations (such as transmitter

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we also delegate to the WTB the authority to specify application information, to make any necessary modifications to the FCC Form 601 and its related schedules, including any reprogramming of the ULS software, to accommodate the application and post-license site and station registration and frequency coordination process prior to each launch. The WTB will issue a Public Notice, in consultation with the Space Bureau and Office of Engineering and Technology, seeking comment on these issues, as appropriate, to further refine our online application process and accommodate frequency coordination.[302]

99. As discussed *infra*, we will require space launch operators to coordinate every launch with applicable Federal and non-Federal entities. While the WTB after seeking comment will issue a Public Notice identifying information that will be required with respect to the application and coordination processes as well as post-license grant registrations, licensees will likely be expected to provide, at a minimum, the same operational and technical parameters currently required of applicants seeking special temporary authority for their space launches to facilitate post-licensing coordination.[303] We anticipate that licensees will identify requisite site and station information, including the specific coordinates of fixed, base, and itinerant stations (e.g., latitude and longitude), frequency channels, launch trajectories, launch window or planned launch date, and any other technical and operational information (e.g., antenna characteristics, power levels, emission designators, launch vehicle trajectory) needed by a third-party frequency coordinator to submit the launch coordination request to the relevant non-Federal and Federal entities. Other information could include coordinates and operational parameters of the earth/ground stations launch operators will be using to provide service at a particular launch site, including whether the sites are Federal or FAA-licensed commercial spaceports or non-Federal launch sites (*e.g.*, Spaceport America in New Mexico and Mojave Air and Space Port in California). Operators may also be asked to provide any coordination agreements that they have already entered into with co-frequency entities or successfully completed coordination conducted by the designated frequency coordinator. As part of this post-license grant coordination process, launch providers must consistent with our service rules comply with the continuing obligation to update their licenses to ensure proper coordination. As noted, the WTB Public Notice will seek comment on collection of this coordination data as well.[304]

100. *Space Launch Vehicle Operations with Earth Stations Outside the United States.* ULA and SpaceX suggest that the Commission forego restrictions on launch vehicle spectrum operations outside the U.S. And ULA, as well as SIA, question whether the Commission has jurisdiction to regulate foreign earth stations' communication with U.S. launch vehicles. SIA asserts that a launch operator with a launch path that extends into a foreign territory must comply with the licensing requirements of that country for those communication needs. Similarly, Boeing suggests that the Commission allow the foreign regulatory authority to handle the licensing for any communications from within its territory with a U.S.-launched vehicle. Finally, Astra Space suggests that if non-U.S. launch operators are authorized to communicate with U.S. ground stations, a similar authorization should be made for U.S.-based launch vehicles that communicate with non-U.S. earth stations.

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location, area of operation, desired frequency(s)/band(s), power levels). Geographic-based licenses, on the other hand, authorize an applicant to construct anywhere within a particular geographic area's boundary and generally do not require applicants to submit additional applications for prior Commission approval of specific transmitter locations. Although space launch entities will be authorized on a nationwide basis, the site-based designation is better suited for the per-launch registration process.

[302] Until we begin accepting applications for space launch services, launch operators will continue to apply for authorization under the normal STA process.

[303] *See discussion infra* at Section III.B.1.i (Frequency Coordination).

[304] The WTB Public Notice will outline the process for coordination to be followed by space launch operators in detail. NTIA may also establish a mechanism to help facilitate the coordination between non-Federal launch operations and Federal incumbents in these bands. In the event an NTIA coordination mechanism is established, WTB will issue a Public Notice with instructions regarding that coordination mechanism.

101. We agree with commenters that any launch vehicle operator that requires communication with a foreign earth station must obtain the necessary approvals for operations of the earth station from the appropriate regulatory body in that country. However, this does not mean that the launch vehicle can be correctly viewed as licensed by that same regulatory body. We are unaware of any ITU Administration that views a U.S. launch vehicle upper stage as a station subject to its licensing (See Article 18.1) simply because it communicates with an earth station within its territory, and similarly this is not the approach taken for non-U.S. launch vehicles communicating with U.S. earth stations. More generally our current licensing of space stations, including under Parts 5, 25, and 97, accounts for space station operations with earth stations outside the United States. The conditions that the Commission places on a satellite license continue to be in effect for the duration of satellite operations regardless of whether the satellite communicates with non-U.S. licensed earth stations, and in some circumstances the space station authorization may involve communications exclusively with earth stations outside the United States.

102. *Operations Inside the United States with non-United States Space Launch Vehicles.* We received limited comments on this issue.[305] We agree with Boeing that there may not be a current demand for these types of communications. We conclude that we can address any requests for these communications through the experimental licensing process for the time being. We believe this approach addresses Astra Space's comments as well by providing an avenue for operators to seek authorization.

103. *ITU Process.* Commenters generally oppose requiring submissions to the ITU related to space launch operations. ULA, Northrop Grumman, and SIA assert that an ITU filing is unnecessary to the space launch licensing process given that there is no existing ITU filing process requirement for such operations.[306] ULA and Northrop Grumman both note that engaging in a lengthy ITU filing process would be burdensome and unrealistic with the nature of short-duration space launch operations and the fleeting potential for harmful interference.[307] Similarly, Boeing argues that because space launches often occur over major oceans, there is little concern for interference with international spectrum users but suggests that any potential concern with neighboring nations could be addressed through bilateral agreements.[308] Astra Space also supports the notion of bilateral agreements with any affected countries to address interference concerns instead of an ITU filing requirement.[309]

104. We agree with commenters that under current circumstances many U.S.-based space launches may not result in the realistic potential for international harmful interference, particularly with respect to the first stage of a launch vehicle or a single stage launch vehicle, for which radio operations may be limited to line-of-sight communications with ground stations in U.S. territory and occur while the launch vehicle is over oceanic areas. As such, engaging in a filing process with the ITU might be viewed as an unnecessary administrative hurdle, and any interference concerns can be addressed bilaterally with adjacent countries. However, we also recognize our duty to carry out the United States' treaty obligations as a ratifying member of the ITU convention, and that this includes an obligation to ensure that U.S.-licensed operations do not cause harmful interference on an international scale.[310] This concern is of greater significance for launch vehicle upper stage operations involving earth stations outside the United States, as those operations do present the potential for interference in multiple countries. These competing considerations must be taken into account in determining whether ITU filings should either be

[305] *See* Boeing Comments at 16-17; NASA Comments "Enclosure" at 4; Astra Space Reply at 9.

[306] ULA Comments at 22-23; SIA Comments at 14; Northrop Grumman Reply at 16.

[307] ULA Comments at 22-23; Northrop Grumman Reply at 16.

[308] Boeing Comments at 16-17.

[309] Astra Space Reply at 8-9.

[310] *See* ITU Convention, Art. 45 "Harmful Interference" ("All stations, whatever their purpose, must be established and operated in such a manner as not to cause harmful interference to the radio services or communications of other Member States…."); *see also* ITU Radio Regulations, Vol. 1, Nos. 0.4, 4.3, 4.4 (2020).

uniformly required for licensed Part 26 operations, or whether operators should be exempted from such requirements.

105. A third option is to require applicants to submit appropriate draft documentation for submission to the ITU on a case-by-case basis, as is the current practice, if the scope and nature of the space launch operations would have the potential to cause harmful interference in another country. For example, the Commission may consider requiring a filing if the upper stages of a launch vehicle will be communicating with earth stations outside the United States. This would align the U.S. with the practice of other countries that submit materials to the ITU for upper stage orbital operations.[311] We conclude that this third option is preferrable. We will not adopt a blanket requirement that all space launches require an ITU filing, yet we do not preclude our ability to require such a filing in the event the Commission deems that such a filing would be necessary and prudent in order to avoid harmful interference with other countries. The Commission has taken steps to create a flexible licensing regime for space launches under the new Part 26, including allowing one launch license to cover multiple launches and nation-wide launch locations, and a 10-year license duration. Particularly given the longer-term aspects of the licensing approach adopted, requiring an ITU submission as part of the license application process will not create an undue burden to operators in the event a filing is deemed necessary and appropriate. We also note that the Commission will be bound by any future ITU requirements related to space launch filings and so our current position is subject to change upon the issuing of new ITU regulations in this area.[312]

i. Frequency Coordination

106. In the *FNPRM*, the Commission sought comment on the appropriate coordination process between Federal and non-Federal entities to be used prior to the grant of an application for space launch frequencies as well as a coordination process for the ongoing use of these frequencies by operators during their license terms.[313] Historically, the Commission and NTIA's shared licensing authority has been guided by an established set of procedures for developing regulations for radio services in the shared bands and for authorizing frequency use by Federal agencies and Commission licensees. These procedures implement the obligation of NTIA and the Commission under their Memorandum of Understanding (MOU) that the agencies endeavor to give notice to each other of "all proposed actions that could potentially cause interference" to non-Federal and Federal operations respectively.[314]

107. The Commission sought comment on whether it should require applicants for a license in space launch frequencies to undergo a pre-application coordination requirement similar to that specified in section 87.305, or whether, in the alternative, the Commission should impose a different coordination process.[315] The Commission noted that Federal entities seeking to use the 2025-2110 MHz band must complete a similar coordination process prior to submitting an application for authorization to NTIA, must coordinate with all BAS and other non-Federal incumbents that may be affected by the Federal operation prior to submitting an application, and must engage the local BAS frequency coordinator(s),

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[311] *See, e.g.*, French ITU filing under the ASV network name, for the upper stages of the launch vehicle, listing various launch vehicle trajectories for operations from French Guiana; New Zealand ITU filing under the APOG, ELECTRONNZ, APSS network names.

[312] Additionally, the ITU is currently studying suborbital operations and considering possible appropriate modifications to the radio regulations to account for spectrum use for these types of operations. *See* ITU Resolution 772 (WRC-19).

[313] *See FNPRM*, 36 FCC Rcd at 7802, para. 98.

[314] *See FNPRM*, 36 FCC Rcd at 7802, paras. 99-100. NTIA coordinates with Federal spectrum users through the Interdepartment Radio Advisory Committee (IRAC), a committee that includes representation from different government agencies, and typically includes a review period of 20 business days. Memorandum of Understanding Between the Federal Communications Commission and the National Telecommunications and Information Administration (Aug. 1, 2022), https://docs.fcc.gov/public/attachments/DOC-385867A1.pdf (MOU).

[315] *See FNPRM*, 36 FCC Rcd at 7803-04, paras. 102-03.

where available, in support of achieving such coordination.[316] In the event the Commission adopts a non-Federal allocation in the 2025-2110 MHz band, the *FNPRM* sought comment on whether to require commercial space launch operators to follow the same pre-application coordination process to help ensure that launch operations will not cause harmful interference to applicable non-Federal and Federal incumbents in the band, or if a different pre-application coordination, such as the process identified in section 87.305, should be applied.[317] The *FNPRM* asked commenters whether the Commission should appoint a designated frequency coordinator to streamline such a pre-application coordination requirement and whether it would be in the public interest to designate the AFTRCC as the frequency coordinator.[318]

108. Because license terms may span several years, the *FNPRM* sought comment on post-grant coordination between space launch licensees and other users of the respective bands for separate launch operations. Pointing to the complicated logistics entailed in a space launch operation, as well as changes in the operational environment on and around Federal ranges and other sites that are likely to occur over time, the Commission indicated that it did not believe that a one-time coordination would be effective to cover all launches that occur during an operator's license term but wanted to avoid imposing a coordination process that is overly burdensome or that injects uncertainty as to spectrum access and asked commenters to propose solutions.[319] Specifically, the Commission sought comment on other coordination processes that are streamlined and efficient for space launch operators but would also adequately protect Federal operations consistent with the provisions of the Commission and NTIA's MOU.[320] Commenters were asked to include detailed coordination procedures in their proposals, as well as the cost and benefits of the proposed process.

109. As a general matter, all of the commenters in the record support the use of frequency coordination and spectrum deconfliction to prevent harmful interference to co-frequency non-Federal/Federal operations and ensure the efficient use of spectrum in these bands.[321] Where they differ is when the coordination process should take place. While a few commenters argue in favor of a pre-license grant coordination approach,[322] most commenters favor a post-license grant coordination and spectrum deconfliction process.[323] ULA asserts that pre-license grant coordination is unnecessary because operators will be required to satisfy the service and technical rules and that post-license grant deconfliction and coordination through a third-party organization as has been done in the past will

[316] *See FNPRM*, 36 FCC Rcd at 7804, para. 104.

[317] *See FNPRM*, 36 FCC Rcd at 7802, para. 104.

[318] *See FNPRM*, 36 FCC Rcd at 7804, para. 105.

[319] *See FNPRM*, 36 FCC Rcd at 7804-05, para. 106.

[320] *See FNPRM*, 36 FCC Rcd at 7805, para. 107.

[321] *See, e.g.,* AIA Comments at 1; ICR Comments at 3-4; EIBASS Comments at 1-2, 7-8; Industry Participants Comments at 9; Axiom Comments at 3; Northrop Grumman Comments at 9-12, 17-18; NCTA Comments at 6.

[322] NAB believes that to ensure incumbent broadcasters are protected, the Commission should require frequency coordination in the 2025-2110 MHz band prior to granting an authorization. NAB Comments at 1. SBE asserts that there should be a coordination requirement prior to and during the license term in the 2025-2110 MHz band and that SBE's frequency coordination manager and local market coordinator should be involved. SBE Comments at 16. AFTRCC weighed in on both pre- and post-licensing coordination, stating that pre-application frequency coordination, along with service and technical rules, is an effective tool in preventing interference and conflict and that the telemetry downlink operations in the 2200-2290 MHz band would benefit the most from pre-application coordination, but that post-license coordination will be necessary because the bands are heavily used by Federal operators and space launches occur over a limited duration — it asserts that the post-license coordination should resemble the STA process in which applicants are required to coordinate and schedule operations directly with government area frequency coordinators (AFCs). AFTRCC Comments at 4-7.

[323] *See* ULA Comments at 4-6; 10, ULA Reply at 5-6; Boeing Comments at 15, 18-19; Boeing Reply at 13; SpaceX Comments at 14-15; SpaceX Reply at 4; SIA Comments at 5; Astra Reply at 5-6.

provide the flexibility for space launch operations that require spectrum at similar times and locations.[324] Boeing asserts that the multi-factored variability of space launches renders a pre-licensing coordination process ineffective and believes that specific approval for a launch is best addressed within the post-licensing coordination process which provides licensees the ability to amend their license if the technical parameters of a launch provider's operation change.[325] SpaceX does not believe it would be feasible to pre-coordinate launch activities under a nationwide licensing scheme, asserting instead that post-licensing coordination would ease the burden on Commission staff by going through NTIA and/or a coordination entity, depending on the degree of Federal or non-Federal presence in the band.[326] SpaceX notes that Boeing and ULA correctly observe that variable parameters in space launches render a pre-licensing coordination process inefficient and points out that in advocating for a pre-licensing approach, NAB and SBE are failing to realize that the current 0.5 dB degradation criterion already ensures sufficient coordination.[327] SIA points out that space launch and reentry parameters are variable to several uncontrollable factors thus making pre-licensing coordination not feasible, and suggests instead that third-party coordination and deconfliction would be better executed post-license grant given that launch providers would still need to comply with FCC service and technical rules prior to being granted a license.[328] Astra opposes requiring launch operators to file certifications to the FCC for every completed coordination because they present an unnecessary administrative burden and supports a post-licensing coordination approach, suggesting that showing compliance with FCC rules, including coordination, during the application process is sufficient.[329]

110. Comments submitted by Federal stakeholders emphasize the importance of coordinating on a case-by-case, launch-by-launch basis to ensure that Federal users in the bands are protected from harmful interference. NASA supports the need for post-license grant coordination on a launch-by-launch basis with the details of such coordination to be the subject of a NTIA/FCC MOU covering commercial space launch coordination with pre-launch coordination requests to be submitted no less than 30 days before launch and a required response to be provided no less than 15 days after receipt.[330] DoD believes that due to the interference potential in these bands and significant congestion in the 2025-2110 MHz and 2200-2290 MHz bands, coordination of each use by non-Federal users is vital and required.[331] Through this coordination DoD receives specific technical and operational details of a planned launch which allows DoD to assess the potential for harmful interference and adjust its operations or suggest

[324] ULA Comments at 4-6. ULA points out that there is precedent for post-license grant coordination, citing non-Federal fixed-satellite service (FSS) licensees who currently coordinate use of the spectrum they share with Federal operations after they receive their licenses but at least fourteen days before they deploy service. ULA Comments at 9-10. Commenting on SBE's request for pre-license coordination, ULA asserts that SBE is ignoring the dynamic nature of space launches and that the plethora of variable parameters for short-duration operations renders pre-license coordination highly unlikely. ULA Reply at 5-6. ULA argues that SBE is overlooking the fact that traditional satellite systems have generally static parameters for long-duration operations making pre-license coordination of those operations feasible. ULA Reply at 5-6.

[325] Boeing Comments at 15, 18. Boeing asserts that a pre-licensing coordination with non-Federal users could also raise significant anti-competitive concerns, Boeing Comments at iv, 18, but adds that while it's against requiring pre-license coordination, it's not opposed to permitting it only on a voluntary basis because it could expedite the inter-agency coordination process. Boeing Reply at 13. Boeing agrees with NASA that a post-grant launch-by-launch coordination process grants commercial spectrum users *de facto* interference protection. Boeing Reply 6.

[326] SpaceX Comments at 14-15.

[327] SpaceX Reply at 4. SpaceX supports using this criterion if it facilitates coordination in the 2025-2110 MHz band. *Id*.

[328] SIA Comments at 5.

[329] Astra Reply at 5-6.

[330] NTIA/NASA Comments at 11, 14.

[331] NTIA/DoD Comments at 18, 21.

mitigations such as having the non-Federal user alter its operating parameters to facilitate a successful coordination.[332] NOAA supports coordination in both the 2025-2110 MHz and 2200-2290 MHz frequency bands for each launch and notes that Federal agencies undertake extensive inter-agency coordination efforts to ensure compatibility within these congested frequency bands so a similar level of effort must be required from commercial launch operators to ensure compatibility with existing Federal users.[333]

111. Based on the record in this proceeding, we find that post-license grant coordination will ensure cooperation with and avoid harmful interference to co-frequency entities, both Federal and non-Federal, operating in the 2025-2110 MHz and 2200-2290 MHz bands. We believe that post-license grant coordination in concert with a comprehensive nationwide, non-exclusive licensing regime will provide space launch operators access to the spectrum they need and relief from the administrative burdens associated with either a site-based licensing approval process or the current launch-by-launch STA regime. Post-license grant coordination will also endow them with the operational flexibility to modify their launch parameters (*e.g.*, frequency channels, antenna height, trajectory, power level) closer in time to the launch event and the latitude to adjust their services to accommodate demand as it arises.

112. We reach this decision based on the length of the license term (10 years) and a record that demonstrates the complicated logistics surrounding space launch operations, including multi-factored variability of launch elements that are beyond the licensee's control, as well as changes in the operational environment on and around Federal ranges and other sites that are likely to occur over time. On balance, these factors suggest that a one-time pre-licensing coordination would be insufficient to protect co-frequency entities from harmful interference in spectrum bands that commenters suggest are already congested.[334] Moreover, given the anticipated growth of space launch services, we find that a one-time pre-licensing coordination is unlikely to cover all the space launches that will occur over the life of an operator's license nor would it be able to anticipate the introduction of new launch sites, changes in launch vehicles, or technological innovations that are likely to occur during those ten years. For these reasons, we believe that third-party coordination and spectrum deconfliction would be better executed post-license grant.

113. Post-licensing coordination affords space launch operators who are sharing these frequency bands (and launch facilities) the opportunity and flexibility to adjust specific areas of operation (site location, launch vehicle, or in-flight trajectories, etc.) as they come up with each individual launch event, particularly as they get closer to the scheduled launch date. For space launch operators seeking launch clearance, it is critically important that their post-grant coordination requests cover the key elements of a launch so they can adequately complete the required per-launch coordination process. Consistent with our decision to adopt allocation and service rules for space launch services for two distinct bands, 2200-2290 MHz (space-to-earth) and 2025-2110 MHz (earth-to-space), we will adopt a post-license grant coordination approach that takes into account the unique characteristics of these bands. We will also approach coordination in a manner that reflects our decision to apply a modified 3650-3700 MHz licensing framework[335] to grant space launch operators a nationwide, non-exclusive blanket license

[332] NTIA/DoD Comments at 18. DoD notes that coordination of each use of 2025-2110 MHz is required. While DoD does not propose specific limits upon locations from which commercial space launch operations may occur, DoD does note that locations close to major DoD test and training ranges (excluding specific space launch ranges such as Vandenberg Space Force Base and Cape Canaveral Space Force Stations) may result in more challenging coordination scenarios due to impacts to DoD terrestrial operations. NTIA/DoD Comments at 21-22. DoD also notes that commercial space launch operations can impact more than just spectrum use, citing examples such as restrictions on airspace used for DoD testing, training, and exercises or DoD's ability to operate in a Global Position System-denied environment due to its potential impact on space launch operations. NTIA/DoD Comments at 22.

[333] NTIA/NOAA Comments at 27.

[334] *See, e.g.*, NTIA/NASA Comments at 12; NTIA/DoD Comments at 18, 21; NTIA/NOAA Comments at 27.

[335] *See discussion supra* at Section III.B.1.d (Licensing).

on the condition that they agree to cooperate with and avoid harmful interference to co-frequency entities and cannot operate launch sites and corresponding radio stations (earth/ground stations, stations on their launch vehicles, and any associated mobile stations on the ground) until they have first registered them under their license after completion of coordination through a third-party coordinator.[336]

114. We find significant efficiencies justifying the use of a third-party frequency coordinator in the bands at issue. Given the variety of non-Federal and Federal stakeholders sharing this spectrum, all with different operational and technical needs, and the administrative burdens licensees face in having to submit to different coordination processes, we find it prudent to designate a single entity that will serve as both a clearinghouse and as an intermediary in negotiating operational parameters with SBE, NTIA, government AFCs, and co-frequency operators.[337] Currently, space launch operators are tasked with determining the impact of their services on non-Federal and Federal users whose operations may or may not have already been coordinated by SBE to protect BAS, CARS, and LTTS in the 2025-2110 MHz band as well as the effect on co-frequency operators and Federal incumbents that must be protected in both bands. We find that a single third-party coordinator armed with knowledge of the operational guidelines imposed by prior coordination can cross reference that data with new requests for coordination in real time and act as an intermediary with SBE and NTIA to speed up the review process and thus expedite deployment in the bands. Absent the assistance of a centralized coordinator familiar with the operational and protection needs of non-Federal operators and Federal incumbents as well as the terms of previously completed launch coordination, individual space launch operators will find it far more difficult to navigate the requisite layers of approval in a timely fashion, particularly considering the short turnaround times and multi-factored variability of space launches and the fluctuating needs of Federal users in these heavily trafficked bands. Having a third-party entity perform those duties on behalf of the operators will streamline the coordination process, offer greater flexibility to operators as they approach scheduled launch dates, and ensure protection for incumbent operations against harmful interference.

115. Accordingly, we hereby adopt a post-license grant coordination regime that will be facilitated by a third-party space launch frequency coordinator and require a two-part process: (1) for the

[336] As stated previously, space launch licensees also have an obligation to delete registrations for unused fixed, base, itinerant, and mobile stations. *See discussion supra* at Section III.B.1.d (Licensing).

[337] A number of commenters support the designation of a third-party organization to serve as a frequency coordinator. AIA supports the creation of a nationwide, non-exclusive license process requiring post-license grant spectrum de-confliction by a neutral third-party such as AFTRCC and requiring operators to coordinate in good faith, even if coordination is facilitated by a neutral third-party. AIA Comments at 1. Stating that the Commission has repeatedly recognized the effectiveness of third-party frequency coordination, and noting that such an approach would be suitable for launch and entry operation, SIA asserts that AFTRCC or another qualified third-party facilitator can effectively handle the coordination process by taking on processes and capabilities to track launch pad and launch window availability; allow launch operators to schedule slots in anticipation of coordination; and ensure they schedule slots in good faith. SIA Comments at 4-7, Letter from Tom Stroup, President, SIA, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 13-115, RM -11341, at 4 (filed Nov. 9, 2023) (SIA Ex Parte). Astra advocates modernizing the coordination process by adopting an automated system or bringing in a third-party entity if such an approach isn't feasible. Astra Reply at 6-7. Pointing out that SIA, ULA, and Boeing support its designation as the frequency coordinator, AFTRCC asserts that it is well qualified to serve as the frequency coordinator and while it does not oppose the idea of an automated portal, AFTRCC points out that a third-party entity would have to be designated to build and manage the portal. AFTRCC Reply at 4-8 (citing SIA Comments at 7, ULA Comments at 6, and Boeing Comments at 18-19). AFTRCC states a frequency coordinator would serve as a single point of contact for applicants to initiate frequency coordination and licensing; verify that the applicant is qualified for the frequencies and that the frequency request is compliant with the allocation; verify that the requested frequencies will not conflict with any other proposed or existing frequency assignments within a specified area; and seek written concurrence from the applicable AFCs and coordinator(s) for any other non-Federal users in the shared bands (e.g., SBE for the 2025-2110 MHz band); and respond to the applicant in writing with the results of coordination including any conditions or limitations. Letter from Stephen J. Rosen, Counsel to AFTRCC, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 13-115, RM -11341, at 12 (filed Dec. 13, 2021) (AFTRCC Ex Parte).

2025-2110 MHz band, a site-specific coordination of the operator's stations and launch parameters with BAS operations; and (2) for both bands, coordination on a per-launch basis with NTIA. In practice, as described in more detail below, coordination processes for the two bands will be different given the existing 2025-2110 MHz coordination process currently conducted by the Society of Broadcast Engineers, Inc. (SBE) to protect BAS, CARS, and LTTS operations and previously coordinated Federal incumbents in the band.

116. *2025-2110 MHz Post-license Coordination (Earth-to-Space).* Once a launch operator registers its site and corresponding station information with the Commission in ULS and it is made available to the space launch frequency coordinator, the coordinator will verify that the operator is licensed and then contact the SBE Frequency Coordination Manager and the relevant SBE local market coordinator for the 2025-2110 MHz band to initiate coordination for the local launch site to protect non-Federal incumbents.

117. For this process, we adopt an approach that mirrors the coordination approach that Federal users in the band must follow. As noted in the *FNPRM*, Federal entities seeking to use the 2025-2110 MHz band for TT&C uplink purposes must coordinate with all BAS and other non-Federal incumbents that may be affected by the Federal operation prior to submitting an application, and must engage the local BAS frequency coordinator(s) in support of achieving such coordination.[338] In the context of pre-license grant coordination, the Commission sought comment on whether to require commercial space launch operators seeking to use the band to follow the same coordination process to help ensure that launch operations will not cause harmful interference to applicable non-Federal and Federal incumbents in the band.[339] In its comments, SBE described this Federal precedent and pointed out that the terms of a subsequent SBE-NAB-DoD Memorandum of Understanding (MOU) are currently being used to coordinate Federal entities seeking to use the 2025-2110 MHz band for TT&C uplink purposes.[340] EIBASS, NAB, and SpaceX supported the use of the BAS coordination approach set forth in the SBE-NAB-DoD MOU.[341]

118. Accordingly, we adopt the same site-specific BAS coordination process (and any re-coordination of the launch site) for commercial space launch services for our post-license grant coordination regime. We find merit in SBE's suggestion that this means that each space launch communications operator, through a third-party space launch frequency coordinator, should either complete BAS coordination for its identified sites or provide a showing to the space launch frequency coordinator (a) that it has previously coordinated its proposed operations with the SBE Frequency Coordination Manager; (b) that it has ascertained that its proposal will not constrain, preclude, nor interfere with incumbents in the band, including BAS, CARS and LTTS licensees; and (c) that it has demonstrated in a technical showing that its proposed operation will not create more than 0.5 dB increase in the noise threshold of a receiver at a fixed or temporary fixed electronic news gathering (ENG) receive site.[342]

119. We do not anticipate that there is a need for a subsequent per-launch coordination with BAS as long as the site operation for the proposed launch is consistent with the technical characteristics

[338] *See FNPRM*, 36 FCC Rcd at 7802, para. 104.

[339] *Id*.

[340] SBE indicated that footnote US92 to the Table of Frequency Allocations established a mechanism by which displaced Federal operations would be accommodated in the 2 GHz band without interference, and without constraint on the current and future deployment of BAS operations in the band and that this process has been effectuated by SBE, NAB, and DoD in an MOU that is in the final stages of development. *See* SBE Comments at 8-10 (citing 47 CFR § 2.106 footnote US92).

[341] *See* EIBASS Comments at 1; NAB Comments at 1, 4-7; SpaceX Reply at 4; *see also* SBE Comments at 8-10, 15-17.

[342] *See* SBE Comments at 2-3, 6-12, 18.

and launch parameters that were successfully coordinated previously and complies with any conditions or agreements resulting from such prior coordination. In other words, there is no need to conduct a per-launch coordination with BAS if the operator/frequency coordinator can perform the technical calculations to show its proposed uplink operations will meet the SBE-NAB-DoD protection criteria.[343] We find that this approach will streamline the coordination process with BAS, particularly for space launch operators who provide multiple launches over their license term with the same sites that were previously coordinated and retain the same technical and operational characteristics. We note, however, that if these conditions are not met then the site must be re-coordinated pursuant to the site-specific BAS coordination process outlined above.

120. With respect to protecting Federal users in the band, we will require coordination with NTIA on a post-grant, per-launch basis. This process will be initiated after the operator obtains its license and provides applicable launch site and corresponding station information to the Commission in ULS, and submits this data, along with its proposed operational parameters, in a coordination request to the third-party space launch frequency coordinator. Given the variability of space launches, per-launch coordination offers an effective means of protecting co-frequency Federal users in the 2025-2110 MHz band from any potentially harmful interference stemming from a particular launch. We note that per-launch coordination is particularly well suited for accommodating the changing nature of Federal spectrum use. As demonstrated by NTIA's Federal Government Spectrum Use Reports, Federal spectrum uses and needs continue to evolve over time.[344] The timely nature of a per-launch coordination with NTIA, facilitated by a third-party frequency coordinator, would account for the fluctuating needs of Federal TT&C used to track mobile satellites and the shifting demands of Federal mobile users that tend to change locations over time. We contemplate a process that will be functionally similar to the current per-launch STA coordination procedures. As noted in the record, frequency coordination has been an effective tool in ensuring equitable spectrum sharing by co-frequency non-Federal and Federal users without causing harmful interference.[345] While we adopt baseline power and emissions standards to facilitate spectrum sharing and interoperability among Federal and non-Federal operations, as explained in further detail below, per-launch coordination will be critical in determining additional technical and operational parameters necessary to permit space launch operators to carry out missions without causing harmful interference to other users of the spectrum. Given the intermittent nature of space launch operations as well as evolving Federal spectrum uses, this targeted per-launch approach ensures timely and accurate guidance closer to the launch date by affording parties the flexibility to make adjustments necessary to protect co-frequency Federal users.

121. *2200-2290 MHz Post-license Coordination (Space-to-Earth)*. Similarly, for the 2200-2290 MHz band, a space launch operator must identify applicable site and corresponding station information with the Commission in ULS and make it, along with its proposed operational details, available to the third-party space launch frequency coordinator, who verifies that the operator is licensed and that the request comports with rules, to initiate the coordination process with NTIA. Coordination with NTIA will be functionally similar to the current STA coordination process (i.e., site-specific and per-

[343] *See* EIBASS Comments at 4-5; EIBASS Reply at 6.

[344] *See* National Telecommunications and Information Administration, Federal Government Spectrum Use Reports 225 MHz – 7.125 GHz available on the NTIA webpage at https://ntia.gov/page/federal-government-spectrum-use-reports-225-mhz-7125-ghz.

[345] For example, noting that coordination of each use by non-Federal users is vital, DoD asserts that coordination provides it with specific technical and operational details that it uses to assess the potential for interference and then decide whether to accept the risk of interference, adjust its operations accordingly, or suggest other mitigations including changing the parameters of the non-Federal operations to facilitate successful coordination. *See* NTIA/DoD Comments at 18.

launch coordination with NTIA and the relevant Federal offices).[346] Similar to the 2025-2110 MHz band, the coordination process will enable any necessary adjustments regarding the operational and technical parameters on a per-launch basis to protect against harmful interference.

122. We direct WTB to seek further comment on the circumstances attending the designation of a third-party space launch coordinator, including a mechanism for selecting a frequency coordinator.[347] As noted, WTB will issue a public notice regarding the coordination process after reviewing the record, which will include information regarding the third-party frequency coordinator.

2. Technical Rules for Space Launch Operations

123. As noted in the *FNPRM*, we seek to establish technical parameters for commercial space launch operations that will support the evolving interests and requirements of commercial space entities while minimizing harmful interference between Federal and non-Federal operations.[348] We proposed that the current framework applicable to Federal operators would offer a predictable and tested model that facilitates the efficient use of spectrum while minimizing interference among users in these bands,[349] and proposed to adopt a similar set of technical rules for non-Federal space launch operations in the 2200-2290 MHz and 2025-2110 MHz bands.[350] We find that adopting baseline emissions and power limits similar to that which currently apply to Federal operations will facilitate interoperability and greater predictability regarding operations in these bands. As discussed previously, however, the variability of space launches and the changing needs of Federal operations may require additional or alternative technical requirements for a given launch as determined pursuant to the coordination process. We conclude that adopting a technical framework that relies on close coordination between Federal and non-Federal entities as well as the use of similar emissions and power limits will help users of the bands to avoid harmful interference while allowing commercial launch providers to benefit from the economies of scale inherent from using the same communications systems for both Federal agencies and commercial customers.[351]

a. 2200-2290 MHz Band

124. For non-Federal space launch operations, the 2200-2290 MHz band typically is used for sending telemetry data from the launch vehicle to ground controllers. According to NTIA, Federal operations in the band primarily consist of tracking, telemetry, and control data communications for control of spacecraft, as well as foreign space agency mission spacecraft.[352] NTIA explains that the band is used by Federal agencies in space operation, space research and Earth exploration-satellite service

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[346] The *FNPRM* indicated that the Commission grants space launch providers special temporary authority (STA) under the Part 5 experimental licensing rules to use particular frequencies on a non-interference basis during their operations. The Commission coordinates use of the spectrum with the National Telecommunications and Information Administration (NTIA), which consults with affected Federal agencies in order to authorize a single launch with the STAs covering pre-launch communications operations and communications with the space launch vehicle and payload during orbital and reentry phases of the operations. The *FNPRM* noted that these STAs are issued with the condition that any future launches by the grantees would be considered on a case-by-case basis and that there is no expectation that experimental STAs for future launches would be approved. *See FNPRM*, 36 FCC Rcd at 7767-68, para. 6.

[347] *See infra* Appendix A (adopting 47 CFR § 0.331(g)).

[348] *FNPRM*, 36 FCC Rcd at 7805, para. 108.

[349] *FNPRM*, 36 FCC Rcd at 7805, para. 108.

[350] *FNPRM*, 36 FCC Rcd at 7805, para. 108.

[351] *FNPRM*, 36 FCC Rcd at 7805-06, para. 109.

[352] National Telecommunications and Information Administration, Federal Government Spectrum Use Reports, 2200-2290 MHz, at 1 (Dec. 1, 2015), https://www.ntia.doc.gov/files/ntia/publications/compendium/2200.00-2290.00_01DEC15.pdf.

(space-to-Earth) for communications with earth stations and return links via TDRSS (space-to-space), which provides links between low earth orbiting spacecraft and earth stations. Federal agencies and the military also use this band for terrestrial telemetry operations for aircraft, missile flight testing, land and maritime mobile communications, and fixed point-to-point microwave relay communications.[353]

125. The *FNPRM* noted that space launch operations may potentially operate under a dual regulatory approach, and sought comment on the appropriate technical requirements under both a space operations and aeronautical mobile allocation.[354] We asked whether these technical rules align with NTIA's requirements for both Federal and non-Federal space operations and how we might promote consistency between and among the various, similarly situated services authorized in the band.[355]

126. *Emission masks*. In the *FNPRM*, we sought comment on whether to apply NTIA rules that require that earth and space stations in the space operations service above 470 MHz comply with the emissions mask standard established in section 5.6.2 of the NTIA Manual.[356] Section 5.6.2 provides that for frequencies offset from the assigned frequency less than the 50 percent of the necessary bandwidth, no attenuation is required.[357] At a frequency offset equal to 50 percent of the necessary bandwidth, an attenuation of at least 8 dB is required,[358] while frequencies offset more than 50 percent of the necessary bandwidth should be attenuated in accordance with a specified formula dependent on necessary bandwidth and frequency displaced from the center of the emission bandwidth.[359]

127. Further, we noted that section 5.3.9 of the NTIA Manual provides that aeronautical telemetry operations in the 2200-2290 MHz band must meet the emissions limits from Chapter 2 of the Inter-Range Instrumentation Group (IRIG) Standard 106-15, Part 1.[360] Chapter 2 of IRIG Standard 106-15, Part 1 (hereinafter IRIG Standard 106-15), in turn, includes the following aeronautical telemetry spectral mask: all spectral components larger than −[55 + 10xlog(P)] dBc (*i.e.*, larger than −25 dBm) at the transmitter output must be within the spectral mask calculated using the following equation:

$$M(f) = K + 90 \log(R) - 100 \log |f\text{-}fc|; |f\text{-}fc| \geq R/m$$

where M(f) = power (dBc) at frequency f (MHz)

K = −20 for analog signals

K = −28 for binary signals

K = −61 for FQPSK-B, FQPSK-JR, SOQPSK-TG

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[353] National Telecommunications and Information Administration, Federal Government Spectrum Use Reports, 2200-2290 MHz, at 1 (Dec. 1, 2015), https://www.ntia.doc.gov/files/ntia/publications/compendium/2200.00-2290.00_01DEC15.pdf.

[354] *FNPRM*, 36 FCC Rcd at 7807, 7808, paras. 114, 117.

[355] *FNPRM*, 36 FCC Rcd at 7807, para. 114.

[356] *See* NTIA Manual § 5.2.2.1.

[357] *See* NTIA Manual § 5.6.2 ("Unwanted Emission Mask"). Necessary bandwidth is defined as follows: "For a given class of emission, the width of the frequency band which is just sufficient to ensure the transmission of information at the rate and with the quality required under specified conditions." *See* NTIA Manual § 6.1.1. Methods of calculating necessary bandwidth are provided in Annex J. *See* NTIA Manual, Annex J. We note that the Commission also applies the same definition for "necessary bandwidth." *See, e.g.*, 47 CFR § 2.1.

[358] *See* NTIA Manual § 5.6.2.

[359] *See* NTIA Manual § 5.6.2.

[360] *FNPRM*, 36 FCC Rcd at 7807-08, para. 116. *See* NTIA Manual, §§ 5.2.2.1, 5.3.9. *See also* Telemetry Standards, "Transmitter and Receiver Systems," IRIG Standard 106-15 (Part 1), Chapter 2, (July 2015) (IRIG Standard 106-15), *available at* http://www.irig106.org/docs/106-15/. The NTIA Manual provides that "aeronautical telemetering" in the 2200-2290 MHz band includes "telemetry associated with launch vehicles[.]" NTIA Manual § 4.3.4(2).

K = −73 for ARTM CPM

fc = transmitter center frequency (MHz)

R = bit rate (Mbps) for digital signals or (Δf +fmax)(MHz) for analog FM signals

M = number of states in modulating signal (m = 2 for binary signals, m = 4 for quaternary signals and analog signals)

Δf = peak deviation

fmax = maximum modulation frequency[361]

128. The *FNPRM* also sought comment on alternative approaches, stating that, while the Commission seeks to align the technical parameters used by Federal and non-Federal operations to enable interoperability, we also seek to implement measures that will help licensees to simplify or streamline operations, while ensuring that other users in the band are protected.[362] Accordingly, we requested comment on the utility of using a single mask for non-Federal operations in the band rather than NTIA's dual emissions mask approach.[363] We asked, for example, whether to apply the section 5.6.2 space operations emissions mask to all stages of flight, or whether alternatively to apply emissions limits set forth in the Commission's rules for space stations found in Part 25[364] or an alternative mask found in section 87.139.[365]

129. There was limited comment regarding the emissions limit(s) that should be applied. Of the few commenting on this issue, SpaceX supports the use of a single mask over NTIA's dual emissions mask approach, arguing that "this will avoid artificial delineations and enable commercial launch providers to treat launch activities as a single continuum…."[366] SpaceX, noting that the Commission and NTIA have previously utilized a "unitary approach," argues that we should adopt the NTIA emissions mask for space operations for the 2200-2290 MHz band.[367]

130. ULA, however, supports following the NTIA's dual mask approach with one for space emissions and the other for aeronautical mobile emissions, noting that launch operators build vehicle

[361] *See* IRIG Standard 106-15, § 2.4.6.

[362] *FNPRM*, 36 FCC Rcd at 7808, para. 117.

[363] *FNPRM*, 36 FCC Rcd at 7808, para. 117. The *FNPRM* observed that similar launch telemetry services in other bands have been subject to a single aeronautical standard at all stages. For example, the NTIA Manual provides that the 1435-1525 MHz band's terrestrial mobile service includes launch telemetry at all stages, including all "telemetry associated with launching and reentry into the Earth's atmosphere as well as any incidental orbiting prior to reentry of manned objects[.]" *See* NTIA Manual § 4.3.4(1). The Commission has also administered launch telemetry at all stages as an aeronautical mobile service. *See* 47 CFR 2.106, Table of Frequency Allocations, U.S. Table, US343; 47 CFR § 87.303(d)(1) (providing that frequencies in the 1435-1525 MHz and 2360-2395 MHz bands, with non-Federal allocations of Mobile (aeronautical telemetry) and Mobile, respectively, are assigned in the mobile service primarily for aeronautical telemetry including "telemetry and associated telecommand operations associated with the launching and reentry into the Earth's atmosphere, as well as any incidental orbiting prior to reentry, of objects undergoing flight tests").

[364] *See* 47 CFR § 25.202(f).

[365] *FNPRM*, 36 FCC Rcd at 7808, para. 117. Section 87.139 specifies that: (1) on any frequency removed from the assigned frequency by more than 50 percent, up to and including 100 percent of the authorized bandwidth, at least 25 decibels attenuation; (2) on any frequency removed from the assigned frequency by more than 100 percent, up to and including 250 percent of the authorized bandwidth, at least 35 decibels attenuation; and (3) on any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth, at least 43 + 10 log(pY) decibels or 80 decibels, whichever is the lesser attenuation. 47 CFR § 87.139.

[366] SpaceX Comments at 18.

[367] SpaceX Comments at 18 (referencing NTIA Manual § 4.3.4(1), 47 CFR §§ 2.106 footnote US343 and 87.303(d)(1)).

designs around this method for current NTIA authorizations.[368] Alternatively, ULA states that, if we opt to establish a uniform mask, it opposes the use of the IRIG Standard 106-15 as it would not be able to satisfy that standard during the space operations phase of flight.[369] It argues that the IRIG Standard 106-15 emissions mask—covering land and mobile telemetry links—is based on non-orbital, aeronautical telemetry systems that use spectrally efficient modulation methods.[370] ULA asserts that the IRIG Standard 106-15 mask, therefore, does not account for orbital launch vehicle links that rely on government earth stations that cannot support these modulations and, as a result, cannot comply with the mask.[371] To the extent a single mask is adopted, ULA would instead support the use of the section 5.6.2 space operation emission mask, noting that it accommodates all launch vehicles during their orbital phase while protecting co-frequency spectrum users.[372]

131. We agree with ULA that we should adopt NTIA's dual mask approach, and our adoption of a Mobile allocation for this band facilitates this approach.[373] As noted, NTIA regards launch vehicles as undergoing two stages: an aeronautical mobile stage and a space operation stage. The NTIA rules treat the telemetry system during the first stage of a launch vehicle as an aeronautical mobile system.[374] The NTIA rules provide that after the first stage (which it views as the first 15 minutes of flight), the launch vehicle operates as a space operation service during the second stage or higher stages of a launch.[375] As we have noted, we seek to align the technical parameters used by Federal and non-Federal operations to facilitate interoperability with respect to use of the 2200-2290 MHz band, and to provide predictability regarding such operations for other users of the band. While we appreciate SpaceX's desire to avoid "artificial delineations," the application of the dual approach best accommodates operations in this band as it is the approach that is already being utilized and which has proven to be effective in protecting operations in the band. Accordingly, we will apply the dual aeronautical mobile and space operation emissions masks similar to those found in the NTIA rules.

132. *Power limits.* As noted in the *FNPRM*, the IRIG Standard 106-15 that NTIA applies to aeronautical telemetry in the 2200-2290 MHz band provides that the effective isotropic radiated power of a transmitter shall not exceed 25 watts and that the output power shall not exceed 25 watts.[376] In contrast, NTIA's requirements for space operations do not impose a power limit, and instead rely on a power flux-density limit established by the ITU.[377] The *FNPRM* sought comment on whether, consistent with the

[368] ULA Reply at 7-8.

[369] ULA Comments at 30; ULA Reply at 8.

[370] ULA Comments at 29-30.

[371] ULA Comments at 29-30. ULA notes that it has no ground station system of its own and relies on modulation-limited government earth stations.

[372] ULA Comments at 30.

[373] *See supra* Section III.A.

[374] NTIA Manual § 8.2.44 (stating that the telemetry system on the first stage of a launch vehicle is considered an aeronautical mobile system as it starts from the ground and ascends until the second stage and or any other upper stages of the rocket is engaged).

[375] NTIA Manual § 8.2.44.

[376] *See* IRIG Standard 106-15, Ch. 2 § 2.4.2.

[377] *See* NTIA Manual § 8.2.36; *see also* NTIA Manual, Annex B, § B.1.3 (establishing procedures for assessing compliance with power flux-density limits). The ITU Radio Regulations establish power flux-density limits at the surface of the Earth from space research, space operation, and Earth exploration-satellite services in the 2200-2290 MHz band in order to protect the fixed and mobile services in the band. *See* No. 21.16 of Article 21 of the ITU Radio Regulations. No. 21.17 of the ITU Radio Regulations provides that these limits may be exceeded on the territory of any administration who has so agreed, thus providing individual administrations with some flexibility in how these limits are implemented. *See also* Recommendation ITU-R SA.1273, https://www.itu.int/dms_pubrec/itu-

(continued….)

NTIA rules, to limit first-stage operations to an effective isotropic radiated power[378] of 25 watts and a transmitter output power of up to 25 watts, and sought comment on whether to apply a power flux-density limit on operations after the first stage.[379] Alternatively, to the extent we adopt a power flux-density limit in the band, the *FNPRM* asked whether no further limit on power is necessary, or whether we should adopt an alternative to the power limit in IRIG Standard 106-15.[380]

133. As in the case of emissions masks, we received limited comment on this issue. ULA argues that these limits are appropriate for aeronautical applications, but not for orbital launches.[381] ULA asserts that, given real-world practicalities and what it states as NTIA's previous acceptance of higher power levels, we should adopt power levels of "340 watts for the transmitter's ERP and 55 watts for the transmitter's output power."[382] ULA argues that relaxing the power limits in this manner should conservatively serve the needs of all launch service providers and ensure commercial interoperability with Federal space operations requirements.[383] SpaceX, on the other hand, supports the adoption of a single power flux-density limit for all aspects of launch operations rather than the use of power limits.[384] Such a limit, SpaceX argues, would eliminate the need for any additional limitations on power or for adopting what it describes as artificial distinctions between various launch operations, greatly simplifying compliance for launch providers.[385]

134. Upon review, we find that it is in the public interest to apply the dual stage aeronautical mobile and space operations approach for power limits as specified in the NTIA rules. While we recognize that there may be individual launch operations that require the use of technical parameters outside of the norm, there is insufficient information in the record that would support deviation from limits currently used by NTIA during the first/ascent stage—either with respect to a power increase or to the use of a power flux-density limit. Neither would serve our goal of facilitating interoperability with Federal launch operations. With respect to ULA's request to adopt much higher power limits to support orbital launches, we conclude that any orbital flight phase would be better governed by established space operation requirements, i.e. the NTIA/ITU space operation power flux-density limit.[386] Further, we do not find the use of the space operation power flux-density limit for all phases of a launch to be appropriate given that, as ULA notes, launch vehicles remain too close to the Earth's surface during the launch phase to comply with the limit.[387] Moreover, neither commenter discusses the impact of their proposals on other users of the 2200-2290 MHz band. Absent support that these proposals would not adversely affect other operations in the band and provide advantages to commercial space launch entities that would exceed

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r/rec/sa/R-REC-SA.1273-0-199710-I!!PDF-E.pdf. Recommendation ITU-R SA.1273 recommends similar levels as in Article 21, except that the reference bandwidth is 1 megahertz instead of 4 kilohertz and the level for space-to-space links in the Space Operations Service is 3 dB higher.

[378] We note that the *FNPRM* inadvertently specified the power limit as "effective radiated power" instead of "effective isotropic radiated power" at one point in paragraph 118 of the *FNPRM*. However, the intent of the paragraph was clear as the *FNPRM* sought comment on the IRIG Standard 106-15 limit, which specifies "effective isotropic radiated power."

[379] *FNPRM*, 36 FCC Rcd at 7808-09, para. 118.

[380] *FNPRM*, 36 FCC Rcd at 7808-09, para. 118.

[381] ULA Comments at 32.

[382] ULA Comments at 32-33. We note that ULA's comments specified "ERP" instead of "EIRP."

[383] ULA Comments at 33.

[384] Space X Comments at 18.

[385] SpaceX Comments at 18.

[386] We note that the scope of space launch operations adopted herein is limited to the launch and recovery/reentry operations and generally excludes longer term orbital operations.

[387] *See* ULA Comments at 34.

those that result from being able to operate with both Federal and non-Federal launch systems, we find it appropriate to follow the NTIA dual stage approach.

135. The *FNPRM* sought comment regarding the point at which we should apply the ITU power-flux density limits in the event we adopt the dual aeronautical mobile and space operation service approach.[388] We asked commenters whether the ITU power flux-density limits should apply when the launch vehicle is above a specified altitude, at a certain time after launch (such as after 15 minutes of flight), at a particular stage of operation, or based on some other launch operations criteria.[389]

136. ULA argues that power flux-density limits should apply only during the orbital flight phase.[390] ULA argues that the ITU limits are aimed at satellite communications; because liftoff and ascent flight phases (first-stage) do not involve emissions from satellites, power flux-density limits do not apply and are exclusive to the orbital flight phase (second-stage). Therefore, ULA argues that applying the power flux-density limits to strictly orbital flight would align with the ITU's intent and better reflect technical realities.[391] Rocket Lab similarly supports applying the power flux-density limit only after a launch vehicle reaches an orbital trajectory, arguing that it would be inappropriate to apply the power flex-density limit either on a time-after-launch basis or launch vehicle stage number.[392] It argues that rapid innovation in recent years, such as non-traditional staging, re-entry and landing, means that the Commission risks applying a regulatory model that may be inflexible to new innovations if regulations are based on time or flight stage.[393] Further, NASA notes that attempting to apply the power flux-density limits to even the second stage of a launch is problematic, and that given the short duration of telemetry transmissions from launch vehicles, application of these limits is not necessary.[394]

137. We find it appropriate to apply the NTIA aeronautical mobile power limits to first stage launch operations (first 15 minutes of flight) and ITU-derived space operation power flux-density limits to launch operations beyond the first stage. We will adopt the NTIA approach which regards the first stage of a launch as an aeronautical mobile operation and treats the second stage or higher stages of a launch as space operations. While Rocket Lab and NASA note the difficulties associated with defining the dividing line between aeronautical mobile operations and space operations according to launch stages, we find that doing so provides a predictable approach and permits the similar treatment of Federal and non-Federal space launch operations. To the extent that this approach presents technical issues for a given launch (for example, the approach would require the application of the power flux-density limit too early in a launch), operators may seek a waiver of this provision.[395]

b. 2025-2110 MHz Band

138. The 2025-2110 MHz band supports fixed and mobile services on a primary basis for non-Federal terrestrial use. As noted, the band is allocated to BAS and LTTS for fixed and mobile use and to CARS for mobile use only. Federal operations include communications with satellites or other space stations, as well as between satellites or spacecraft, occurring under primary allocations for space operations (Earth-to-space) (space-to-space), space research (Earth-to-space) (space-to-space), or Earth

[388] *FNPRM*, 36 FCC Rcd at 7809, para. 119.

[389] *FNPRM*, 36 FCC Rcd at 7809, para. 119.

[390] ULA Comments at 33.

[391] ULA Comments at 34 (noting that during liftoff and early ascent phases of flight, launch vehicles remain close enough to the Earth such that free space propagation losses alone will not reduce received signal power within PFD limits).

[392] Rocket Lab Comments at 2-3.

[393] Rocket Lab Comment at 2-3.

[394] NTIA/NASA Comments at 14.

[395] Such issues may potentially be resolved as part of the registration and coordination process for a given launch.

exploration-satellite service (Earth-to-space) (space-to-space).[396] Federal agencies operate earth stations in this band for tracking and command of manned and unmanned Earth-orbiting satellites and space vehicles either for Earth-to-space links for satellites in all types of orbits or through space-to-space links using TDRSS. In addition, NOAA operates earth stations in this band to control the Geostationary Operational Environmental Satellite (GOES) and Polar Operational Environmental Satellite (POES) meteorological satellite systems.[397] As a result of the relocation of military operations from the 1755-1780 MHz band, the 2025-2110 MHz band also includes a primary Federal allocation for fixed and mobile services, restricted to use by the military services and subject to certain provisions codified in footnote US92 of the U.S. Table.[398]

139. *Emissions Limits.* As discussed in the *FNPRM*, the most analogous authorized Federal operation in the 2025-2110 MHz band is earth station telecommand transmissions to spacecraft, which operate under space operations rules.[399] As discussed above, NTIA requires that earth and space stations in the space operations service above 470 MHz comply with the emissions mask standards established in section 5.6.2 of the NTIA Manual. Section 5.6.2 provides that for frequencies offset from the assigned frequency less than the 50 percent of the necessary bandwidth, no attenuation is required.[400] At a frequency offset equal to 50 percent of the necessary bandwidth, an attenuation of at least 8 dB is required, while frequencies offset more than 50 percent of the necessary bandwidth should be attenuated in accordance with a specified formula dependent on necessary bandwidth and frequency displaced from the center of the emission bandwidth.[401] The *FNPRM* proposed to adopt the NTIA's emissions mask for commercial space launch transmissions in the 2025-2110 MHz band, except that we proposed to apply attenuation requirements to the licensee's assigned frequencies rather than requiring a separate calculation of necessary bandwidth.[402]

140. SpaceX agrees that we should apply the emissions mask applicable to space operation service for operations in the 2025-2110 MHz band.[403] Other than SpaceX, we received no other comment regarding the appropriate emissions limit for this band. Accordingly, in line with our overall approach for space launch technical rules, we will apply an emissions mask using the same limit as that set forth in section 5.6.2 of the NTIA Manual.

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[396] *See* National Telecommunications and Information Administration, 2025-2110 MHz, at 4 (March 1, 2014), https://www.ntia.doc.gov/files/ntia/publications/compendium/2025.00-2110.00_01MAR14.pdf (listing types of applications and the number of assignments by agency).

[397] *See* National Telecommunications and Information Administration, 2025-2110 MHz, at 1 (March 1, 2014), https://www.ntia.doc.gov/files/ntia/publications/compendium/2025.00-2110.00_01MAR14.pdf (listing types of applications by agency).

[398] *See* 47 CFR § 2.106 footnote US92; *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*, GN Docket No. 13-185, Report and Order, 29 FCC Rcd 4610, 4689, para. 211 (2014). Footnote US92 includes, among other provisions, a requirement that military fixed and mobile operations in the 2025-2110 MHz band may not cause harmful interference to or constrain the deployment and use of the band by BAS, CARS, or LTTS, a requirement of coordination in accordance with a Memorandum of Understanding between Federal and non-Federal fixed and mobile operations, and a provision that Non-Federal licensees in the band shall make all reasonable efforts to accommodate military mobile and fixed operations but that the use of the band by the non-Federal fixed and mobile services has priority over military fixed and mobile operations. *See* 47 CFR § 2.106 footnote US92.

[399] *See FNPRM*, 36 FCC Rcd at 7811, para. 127.

[400] *See* NTIA Manual § 5.6.2. Methods of calculating necessary bandwidth are provided in Annex J. *See* NTIA Manual, Annex J.

[401] *See* NTIA Manual § 5.6.2.

[402] *FNPRM*, 36 FCC Rcd at 7812, para. 128.

[403] SpaceX Comments at 18.

141. Further, we will retain the provision in section 5.6.2 which specifies attenuation requirements based on a separate calculation of necessary bandwidth. Although SpaceX supports the *FNPRM's* proposal to apply attenuation requirements based on a licensee's assigned frequencies,[404] we find that it is more appropriate to apply the same methodology that is used currently. Given that we seek to apply a technical framework that provides predictability and minimizes the risk of interference among users in the band, we find that applying the section 5.6.2 methodology will provide consistency and prevent confusion. Accordingly, we will not adopt our proposal to permit space launch operators to determine applicable attenuation requirements using the licensee's assigned frequencies.[405]

142. *Power limits.* Section 8.2.35 of the NTIA manual requires that the EIRP transmitted in any direction towards the horizon by a Federal earth station in bands between 1 GHz and 15 GHz that are shared with stations in the fixed or mobile service, which includes the 2025-2110 MHz band, shall not (with limited exceptions) exceed the following limits:

+40 dBW in any 4 kHz band for $\theta \leq 0°$

+40+3θ dBW in any 4 kHz band for $0° < \theta \leq 5°$

where θ is the angle of elevation of the horizon viewed from the center of radiation of the antenna of the earth station and measured in degrees as positive above the horizontal plane and negative below it.[406]

143. As in the case with the 2200-2290 MHz band, SpaceX supports adoption of a single power flux-density limit for all aspects of launch operations in lieu of a specific power limit on the grounds that it would obviate the need for any additional limitations on power or for adopting artificial distinctions between various launch activities.[407]

144. As we noted with respect to SpaceX's proposal to apply a power flux-density limit to 2200-2290 MHz band operations, SpaceX does not provide sufficient information regarding the impact to other users of the 2025-2110 MHz band and provides no support as to whether using the space operation power flux-density limit will adequately protect other operations. Instead, SpaceX mainly argues that adopting a single flux-density limit for all aspects of a launch operation will simplify compliance for launch operators. While we seek to adopt rules that will help space launch entities to simplify or streamline operations, it is necessary that any measures that we take will also ensure that other users of the band are protected. Further, although SpaceX argues that ITU and NTIA regulations permit the use of the power flux-density limit for the 2025-2110 MHz band,[408] the power limits above are the requirements that both ITU and NTIA specify for earth stations in bands that are shared with stations in the fixed or mobile service. Accordingly, we adopt the same power limits as those set forth in section 8.2.35 of the NTIA Manual.

145. *Compliance with technical specifications.* In its Reply Comments, Northrop Grumman

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[404] SpaceX Comments at 23.

[405] Both SpaceX and ULA favor applying this method to the 2200-2290 MHz band as well. *See* SpaceX Comments at 18; ULA Comments at 30. In the *FNPRM*, however, we proposed to apply attenuation requirements using a licensee's assigned frequencies rather than requiring a separate calculation of necessary bandwidth only for the 2025-2110 MHz emissions mask.

[406] NTIA Manual § 8.2.35; *see also Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, ET Docket No. 00-258, Seventh Report and Order, 19 FCC Rcd 21350, para. 33 (2004) (noting that this provision of the NTIA Manual applies to Defense Department earth stations for tracking, telemetry, and commanding that operate in the 2025-2110 MHz band). We note that, under this standard, there is no power limit for angles of elevation above five degrees.

[407] SpaceX Comments at 18-19.

[408] SpaceX Comments at 18-19.

notes that because launch providers operate from Federal launch sites, launch vehicles and associated ground stations meet applicable Federal technical requirements, including emission limits, power limits, and power flux-density limits.[409] Northrop Grumman recommends that, to ensure consistency and to avoid differing standards among launch sites, the Commission permit operators to demonstrate compliance with either 1) any new FCC requirements adopted in this proceeding or 2) existing Federal requirements serving the same purpose.[410] Northrop Grumman argues that the latter is necessary to ensure that any new rules that we apply to launch vehicle operators do not require that existing launch equipment be redesigned or modified or be subject to further regulatory requirements.[411] Alternatively, Northrop Grumman argues that if we impose new technical standards, we should grandfather existing operators and exempt their current launch vehicles from these requirements. Northrop Grumman asserts that this flexibility is necessary to ensure that the application of any new technical standards does not delay or impact upcoming launches or require that existing launch vehicles be modified or subject to further regulatory requirements.[412]

146. While we seek to adopt rules that will facilitate the continued growth of the commercial space launch sector, and avoid policies that will negatively impact launch operations, we are hesitant to grandfather operations that may not meet current required technical specifications. For example, Northrop Grumman notes that transmitters on its launch vehicles are designed to meet IRIG Standard 106-07, a previous IRIG Standard 106 version.[413] While that standard shares many of the specifications as IRIG Standard 106-15,[414] it is not clear that the use of IRIG Standard 106-07 or other standards meet all necessary technical specifications set forth here or in current NTIA requirements, and accordingly, we are not prepared at this juncture to grandfather all existing launch vehicles.[415]

c. Equipment Authorization

147. In the *FNPRM*,[416] the Commission noted that, with certain limited exceptions, equipment containing Radio Frequency (RF) devices must be authorized in accordance with the appropriate procedures specified in 47 CFR Part 2, subpart J,[417] prior to being marketed or imported into the United States. Accordingly, in the *FNPRM*, the Commission asked whether it should require Part 2 equipment authorization for the RF devices that are being used to provide space launch operations and if so, which procedure. The Commission also asked if there any analogous authorization models found in other any

[409] Northrop Grumman Reply at 14.

[410] Northrop Grumman Reply at 14.

[411] Northrop Grumman Reply at 14.

[412] Northrop Grumman Reply at 14.

[413] Northrop Grumman Reply at 14.

[414] For example, both IRIG Standard 106-15 and IRIG Standard 106-07 require that spurious emissions are to be within limits specified in Military Standard MIL-STD 461. *See* IRIG Standard 106-15, §2.4.4; Telemetry Standard RCC Document 106-07, "Transmitter and Receiver Systems," IRIG Standard 106-07 (Part 1), Chapter 2, § 2.4.4 (Sept. 2007) (IRIG Standard 106-07), *available at* http://www.irig106.org/docs/106-07/.

[415] We note that launch operators have the option to submit waiver requests demonstrating that their launch operations are providing the same level of protection as those we are adopting here.

[416] *R&O and FNPRM*, 36 FCC Rcd at 7815, para. 138.

[417] 47 CFR Part 2, Subpart J. The Commission has two different approval procedures for equipment authorization—Certification and Supplier's Declaration of Conformity (SDoC). *See* 47 CFR § 2.901. In some instances, a device may perform different functions under multiple rule parts, resulting in the device being subject to more than one type of approval procedure.

rule parts (specifically noting Parts 25, 87, and 90) that could provide additional or alternative compliance requirements that may be appropriate for space launch RF devices.[418]

148. Few comments addressed the issue of equipment authorization. ULA and Boeing both oppose specific equipment authorization rules, citing, in part, the current Part 25 rules that do not include such requirements.[419] Northrop Grumman "takes no position" on such requirements, however it does ask for a 5 year grandfathered period should the Commission decide to adopt rules in this regard.[420]

149. We shall not require that equipment used for space launch telemetry and telecommand during space launches under the Part 26 rules be authorized under 47 CFR Part 2, subpart J. We expect that this equipment will be deployed by a limited number of licensees who will be responsible for ensuring that their transmitters comply with our rules. Given the small number of licensees we do not believe there is utility in implementing an authorization requirement. This decision is consistent with our Part 87 rules which exempt flight test transmitters used for limited periods from needing equipment certification.[421]

C. Expanded Federal Use of the non-Federal FSS and MSS Bands

150. When this proceeding began in 2013, the Commission recognized that the spectrum needs of the space launch industry and the commercial satellite industry are "separate, but closely related portions of the commercial space sector."[422] At that time, the Commission sought to address the needs of the space launch industry with new spectrum allocations and a licensing framework,[423] and the needs of the commercial satellite industry's government customers by providing for Federal earth station assignments in exclusively non-Federal FSS and MSS allocations.[424]

151. In the 2013 *NPRM* the Commission specifically sought comment on two proposals for expanding Federal use of non-Federal FSS and MSS satellites. One proposal was to add co-primary Federal FSS or MSS allocations to several bands together with a footnote that limits primary Federal use of the bands to earth stations communicating with non-Federal space stations.[425] The other proposal was to add a footnote to the Table of Allocations outlining circumstances under which Federal earth stations operating with non-Federal space stations would be entitled to interference protection.[426]

152. In the *FNPRM*, the Commission sought to refresh the record on its proposals for expanding Federal use of non-Federal FSS and MSS satellites, noting that in the eight years since the *NPRM* was adopted "the spectrum landscape in non-Federal FSS and MSS allocations has changed significantly."[427] The Commission observed that some of the bands under consideration in the *NPRM*

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[418] *R&O and FNPRM*, 36 FCC Rcd at 7815, para. 138. The requirements specifying whether such equipment must be authorized under SDoC or receive a grant of certification from a Telecommunication Certification Body are found in the Commission rule part governing the service under which the equipment operates. A device that performs different functions under multiple rule parts, may be subject to more than one type of approval procedure.

[419] ULA Comments at 21; Boeing Comments at 35.

[420] Northrop Grumman Reply at 15.

[421] 47 CFR § 87.145(c)(1).

[422] *NPRM*, 28 FCC Rcd at 6699, para. 1.

[423] *Id*. at paras. 65-87.

[424] *Id*. at paras. 19-58.

[425] *Id.* at paras. 36-46.

[426] *Id.* at paras. 47-58.

[427] *R&O and FNPRM*, 36 FCC Rcd at 7818, para. 148.

may no longer be appropriate candidates for expanded Federal FSS or MSS use, while other bands may support greater Federal use.[428]

153. We continue to believe that improvements to our policies and processes for communications between earth stations utilized by government agencies and commercial satellites are desirable and may ultimately serve the public interest. However, we believe that this issue, while related to space launch operations generally, implicates different licensing processes and ultimately would require implementation distinct from the changes to launch frequency licensing we are adopting here.[429] Therefore, we conclude that Federal access would be better addressed through a separate proceeding specifically focused on communications between commercial satellites and Federal users. Accordingly, we will continue to examine the record on expanded Federal earth station access to non-Federal FSS and MSS satellites through a separate proceeding, and we welcome continued comment and dialogue from both Federal and non-Federal stakeholders as we seek to address this issue, incorporating by reference the record to date on this issue from this proceeding. We direct OET to issue a public notice opening a new docket for comments on this issue and provide additional context for interested parties to provide additional comments.[430] After receiving additional comments on this issue, OET is directed to develop a recommendation so as to enable Commission consideration not later than one year from the release of this item.

D. Federal Space Stations in the 399.9-400.05 MHz MSS Band

154. As requested by NTIA the Commission will revise footnote US319 of the Allocation Table to permit Federal space stations (*i.e.*, satellites) to operate in the 399.9-400.05 MHz band.[431] Currently, U.S. Table footnote US319 prevents Federal space stations from operating in the 399.9-400.05 MHz band even though there is a primary Federal Mobile Satellite Service allocation for this band. NTIA requests that the footnote be modified to delete the 399.9 400.05 MHz band thereby allowing Federal satellites to operate in this band. Footnote US319 currently states:

> US319: In the bands 137-138 MHz, 148-149.9 MHz, 149.9-150.05 MHz, 399.9-400.05 MHz, 400.15-401 MHz, 1610-1626.5 MHz, and 2483.5-2500 MHz, Federal stations in the mobile-satellite service shall be limited to earth stations operating with non-Federal space stations.[432]

155. NTIA made this request to allow the 399.9-400.05 MHz band to be used for a new satellite system that will assume some of the non-environmental traffic currently handled by the Argos satellite system. Argos is a satellite system that was established by the French Space Agency, NASA, and the National Oceanic and Atmospheric Administration (NOAA).[433] Argos is used for a large number of applications such as monitoring the oceans at thousands of fixed and drifting buoys, tracking the movements of wildlife, relaying information by humanitarian agencies from remote areas, monitoring water resources, and tracking the locations of ships.[434] The latest version of the Argos satellite system, the

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[428] *Id*

[429] Additionally, we note that numerous commenters suggest that these questions would be better addressed in a separate rulemaking. *See, e.g.*, Verizon Comments at 1-4, CTIA Comments at 4-5; AT&T Reply Comments at 3; T-Mobile Comments at 6; *see also* Boeing Comments at 24 (suggesting that if the Commission cannot exempt Federal earth stations from Section 25.136, the question of UMFUS shared spectrum should be considered in a second FNPRM); Echostar Comments at 6-7 (arguing that any consideration of allocation in bands shared with UMFUS should be done in an FNPRM).

[430] The OET Public Notice will be issued expeditiously, setting forth comment and reply comment deadlines for interested parties.

[431] *See NTIA US319 Letter* at footnote 17, *supra*.

[432] 47 CFR § 2.106 footnote US319.

[433] Argos, *About Argos*, https://www.argos-system.org/about-argos/ (last visited July 28, 2023).

[434] Argos, *Argos Solutions*, https://www.argos-system.org/solutions/ (last visited July 28, 2023).

Argos-4 was launched on October 7, 2022. According to NTIA, the newly established satellite system in the 399.9-400.05 MHz band would allow non-environmental applications to be removed from the Argos system which will result in lower interference, higher capacity, and improved reliability and service for both the environmental applications remaining on Argos and the non-environmental applications moved to the new system.[435]

156. The Commission first made the 399.9-400.05 MHz band along with three other frequency bands available for MSS in 1993 to allow deployment of non-geosynchronous low Earth orbit (LEO) satellite systems, called "Little LEO" systems, to provide non-voice services such as data messaging and position determination.[436] In 2019, the Commission's International Bureau initiated a processing round for non-voice non-geostationary systems in this band as well as the 400.15-401 MHz band. The Commission's Space Bureau has granted market access for the 399.9-400.05 MHz band to three of these applicants while other applications remain pending or have been withdrawn.[437] In the past two years other companies have filed applications to operate in the 399.9-400.05 MHz band.[438]

157. The Commission received four comments and two reply comments in response to the *FNPRM*.[439] Myriota Pty Ltd. (Myriota) and Fleet Space Technologies Pty. Ltd. (Fleet) express concerns regarding the impact to Internet of Things (IoT) connectivity and the coordination requirements needed to ensure there will be no interference between non-Federal and Federal space stations in the 399.9-400.05 MHz band.[440] According to Myriota, making this modification to US319 would permit an unidentified number of Federal satellites to operate in the band and leave commercial operators who have invested in the band without adequate safeguards to ensure their operations will not be constrained.[441] Myriota suggest that if the Commission makes this modification to US319 it should adhere to the stated purpose of the modification by permitting only a single Argos satellite and that NTIA and NOAA should consider

[435] *See NTIA US319 Letter* at footnote 17*, supra.*

[436] *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum to the Fixed-Satellite Service and the Mobile-Satellite service for Low-Earth Orbit Satellites*, ET Docket No. 91-280, Report and Order, 8 FCC Rcd 1812, 1813, paras. 7, 12 (1993). The Little LEO MSS is officially known as the non-voice, non-geostationary (NVNG) mobile-satellite service.

[437] Kinéis was granted access to the U.S. market using frequencies of the NVNG MSS and earth exploration-satellite service (EESS) through a constellation of up to 25 small, low-Earth orbit (LEO) satellites authorized by France. ICFS File No. SAT-PDR-20191011-00113. Hiber's application was granted on May 6, 2020. ICFS File No. SAT-PDR-20180910-00069, DA 20-491 (granted May 6, 2020). Hiber, however, subsequently surrendered its market access grant. *See* Letter from Bruce Henoch, General Counsel, Hiber Inc., to Marlene H. Dortch, Secretary, FCC (filed Sept. 24, 2021). Myriota's application was granted on May 29, 2020. *See* Myriota, Pty. Ltd., ICFS File No. SAT-PDR-20190328-00020, DA 20-571 (granted May 29, 2020). Spire also requests use of the 399.9-400.05 MHz band for its system, which has to date been authorized for telecommand links with Spire's non-U.S. licensed satellites in the 400.02-400.05 MHz band. *See* Spire Global Inc., ICFS File No. SAT-PDR-20190321-00018 (grant stamped Aug. 16, 2023). The 400 MHz Processing Round also included Astro Digital, which was subject to a separate public notice that did not initiate a processing round. Astro Digital's application was granted in part and deferred in part. Astro Digital, ICFS File No. SAT-LOA-2017050800071 (grant stamped Aug. 1, 2018). Within the frequency ranges included in the processing round, Astro Digital was authorized to use a telemetry carrier (space-to-Earth) centered at 400.5 MHz (center frequency).

[438] Fleet Space Technologies requests authority to provide NVNG MSS in the United States with four low-Earth orbit, non-U.S.-licensed small satellites using the 399.9−400.05 MHz, 400.15−401 MHz, and 2020-2025 MHz bands. ICFS File No. SAT-PDR-20220805-00077. *See also* Space Quest, ICFS File No. SAT-LOA-20210503-00058.

[439] We received comments from BlackSky Global LLC (BlackSky), Department of Commerce (DoC), Myriota Pty. Ltd. (Myriota), and the National Telecommunications and Information Administration (NTIA). We received reply comments from Fleet Space Technologies Pty. Ltd. (Fleet Space) and Myriota Pty. Ltd. (Myriota).

[440] Myriota, Pty. Ltd Comments at 3; Fleet Space Technologies Pty. Ltd at 2,4.

[441] Myriota, Pty. Ltd Reply at 1.

whether commercial satellite operators could meet their mission requirements rather than operating Federal satellites in the band.[442] Fleet points out that the 399.9-400.05 MHz band is the only globally harmonized UHF band for commercial smallsat MSS and claims that permitting Federal satellites in the band would disrupt the coordination among commercial satellite operators and delay deployment of innovative MSS applications.[443] Blacksky Global supports amending footnote US319 and believes that allowing the band to assume some of the traffic currently handled by the Argos system would alleviate the pressure from Federal systems in adjacent bands and result in relaxation of the coordination conditions on non-Federal systems in the 401-402 MHz band.[444] NTIA and DoC both emphasize the need to implement this modification of footnote US319 to ensure that the role of the United States in the Argos-4 program can proceed without any risk to its operation.[445]

158. We are revising US319 as NTIA requests to enable establishment of a new satellite system to supplement the Argos program to further the reliable provision of important services. We appreciate the concerns expressed by Myriota and Fleet that the use of this band by a Federal satellite system may complicate the interference environment and create coordination burdens. However, any Federal satellites that will operate in the band and the associated earth stations will be subject to coordination between NTIA and the Commission. During this coordination process any issues regarding coexistence between the Federal and non-Federal systems can be addressed. As applicants who filed during the processing round indicated that they are capable of sharing with current and future licensees in these bands,[446] we are confident that at the conclusion of this coordination process the Federal satellites will be able to share the band with the existing systems without harmful interference occurring. As the demand for spectrum continues to increase we must continue to look for opportunities to more intensively use spectrum where possible. Therefore, we see no reason to reject NTIA's request to modify US319.

IV. SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

A. NASA Footnotes

159. NTIA has requested that we add three footnotes to the Allocation Table to address the use of spectrum by manned and unmanned spacecraft during space missions.[447] The text of these requested footnotes is as follows:

> USxxx Use of the bands 2290-2293 MHz and 2297-2300 MHz by Federal and non-Federal space stations may be authorized on a primary basis for the specific purpose of emergency transmissions from manned spacecraft used in the exploration and use of outer space, including the Moon and other celestial bodies. This allocation is restricted to emergency transmissions from manned spacecraft when experiencing emergency situations. Additionally, the bands 2025-2110 MHz and 2110-2120 MHz may also be authorized on a primary basis for transmissions of related commands to the spacecraft. Such operations should be conducted in accordance with Recommendation ITU-R SA.1863.
>
> USyyy In the band 2213.5-2218.5 MHz, non-Federal space stations operating in the space operation service providing transportation service of crew to and from the International Space Station, may be authorized on a primary basis to transmit in the space-to-Earth direction, to

[442] *Id*. at 3.

[443] Fleet Space Technologies Pty. Ltd. at 2-4.

[444] Blacksky Global LLC Comments at 4.

[445] NTIA/DoC Comments at 28.

[446] *Kinéis Petition for Declaratory Ruling to Access the U.S. Market Using a Low-Earth Orbit Satellite System*, ICFS File No. SAT-PDR-20191011-00113, Order and Declaratory Ruling, FCC 21-118 at 6, para. 12 (2021).

[447] This request from Charles Cooper, Associate Administrator, Office of Spectrum Management, NTIA, to Ronald Repasi, Acting Chief, FCC Office of Engineering and Technology, was received via e-mail on August 8, 2021.

authorized receiving stations, subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Federal stations. The power flux-density at the Earth's surface from such emissions from these non-Federal stations shall not exceed -144 to -154 dBW/m²/4 kHz, depending on the angle of arrival, in accordance with ITU Radio Regulation No. 21.16.

USzzz (New) In the band 2200.2-2206.2 MHz, non-Federal space stations operating in the space operation service may be authorized on a primary basis to transmit to the International Space Station (ISS) while within 30 km of the ISS, subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Federal stations. The power-flux-density of such emissions at the Earth's surface from these non-Federal stations shall not exceed -144 to -154 dBW/m²/4 kHz, depending on the angle of arrival, in accordance with ITU Radio Regulation No. 21.16. ITU Radio Regulation No. 5.392 also applies.

160. Draft footnote USxxx applies to emergency transmissions to and from manned spacecraft in two portions of the 2200-2290 MHz band as well as the 2025-2110 MHz and 2110-2120 MHz bands. We propose to add this footnote to the allocations table recognizing the importance of emergency communications to safeguard human life during manned space missions. We seek comment on this proposal. Because emergency communications from manned spacecraft are likely to occur infrequently we tentatively conclude that making this spectrum available for this purpose will not present a significant interference risk to other users of these bands. As the 2200-2290 MHz band has a space operation allocation in the space-to-earth direction, permitting transmissions from spacecraft is appropriate.[448] The 2025-2110 MHz band has a primary Federal space operations allocation in the Earth-to-space direction which is consistent with making transmissions to manned spacecraft.[449] The 2110-2120 MHz band has a primary space research service (deep space) (Earth-to-space) allocation at Goldstone California. Given that use of the 2110-2120 MHz for space transmissions is currently limited to this one location, should USXXX have a similar limitation on use of this band? Should any other restrictions be placed on the use of these bands for emergency communications for manned spacecraft to avoid harmful interference from occurring to other users of these bands?

161. Draft footnote USyyy applies to transmissions to ground stations by non-Federal spacecraft transporting crew to and from the International Space Station (ISS). NASA currently has contracts with SpaceX and Boeing to shuttle crew members to the ISS. There is currently a federal Space Operation space-to-Earth allocation for the 2200-2290 MHz band, but the non-federal Space Operation allocation for this band is limited to use for pre-launch testing and space launch operations and therefore does not permit transmissions by crew transport spacecraft after the launch phase of the mission.[450] Given the importance of reliable communications in safeguarding human life during manned space missions, we propose to add this footnote to the Allocation Table. We tentatively conclude that the power flux limits on these transmissions will prevent interference from occurring to receivers on the earth's surface from these transmissions. We seek comment on this proposal.

162. Draft footnote USzzz applies to spacecraft that are transmitting in portions of the 2200-2290 MHz band within 30 kilometers of the ISS. NASA has contracts with commercial companies to transport both supplies and crew to the ISS. These spacecraft need to communicate with the ISS when they are docking. As the Space Operation allocation for the 2200-2290 MHz band is limited to use for pre-launch testing and space launch operations, there is no allocation that permits these non-Federal spacecraft to communicate with the ISS in this band. We propose to add this footnote to the Allocation Table in recognition of the importance of these space missions as well as the limited number of such missions which should present a minimal risk of interference occurring to other users of the band. As with USyyy, we tentatively conclude that the power flux limits on these transmissions will prevent

[448] This allocation is primary for federal use and secondary for non-federal use. 47 CFR § 2.106.

[449] 47 CFR § 2.106.

[450] 47 CFR § 2.106 footnote US96.

interference from occurring to receivers on the earth's surface from these transmissions. We seek comment on this proposal.

163. NASA has adopted a transition plan that envisions deorbiting the ISS in early 2031.[451] Prior to deorbiting the ISS, NASA intends to purchase crew time from at least two Commercial LEO Destinations (CLDs)—*i.e.*, private space stations.[452] As the projected lifetime of the ISS is now less than eight years, we seek comment on whether the new proposed footnotes USyyy and USzzz should be limited to spacecraft traveling to the ISS. Should these footnotes also apply to future manned space stations that are operated by commercial entities? Should they be limited to manned space stations only in low earth orbit or apply more generally to manned space stations anywhere beyond the Earth's atmosphere?

B. Space Operation

164. In this *FNPRM* we continue our efforts to support the expanding activities of the commercial space sector that benefit the public interest. Specifically, we focus on the question of spectrum allocation and licensing processes for certain post-space launch activities, particularly with respect to certain space operations communications currently addressed through experimental licensing, such as crew or cargo capsules destined for the International Space Station (ISS), or similar operations planned for the future, such as spectrum requirements for commercial crewed space stations. Commenters also raised a number of issues that overlap the topics currently being considered in the *Space Innovation; Facilitating Capabilities for In-space Servicing, Assembly, and Manufacturing* proceeding.[453] This broader range of topics will be addressed separately and concurrently with that proceeding, as noted in the accompanying *Second Report and Order*.[454].

165. *Spectrum Allocation for Certain Post-Space Launch Payload Operations*. We seek further comment on whether to include new spectrum allocations in specific bands for communications with cargo and crew capsules and payload communications with the ISS and other crewed space stations. In the *FNPRM* we sought comment on whether there are improvements to the licensing process that could facilitate more routine licensing for certain payload activities currently addressed through experimental licensing. Specifically, we noted the current use by SpaceX of S-band frequencies for cargo and crew capsules and links with the ISS as well as use by Orbital Sciences Corporation, a Northrop Grumman Systems Corporation Affiliate, of 2287.5 MHz (space-to-Earth) as well as 2287.5 MHz for links between the Cygnus spacecraft and TDRSS, and 2203.2 MHz for links between the Cygnus and the ISS. We sought comment on whether any changes to the Table of Frequency Allocations being adopted or proposed for the 2025-2110 MHz and 2200-2290 MHz frequency bands were needed to provide for these cargo and crew capsule communications, what are the spectrum requirements for such operations, and if there are other frequency bands that the Commission should also consider for such uses.

166. In response, SpaceX noted that it has, through the STA process, used the 2025-2110 MHz band for its Dragon capsule to communicate with the ISS and TDRSS, and supports an expanded approach for 2200-2290 MHz band, which would alleviate the need for seeking an STA to cover communication between SpaceX's Dragon and the ISS and TDRSS. Northrop Grumman also noted its use of the 2200-2290 MHz band for ISS-related communications and supports the inclusion of payload operations in the allocation for this band, which is used by its Cygnus mission. Northrop Grumman also suggested that the Commission adopt a fleet licensing process for payload activities, in specific for ISS-

[451] *International Space Station Transition Report Pursuant to Section 303(c)(2) of the NASA Transition Authorization Act of 2017 (P.L. 115-10)*, NASA, at 11, https://www.nasa.gov/sites/default/files/atoms/files/2022_iss_transition_report-final_tagged.pdf.

[452] *Id*. at 6.

[453] *Space Innovation; Facilitating Capabilities for In-space Servicing, Assembly, and Manufacturing*, IB Dockets 22-271, 22-272, Notice of Inquiry, FCC 22-66 at 4, para. 7 (2022) (ISAM NOI).

[454] *See supra*, Section III.A., B.

related activities, such as its Cygnus mission.

167. Other commenters supported allocations in the S-band as well as the L-band and X-band for OOS and RPO operations generally. Industry Participants[455] assert that slightly expanding the 2200-2290 MHz and 2025-2110 MHz allocations to include RPO alongside space launch and reentry "would provide a safer space environment for time-critical RPO communications, where failure can result in loss of spacecraft, termination of a mission, and potentially loss of human lives."[456] They also note that commercial operators have already invested into technology that supports OOS operations in the S-band.[457] Black Sky suggests opening the band for all on-orbit missions to put the U.S. industry on an equal footing with international operators.[458] Spaceflight recommended that the Commission consider 8025-8400 MHz (X-band) and 1610-1626.5 MHz (L-band) for secondary allocation for payload operations specifically.[459] In response to Spaceflight's suggestion for allocation in the L-band, Globalstar asserts that allocation for inter satellite links and space-to-space communication between a launch vehicle and satellites in the L-band is unnecessary and should continue to be authorized only on an experimental basis.[460] In particular Globalstar focuses on the Big LEO band where Globalstar operates and has concerns of harmful interference.[461] Federal agencies were generally opposed to changing the status of the S-band for payload operations as discussed in the accompanying *Second Report and Order*, however NTIA, NASA, DOD, and DOC note that the 2360-2395 MHz band could be used as an alternative to expanding allocation in 2200-2290 MHz band.[462] We consider this alternative in further discussion below.[463]

168. As discussed in the accompanying *Second Report and Order*, we conclude that deliberations for providing S-band, or other possible bands (such as L-band and X-band suggestions by Spaceflight), allocation for OOS/RPO more generally be continued via the ongoing ISAM proceeding. However, we seek further comment on possible necessary changes to the Table of Frequency Allocations to account for space-to-space communications between a crew or cargo capsule and crewed space stations, including in bands outside the S-band. Do the three footnotes requested by NTIA meet this need?[464] Should the Commission adopt an allocation for ISS-related space-to-space communications in this proceeding? Should the Commission expand such an allocation to account for future crewed space stations and operations not connected to the ISS? Should the rules addressing these operations be included in Part 25 of the FCC's rules?

169. *Suborbital Spaceflight Operations.* Additionally, we seek further comment on spectrum allocation and licensing needs related to suborbital spaceflight. Are there aspects of suborbital commercial spaceflight that fall outside of the definition we have adopted for space launch operations that require further licensing and spectrum allocation considerations? In response to the *FNPRM*, Virgin Galactic noted its use, through experimental licensing, of the VHF band, L-band, and S-band for its suborbital flights and suggested that the Commission develop and adopt rules allowing allocation for

[455] Industry Participants refers to Astroscale U.S. Inc., Axiom Space Inc., Atomos Space, Sierra Space Corp., and SCOUT Inc. who submitted comments jointly.

[456] Industry Participants Comments at 6.

[457] Industry Participants Reply at 3.

[458] Black Sky Comments at 2-4.

[459] Spaceflight Comments at 6.

[460] Globalstar Reply at 3-4.

[461] *Id*.

[462] NTIA Comments at 5; NASA Comments at 2; DOD Comments at 2, 5; DOC Comments at 2.

[463] *See infra* Section IV. C..

[464] *See supra* Section IV. A..

commercial spaceflight operations in these bands.[465] Specifically, Virgin Galactic has operated in the 123.225 MHz, 123.275 MHz, 123.375 MHz, 123.450 MHz, and 123.525 MHz (VHF) frequencies, the 1445.5 MHz, 1451.5 MHz, 1462.5 MHz, 1470.5 MHz 1480.5 MHz (L-band) frequencies, and the 2360-2390 MHz (S-band) frequencies.[466] Communications in these bands have included telemetry as well as video and voice communications.[467] The *Second Report and Order* we adopt today has limited use of the S-band to telemetry and tracking communications for launch under Part 26. Should the Commission establish allocations beyond experimental or STA licensing for voice or video communications for these types of crewed suborbital spaceflight operations?

170. In further considering communication related to crewed suborbital operations we note the importance of safety of life communications.[468] Currently, operators who obtain experimental licensing approvals or STAs for these activities are communicating on a non-protected, non-interference basis and must cease operations in the event interference with a primary or secondary allocated operator occurs.[469] We seek comment on how the Commission should ensure a more permanent level of protection for suborbital spaceflight operation communications, while recognizing the need to avoid harmful interference with other important operations in already encumbered bands. Should any of the portions of the VHF, L-band, or S-band that have been authorized experimentally for communications beyond telemetry be allocated for suborbital spaceflight operations on a primary or secondary basis? Are there other bands beyond those we are considering today that might be suitable for these operations?

C. Use of 2360-2395 MHz Band or Other Bands for Commercial Space Launch

171. Three frequencies in the 2360-2395 MHz band are available for both Federal and non-Federal telemetry and telecommand operations of launch vehicles.[470] Beyond these three frequencies, the band is assigned primarily for aeronautical telemetry and telecommand operations for flight testing of aircraft and missiles.[471] In the *FNPRM*, we requested comment on changes that we could take in

[465] *See* Virgin Galactic Comments at 2-8.

[466] *Id*. at 2-3.

[467] *See* Virgin Galactic *Ex Parte* (April 18, 2022); Virgin Galactic Comments at 5-6.

[468] *See, e.g.*, ITU Convention, Art. 40 "Priority of Telecommunications Concerning Safety of Life."

[469] *See* 47 CFR § 5.84.

[470] *See* 47 CFR §§ 2.106 US276, 87.187(p), 87.303(d)(1). The three frequencies are 2364.5 MHz, 2370.5 MHz, and 2382.5 MHz. The 2.3 GHz allocation supporting non-Federal space launch telemetry and telecommand was adopted after national space policy changes in the 1980s, which shifted responsibility for launching non-Government payloads from Federal to non-Federal entities. With concurrence by NTIA, the Commission concluded that the 2310-2390 MHz band was the most suitable at the time to support space launch telemetry and telecommand use and it identified six channels for such use. Portions of the aeronautical mobile telemetry band were reallocated, which reduced the available commercial space launch spectrum to three frequencies in the 2360-2395 MHz band. *See Amendment of the Frequency Allocation & Aviation Servs. Rules (Parts 2 & 87) to Provide Frequencies for Use by Commercial Space Launch Vehicles*, GN Docket No. 89-16, Report and Order, 5 FCC Rcd 493, 493, para. 2 (1990); *Establishment of Rules and Policies for the Digital Audio Radio Service in the 2310-2360 MHz Frequency Band*, IB Docket No. 97-91, GN Docket No. 90-357, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5805-06, paras. 124-26 (1997); *Amendment of Parts 2, 25, and 87 of the Commission's Rules to Implement Decisions from World Radiocommunication Conferences Concerning Frequency Bands Between 28 MHz and 36 GHz and to Otherwise Update the Rules in this Frequency Range*, ET Docket No. 02-305, Report and Order, 18 FCC Rcd 23426, 23441-43, paras. 37-40 (2003); *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*, ET Docket Nos. 12-338 and 15-99, IB Docket No. 06-123, Report and Order, Order, and Notice of Proposed Rulemaking, 30 FCC Rcd 4183, 4210-11, paras. 62-65 (2015); The White House, Office of the Press Secretary, Presidential Directive on National Space Policy (Feb. 11, 1988), www.hq.nasa.gov/office/pao/History/policy88.html.

[471] 47 CFR § 87.303(d)(1).

administering the 2360-2395 MHz space launch rules.[472] For example, we sought comment on whether we should administer the 2360-2395 MHz space launch use, which is currently regulated under subpart J of the Commission's Part 87 rules, under the same rule part as the commercial space launch rules applicable to the 2200-2290 MHz band adopted in the *Second R&O* or retain the current Part 87 designation.[473]

172. In response to the *FNPRM*, certain commenters filed in support of expanding space launch use in the 2360-2395 MHz band. For example, SpaceX argues that uses of the band should extend to the full range of space operations,[474] while Virgin Galactic encourages the Commission to ensure that any primary allocation of the band, as well as associated service and technical rules, facilitate telemetry and video downlink, which it states is consistent with Virgin Galactic's use of the spectrum to monitor the health and safety of its spaceflight participants and crew.[475] NTIA, NASA, and DOD advocate the use of the 2360-2395 MHz band as an alternative to the 2200-2290 MHz and 2025-2110 MHz bands,[476] arguing that the three existing frequencies in the 2360-2395 MHz band provide additional spectrum.[477]

173. AFTRCC, however, argues that there should not be an expansion of the band and urges the Commission to limit the allocation in that band to just the three channels already allocated for space launches, and avoid proposing allocations for space operations that include bands needed for flight testing and space launches.[478] In support, AFTRCC asserts that space launches create large interference cones to flight test operations, and that even a few seconds of interference could disrupt the most critical portions of a flight test and would add a significant risk factor to aircraft flight tests in this band.[479] Similarly, Boeing advises that the Commission should exercise caution with respect to the use of additional portions of the 2360-2395 MHz band for launch operations or in-orbit activities.[480] Boeing asserts that the greater 2360-2395 MHz band is heavily used to support non-federal flight test operations in locations throughout the United States, and that use of the band by commercial aircraft manufacturers is intensive and increasing.[481]

174. We seek further comment on expanding the use of the 2360-2395 MHz band, both in the context of additional uses to the band as well as expanding use in the band beyond the three frequencies currently designated. While we are aware that this band is heavily used for flight test purposes and agree that we should proceed cautiously with respect to measures that have the potential to introduce additional interference to operations in the band, we also recognize that the 2200-2290 MHz and 2025-2110 MHz bands may not accommodate the increasing numbers of operations in the future. While we find that providing space launch operators with increased certainty regarding access to the 2200-2290 MHz and 2025-2110 MHz band is in the public interest and that careful coordination will be effective in enabling use of these bands, the record supports further review of additional spectrum options. Accordingly, we seek to better understand the current use of the 2360-2395 MHz band. We seek information on how both

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[472] *FNPRM*, 36 FCC Rcd at 7814-15, paras. 136-137.

[473] *FNPRM*, 36 FCC Rcd at 7814, para. 136. Because the *FNPRM* proposed to incorporate the new commercial space launch rules under a new subpart in part 87, the *FNPRM* requested comment on whether to administer the 2360-2395 MHz band under the new part 87 subpart.

[474] SpaceX Comments at 8.

[475] Virgin Galactic Comments at 7, n.16.

[476] NTIA/NASA/DOD Comments at 5, 9, 12, 18, 22.

[477] NTIA/NOAA Comments at 27.

[478] AFTRCC Reply at 9; AFTRCC Dec. 13, 2021 *Ex Parte* at 1.

[479] AFTRCC Dec. 13, 2021 *Ex Parte* at 9.

[480] Boeing Reply at 5.

[481] Boeing Reply at 5-6.

flight testing and launch operations in the band are coordinated and conducted,[482] and whether there are measures that could help increase use by space launch operations without increasing the risk of interference to flight test operations. For example, space launch operations in the band are subject to pre-grant frequency coordination, but do not have a coordination requirement once an authorization is granted. Would revising the 2360-2395 MHz band rules to apply provisions that are now applicable to the 2200-2290 MHz and 2025-2110 MHz band, including the per launch coordination requirement, help to facilitate increased use of space launch operations in the 2360-2395 MHz band?[483]

175. Further, we received limited comment on how to administer rules relating to the 2360-2395 MHz band, in particular comment regarding whether and how to harmonize existing 2360-2395 MHz licensing and technical rules with rules now applicable to the 2200-2290 MHz and 2025-2110 MHz band.[484] Accordingly, we seek further comment on certain 2360-2395 MHz issues that were first raised in the *FNPRM*.[485] We request additional comment on how best to administer the space launch rules for this band. Should we incorporate the 2360-2395 MHz space launch use into new Part 26 or should we retain the Part 87 designation? If we administer the 2360-2395 MHz space launch use under the new rule part, should we revise our rules to apply the same non-exclusive licensing scheme we adopt today or retain the existing licensing framework provided under the current Part 87 flight testing rules? In that event, should we continue to apply the technical rules currently applicable to these services? We also note that space launch telemetry and telecommand operations in the 2360-2395 MHz band occur under a Mobile allocation.[486] We seek further comment on whether we should add a primary Space Operation allocation to the band, subject to the same restrictions as apply to such operations under the Mobile allocation as specified in footnote US276 of the U.S. Table.[487] Further, Industry Participants state that, while they appreciate the suggestion of increased 2360-2395 MHz band use in light of congestion in the S-band, the International Table of Frequency Allocations reserves this band for Fixed Service, Mobile Service, Amateur, and Radiolocation services, and consequently it would be necessary to modify that allocation to permit use of that band at the international level.[488] Industry Participants state that a failure to obtain such a modification would be a hardship for on-orbit operators seeking mission support from non-U.S. ground stations.[489] We request comment regarding this issue.

176. With respect to additional spectrum options for space launch operations, Virgin Galactic suggests that we expand the use of the 1435-1525 MHz band for telemetry and safety of flight during

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[482] For example, information on when and where flight testing generally occurs that may provide insight on technical measures that may help mitigate potential interference.

[483] *See* AFTRCC Dec. 13, 2021 *Ex Parte* at 8 (suggesting measures, such as an enhanced scheduling mechanism, that would need to be implemented if expanded use is permitted).

[484] *See* SpaceX Comments at 8 (arguing that the band should be incorporated into the new rule part); Rocket Lab Comments at 3 (recommending that the 2360-2395 MHz band be allocated to any new space launch operations regulatory framework). *See also* Relativity Space Comments at 3 (opposing changes to rules governing the 2360-2390 MHz band on the grounds that uses of the band, which are set out in footnote US276, are effectively coordinated through AFTRCC).

[485] *See FNPRM*, 36 FCC Rcd at 7814, para. 136.

[486] *See* 47 CFR § 2.106 footnote US276.

[487] Footnote US276 provides: "Except as otherwise provided for herein, use of the band 2360-2395 MHz by the mobile service is limited to aeronautical telemetering and associated telecommand operations for flight testing of aircraft, missiles or major components thereof. The following three frequencies are shared on a co-equal basis by Federal and non-Federal stations for telemetering and associated telecommand operations of expendable and reusable launch vehicles, whether or not such operations involve flight testing: 2364.5 MHz, 2370.5 MHz, and 2382.5 MHz. All other mobile telemetering uses shall not cause harmful interference to, or claim protection from interference from, the above uses."

[488] Industry Participants Reply at 11.

[489] Industry Participants Reply at 11.

spaceflight operations.[490] As in the case of the 2360-2395 MHz band, the 1435-1525 MHz band is assigned primarily for aeronautical telemetry and telecommand functions associated with flight testing.[491] Space launch and reentry operations are permissible uses of the band.[492] AFTRCC, however, argues that this band is the "workhorse spectrum" for aeronautical flight testing, and that interference with sensitive flight test equipment risks pilot safety and the success of test maneuvers.[493] Accordingly, says AFTRCC, this band should be reserved for aeronautical mobile telemetry uses.[494] We seek comment on whether the 1435-1525 MHz band can effectively accommodate space launch operations, or whether such use should be discouraged despite being permissible under our rules. As in the case with the 2360-2395 MHz band above, we seek information regarding the current usage of this band, how operations are conducted and coordinated, and whether there are measures that may be taken to successfully integrate space launch use along with flight test operations. Would per launch coordination including an enhanced scheduling mechanism be helpful?[495] To the extent that commenters agree that space launch activities can occur along with flight test operations, we request that commenters also speak to any changes—similar to those discussed above for the 2360-2395 MHz band—we should make to harmonize any space launch use in this band with rules applicable to the 2200-2290 MHz and 2025-2110 MHz bands. However, in the event that commenters believe that increased use of either of these bands for space launch uses should not be accommodated, we request comment on other spectrum bands that may be appropriate candidates.[496]

V. PROCEDURAL MATTERS

A. Ex Parte Presentations

177. These proceedings shall be treated as "permit-but-disclose" proceedings in accordance with the Commission's *ex parte* rules.[497] 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.

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[490] Virgin Galactic Comments at 7.

[491] 47 CFR §§ 87.187(p), 87.303(d)(1).

[492] 47 CFR §§ 87.187(p), 87.303(d)(1); *see also* 47 CFR § 2.106 footnote US78.

[493] AFTRCC Dec. 13, 2021 *Ex Parte* at 8.

[494] AFTRCC Dec. 13, 2021 *Ex Parte* at 8.

[495] *See* AFTRCC Dec. 13, 2021 *Ex Parte* at 8.

[496] For example, Virgin Galactic suggests the use of VHF frequencies telemetry and safety of flight during spaceflight operations. Virgin Galactic Comments at 7.

[497] 47 CFR § 1.1200 *et seq.*

B. Comment Period and Filing Procedures

178. 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. For comments regarding the *Second Further Notice*, comments must be filed in ET Docket No. 13-115. 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).

- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- 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. 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.
    - 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), 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.[498]

C. People with Disabilities

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

D. Regulatory Flexibility Act

180. *Final Regulatory Flexibility Analysis*. The Regulatory Flexibility Act of 1980 (RFA) 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."[499] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Second Report and*

[498] *See Amendment of the Commission's Rules of Practice and Procedure*, Order, DA 20-562 (OMD 2020).

[499] *See 5 U.S.C.* § 605(b).

Order on small entities. The FRFA is set forth in Appendix B.

181. *Initial Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act,[500] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *Second Further Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix E. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Second Further Notice of Proposed Rulemaking*, and should have a separate and distinct heading designating them as responses to the IRFA.

E. Paperwork Reduction Act

182. The *Second Report and Order* contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new 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.

183. The *Second Further Notice of Proposed Rulemaking* may contain proposed 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 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.

F. Congressional Review Act

184. 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 *Second Report and Order* to Congress and the Government Accountability office, pursuant to 5 U.S.C. § 801(a)(1)(A).

G. Accessing Materials

185. The Office of Federal Register (OFR) regulations require that agencies must discuss in the preamble to the Federal Register summary of a final rule the ways that the materials incorporated by reference are reasonably available to interested parties and that interested parties can obtain the materials.[501] In addition, OFR regulations require that the preamble to the Federal Register summary of a final rule summarize the material incorporated by reference.[502]

186. Sections 26.302(a) and (b) of the rules adopted herein incorporate by reference Annex J, Guidance for Determination of Necessary Bandwidth, and Annex M, Measurement Standards, of the National Telecommunications and Information Administration, Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual), January 2021 Edition (Rev. Jan. 2022). The information in these annexes provide guidance for determining the necessary bandwidth of space launch radiocommunication systems. Interested parties may inspect a copy of these regulations at the FCC's

[500] 5 U.S.C. § 603.

[501] 1 CFR § 51.5(b)(2).

[502] 1 CFR § 51.5(b)(3).

main office. The text of the NTIA Manual is also available online at https://www.ntia.gov/publications/redbook-manual.

H. Further Information

187. For additional information on this proceeding, Nicholas Oros of the Office of Engineering and Technology, at Nicholas.Oros@fcc.gov or 202-418-0636; contact Linda Chang of the Wireless Telecommunications Bureau at Linda.Chang@fcc.gov or 202-418-1339; or Julia Malette of the Space Bureau, at Julia.Malette@fcc.gov or 202-418-2453.

VI. ORDERING CLAUSES

188. Accordingly, IT IS ORDERED that pursuant to Sections 1, 2, 4(i), 5(c), 301, 303(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C §§ 151, 152, 154(i), 155(c), 301, 303(c), 303(f), and 303(r), and section 1.411 of the Commission's rules, 47 CFR § 1.411, this *Second Report and Order and Second Further Notice of Proposed Rulemaking* IS HEREBY ADOPTED.

189. IT IS FURTHER ORDERED that the amendments of Parts 2 and 26 of the Commission's rules as set forth in Appendix A, ARE ADOPTED, effective thirty (30) days after publication in the Federal Register, with the exception of sections 26.106, 26.108, 26.202, and 26.301, which contain new or modified information collection requirements that require review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Commission directs the Wireless Telecommunications Bureau to announce the effective date of those information collections in a document published in the Federal Register after the Commission receives OMB approval, and directs the Wireless Telecommunications Bureau to cause these rule sections to be revised accordingly.

190. IT IS FURTHER ORDERED that the Office of the Secretary, Reference Information Center, SHALL SEND a copy of the *Second Report and Order and Second 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.

191. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this *Second 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

Final Rules

For the reasons discussed in the document, the Federal Communications Commission amends 47 CFR parts 0, 1, and 2 and adds 47 CFR part 26 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 § 0.331 by adding paragraph (g) to read as follows:

§ 0.331 Authority delegated.

*****

(g) The Chief of the Wireless Telecommunications Bureau is delegated authority to administer the Commission's space launch services programs (Part 26 of this chapter) and the issuing of space launch services licenses. The Chief is delegated authority to develop specific methods that will be used to develop an application filing procedure for initial authorization and subsequent station registration; to seek comment on the circumstances attending the designation of a third-party space launch frequency coordinator, including a mechanism for selecting a frequency coordinator; to develop procedures that the space launch frequency coordinator will use to ensure compliance with the coordination requirements for space launch operations; and to perform other functions as needed for the administration of the space launch services.

PART 1 – PRACTICE AND PROCEDURE

3. 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.

4. Revise § 1.901 to read as follows:

§ 1.901 Basis and purpose.

These rules are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 151 et seq. The purpose of these rules 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, 26, 27, 74, 80, 87, 90, 95, 96, 97 and 101 of this chapter.

5. Revise § 1.902 to read as follows:

§ 1.902 Scope.

In case of any conflict between the rules set forth in this subpart and the rules set forth in Parts 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 96, 97, and 101 of title 47, chapter I of the Code of Federal Regulations, the rules in Part 1 shall govern.

6. Amend § 1.907 by revising the definitions of "Covered geographic licenses" and "Wireless Radio Services" to read as follows:

§ 1.907 Definitions.

*****

Covered geographic licenses. Covered geographic licenses consist of the following services: 1.4 GHz Service (Part 27, subpart I of this chapter); 1.6 GHz Service (Part 27, subpart J); 24 GHz Service and Digital Electronic Message Services (Part 101, subpart G of this chapter); 218-219 MHz Service (Part 95, subpart F, of this chapter); 220-222 MHz Service, excluding public safety licenses (Part 90, subpart T, of this chapter); 600 MHz Service (Part 27, subpart N); 700 MHz Commercial Services (Part 27, subparts F

and H); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (Part 90, subpart S); 900 MHz Specialized Mobile Radio Service (Part 90, subpart S); 900 MHz Broadband Service (Part 27, subpart P); 3.45 GHz Service (Part 27, subpart Q); 3.7 GHz Service (Part 27, subpart O); Advanced Wireless Services (Part 27, subparts K and L); Air-Ground Radiotelephone Service (Commercial Aviation) (Part 22, subpart G, of this chapter); Broadband Personal Communications Service (Part 24, subpart E, of this chapter); Broadband Radio Service (Part 27, subpart M); Cellular Radiotelephone Service (Part 22, subpart H); Citizens Broadband Radio Service (Part 96, subpart C, of this chapter); Dedicated Short Range Communications Service, excluding public safety licenses (Part 90, subpart M); Educational Broadband Service (Part 27, subpart M); H Block Service (Part 27, subpart K); Local Multipoint Distribution Service (Part 101, subpart L); Multichannel Video Distribution and Data Service (Part 101, subpart P); Multilateration Location and Monitoring Service (Part 90, subpart M); Multiple Address Systems (EAs) (Part 101, subpart O); Narrowband Personal Communications Service (Part 24, subpart D); Paging and Radiotelephone Service (Part 22, subpart E; Part 90, subpart P); VHF Public Coast Stations, including Automated Maritime Telecommunications Systems (Part 80, subpart J, of this chapter); Space Launch Services (Part 26 of this chapter); Upper Microwave Flexible Use Service (Part 30 of this chapter); and Wireless Communications Service (Part 27, subpart D of this chapter).

*****

Wireless Radio Services. All radio services authorized in Parts 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 96, 97 and 101 of this chapter, whether commercial or private in nature.

*****

PART 2 – FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Amend § 2.106(a) by revising the Table of Frequency Allocations, pages 26, 36, and 37 to read as follows:

§ 2.106 Table of Frequency Allocations.

(a) * * *

272-273 SPACE OPERATION (space-to-Earth) FIXED MOBILE 5.254			
273-312 FIXED MOBILE 5.254			
312-315 FIXED MOBILE Mobile-satellite (Earth-to-space) 5.254 5.255			
315-322 FIXED MOBILE 5.254	G27 G100		
322-328.6 FIXED MOBILE RADIO ASTRONOMY 5.149	322-328.6 FIXED MOBILE US342 G27	322-328.6 US342	
328.6-335.4 AERONAUTICAL RADIONAVIGATION 5.258 5.259	328.6-335.4 AERONAUTICAL RADIONAVIGATION 5.258		Aviation (87)
335.4-387 FIXED MOBILE 5.254	335.4-399.9 FIXED MOBILE	335.4-399.9	
387-390 FIXED MOBILE Mobile-satellite (space-to-Earth) 5.208A 5.208B 5.254 5.255			
390-399.9 FIXED MOBILE 5.254	G27 G100		
399.9-400.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.220	399.9-400.05 MOBILE-SATELLITE (Earth-to-space)) ~~US319~~ US320 RADIONAVIGATION-SATELLITE		Satellite Communications (25)
400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) 5.261 5.262	400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) 5.261		

1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.289 5.341		1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.289 5.341 5.384	5.341	5.341 US88	
1710-1930 FIXED MOBILE 5.384A 5.388A 5.388B			1710-1761 5.341 US91 US378 US385	1710-1780 FIXED MOBILE 5.341 US91 US378 US385	
			1761-1780 SPACE OPERATION (Earth-to-space) G42 US91		
			1780-1850 FIXED MOBILE SPACE OPERATION (Earth-to-space) G42	1780-1850	
5.149 5.341 5.385 5.386 5.387 5.388			1850-2025	1850-2000 FIXED MOBILE	RF Devices (15) Personal Communications (24) Wireless Communications (27) Fixed Microwave (101)
1930-1970 FIXED MOBILE 5.388A 5.388B 5.388	1930-1970 FIXED MOBILE 5.388A 5.388B Mobile-satellite (Earth-to-space) 5.388	1930-1970 FIXED MOBILE 5.388A 5.388B 5.388			
1970-1980 FIXED MOBILE 5.388A 5.388B 5.388					
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F				2000-2020 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	Satellite Communications (25) Wireless Communications (27)
2010-2025 FIXED MOBILE 5.388A 5.388B 5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.388 5.389C 5.389E	2010-2025 FIXED MOBILE 5.388A 5.388B 5.388		2020-2025 FIXED MOBILE	

2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) 5.392	2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 5.392 US90 US92 US222 US346 US347	2025-2110 FIXED NG118 MOBILE 5.391 Space Operation (Earth-to-space) US94 5.392 US90 US92 US222 US346 US347	Space Launch Services (26) TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J) Page 36

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388			2110-2120 US252	2110-2120 FIXED MOBILE US252	Public Mobile (22) Wireless Communications (27 Fixed Microwave (101)
2120-2170 FIXED MOBILE 5.388A 5.388B 5.388	2120-2160 FIXED MOBILE 5.388A 5.388B Mobile-satellite (space-to-Earth) 5.388 2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.388 5.389C 5.389E	2120-2170 FIXED MOBILE 5.388A 5.388B 5.388	2120-2200	2120-2180 FIXED MOBILE NG41	
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A 5.388 5.389A 5.389F				2180-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25) Wireless Communications (27)
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) US96 EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only) MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392 US303	2200-2290 US96 US303	Space Launch Services (26)
2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)			2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)	2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)	
2300-2450 FIXED MOBILE 5.384A Amateur Radiolocation	2300-2450 FIXED MOBILE 5.384A RADIOLOCATION Amateur		2300-2305 G122 2305-2310	2300-2305 Amateur 2305-2310 FIXED MOBILE except aeronautical	Amateur Radio (97) Wireless Communications (27)

		US97 G122	RADIOLOCATION Amateur US97	

* * * * *

(b) * * *

7. Section 2.106 is amended by adding paragraph (c)(94) and by revising paragraphs (c)(96) and (c)(319) to read as follows:

(c) * * *

(94) US94 In the band 2025-2110 MHz, the non-Federal space operation service shall be subject to the following conditions:

(i) transmissions are restricted to telecommand use for pre-launch testing and space launch operations.

(ii) subject to coordination with NTIA prior to each launch.

(iii) subject to coordination with non-federal fixed and mobile stations.

* * * * *

(96) US96 The band 2200-2290 MHz is allocated to the space operation service (space-to-Earth) and mobile service on a secondary basis for non-Federal use subject to the following conditions. Non-Federal stations shall be:

(i) Restricted to use for pre-launch testing and space launch operations, except as provided under US303; and

(ii) Subject to coordination with NTIA prior to each launch.

* * * * *

(319) US319 In the bands 137-138 MHz, 148-149.9 MHz, 149.9-150.05 MHz, 400.15-401 MHz, 1610-1626.5 MHz, and 2483.5-2500 MHz, Federal stations in the mobile-satellite service shall be limited to earth stations operating with non-Federal space stations.

* * * * *

3. Add part 26 to read as follows:

PART 26 – SPACE LAUNCH SERVICES

Authority: 47 U.S.C. 151, 152, 154, 301, 303, unless otherwise noted.

Subpart A – GENERAL INFORMATION

Sec.

26.1 Basis and purpose.

26.2 Frequencies.

26.3 Scope of Service.

26.4 Other applicable rule parts.

26.5 Terms and definitions.

Subpart B – APPLICATIONS AND LICENSES

Sec.

26.101 Eligibility.

26.102 License period; Renewal.

26.103 Licensing.

26.104 Regulatory Status.

26.105 Authorization required.

26.106 Submission and Filing of Applications.

26.107 Restrictions on the Operation of Stations.

26.108 Content of applications; Registration of Stations.

26.109 Assignment and Transfer.

Subpart C – FREQUENCY COORDINATION

Sec.

26.201 Policies governing the assignment of frequencies.

26.202 Frequency coordinator requirements.

Subpart D -- TECHNICAL STANDARDS

Sec.

26.301 Authorized Bandwidth.

26.302 Emission masks.

26.303 Power limits.

26.304 Antenna Structures; air navigation safety.

26.305 Incorporation by Reference.

Authority: 47 U.S.C. sections 154, 301, 302a, 303, 307, 309 and 332, unless otherwise noted.

Subpart A -- GENERAL INFORMATION

§ 26.1 Basis and purpose.

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) Basis. The rules for Space Launch Services in this part are promulgated under the provisions of the Communications Act of 1934, as amended, that vest authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations. All rules in this part are in accordance with applicable treaties and agreements to which the United States is a party.

(b) Purpose. This part states the conditions under which spectrum is made available and licensed for the provision of Space Launch Services. These rules do not govern the licensing of radio systems belonging to and operated by the United States.

§ 26.2 Frequencies.

The following frequencies are available for assignment on a nationwide, non-exclusive basis for Space Launch Services:

(a) 2025-2110 MHz; and

(b) 2200-2290 MHz.

§ 26.3 Scope of Service.

(a) Space launch stations are restricted to the following uses:

(1) 2025-2110 MHz band. The use of Space Launch Services licenses in the 2025-2110 MHz band is restricted to ground-to-launch vehicle telecommand uses necessary to support space launch operations.

(2) 2200-2290 MHz band. The use of Space Launch Services licenses in the 2200-2290 MHz band is restricted to launch vehicle-to-ground communications associated with telemetry and tracking operations.

(b) Telemetry, tracking and telecommand functions permissible as space launch operations include, but are not limited to, (1) pre-launch testing, such as pre-flight checks, ground testing, and telemetry; (2) vehicle tracking, including the transmission of parameter data from a launch vehicle to ground; (3) telecommand signals for propulsive maneuvering of a launch vehicle and separation of payload from launch vehicle; and (4) telecommand signals for propulsive maneuvering of a reentry vehicle for return and recovery.

(c) The use of Space Launch Services licenses for on-orbit communications after a launch vehicle separates from its payload are not permitted, provided that a space launch station may be used for telemetry, tracking, and telecommand activities for the incidental orbiting of a launch vehicle before or after it has separated from its payload. The use of Space Launch Services licenses for such incidental orbiting are permitted only to the extent necessary for space launch operations.

§ 26.4 Other applicable rule parts.

Other FCC rule parts applicable to the Space Launch Services include the following:

(a) *Part 0*. This part describes the Commission's organization and delegations of authority. Part 0 of this chapter also lists available Commission publications, standards and procedures for access to Commission records, and location of Commission Field Offices.

(b) *Part 1*. This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; competitive bidding procedures; and the environmental requirements that, together with the procedures specified in § 17.4(c) of this chapter, if applicable, must be complied with prior to the initiation of construction. Subpart F includes the rules for the Wireless Radio Services and the procedures for filing electronically via the Universal Licensing System (ULS).

(c) *Part 2*. This part contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, and treaties. This part also contains standards and procedures concerning the marketing and importation of radio frequency devices, and for obtaining equipment authorization.

(d) *Part 5*. This part contains rules prescribing the manner in which parts of the radio frequency spectrum may be made available for experimentation.

(e) *Part 15*. This part sets forth the requirements and conditions applicable to certain radio frequency devices.

(f) *Part 17*. This part contains requirements for the construction, marking and lighting of antenna towers, and the environmental notification process that must be completed before filing certain antenna structure registration applications.

(g) *Part 25*. This part contains the requirements for satellite communications, including satellite DARS.

(i) *Part 74*. This part sets forth the requirements and conditions applicable to experimental radio, auxiliary, special broadcast and other program distributional services.

(j) *Part 87*. This part sets forth the requirements and conditions applicable to aviation services.

§ 26.5 Terms and definitions.

Base station. A station at a specified site authorized to communicate with mobile stations.

Equivalent Isotropically Radiated Power (*EIRP*). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna (absolute or isotropic gain).

Expendable launch vehicle. A launch vehicle whose propulsive stages are used only once.

First stage of a launch. The first 15 minutes of flight.

Fixed service. A radio communication service between specified fixed points.

Fixed station. A station in the fixed service.

Frequency coordination. The process of obtaining the recommendation of a frequency coordinator for a frequency(ies) that will most effectively meet the applicant's needs while minimizing interference to licensees already operating within a given frequency band.

Frequency coordinator. An entity or organization that has been certified by the Commission to recommend frequencies for use by licensees in the Space Launch Services.

Harmful interference. For the purposes of resolving conflicts between stations operating under this part, any emission, radiation, or induction which specifically degrades, obstructs, or interrupts the service provided by such stations.

Itinerant Operation. Operation of a radio station at unspecified locations for varying periods of time.

Launch vehicle. A vehicle built to place a payload or human beings from Earth in a suborbital trajectory, in Earth orbit, or otherwise in outer space.

Mobile service. A radio communication service between mobile and land stations, or between mobile stations.

Mobile station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

Reentry vehicle. A vehicle designed to return from Earth orbit or outer space to Earth substantially intact. A reentry vehicle is regarded as a launch vehicle in the context of a space launch operation only to the extent that it is being used for launch purposes.

Reusable launch vehicle. A launch vehicle that is designed to return to Earth substantially intact and may be launched more than one time or that contains vehicle stages that may be recovered by a launch operator for future use.

Space launch operations. Any activity that places a launch vehicle, whether an expendable launch vehicle or a reusable launch vehicle or reentry vehicle used for launch, and any payload or human being from Earth in a suborbital trajectory, in Earth orbit, or otherwise in outer space, including pre-launch testing and recovery or reentry of the launch vehicle.

Telecommand. The transmission of non-voice signals for the purpose of remotely controlling a device.

Telemetry. The transmission of non-voice signals for the purpose of automatically indicating or recording measurements at a distance from the measuring instrument. In the context of space launch operations, telemetry is diagnostic information, transmitted from the launch vehicle to ground controller stations during the flight, which allows the ground controller station to track the performance of the launch vehicle.

Universal Licensing System (*ULS*). The consolidated database, application filing system and processing system for all Wireless Telecommunications Services. The ULS offers Wireless Telecommunications Bureau (WTB) applicants and the general public electronic filing of all applications requests, and full public access to all WTB licensing data.

Subpart B -- APPLICATIONS AND LICENSES

§ 26.101 Eligibility.

(a) The following entities are eligible for Space Launch Services licenses:

(1) A non-Federal entity that conducts space launch operations; or

(2) A parent of such entity or a subsidiary of such entity if either conducts space launch operations.

§ 26.102 License period; Renewal.

Licenses for stations in the Space Launch Services will be issued for a term of ten years from the date of original issuance, or renewal. Prior to expiration of the term of a license, the space launch licensee shall submit to the Commission an application for the renewal in accordance with Part 1, subpart F of this chapter. Such renewal application shall certify that, during the preceding license term, the licensee operated and continues to operate consistent with Commission rules and the terms of its existing authorization, including the operation of stations consistent with the terms of frequency coordination performed during its license term.

§ 26.103 Licensing.

The 2025-2110 MHz and 2200-2290 MHz bands are authorized on a non-exclusive nationwide basis for Space Launch Services. Non-exclusive nationwide licenses will serve as a prerequisite for registering launch sites and individual fixed, base, itinerant and mobile stations, as well as individual coordinated launches. A Space Launch Services licensee cannot operate a launch site and corresponding fixed, base, itinerant or mobile stations before registering it under its license and may only operate a station after that station has been cleared to operate in a particular frequency band in connection with a particular launch pursuant to the post-grant frequency coordination process set forth in Subpart C of this part. Space Launch Services licensees must delete registrations for unused launch sites and unused fixed, base, itinerant and mobile stations to maintain database integrity and facilitate coordination with other users of the 2025-2110 MHz and 2200-2290 MHz bands.

§ 26.104 Regulatory Status.

Licensees are permitted to provide services on a non-common carrier basis. A licensee may render communications services consistent with the regulatory status in its license and with the Commission's rules applicable to the Space Launch Services.

§ 26.105 Authorization required.

(a) General rule. Stations in the Space Launch Services must be used and operated only in accordance with the service rules set forth in this part, including the terms of the frequency coordination performed pursuant to subpart C of this part, and with a valid authorization granted by the Commission under the provisions of this part, except as specified in paragraph (b) of this section.

(b) Restrictions. The holding of an authorization does not create any rights beyond the terms, conditions and period specified in the authorization. Authorizations may be granted upon proper application, provided that the Commission finds that the applicant is qualified in regard to citizenship, character, financial,

technical and other criteria, and that the public interest, convenience and necessity will be served. *See* 47 U.S.C. §§ 301, 308, 309, and 310.

§ 26.106 Submission and Filing of Applications.

(a) Applications for authorizations in the Space Launch Services must be filed in the Universal Licensing System (ULS) in accordance with Part 1, subpart F of this chapter. All modifications or renewals of licenses, assignments or transfers of control of licenses or any rights thereunder, and waiver requests associated with any of the foregoing shall be granted only upon an application filed pursuant to Part 1, subpart F as well. Applicants should also refer to the Commission rules regarding the payment of statutory charges (subpart G of Part 1) and the use of the FCC Registration Number (FRN) (*see* subpart W of Part 1).

(b) Electronic filing. All applications and other filings using the application and notification forms listed in Part 1, subpart F of this chapter or associated schedules must be filed electronically in accordance with the electronic filing instructions provided by ULS. The Commission will announce by public notice the deployment date of the service in ULS and provide corresponding filing instructions.

§ 26.107 Restrictions on the Operation of Stations.

Stations in the Space Launch Services may operate in a particular frequency band only if they have been registered pursuant to § 26.108 and cleared to operate in that frequency band by the space launch frequency coordinator using the frequency coordination process set forth in subpart C of this part.

§ 26.108 Content of Applications; Registration of stations.

(a) Application for authorization. Each application for authorization required by this part shall be specific and complete with regard to the information requested by the application forms in Part 1, subpart F of this chapter and associated public notice(s). Applicants must provide any additional information requested by NTIA or the frequency coordinator to complete the frequency coordination process set forth in subpart C of this part.

(b) Station Registration. Once authorization is granted, Space Launch Services licensees must register in ULS each launch site and each corresponding station (fixed, base, itinerant, or mobile) that will be used in their space launch operations, as well as each individual launch that has completed the frequency coordination process set forth in subpart C of this part.

(c) Space Launch Services licensees have a continuing obligation to update their licenses and corresponding site and station registration data as soon as the operational or technical details of a launch changes to ensure proper coordination.

§ 26.109 Assignment and Transfer.

Licensees may assign or transfer their non-exclusive nationwide licenses upon application to and prior approval from the Commission, and any stations registered under those licenses will remain associated with those licenses unless otherwise agreed upon by the parties to the assignment or transfer and approved by the Commission.

Subpart C – FREQUENCY COORDINATION

§ 26.201 Policies governing the assignment of frequencies.

(a) Frequencies assigned to Space Launch Services stations are available on a shared basis only and will not be assigned for the exclusive use of any licensee.

(b) Any base, fixed, itinerant, or mobile station operating in the band must comply with the frequency coordination requirements set forth in § 26.202.

(c) All applicants and licensees shall cooperate in the selection and use of frequencies for Space Launch Services and comply with the frequency coordination requirements in order to minimize the potential for interference and make the most effective use of the authorized facilities. Information regarding registered launch sites, stations and launches that have completed the frequency coordination process set forth in subpart C of this part will be available at http://wireless.fcc.gov/uls. Licensees should examine this information before registering individual launch operations, and make every effort to ensure that their planned launch operations will not interfere or conflict with previously registered operations. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements.

§ 26.202 Frequency coordinator requirements.

Once an application for a new Space Launch Services authorization is granted, each Space Launch Services licensee must submit, for each proposed launch operation, the applicable launch site and corresponding fixed, base, itinerant, and mobile stations consistent with § 26.108 and submit their technical and operational parameters to the space launch frequency coordinator to initiate post-grant frequency coordination. Any changes to the technical and operational parameters for a launch event that occur after completion of post-grant frequency coordination also require coordination, and these changes shall be provided to initiate an updated post-frequency grant coordination.

(a) The space launch frequency coordinator may request, and Space Launch Services licensees are required to provide, all appropriate technical information, system requirements, and justification for requested station parameters when such information is necessary to identify and recommend the most appropriate frequency.

(b) In the 2025-2110 MHz band:

(1) Site-based Local Coordination.

(A) The space launch frequency coordinator must initiate a post-grant coordination request for site-specific coordination with the local Broadcast Auxiliary Service (BAS) frequency coordinator, including the provision of all necessary technical and operational parameters for each space launch licensee, to protect BAS, Cable Television Relay Service (CARS), and Local Television Transmission Service (LTTS) operations, as well as Federal entities that have completed coordination with the BAS frequency coordinator.

(B) The space launch frequency coordinator is not required to initiate a post-grant coordination request for site-specific coordination with the local BAS frequency coordinator if the Space Launch Services licensee provides a showing to the space launch frequency coordinator that (a) it has previously coordinated its proposed launch operations with the appropriate local BAS frequency coordinator and continues to comply with any conditions or agreements resulting from such prior coordination, or that it has entered into applicable coordination agreements with co-frequency entities; (b) it has ascertained that its proposal will not constrain, preclude, nor interfere with incumbents in the band, including BAS, CARS and LTTS licensees and previously coordinated Federal operations; and (c) it has demonstrated in a technical showing that its proposed operation will not create more than 0.5 dB increase in the noise threshold of a receiver at a fixed or temporary fixed electronic news gathering (ENG) receive site.

(C) Upon request, the space launch frequency coordinator and/or the Space Launch Services licensee must provide any additional information requested by the local BAS frequency coordinator regarding a pending recommendation that it has processed but has not yet been granted.

(D) It is the responsibility of the space launch frequency coordinator to ensure that its frequency recommendations do not conflict with the frequency recommendations of the local BAS frequency coordinator. Should a conflict arise, the affected coordinators are jointly responsible for taking action to

resolve the conflict, up to and including notifying the Commission and NTIA that a launch request must be denied.

(2) Per-Launch Coordination with the National Telecommunications and Information Administration (NTIA).

(A) To protect Federal users in the band, the space launch frequency coordinator shall conduct a post-grant, per-launch coordination with NTIA by providing the Space Launch licensee's site and station registration with their corresponding technical and operational parameters to initiate the coordination process for each proposed launch.

(B) To assist NTIA's review, the space launch frequency coordinator may provide a showing that the operational and technical parameters of a proposed launch are consistent with a prior successful coordination and that the space launch licensee continues to comply with any conditions or agreements resulting from such prior coordination or that its proposed launch is covered by an applicable coordination agreement(s) with co-frequency entities.

(c) In the 2200-2290 MHz band:

(1) Per-Launch Coordination with NTIA.

(A) To protect Federal users in the band, the space launch frequency coordinator shall conduct a post-grant, per-launch coordination with NTIA by providing the Space Launch Services licensee's site and station registration with their corresponding technical and operational parameters to initiate the coordination process for each proposed launch.

(B) To assist NTIA's review, the space launch frequency coordinator may provide a showing that the operational and technical parameters of a proposed launch are consistent with a prior successful coordination and that the space launch licensee continues to comply with any conditions or agreements resulting from such prior coordination or that its proposed launch is covered by an applicable coordination agreement(s) with co-frequency entities.

Subpart D -- TECHNICAL STANDARDS

§ 26.301 Authorized Bandwidth.

The Commission shall issue licenses in the Space Launch Services with bandwidths up to and including 5 megahertz, provided that the Commission may issue licenses with a maximum bandwidth exceeding 5 megahertz upon adequate justification from a license applicant explaining why the requested bandwidth is necessary for specific space launch operations, including an explanation of why the applicant's operations cannot be satisfied using a bandwidth of 5 megahertz or less.

§ 26.302 Emission Masks.

(a) 2025-2110 MHz. For frequencies offset from the assigned frequency less than the 50 percent of the necessary bandwidth, no attenuation is required. At a frequency offset equal to 50 percent of the necessary bandwidth, an attenuation of at least 8 dB is required. Frequencies offset more than 50 percent of the necessary bandwidth shall be attenuated by the following mask:

$$40 \times \log\left(\frac{2 \times |f_d|}{B_n}\right) + 8 \text{ dBsd}$$

Where f_d is the frequency displaced from the center of the emission bandwidth.

Necessary bandwidth (B_n) is determined in accordance with Annex J of the NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual) (incorporated by reference, see § 26.305).

dBsd is dB attenuation in a 4 kHz bandwidth, relative to the maximum power in any 4 kHz bandwidth within the necessary bandwidth (0 dBsd).

Attenuation in this sense refers to the reduction in level relative to the reference, 0 dBsd, unless otherwise specified.

The unwanted emission mask rolls off at 40 dB per decade to a maximum attenuation of 60 dBsd, at which point it continues on both sides of the carrier for all frequencies beyond this point. See Annex M of the NTIA Manual regarding measurement requirements (incorporated by reference, see § 26.305). For any narrowband or single frequency unwanted emission which is not spread by the modulation process, the required attenuation shall be at least 60 dBc, where dBc is attenuation below the mean transmit power, rather than the dBsd value determined above.

(b) 2200-2290 MHz.

(1) During the first stage of a launch, all spectral components larger than −[55 + 10xlog(P)] dBc (i.e., larger than −25 dBm) at the transmitter output must be within the spectral mask calculated using the following equation:

$M(f) = K + 90 \log(R) - 100 \log |f-fc|; |f-fc| \geq R/m$

where M(f) = power (dBc) at frequency f (MHz)

K = −20 for analog signals

K = −28 for binary signals

K = −61 for FQPSK-B, FQPSK-JR, SOQPSK-TG

K = −73 for ARTM CPM

fc = transmitter center frequency (MHz)

R = bit rate (Mbps) for digital signals or (Δf +fmax)(MHz) for analog FM signals

M = number of states in modulating signal (m = 2 for binary signals, m = 4 for quaternary signals and analog signals)

f = peak deviation

fmax = maximum modulation frequency

(2) After the first stage of a launch, the emission mask set forth in paragraph (a) of this section shall apply.

§ 26.303 Power Limits.

(a) 2025-2110 MHz. The equivalent isotropically radiated power (EIRP) transmitted in any direction towards the horizon by an earth station in the 2025-2110 MHz band of the Space Launch Services shall not (with limited exceptions) exceed the following limits:

+40 dBW in any 4 kHz band for $\theta \leq 0°$

$+40+3\theta$ dBW in any 4 kHz band for $0° < \theta \leq 5°$

where θ is the angle of elevation of the horizon viewed from the center of radiation of the antenna of the earth station and measured in degrees as positive above the horizontal plane and negative below it.

(b) 2200-2290 MHz. During the first stage of a launch, the EIRP of any station in the 2200-2290 MHz band of the Space Launch Services shall not exceed 25 Watts and the transmitter output power shall not exceed 25 Watts. In addition, the power flux-density at the Earth's surface produced by emissions from a transmitter operating after the first stage of a launch for all conditions and for all methods of modulation shall not exceed the following limits:

–154 dB(W/m2) in any 4 kHz for angles of arrival less than 5° above the horizontal plane;

–154 + 0.5 (δ – 5) dB(W/m2) in any 4 kHz for angles of arrival δ (degrees) between 5° and 25° above the horizontal plane;

–144 dB(W/m2) in any 4 kHz for angles of arrival between 25° and 90° above the horizontal plane.

§ 26.304 Antenna structures; air navigation safety.

A licensee that owns its antenna structure(s) must not allow such antenna structure(s) to become a hazard to air navigation. In general, antenna structure owners are responsible for registering antenna structures with the FCC if required by Part 17 of this chapter, and for installing and maintaining any required marking and lighting. However, in the event of default of this responsibility by an antenna structure owner, the FCC permittee or licensee authorized to use an affected antenna structure will be held responsible by the FCC for ensuring that the antenna structure continues to meet the requirements of Part 17 of this chapter. See § 17.6 of this chapter.

(a) Marking and lighting. Antenna structures must be marked, lighted and maintained in accordance with Part 17 of this chapter and all applicable rules and requirements of the Federal Aviation Administration. For any construction or alteration that would exceed the requirements of section 17.7 of this chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460–1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, WTB, 1270 Fairfield Road, Gettysburg, PA 17325.

(b) Maintenance contracts. Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) may enter into contracts with other entities to monitor and carry out necessary maintenance of antenna structures. Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) that make such contractual arrangements continue to be responsible for the maintenance of antenna structures in regard to air navigation safety.

§ 26.305 Incorporation by Reference.

Certain standards listed in this section are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The approved material is available for inspection at 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 sources indicated below. 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. This material is available at www.archives.gov/federal-register/cfr/ibr-locations.html. The text of the National Telecommunications and Information Administration (NTIA) regulations is also available online at https://www.ntia.gov/publications/redbook-manual.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* (*FNPRM*) released in April 2021 in this proceeding.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comments on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Second Report and Order

2. In the *Second Report and Order*, the Commission continued its efforts to reform and streamline regulation of U.S. space commerce in order to ensure commercial companies can continue to drive U.S. space leadership. In furtherance of these objectives, the Commission adopted a new rule Part 26 for commercial space launch services, added a secondary non-Federal Space Operation allocation to the 2025-2110 MHz band, added a secondary non-Federal Mobile allocation to the 2200-2290 MHz band, removed the restriction on use of the secondary non-Federal Space Operation allocation to four channels, adopted a ten-year license term for commercial space launch operation, and established an application process modeled after space launch services' licensing framework for the 3650-3700 MHz band.

3. The new Part 26 rules adopted by the Commission contain the licensing, operation and service rules for space launch services and serve to both clarify the rules as well as improve the ability of those seeking guidance in this regulatory area to more easily reference the applicable rules. The space launch licensees will receive non-exclusive nationwide licenses with a ten-year term, which will provide both certainty and flexibility for space launch providers. Upon receiving their licenses, licensees may register their launch site and corresponding fixed, base, and itinerant stations as well as their mobile stations associated with the launch vehicles. The newly adopted Part 26 technical rules are similar to the current framework applicable to Federal operators in these bands, and also include emission mask and power limits that are consistent with the National Telecommunications and Information Administration's (NTIA) rules applicable to these bands.

4. The addition of a secondary Space Operation allocation to the 2025-2110 MHz band enables the Commission to issue licenses for use of this band during commercial space launches. This spectrum, which is regularly used by commercial space launch providers for sending control signaling to launch vehicles, will be subject to the same coordination requirements that currently apply to Federal users and will also sufficiently address the regulatory needs of the commercial space launch industry while ensuring the protection of incumbents. This band requires coordination of its use, as it is utilized by Broadcast Auxiliary Service (BAS) and Cable Television Relay Service (CARS) licensees as well as Federal agencies.

5. The *Second Report and Order* also removes the current four channel restriction for secondary non-Federal Space Operation allocation for the 2200-2290 MHz band. This change enables the availability of the entire band for non-Federal space launch operations. However, the other restrictions regarding use of the band, such as limiting use to pre-launch testing and space launch operations and requiring coordination with NTIA prior to each launch, will remain in place.

6. Additionally, adopting the secondary Mobile allocation for the 2200-2290 MHz band will

[1] 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).

[2] *Allocation of Spectrum for Non-Federal Space Launch Operations*, ET Docket No. 13-115, Report and Order and Further Notice of Proposed Rulemaking, 36 FCC Rcd 7764 (11), Appendix E (2021).

[3] 5 U.S.C. § 604.

facilitate the Commission's adoption of technical rules for space launch telemetry, which follows the same approach NTIA applies to Federal launches.[4] The Commission has determined that it is important to have the flexibility to adopt technical rules that are in harmony with the technical standards applied to Federal launches, because many launch vehicles are used for both Federal and non-Federal launches and many non-Federal launches occur at Federal launch facilities. Further, the secondary Mobile allocation for the 2200-2290 MHz will be subject to the same restrictions as the non-Federal Space Operation allocation in the band. The non-Federal Mobile allocation will be restricted to use during pre-launch testing and space launch operations and are subject to coordination for each launch.

7. Lastly, space launch licensees will be required to comply with post-license grant coordination requirements for each launch. The post-license grant coordination regime will be facilitated by a third-party space launch frequency coordinator in a two-part process: (1) for the 2025-2110 MHz band, a site-specific coordination of the operator's stations and launch parameters with BAS operations that requires the operator to submit its registered sites and stations to a designated third-party coordinator to initiate a launch coordination request(s), and (2) for both the 2025-2110 MHz and 2200-2290 MHz bands, coordination on a per-launch basis with NTIA unless not required by applicable coordination agreements with co-frequency entities or prior coordination. This will protect BAS, CARS, and Local Television Transmission Service (LTTS) operations and previously coordinated Federal incumbents which share these bands. In short, the rules adopted in the *Second Report and Order* provide much-needed updates to spectrum allocation and licensing for commercial space launch operations that will enable the fostering of innovation, investment and growth in the United States commercial space launch industry.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

8. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

9. 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.[5]

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

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

11. 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.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[8] A small business concern is one that:

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[4] NTIA treats telemetry systems during the first stage of a launch as an aeronautical mobile system and the second and later stages as a space operation system. *See* NTIA Manual § 8.2.44.

[5] 5 U.S.C. § 604(a)(3).

[6] *Id*. at 604(a)(4).

[7] 5 U.S.C. § 601(6).

[8] *Id*. § 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

(continued….)

(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.[9]

12. *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."[10] 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.[11] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[12] Of this number, 242 firms had revenue of less than $25 million.[13] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.[14] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[15] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

13. *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.[16] 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.[17] 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.[18] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[19] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that

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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).

[9] Small Business Act, 15 U.S.C. § 632 (1996).

[10] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[11] *See* 13 CFR § 121.201, NAICS Code 517410.

[12] *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.

[13] *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.

[14] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022),

https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[15] *Id.*

[16] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[17] *Id.*

[18] *Id*.

[19] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

operated for the entire year.[20] Of those firms, 1,039 had revenue of less than $25 million.[21] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

14. *Commercial Space Transportation*. Neither the Commission nor the SBA have developed a small business size standard for commercial space transport. Nonscheduled Charter Passenger Air Transportation[22] is the closest industry with a SBA small business size standard. This U.S. industry comprises establishments primarily engaged in providing air transportation of passengers or passengers and cargo with no regular routes and regular schedules.[23] This industry also includes air taxi services, aircraft charter passenger services and charter air passenger services which would encompass air space transportation.[24] The SBA small business size standard for this industry classifies a business as small if it has 1,500 employees or less.[25] U.S. Census Bureau data for 2017 indicates there were 1,148 firms in this industry that operated for the entire year.[26] Of this number 1,129 firms had less than 250 employees.[27] Thus, the major of Nonscheduled Charter Passenger Air Transportation firms can be considered small. We note however, that this category encompasses various types of commercial air transportation firms and does not exclusively represent the number of firms engaged in passenger space transport.

15. The FCC believes that the following business entities are the principle entities currently comprising the commercial space transportation launch operator industry in the United States: Blue Origin, Lockheed Martin Corporation, Northrup Grumman, Space Exploration Technologies (Space X), The Boeing Company, and Virgin Galactic. In May 2020, Space Exploration Technologies with NASA astronauts in a commercially built and operated spacecraft launched from American soil to the International Space Station for the first time in history.[28] More recently, in July 2021, Virgin Galactic and Blue Origin both successful launched manned space flights.[29] Additionally, The Boeing Company has

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[20] *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.

[21] *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.

[22] *See* U.S. Census Bureau, *2017 NAICS Definition, "481211* Nonscheduled Charter Passenger Air Transportation,*"* https://www.census.gov/naics/?input=481211&year=2017&details=481211.

[23] *Id.*

[24] *Id.*

[25] *See* 13 CFR § 121.201, NAICS Code 481211.

[26] *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 481211, https://data.census.gov/cedsci/table?y=2017&n=481211&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[27] *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.

[28] *See* NASA Astronauts Launch from America in Historic Test Flight of SpaceX Crew Dragon (dated May 30, 2020), https://www.nasa.gov/press-release/nasa-astronauts-launch-from-america-in-historic-test-flight-of-spacex-crew-dragon.

[29] On July 11, 2021, Virgin Galactic completed the first test flight with a full crew onboard in the commercial space industry. *See* https://www.space.com/virgin-galactic-spaceshiptwo-reservations-one-small-step.html; On July 20, 2021, Blue Origin successfully launched the first commercial space flight with four private citizens onboard. *See* https://www.blueorigin.com/news/first-human-flight-updates.

been working with NASA on its commercial Starliner spacecraft to incorporate various lessons learned as it prepares for its second unmanned launch of the Starliner - Orbital Flight Test (OFT-2).[30]

16. The commercial space industry is a nascent industry and the Commission does not have data on the size of these entities. We therefore cannot reach definite conclusions as to the number of small entities that will be affected by our actions in this proceeding, but we shall assume that a significant number of small entities will be affected. NASA has agreements with two companies to design and develop human space flight capabilities: Space Exploration Technologies, and The Boeing Company.[31]

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

17. The rules adopted in the *Second Report and Order* will impose new or modified reporting, recordkeeping or other compliance requirements on certain small and other entities. We adopt a streamlined application framework for Space Launch Service licenses, thus reducing compliance burdens for small and other entities. For example, applications for licenses in the Space Launch Service must be filed electronically in the Universal Licensing System (ULS) at http://wireless.fcc.gov/uls. All modifications or renewals of licenses, assignments or transfers of control of licenses, and waiver requests associated will be granted only upon a filed application. Space Launch Service licensees have an obligation to update their license and corresponding site and station registration data as soon as the operational or technical details of a launch changes to ensure proper coordination.

18. Additionally, the adopted rules require Space Launch Service licensees to conduct a post-grant, per-launch coordination directly with NTIA by providing NTIA with its site and station registration along with their corresponding technical and operational parameters. In addition, for the 2025-2110 MHz band, the licensee must submit technical and operational parameters to a space launch frequency coordinator to initiate post-grant frequency coordination. The space launch frequency coordinator will then coordinate with the local BAS frequency coordinator.

19. The Commission does not have sufficient information on the record to determine whether the rules adopted in the *Second Report and Order* will require small entities to hire professionals to comply with its decisions or to quantify the cost of compliance for small entities. We note, however, that the Commission anticipates the approaches it has taken to implement the requirements should have minimal cost implications, as the adopted rules are largely implementing an application framework that utilizes elements of existing processes small entities are already familiar with, such as the 3650-3700 MHz licensing framework or use of FCC Form 601 for applicant qualification for non-exclusive nationwide wireless licenses.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. 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 other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[32]

21. The Commission has considered the economic impact on small entities in reaching its final conclusions and through the actions we have taken in this proceeding. For example, the *Second*

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[30] *See* Starliner Program Manager Shares Team's North Star (dated July 29, 2021), https://www.boeing.com/features/2021/07/starliner-program-manager-shares-teams-north-star.page.

[31] *See* NASA Astronauts Launch from America in Historic Test Flight of SpaceX Crew Dragon (dated May 30, 2020), https://www.nasa.gov/press-release/nasa-astronauts-launch-from-america-in-historic-test-flight-of-spacex-crew-dragon; Boeing, CST-1000 Starliner, https://www.boeing.com/space/starliner/ (last visited July 28, 2023).

[32] 5 U.S.C. § 604(a)(6).

Report and Order adopted an allocation in the 2025-2110 MHz band and expanded the previous allocation for the 2200-2290 MHz band, as well as permitted the Commission to issue licenses for commercial space launches to use these bands. We considered proposed alternatives that would limit space launch operations for the use of the 2025-2210 MHz band to specified geographic sites and pre-licensing coordination.[33] However, the actions we have taken in this proceeding will provide more efficient use of spectrum in those ranges, create a more certain regulatory regime, protect incumbent users from harmful interference and provide economic growth opportunities to small and other launch providers utilizing the bands.

22. Additionally, the *Second Report and Order* adopted licensing and technical rules governing spectrum requirements for Space Launch Services. Prior to the adoption of these rules, the Commission had granted special temporary authority (STA) under the Part 5 experimental licensing rules for each individual launch. Rather than retaining a site-by-site STA process, which are only valid for a single launch and expire after six months, our decision to adopt a nationwide, non-exclusive licensing approach provides small and other space launch operators the efficiency of only having to file one license to cover a host of launch sites that are shared by multiple co-frequency operators. Further, small entities who manufacture and/or develop launch vehicles and spacecraft or conduct launches will benefit because they will be able to obtain licenses for spectrum to use during launches instead of being subject to the added burden and uncertainty of having to obtain STA licenses for each launch. Consequently, adopting these allocations will provide only a benefit to small entities and will have no significant harmful economic impact on any small entity.

23. Lastly, with the adoption of these rules, the Commission can now provide launch providers with ten-year term licenses, which serve the Commission's goals of minimizing administrative burdens to small and other entities and encouraging long-term investment in these services, while still allowing the Commission to retain proper oversight over commercial space launch operations. We gave consideration to comments suggesting a 15-year term; however, we rejected such an approach as inefficient, given the congested nature of the bands at issue. While coordination of each launch will still be required because of the other Federal and non-Federal operations in these bands, the adopted rules take the step of establishing a coordination process that should streamline the process of providing access to spectrum during space launches, which will provide an economic benefit to small entities with limited human and economic resources that would otherwise have to navigate a more inefficient approach to launch coordination.

G. Report to Congress

24. The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[34] In addition, the Commission will send a copy of the *Second Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.[35]

[33] SBE Comments at 17; NAB Comments at 5.

[34] 5 U.S.C. § 801(a)(1)(A).

[35] 5 U.S.C. § 604(b).

APPENDIX C

List of Commenters

FNPRM Comments

Aerospace and Flight Test Coordinating Radio Council (AFTRCC)
Aerospace Industries Association
Astroscale U.S. Inc.
Axiom Space Inc., Atmos Space, Sierra Space Corp., Scout Inc. (Industry Participants)
Axiom Space Inc.
BlackSky Global LLC
Boeing
CTIA
Department of Commerce
Department of Defense
EchoStar
EIBASS
Industry Coalition Response (ICR)
Iridium Communications inc.
Myriota PYT LTD
NASA
National Association of Broadcasters (NAB)
NCTA
NTIA
Relativity Space Inc.
Rocket Lab USA Inc.
Satellite Industry Association (SIA)
Society of Broadcast Engineers (SBE)
Spaceflight Inc.
SpaceX
T-Mobile USA Inc.
United Launch Alliance LLC (ULA)
Verizon
Virgin Galactic Holdings Inc.
Wi-Fi Alliance

FNPRM Reply Comments

AFTRCC
Astra Space Inc.
AT&T
Axiom
Boeing
Consortium for the Execution of Rendezvous and Servicing (CONFERS)
CTIA
EIBASS
Fleet Space Technologies PYT LTD
Globalstar Inc.
Industry Participants
Momentus Inc.
Myriota
Northrop Grumman
Open Technology Institute at New America and Public Knowledge
Spaceflight Inc.
SpaceX
TechFreedom
T-Mobile
ULA
Verizon

APPENDIX D

Proposed Rules

For the reasons discussed in the document, the Federal Communications Commission proposes to amend 47 CFR part 2 as follows:

PART 2 – FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Amend § 2.106(a) by revising the Table of Frequency Allocations, pages 36 and 37 to read as follows:

§ 2.106 Table of Frequency Allocations.

(a) * * *

1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.289 5.341		1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.289 5.341 5.384	5.341	5.341 US88	
1710-1930 FIXED MOBILE 5.384A 5.388A 5.388B 5.149 5.341 5.385 5.386 5.387 5.388			1710-1761 5.341 US91 US378 US385 1761-1780 SPACE OPERATION (Earth-to-space) G42 US91 1780-1850 FIXED MOBILE SPACE OPERATION (Earth-to-space) G42 1850-2025	1710-1780 FIXED MOBILE 5.341 US91 US378 US385 1780-1850 1850-2000 FIXED MOBILE	
1930-1970 FIXED MOBILE 5.388A 5.388B 5.388	1930-1970 FIXED MOBILE 5.388A 5.388B Mobile-satellite (Earth-to-space) 5.388	1930-1970 FIXED MOBILE 5.388A 5.388B 5.388			RF Devices (15) Personal Communications (24) Wireless Communications (27) Fixed Microwave (101)
1970-1980 FIXED MOBILE 5.388A 5.388B 5.388					
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F				2000-2020 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	Satellite Communications (25) Wireless Communications (27)
2010-2025 FIXED MOBILE 5.388A 5.388B 5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.388 5.389C 5.389E	2010-2025 FIXED MOBILE 5.388A 5.388B 5.388		2020-2025 FIXED MOBILE	

2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) 5.392	2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 5.392 US90 US92 US222 US346 US347 USxxx	2025-2110 FIXED NG118 MOBILE 5.391 Space Operation (Earth-to-space) US94 5.392 US90 US92 US222 US346 US347 USxxx	Space Launch Services (26) TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J) Page 36

Table of Frequency Allocations — 2110-2483.5 MHz (UHF)

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388			2110-2120 US252 USxxx	2110-2120 FIXED MOBILE US252 USxxx	Public Mobile (22) Wireless Communications (27 Fixed Microwave (101)
2120-2170 FIXED MOBILE 5.388A 5.388B 5.388	2120-2160 FIXED MOBILE 5.388A 5.388B Mobile-satellite (space-to-Earth) 5.388 2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.388 5.389C 5.389E	2120-2170 FIXED MOBILE 5.388A 5.388B 5.388	2120-2200	2120-2180 FIXED MOBILE NG41	
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A 5.388 5.389A 5.389F				2180-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25) Wireless Communications (27)
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) US96 EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only) MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392 US303 USyyy USzzz	2200-2290 US96 US303 USyyy USzzz	
2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)			2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth) USxxx	2290-2300 SPACE RESEARCH (deep space) (space-to-Earth) USxxx	
2300-2450	2300-2450		2300-2305	2300-2305	

MOBILE 5.384A Amateur Radiolocation	MOBILE 5.384A RADIOLOCATION Amateur	2305-2310 US97 G122	2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US97	Wireless Communications (27) Amateur Radio (97)

3. Amend § 2.106 by adding (c)(96)(i) through (iii) to read as follows:

(c) * * *

(96) * * *

(i) USxxx Use of the bands 2290-2293 MHz and 2297-2300 MHz by Federal and non-Federal space stations may be authorized on a primary basis for the specific purpose of emergency transmissions from manned spacecraft used in the exploration and use of outer space, including the Moon and other celestial bodies. This allocation is restricted to emergency transmissions from manned spacecraft when experiencing emergency situations. Additionally, the bands 2025-2110 MHz and 2110-2120 MHz may also be authorized on a primary basis for transmissions of related commands to the spacecraft. Such operations should be conducted in accordance with Recommendation ITU-R SA.1863.

(ii) USyyy In the band 2213.5-2218.5 MHz, non-Federal space stations operating in the space operation service providing transportation service of crew to and from the International Space Station, may be authorized on a primary basis to transmit in the space-to-Earth direction, to authorized receiving stations, subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Federal stations. The power flux-density at the Earth's surface from such emissions from these non-Federal stations shall not exceed -144 to -154 dBW/m²/4 kHz, depending on the angle of arrival, in accordance with ITU Radio Regulation No. 21.16.

(iii) USzzz In the band 2200.2-2206.2 MHz, non-Federal space stations operating in the space operation service may be authorized on a primary basis to transmit to the International Space Station (ISS) while within 30 km of the ISS, subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Federal stations. The power-flux-density of such emissions at the Earth's surface from these non-Federal stations shall not exceed -144 to -154 dBW/m²/4 kHz, depending on the angle of arrival, in accordance with ITU Radio Regulation No. 21.16. ITU Radio Regulation No. 5.392 also applies.

* * * * *

APPENDIX E

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (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 FNPRM*). 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 in the *Second FNPRM*. The Commission will send a copy of the *Second FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Second FNPRM* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the Second FNPRM, the Commission proposes to add three footnotes requested by NTIA to the Allocation Table. The footnotes, titled USxxx, USyyy and USZZZ, will address manned and unmanned spacecraft use of spectrum during space missions. Draft footnote USxxx addresses emergency transmissions involving manned spacecraft in two portions of the 2200-2290 MHz band as well as the 2025-2110 MHz and 2110-2120 MHz bands; draft footnote Uyyy is applicable to ground station transmissions by non-Federal spacecraft transporting crew to and from the International Space Station (ISS); and draft footnote USzzz is applicable to spacecraft that are transmitting in portions of the 2200-2290 MHz band within 30 kilometers of the ISS and serves to provide an allocation for commercial companies transporting supplies and crew to the ISS.

3. In addition to the proposed footnotes, the Commission also seeks comment on (1) whether to include new spectrum allocations in specific bands for communications with cargo and crew capsules and payload communications with the International Space Station (ISS) and other crewed space stations; (2) possible necessary changes to the Table of Frequency Allocations to account for space-to-space communications between a crew or cargo capsule and crewed space stations, including in bands outside the S-band; (3) allowing a spectrum allocation for commercial spaceflight operations and licensing needs related to suborbital spaceflight; (4) expanding the use of the 2360-2395 MHz band in the context of additional uses to the band as well as expanded beyond the three frequencies currently designated for use by launch vehicles; and (5) whether 2360-2395 MHz space launch use of 2360-2395 MHz should be incorporated into the new Part 26 or instead be retained in Part 87.

4. The Commission also seeks to gain information that would support our objectives of providing efficient spectrum allocation and licensing processes for the commercial space sector. Of particular interest to the Commission are comments relating to:

- *Spectrum Allocation for Certain Post-Space Launch Payload Operations*. Whether payload operations should include new spectrum allocation in specific bands for communications with cargo and crew capsules and payload communications with the ISS and other crewed space stations.
- *Suborbital Spaceflight Operations*. Specific spectrum allocation and licensing needs in relation to suborbital spaceflight.

[1] 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).

[2] 5 U.S.C. § 603(a).

[3] *Id.*

5. The Commission also seeks further comment on expanding the use of the 2360-2395 MHz band, both in the context of additional uses to the band as well as in expanding use in the band beyond the three frequencies currently designated for Federal and non-Federal telemetry and telecommand operations of launch vehicles. Lastly, in the *Second FNPRM*, we seek comment as to whether the 1435-1525 MHz band can effectively accommodate space launch operations, or if such use should be discouraged despite being permissible under our rules. Of interest are comments discussing the current use of the band and what changes would be needed to harmonize space launch use of the band with the rules applicable to 2025-2110 MHz and 2200-2290 MHz.

B. Legal Basis

6. The proposed action is authorized pursuant to sections 1, 2, 4(i), 5(c), 301, 303(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 155(c), 301, 303(c), 303(f), and 303(r), and section 1.411 of the Commission's rules, 47 CFR § 1.411.

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.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] 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 SBA.[7]

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, at the outset, three broad groups of small entities that could be directly affected herein.[8] 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.[9] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[10]

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."[11] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual

[4] 5 U.S.C § 603(b)(3).

[5] 5 U.S.C. § 601(6).

[6] *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."

[7] 15 U.S.C. § 632.

[8] *See* 5 U.S.C. § 601(3)-(6).

[9] *See* SBA, Office of Advocacy, "What's New With Small Business?,"

https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf. (Mar. 2023)

[10] *Id*.

[11] *See* 5 U.S.C. § 601(4).

electronic filing requirements for small exempt organizations.[12] 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.[13]

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."[14] U.S. Census Bureau data from the 2017 Census of Governments[15] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[16] Of this number, there were 36,931 general purpose governments (county,[17] municipal, and town or township[18]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[19] with enrollment

[12] 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. S*ee* 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.

[13] *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.

[14] *See* 5 U.S.C. § 601(5).

[15] *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.

[16] *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.

[17] *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.

[18] *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.

[19] *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.[20] 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."[21]

11. *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."[22] 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.[23] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[24] Of this number, 242 firms had revenue of less than $25 million.[25] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.[26] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[27] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

12. *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.[28] 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.[29] 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.[30] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million

[20] 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.

[21] 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.

[22] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[23] *See* 13 CFR § 121.201, NAICS Code 517410.

[24] *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.

[25] *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.

[26] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[27] *Id.*

[28] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[29] *Id.*

[30] *Id*.

or less as small.[31] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[32] Of those firms, 1,039 had revenue of less than $25 million.[33] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

13. *Commercial Space Transportation*. Neither the Commission nor the SBA have developed a small business size standard for commercial space transport. Nonscheduled Charter Passenger Air Transportation[34] is the closest industry with a SBA small business size standard. This U.S. industry comprises establishments primarily engaged in providing air transportation of passengers or passengers and cargo with no regular routes and regular schedules.[35] This industry also includes air taxi services, aircraft charter passenger services and charter air passenger services which would encompass air space transportation.[36] The SBA small business size standard for this industry classifies a business as small if it has 1,500 employees or less.[37] U.S. Census Bureau data for 2017 indicates there were 1,148 firms in this industry that operated for the entire year.[38] Of this number 1,129 firms had less than 250 employees.[39] Thus, the major of Nonscheduled Charter Passenger Air Transportation firms can be considered small. We note however, that this category encompasses various types of commercial air transportation firms and does not exclusively represent the number of firms engaged in passenger space transport.

14. The FCC believes that the following business entities are the principle entities currently comprising the commercial space transportation launch operator industry in the United States: Blue Origin, Lockheed Martin Corporation, Northrup Grumman, Space Exploration Technologies (Space X), The Boeing Company, and Virgin Galactic. In May 2020, Space Exploration Technologies with NASA astronauts in a commercially built and operated spacecraft launched from American soil to the International Space Station for the first time in history.[40] More recently, in July 2021, Virgin Galactic and

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[31] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[32] *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.

[33] *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.

[34] *See* U.S. Census Bureau, *2017 NAICS Definition, "481211* Nonscheduled Charter Passenger Air Transportation,*"* https://www.census.gov/naics/?input=481211&year=2017&details=481211.

[35] *Id.*

[36] *Id.*

[37] *See* 13 CFR § 121.201, NAICS Code 481211.

[38] *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 481211, https://data.census.gov/cedsci/table?y=2017&n=481211&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[39] *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.

[40] *See* NASA Astronauts Launch from America in Historic Test Flight of SpaceX Crew Dragon (dated May 30, 2020), https://www.nasa.gov/press-release/nasa-astronauts-launch-from-america-in-historic-test-flight-of-spacex-crew-dragon.

Blue Origin both successful launched manned space flights.[41] Additionally, The Boeing Company has been working with NASA on its commercial Starliner spacecraft to incorporate various lessons learned as it prepares for its second unmanned launch of the Starliner - Orbital Flight Test (OFT-2).[42]

15. The commercial space industry is a nascent industry and the Commission does not have data on the size of these entities. We therefore cannot reach definite conclusions as to the number of small entities that will be affected by our actions in this proceeding, but we shall assume that a significant number of small entities will be affected. NASA has agreements with two companies to design and develop human space flight capabilities: Space Exploration Technologies, and The Boeing Company.43

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

16. Many of the rule changes which the *Second FNPRM* proposes or seeks comment on would, if adopted, involve making changes to the table of frequency allocations for a number of different frequency bands. These particular proposed changes would not involve making changes to the licensing and technical rules for any of these bands, and do not involve any new reporting, recordkeeping, or other compliance requirements. However, the *Second FNPRM* seeks comment on expanding the use of the 2360-2395 MHz band for space launches and whether the 1435-1525 MHz band can be used for space launches. Either of these proposals, if adopted, could potentially impact current users of these bands because of the need to coordinate use with the space launch activities.

17. At this time, the Commission is not in a position to determine whether, if adopted, our proposals and the matters upon which we seek comment will require small entities to hire professionals to comply, and cannot quantify the cost of compliance with the potential rule changes discussed in the *Second FNPRM*. We anticipate the information we receive in comments including where requested, cost and benefit analyses, will 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 made in the *Second FNPRM*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities."[44]

19. Through the proposals contained in the *Second FNPRM*, we have taken steps to encourage further development of the domestic commercial space launch sector, while protecting

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[41] On July 11, 2021, Virgin Galactic completed the first test flight with a full crew onboard in the commercial space industry. *See* https://www.space.com/virgin-galactic-spaceshiptwo-reservations-one-small-step.html; On July 20, 2021, Blue Origin successfully launched the first commercial space flight with four private citizens onboard. *See* https://www.blueorigin.com/news/first-human-flight-updates.

[42] *See* Starliner Program Manager Shares Team's North Star (dated July 29, 2021), https://www.boeing.com/features/2021/07/starliner-program-manager-shares-teams-north-star.page.

[43] *See* NASA Astronauts Launch from America in Historic Test Flight of SpaceX Crew Dragon (dated May 30, 2020), https://www.nasa.gov/press-release/nasa-astronauts-launch-from-america-in-historic-test-flight-of-spacex-crew-dragon; Boeing, CST-1000 Starliner, https://www.boeing.com/space/starliner/ (last visited June 11, 2020).

[44] 5 U.S.C. § 603(c)(1)-(4).

incumbent users from harmful interference and minimizing significant economic impact to small entities. One way the Commission has sought to accomplish these objectives is to take the step of including proposals that provide a benefit to the industry, while causing minimal, if any, economic or regulatory burdens. For example, we propose to add three footnotes to the Allocation Table as well as make a number of other Allocation Table modifications. As none of these actions would involve changing the licensing and technical rules for these bands, these actions would not change the regulatory burdens on Commission licensees. Commission licensees will continue to follow the same licensing procedures and be subject to the existing technical rules when operating in these bands. Therefore, the proposed footnote additions would not have a significant economic impact on small entities.

20. In proposing an expansion of the use of the 2360-2395 MHz band for space launches or in making the 1435-1525 MHz band available for space launches as discussed in the *Second FNPRM*, we acknowledge that such an approach, if adopted, could impact current users of these bands, which are primarily used for flight testing of aircraft. Based on industry feedback, we have considered declining to expand the use of the band, due to potential concerns of interference during flight tests.[45] Alternatively, we also considered and seek comment on what actions could promote increased usage by space launch operations without increasing the risk of interference. Additionally, in developing these proposals, we have considered any significant economic impact relating to coordination of flight testing and launch operations. At present, use of these bands is on a shared coordinated basis—i.e. there are no exclusive rights to use of the bands. As use of the band currently requires coordination, having to coordinate with increased space launch activities is not expected to present a significant economic impact on other users of the band. We seek comment from small and other entities concerning this issue.

21. Further, the Commission seeks comment on alternatives to its proposals as well as consider any questions raised that can help identify whether small entities face any special or unique issues that would require certain accommodations or additional time to comply. The Commission also seeks comment on modifications that could be made to our rules regarding administrative processes in order to reduce the economic impacts of the proposed rule changes on small entities. By specifically targeting small entities, we hope to obtain the requisite data to allow it to evaluate the most cost-effective approach to minimize the economic impact for such entities, while achieving our statutory objectives.

22. Additionally, to assist with the Commission's evaluation of the economic impact on small entities that may result from the actions and alternatives that have been proposed in this proceeding, the *Second FNPRM* seeks alternative proposals and requests information on the potential costs of such alternatives to licensees. The Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the *Second FNPRM*, including costs and benefits information. Alternative proposals and approaches from commenters could help the Commission further minimize the economic impact on small entities. The Commission's evaluation of the comments filed in this proceeding will shape the final conclusions it reaches, the final alternatives it considers, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities from the final rules that are ultimately adopted.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

23. None.

[45] *See* AFTRCC Reply at 9; AFTRCC Dec. 13, 2021 Ex Parte at 1.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Allocation of Spectrum for Non-Federal Space Launch Operations*, *Amendment of Part 2 of the Commission's Rules for Federal Earth Stations Communicating with Non-Federal Fixed Satellite Service Space Stations*, *Federal Space Station Use of the 399.9-400.05 MHz Band*; ET Docket No. 13-115, RM-11341; Second Report and Order and Second Further Notice of Proposed Rulemaking (September 21, 2023)

Six weeks ago, I had the honor of visiting Kennedy Space Center. I met with NASA Administrator Bill Nelson and scientists throughout the complex. The highlight of the trip was meeting the Artemis II crew who will soon become the first people to visit the moon in over half a century—including, I should add, the first woman and the first person of color. The rush of this trip was unlike anything I had ever experienced.

Why did I feel that way? I think it is because space exploration reminds us of what is best in us. It reminds us that we are a Nation that pushes boundaries and purses discoveries. We do this, as President Kennedy so famously said last week in 1962, not because it is easy, but because it is hard. Because the skies inspire us to push the limits of human achievement, communicate in new ways, and understand our own planet like never before. In this country we have done it before, and we are working to do it again.

What is so exciting about the future of United States space exploration is that the Artemis mission is far from the only major endeavor we are working on. Coming up, NASA will launch its Psyche mission with a commercial operator, sending a spacecraft to land on an asteroid orbiting the Sun between Mars and Jupiter. This kind of commercial space activity is multiplying. The number of space launches is growing—fast.

Our policies need to keep up. We need to ensure that providers have a more consistent and reliable way to get the bandwidth they need for communications during space launches. Historically, this agency provided access to airwaves for space launch activity using special temporary authority. But this cobbled-together approach is not well-suited to an era where commercial launches are a happening with far greater frequency. So today we allocate airwaves specifically to support commercial space launch activity. It will make our process simpler and more open to new entrants. It will better facilitate coordination with our federal partners through the use of a frequency coordinator. Launches are nail-biting undertakings under ideal conditions, so this will help make them easier and also boost competition.

I want to thank our colleagues at the National Telecommunications and Information Administration and the Department of Defense working collaboratively with us on this effort. I know they join us in supporting United States leadership in the new space age.

Thank you to the staff responsible for this effort: Damian Ariza, David Duarte, Michael Ha, Nick Oros, Siobahn Philemon, Jamison Prime, Ronald Repasi, and Tom Struble from the Office of Engineering and Technology; Linda Chang, Mark DeSantis, David Hu, John Lockwood, Roger Noel, Paul Powell, Arpan Sura, Joel Taubenblatt, and Peter Trachtenberg from the Wireless Telecommunications Bureau; Joseph Hill, Julie Kearney, Karl Kensinger, Julia Malette, Kathyrn Medley, and Merissa Velez from the Space Bureau; David Konczal, Chin Yoo, Deborah Broderson, David Senzel, Anjali Singh, and Jeffrey Steinberg from the Office of General Counsel; Nicolas Copeland, Patrick Sun, and Aleks Yankelevich from the Office of Economics and Analytics; Gregory Baker, Nese Guendelsberger, Dante Ibarra, and Ethan Lucarelli from the Office of International Affairs; Jeffrey Neumann from the Media Bureau; Jason Koslofsky, Jeremy Marcus, Paul Noone, Josh Zeldis from the Enforcement Bureau; Michael Gussow and

Joy Ragsdale from the Office of Communications Business Opportunities; and Nicole Ongele from the Office of Managing Director.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Allocation of Spectrum for Non-Federal Space Launch Operations; Amendment of Part 2 of the Commission's Rules for Federal Earth Stations Communicating with Non-Federal Fixed Satellite Service Space Stations; and Federal Space Station Use of the 399.9-400.05 MHz Band*, Second Report and Order in ET Docket No. 13-115 and RM Docket No. 11341, and Second Further Notice of Proposed Rulemaking, ET Docket No. 13-115 and RM Docket No. 11341

Just moments ago, we voted an item to streamline our satellite licensing rules, and earlier this year, we adopted a spectrum framework to spur entry by new NGSO systems. Those were important steps that will drive innovation and competition in commercial space. But if we truly want to be successful, we can't just focus on what happens in orbit. We also need to account for the precious few minutes it takes to get an object *into* space. That means our efforts must start at the launch.

There's plenty of opportunity for progress. For years, launch providers have relied on cramped and uncertain spectrum access authorized piecemeal by special temporary authority. While that band-aid approach may once have proved adequate, it's no match for the new cadence of a frothy commercial space industry—where days, not weeks or months, now separate each launch on average. Remember that each launch costs millions to execute and carries many millions more in terms of the value of the payload. So if we want to make it attractive to invest in new and greater commercial space opportunities, a more efficient and more predictable launch clearance process is a great place to start.

In 2021, we made a downpayment on fixing the problem. Today, we reach for liftoff. Consistent with bipartisan legislation on the issue, we expand access to the 2200-2290 MHz band and identify additional launch spectrum in 2025-2110 MHz. We also stay ahead of a potential growth in demand by seeking comment on ways to free up the 2360-2395 MHz band, and on ways to support the spectrum needs of emerging endeavors like commercial crew and cargo missions. Equally important, we establish a predictable licensing regime that will move providers away from tedious launch-by-launch authorizations, while fully protecting other federal agencies and facilitating the process of coordinating with them. Combined with our larger space agenda, these efforts will help us eliminate unnecessary barriers that make it harder to get into space.

A special thanks belongs to leaders in Congress who created a blueprint for today's action with efforts like the Launch Communications Act. I'd especially like to thank Senators Hickenlooper and Schmitt, and Representatives Soto and Dunn, for their leadership on this issue. I'd also like to extend my thanks to the Chairwoman for bringing this item to the floor, and to our Office of Engineering and Technology for their hard work. This item has my full support.

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

In the Matter of	)	
	)	
	)	File No.: EB-TCD-21-00032187
Thomas Dorsher;	)	NAL/Acct. No.: 202232170007
ChariTel Inc;	)	FRN: 0029846979
OnTel Inc;	)	FRN: 0029796505
ScammerBlaster Inc	)	FRN: 0032657736
	)	

FORFEITURE ORDER

Adopted: September 21, 2023 **Released: September 22, 2023**

By the Commission: Chairwomen Rosenworcel and Commissioner Starks issuing separate statements.

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I. INTRODUCTION

1. We impose a penalty of $116,156,250 against Thomas Dorsher (Dorsher), ChariTel Inc (ChariTel), Ontel Inc (OnTel), and ScammerBlaster Inc (ScammerBlaster) (collectively, the Dorsher Enterprise)[1] for willfully and repeatedly engaging in conduct that violated the Telephone Consumer Protection Act (TCPA) and the rules of the Federal Communications Commission (Commission or FCC)

[1] 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.

prohibiting prerecorded voice message calls made without consent or an emergency purpose to toll free numbers.[2] We hold the members of the Dorsher Enterprise jointly and severally liable.[3] After reviewing Dorsher's response to the Notice of Apparent Liability (*Notice*), we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess the $116,156,250 forfeiture.

II. BACKGROUND

A. Legal Framework

2. Section 227(b)(1)(A)(iii) of the Communications Act of 1934, as amended (Act) and the Commission's implementing rules prohibit making prerecorded voice message calls to any telephone number assigned to "any service for which the called party is charged for the call" absent prior express consent or an emergency purpose.[4] When a call is placed to a toll-free number, the called party—and not the caller—pays the toll charge.[5] Intentional violations are subject to a four-year statute of limitations.[6] Intent is fairly ascribed to a caller who makes autodialed or prerecorded voice calls to the types of numbers covered by the TCPA without "a reasonable basis to conclude that the intended recipient had consented to receive such calls," and who "intend[ed] to violate the other applicable legal requirements, including any such requirements set forth in the TCPA's statutory exceptions."[7]

B. Factual Background

3. On October 29, 2020, the Industry Traceback Group (ITG)[8] informed the Enforcement Bureau (Bureau) that a caller was targeting and calling owners of toll free telephone numbers (Toll Free Customers) and playing prerecorded voice messages.[9] The ITG traced the calls to Integrated Path Communications, LLC (Integrated Path Communications), a competitive local exchange carrier,[10] which in turn identified the maker of the calls as ChariTel,[11] a company formed and operated by Dorsher.[12] The

[2] 47 U.S.C. § 227(b); 47 CFR 64.1200(a)(1)(iii). The TCPA is codified in the Communications Act of 1934, as amended (Act).

[3] *Thomas Dorsher, ChariTel Inc, OnTel Inc, ScammerBlaster Inc*, Notice of Apparent Liability for Forfeiture, FCC 22-57, at 13-17, paras. 27-35 (July 14, 2022) (*Notice*).

[4] 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)(iii); *see also id.* § 64.1200(a)(9) (articulating exemptions to liability under section 64.1200(a)(1)(iii); none of which apply here).

[5] *See generally 8YY Access Charge Reform*, WC Docket No. 18-156, Report and Order, 35 FCC Rcd 11594, 11595-6, para. 5 (2020) (*8YY Access Charge Reform Order*) ("8YY services have long been a prominent fixture of the telecommunications landscape. Calls to 8YY numbers differ from other calls carried over the public switched telephone network in that the party receiving the call—not the party placing the call—pays the toll charges.").

[6] 47 U.S.C. § 227(b)(4)(B).

[7] S. Rep. No. 116-41, at 12 (2019).

[8] The Industry Traceback Group (ITG) is the registered consortium selected by the Enforcement Bureau (Bureau) to lead industry efforts to trace back illegal robocalls to determine their origin. *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, 36 FCC Rcd 12782, 12782 (EB Aug. 25, 2021).

[9] ITG, *ScammerBlaster Traceback Findings & Interaction*, at 1 (Oct. 29, 2020) (on file in EB-TCD-21-00032187) (ScammerBlaster Referral).

[10] Integrated Path Communications LLC, *Company*, http://www.ipc-llc.com/index-1 (last visited July 3, 2023).

[11] ScammerBlaster Referral at 1.

[12] *See Notice*, *supra* note 3, at 3-4, paras. 6-7.

messages themselves purported to be made on behalf of ScammerBlaster, a company also formed and operated by Dorsher.[13]

4. Records obtained from Integrated Path Communications exposed the Dorsher Enterprise's scheme. ChariTel purchased several thousand direct inward dial (DID)[14] telephone numbers and Voice over Internet Protocol (VoIP) service from Integrated Path Communications.[15] Between January 1, 2021, and March 2, 2021, ChariTel used these phone numbers to make 9,763,599 prerecorded voice message calls (i.e., robocalls) to toll free numbers.[16]

5. The calls played a prerecorded voice message proclaiming to be a "public service announcement" warning Toll Free Customers about the dangers of illegal robocalls and directing recipients to report robocalls to the FCC, phone companies, and the ScammerBlaster website:

> This is an important public service announcement. There is a rise in scam calls impacting people around the world. Many of these scammers are directly funding terrorist organizations, and in 2017, 16 billion dollars was scammed from Americans. Much of this money is used to fund terrorist organizations such as the Al-Qaeda and ISIS to further hurt our neighbors around the world. It is critical that you report any phone calls from these scammers to the FCC or to the phone company of the scammer. You can use free carrier look up tools to identify the carrier and then call or email the carrier so that the scammer's phone system is shut down. Most importantly, if someone with a foreign accent claims to be the IRS, Social Security Administration Office, Microsoft, Amazon, Cash App, or any other questionable source that generally doesn't call you, immediately hang up the call and report it on our website, scammerblaster.com. Again that's scammerblaster.com. Knowledge is power. If everyone refuses to fall victim to these scams, then the scammer's revenue source will dry up and together we can get this problem significantly reduced.[17]

The message would play continuously for up to ten hours if the called party did not terminate the call.[18]

6. Two of these calls were to an AT&T Service, Inc. (AT&T) toll free fraud protection hotline.[19] AT&T attested that it never consented to those calls.[20] Other calls were to toll free subscribers

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[13] ScammerBlaster Public Service Announcement Recording (Jan. 31, 2021 09:24 EST) (on file in EB-TCD-21-00031748) (ScammerBlaster Recording); *see Notice*, *supra* note 3, at 4-5, para. 8.

[14] "Direct Inward Dialing" is a telephone service that allows a specific phone in a multi-line entity to receive calls directly instead of the caller having to go through an operator or needing to dial an extension. Twilio, *Direct Inward Dialing (DID)*, https://www.twilio.com/docs/glossary/what-direct-inward-dialing-did (last visited July 6, 2023).

[15] E-mail from Harold Barr, Vice President, Integrated Path Communications, LLC, to Daniel Stepanicich, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (July 28, 2021, 18:09 EDT) (on file in EB-TCD-21-00031748) (Integrated Path Communications Narrative Response); ChariTel Inc and Integrated Path Communications, LLC, Master Service Agreement (July 13, 2021) (on file in EB-TCD-21-00031748) (ChariTel Service Agreement).

[16] Integrated Path Communications Subpoena Response (May 14, 2021) (on file in EB-TCD-21-00031748) (Call Detail Records).

[17] ScammerBlaster Recording.

[18] *See* Call Detail Records (showing the maximum call length of 36,000 seconds or 10 hours).

[19] Affidavit of Adam Panagia, Director, Global Fraud Management, AT&T Services, Inc., para. 4 (Sept. 21, 2021) (AT&T Aff.); Call Detail Records.

[20] AT&T Aff. para. 5.

who complained to the Commission about ChariTel's robocalls.[21] None of these complainants said that they gave consent to Dorsher, ChariTel, OnTel, or ScammerBlaster.[22] Both AT&T and these other complainants were ultimately charged for these toll free calls.

7. Integrated Path Communications paid ChariTel $0.0001 (one ten thousandth of a cent) for each minute of outbound calls that it made to toll free numbers.[23] Dorsher used the revenue from ChariTel's toll free robocalls to fund OnTel's operations, namely, launching telephone denial of service (TDoS) attacks against other companies.[24] A TDoS attack is a flood of calls to a telephone number made with the intent to tie up that telephone line and disrupt communications.[25] TDoS attacks are highly dangerous as they disable telephone networks and can disrupt critical emergency services.[26] Dorsher branded his toll free robocalling and TDoS schemes as "ScammerBlaster," which he advertised to the public on his website.[27]

8. On July 14, 2022, the Commission adopted the *Notice* and proposed a penalty of $116,156,250 against the Dorsher Enterprise.[28] Dorsher contested the Commission's finding of liability in a three-sentence response to the *Notice*, stating he was "struggling, and finding difficulty, in seeing anything in [the *Notice*] that is actually accurate" and questioned if the Commission might "have the wrong person," but offered no legal or factual counterarguments to the Commission's apparent findings.[29] In response to a subpoena sent by the Bureau concurrently with the release of the NAL, Dorsher also contested liability on the grounds that Toll Free Customers do not pay on a per call basis, and that his calls were excepted from liability because they were made in good faith.[30] Dorsher also contested that he violated the TCPA with intent because a lawyer purportedly advised that the Dorsher Enterprise's robocalling operation did not violate the TCPA.[31] Lastly, Dorsher contested the assessed forfeiture on the

[21] FCC Consumer Complaint 4715208 (Feb. 9, 2021); FCC Consumer Complaint 4528459 (Feb. 1, 2021); FCC Consumer Complaint 4520483 (Jan. 28, 2021); FCC Consumer Complaint 4480335 (Jan. 11, 2021); FCC Consumer Complaint 4478654 (Jan. 10, 2021) (collectively, *ScammerBlaster Complaints*).

[22] *See ScammerBlaster Complaints*.

[23] *Integrated Path Communications Narrative Response*, *supra* note 15.

[24] Affidavit of David Frankel on Behalf of ZipDX LLC, para. 16 (on file in EB-TCD-21-00032187) (ZipDX Aff.).

[25] Cyber Risks to 911: Telephony Denial of Service, Cybersecurity & Infrastructure Security Agency at 1, https://www.cisa.gov/sites/default/files/publications/Cyber%20Risks%20to%20911%20TDoS_6.4.2020%20-%20%28508c%29_1.pdf.

[26] *Id.*

[27] Internet Archive, *About Us* (Apr. 20, 2021), https://web.archive.org/web/20210420203344/https://scammerblaster.com/about-us/; ScammerBlaster, *About Us*, https://scammerblaster.com/ (as visited on Jan. 19, 2022) (on file in EB-TCD-21-00032187). The Federal Bureau of Investigation seized the scammerblaster.com website as part of a criminal action in the District of Utah. ScammerBlaster, *About Us*, https://scammerblaster.com/ (last visited July 21, 2023).

[28] *Notice*, *supra* note 3, at 1, para. 1.

[29] E-mail from Thomas Dorsher to Dan Stepanicich, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Sep. 15, 2022, 15:02 EDT) (on file in EB-TCD-21-00032187) (Dorsher Notice Response).

[30] E-mail from Thomas Dorsher to Dan Stepanicich, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, Attach. FCC question responses, at 8 (Sep. 13, 2022, 17:49 EDT) (Dorsher Subpoena Response).

[31] *Id.* at 6.

grounds that his conduct was not egregious, and that the FCC should have warned him before releasing the *Notice*.[32]

9. Independently, while not legally relevant to this forfeiture order, on November 11, 2022, a federal grand jury sitting in the District of Utah charged Dorsher and others with multiple federal criminal counts for conduct related to the Dorsher Enterprise's robocalling scheme.[33] The indictment alleged that Dorsher and a co-conspirator launched TDoS attacks against private businesses, including two U.S. based telecommunications service providers, under the ScammerBlaster name.[34] The indictment also alleged that in May 2021, Dorsher targeted a telecommunications service provider's numbers reserved for 9-1-1 call support services.[35] The indictment further alleged that in 2022, Dorsher directed an attack against a different telecommunications service provider that affected 41,000 customers and rendered a hospital in a foreign country unable to make or receive calls.[36] Purportedly, the objectives of the conspiracy "were to harass and intimidate businesses and disrupt their operations in an effort to secure concessions from those businesses, including the termination of customer accounts, payment of money to ScammerBlaster, customer refunds, and other demands of Dorsher."[37]

III. DISCUSSION

10. The Commission proposed a forfeiture in this case in accordance with section 503(b) of the Act,[38] section 1.80 of the Commission's rules,[39] and the Commission's *Forfeiture Policy Statement*.[40] When we assess forfeitures, we take into account 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."[41] We have fully considered Dorsher's responses to the *Notice*, which raised various factual and legal arguments, but we find none of them persuasive. We therefore affirm the $116,156,250 forfeiture proposed in the *Notice.*

A. The Dorsher Enterprise Violated the TCPA by Making 20,650 Prerecorded Voice Message Calls to Toll Free Numbers

11. Section 227(b)(1)(A)(iii) of the Act and the Commission's rules prohibit making prerecorded voice message calls without prior express consent, absent an emergency purpose or an exemption, to numbers for which the called party is charged for the call—including toll free numbers.[42] The Commission found that between January 1, 2021, and March 2, 2021, Dorsher, using ChariTel and on behalf of OnTel and ScammerBlaster, made 9,763,599 prerecorded voice message calls to toll free

[32] *Id.* at 6-9.

[33] Indictment, *United States v. Thomas William Dorsher, et al.*, No. 2:22-cr-00463-CW (D. Utah 2022).

[34] *Id.* at para. 8.

[35] *Id.* at para. 11.

[36] *Id.*

[37] *Id.* at para. 9.

[38] 47 U.S.C. § 503(b).

[39] 47 CFR § 1.80.

[40] *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 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[41] 47 U.S.C. § 503(b)(2)(E).

[42] *Id.* § 227(b)(1)(A)(iii),(b)(2); 47 CFR § 64.1200(a)(1)(iii).

numbers.[43] Bureau staff verified 20,650 of these calls for violations of the TCPA.[44] The Dorsher Enterprise's purported defenses, discussed below, do not alter our conclusions.

1. Dorsher's Mistaken Identity Argument Is Meritless.

12. In response to the *Notice*, Dorsher states, "I am really struggling, and finding difficulty, in seeing anything in here that is actually accurate. As such, I think you have the wrong person?"[45] Dorsher also argues that "the [*Notice*] fails to explain how I *actually* violated the TCPA—because I did not."[46] Dorsher offers no new evidence or legal arguments to support his claim that the *Notice* is factually inaccurate or that he may not be the person responsible for originating the calls that Bureau staff identified as violating the TCPA.

13. We are not persuaded by Dorsher's conclusory statement that we may "have the wrong person." The Bureau's investigation identified the members of the Dorsher Enterprise as the source of the 20,650 verified robocalls. The ITG informed the Bureau that a caller was targeting toll free services with prerecorded voice message calls that referenced "ScammerBlaster."[47] The ITG traced the calls to Integrated Path Communications which identified the sources of the calls as ChariTel.[48] Records produced in response to a subpoena to Integrated Path Communications showed that Dorsher executed, on behalf of ChariTel, a service agreement with Integrated Path Communications on July 13, 2020, for several thousand direct DID telephone numbers and VoIP service.[49] Call detail records produced by Integrated Path Communications show millions of calls to toll free numbers originating from ChariTel's account between January 1, 2021, and March 2, 2021. Dorsher's own response to the FCC's subpoena confirms his connection to the other members of the Dorsher Enterprise.[50] Dorsher offers no evidence to refute our findings. Therefore, we conclude that the Dorsher Enterprise made the calls identified in the *Notice*.

2. Dorsher Incorrectly Asserts Toll Free Customers Aren't Charged for Calls.

14. Toll free service is a "service for which the called party is charged for the call."[51] When a caller makes a toll free call, the toll free service provider—typically a long distance carrier—pays the caller's local exchange carrier for originating the call.[52] The toll free service provider also pays intermediate providers in the call path.[53] The called party—the Toll Free Customer—then compensates the toll free service provider for completing the call.[54]

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[43] *Notice*, *supra* note 3, at 7, para. 13; *id.* At 16-17, para. 34.

[44] *Id*.

[45] Dorsher Notice Response, *supra* note 29, at 1.

[46] Dorsher Subpoena Response, *supra* note 30, at 8.

[47] ScammerBlaster Referral, *supra* note 9, at 1.

[48] *Id.*

[49] Integrated Path Communications Narrative Response, *supra* note 15; ChariTel Service Agreement, *supra* note 15.

[50] ScammerBlaster Subpoena Response, at 1. Dorsher named himself as the president and director of ChariTel and the president, vice president, treasurer, and secretary of both OnTel and ScammerBlaster. *Id.*

[51] 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)(iii).

[52] *8YY Access Charge Reform Order*, *supra* note 5, at 11598, para. 10.

[53] *Id.*

[54] *Id.*

15. Dorsher argues that there is no proof the Toll Free Customers were charged for calls they received from the Dorsher Enterprise. He states, "where is the proof that anyone that I have allegedly called had to pay money for THAT call? Where is the proof that a toll-free provider charges on a per-call basis[.]"[55] He argues that "Consumers—and businesses alike—have flat-rated plans for which they are not charged for calls, whether they use a traditional 10-digit *or* a toll-free number."[56]

16. Dorsher's claim that toll free calling plans work no differently from other flat rate business calling plans is incorrect. Toll free subscribers have long paid the cost of telephone calls made to those numbers.[57] In order to confirm this, the Bureau reviewed a number of toll free service providers' publicly available billing practices. The Bureau found that providers charge their Toll Free Customers on a per call basis or in bundles of minutes where the per minute cost can be easily determined.[58] Further, as it pertains to this case specifically, AT&T confirmed that its Toll Free Customers were "financially responsible" for calls they received from the Dorsher Enterprise.[59] We therefore find that: (a) toll free service providers continue to charge on a per-minute basis as a general matter; (b) where toll free service is sold in bundled minutes, the charges are easily broken down into a per minute cost; and (c) in the instant case, the Dorsher Enterprise's robocalls resulted in actual financial losses to the Toll Free Customers who received them. Accordingly, the Toll Free Customers that the Dorsher Enterprise robocalled were charged for those calls.

3. No Good Faith or Public Safety Doctrine Justifies the Dorsher Enterprise's Calls.

17. Dorsher claims that he "acted in good faith and with the interests of protecting victims . . . and shutting down scammers from being able to prey on innocent Americans."[60] There is no good faith or public interest exception to the TCPA, however, and Dorsher's attempted defense in this regard thus fails.

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[55] Dorsher Subpoena Response, *supra* note 30, at 8.

[56] *Id.*

[57] *See 8YY Access Charge Reform Order*, *supra* note 5, at 11598, para. 10 (describing toll free compensation); *Toll Free Service Access Codes*, CC Docket No. 95.155, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 11162, 11166, para. 4 (1997) ("Unlike traditional telephone calls, for which the calling party paid, 800 service subscribers agreed to pay for calls made to subscriber-designated numbers."); *Provision of Access for 800 Service*, CC Docket No. 86-10, Report and Order, 4 FCC Rcd 2824, 2825, para. 5 (1989) (noting that toll free service has existed since 1967); *WATS-Related and Other Amendments of Part 69 of the Commission's Rules*, CC Docket No. 86-1, Report and Order, 59 Rad. Reg. 2d 1418, para. 2 (1986); *AT&T Co. (Long Lines Department)*, Docket No. 19989, Final Decision and Order, 59 FCC 2d 671, 674, para. 5 (1976) (observing that such calls were paid for by the company that had received the calls and had subscribed to the toll free service).

[58] *See, e.g.*, Twilio, *Programmable Voice Pricing*, https://www.twilio.com/en-us/voice/pricing/us (last visited May 26, 2023) (offering $0.022 per minute to receive toll free calls); Voxology, *Pricing*, https://voxolo.gy/pricing (last visited May 26, 2023) (offering $0.0022 per six seconds to receive toll free calls); Vonage, *Toll Free Number Bundles*, https://businesssupport.vonage.com/articles/answer/Toll-Free-Bundles (last visited May 26, 2023) (offering bundled toll free minutes that range from $0.0299 per minute to $0.0179 per minute); Telnyx, *SIP Trunking Pricing*, https://telnyx.com/pricing/elastic-sip#volume-based (last visited July 17, 2023) (offering toll free plans starting at $0.015 per minute); Spectrum, *Spectrum Business Voice Pricing Guide*, https://www.spectrum.com/policies/charter-spectrum-business-voice-price-guide (last visited July 17, 2023) (offering toll free service starting at $0.04 per minute).

[59] AT&T Aff., *supra* note 19, at para. 7.

[60] Dorsher Subpoena Response, *supra* note 30, at 6.

18. The TCPA contains an exception permitting a caller to make prerecorded calls to toll free numbers for an emergency purpose,[61] and while Dorsher did not expressly or even impliedly invoke that exception, we construe portions of his subpoena response as making an argument in that vein. We find any such defense unavailing. "The term emergency purpose[] means calls made necessary in any situation affecting the *health and safety* of consumers."[62] Such instances include, for example, a public utility warning customers about unexpected service interruptions,[63] a school notifying family members about an incident affecting the health and safety of students and faculty,[64] and healthcare providers notifying the public about imminent health and safety risks arising from the COVID-19 pandemic.[65] In each such case, the callers made the calls in response to an imminent and specific health or safety concern affecting the particular recipients of the prerecorded messages.

19. Although we agree that illegal robocalls are a serious threat to the American public, we are not convinced that the Dorsher Enterprise's prerecorded message did anything to protect the health and safety of consumers.[66] The "public service announcement" cannot reasonably be interpreted as necessary to warn anyone about specific threats posed by illegal robocalls, as the message directed the recipient to visit the ScammerBlaster website and report information that would allow the Dorsher Enterprise to take action into its own hands. Furthermore, the fact that the Dorsher Enterprise: (a) only sent the prerecorded message to Toll Free Customers; and (b) configured his message to play on repeat for up to ten hours if not disconnected convinces us that the Dorsher Enterprise's motivations were far more pecuniary than philanthropic. The Dorsher Enterprise intended to target Toll Free Customers to generate revenue, not to warn any specific person or entities of a supposed imminent health or safety threat. We reject Dorsher's argument that he acted with an emergency purpose.

20. Dorsher cites the "Good Samaritan" law, "Duty to Rescue", "Omission" law, and the "Rescue Doctrine" as potentially justifying the calls.[67] Dorsher argues that "[t]here are various elements in these laws that are quite noteworthy, especially as it pertains to when someone is being injured, or at risk of being injured, as in the case of victims at the hands of scammers, and someone like me has a deep desire to protect them from such injury."[68] Dorsher does not cite any cases to support these arguments or explain how the laws are a valid defense to a TCPA violation.

21. Indeed, the laws and doctrines to which Dorsher refers are irrelevant or inapplicable—or both—to the instant TCPA claim. Good Samaritan laws protect bystanders who render emergency

[61] 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)(iii).

[62] 47 CFR § 64.1200(f)(4) (emphasis added).

[63] *Rules and Regulations Implementing the Telephone Consumer Protection Act*, Report and Order, 7 FCC Rcd. 8752, 8778, para. 51 (1992).

[64] *Rules and Regulations implementing the Telephone Consumer Protection Act*, Report and Order, 31 FCC Rcd 9054, 9062, para. 20 (2016).

[65] *Rules and Regulations implementing the Telephone Consumer Protection Act*, Report and Order, 35 FCC Rcd 2840, 2841-42, paras. 7-8 (CGB 2020).

[66] FCC, *Robocall Response Team: Combating Scam Robocalls & Robotexts*, https://www.fcc.gov/spoofed-robocalls (last visited July 4, 2023) (explaining that fighting illegal robocalls and malicious caller ID spoofing is a "top priority" for the Commission).

[67] Dorsher Subpoena Response, *supra* note 30, at 7.

[68] *Id.*

medical care from tort liability.[69] Dorsher does not claim he or any member of the Dorsher Enterprise was rendering assistance to someone who appeared to be experiencing a medical emergency. Good Samaritan laws are therefore not applicable. Similarly, a "duty to rescue" only arises where a special relationship creates such a duty.[70] The Dorsher Enterprise members do not claim to have had a special relationship to the called parties that would give rise to "a special responsibility to render assistance,"[71] assuming that their actions could be considered "assistance" at all. Even if such a relationship existed, none of the called parties required rescuing or were rescued by the Dorsher Enterprise. A failure to act where there is an affirmative duty to act can give rise to omission liability.[72] Dorsher cites no cases nor explains his reasoning for invoking "Omission;" it is unclear how this doctrine would apply to a claim under the TCPA—a statute which imposes no affirmative duty to act. Finally, "[u]nder the [rescue] doctrine, one who is injured in reasonably undertaking to rescue a person in danger may not be charged with contributory negligence and thus may recover from the person whose negligence created the perilous situation."[73] Whether Dorsher is contributorily negligent is not at issue here; the rescue doctrine is irrelevant.

B. The Dorsher Enterprise Intentionally Violated the TCPA

22. Section 227(b)(4)(E) of the Act provides that the statute of limitations is four years, rather than one year, if the violation was committed "with the intent to cause such violation."[74] In the *Notice*, the Commission indicated that the Dorsher Enterprise made prerecorded message calls with the intent to violate the TCPA because the Dorsher Enterprise: (1) targeted protected toll free numbers with prerecorded messages; and (2) had no reasonable basis to believe that it had consent for the calls.[75]

23. Dorsher's response refutes neither of these findings. First, Dorsher does not contest that he targeted toll free numbers. Instead, he questions whether the called parties were "charged for the call,"

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[69] *See, e.g.*, N.D. Cent. Code § 32-03.1-02 (2023) (North Dakota's Good Samaritan Act); *see also McDowell v. Gillie*, 626 N.W.2d 666, 671 (N.D. 2001) ("The obvious purpose of the Good Samaritan Act is to encourage those who do not have a preexisting duty to voluntarily act in times of emergency by limiting the threat of civil liability for the actions taken."); *see also* Charles Krause & Alfred Gans, American Law of Torts § 15:3 (2023) ("'Good Samaritan laws' afford[] either liability or suit immunity to those persons acting in emergency medical care situations[.]"). Dorsher resides in North Dakota.

[70] Jonathan Purver, 33 A.L.R 3d 301 (1970); *see also Twitter, Inc. v. Taamneh*, 143 S.Ct. 1206, 1221 (2023) ("Although inaction can be culpable in the face of some independent duty to act, the law does not impose a generalized duty to rescue.").

[71] *McDowell*, 626 N.W.2d at 669.

[72] *See State v. Streeper*, 727 N.W.2d 759, 767 (N.D. 2007) ("In some very limited instances, a person can be held criminally liable *solely* for failing to render aid to another. . . . A person can be held civilly liable for failing to render aid to someone he knew or had reason to know was put in danger by his conduct."); *see also* Wayne LaFave, Substantive Criminal Law § 6.2 (3d ed. 2022) (describing criminal omission and giving examples, such as failing to file a tax return).

[73] *Barger v. Charles Mach. Works, Inc.*, 658 F.2d 582, 587 (8th Cir. 1981); *see also McShane Constr. Co. v. Gotham Ins. Co.*, 867 F.3d 923, 930-31 (8th Cir. 2017) ("The rescue doctrine contemplates a voluntary act by one who, in an emergency and prompted by spontaneous human motives to save human life, attempts a rescue which he had no duty to attempt by virtue of a legal obligation or duty fastened on him by his employment."); *see also* Barry Lindahl, Modern Tort Law: Liability and Litigation § 3:26 (2d ed. 2023) ("The purpose of the doctrine is to avoid finding the rescuer contributorily negligent when the rescuer voluntarily placed himself or herself in a perilous situation.").

[74] 47 U.S.C. § 227(b)(4)(E).

[75] The Dorsher Enterprise also had no reasonable basis to believe that one of the TCPA exemptions applied. *See supra* paras. 18-19.

such that the calls constituted a violation of section 227(b)(1)(A)(iii) in the first place.[76] As discussed above,[77] the longstanding definition of toll free service is a "service for which the called party is charged for the call,"[78] and Dorsher's response itself indicates his understanding of this fundamental definition—"businesses obtain toll-free numbers so their customers don't have to pay long distance charges."[79] Second, the Commission has historically identified "toll-free lines" as a "category of protected telephone line[]" under the TCPA,[80] and the record reveals that the Dorsher Enterprise intentionally made calls to such lines. In particular, the Dorsher Enterprise was a beneficiary of the toll free compensation scheme. Integrated Path Communications paid the Dorsher Enterprise $0.0001 for each minute of outbound calls that it made to toll free numbers.[81] It is illogical to expect that Integrated Path would provide that service at a loss, which means that the Dorsher Enterprise must have understood that Integrated Path was earning revenues based on those calls. Given the Commission's historical identification of toll free lines as protected by the TCPA, our longstanding recognition that toll-free calls are charged to the called party, and the marketplace evidence regarding how toll free calling is billed, we see no reasonable basis for the Dorsher Enterprise to believe that no consent was required for its calls to toll free lines. Finally, Dorsher has introduced no evidence that the Dorsher Enterprise had any reasonable basis to conclude the called party consented to receive the calls.[82]

24. Instead, Dorsher argues that his reliance on legal advice constitutes a defense against liability.[83] Dorsher states, "[y]ou will note that a telecommunications lawyer signed off on my operation BEFORE the time period in question starting January 1, 2021. I have acted in good faith when educating the public about scams[.]"[84] The advice that Dorsher received from his counsel, however, is inapposite in

[76] 47 U.S.C. § 227(b)(1)(A)(iii).

[77] *See supra* paras. 14-16.

[78] 47 U.S.C. § 227(b)(1)(A)(iii); *cf. 8YY Access Charge Reform Order*, *supra* note 5, at 11598, para. 10 (describing toll free compensation); *Toll Free Service Access Codes*, CC Docket No. 95.155, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 11162, 11166, para. 4 (1997) ("Unlike traditional telephone calls, for which the calling party paid, 800 service subscribers agreed to pay for calls made to subscriber-designated numbers."); *Provision of Access for 800 Service*, CC Docket No. 86-10, Report and Order, 4 FCC Rcd 2824, 2825, para. 4 (1989) ("The term "800 service" describes an interexchange service in which subscribers agree in advance to pay for calls made to certain subscriber-designated numbers.").

[79] Dorsher Subpoena Response, *supra* note 30, at 8.

[80] *FCC Enforcement Advisory*, Public Notice, 31 FCC Rcd 1940, 1940 (EB 2016); *see also, e.g.*, *FCC Enforcement Advisory*, Public Notice, 29 FCC Rcd 12657, 12657 (EB 2014) (same); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, et al.*, CC Docket No. 96-128, *et al.*, Report and Order, 11 FCC Rcd 20541, 20575, para. 65 (1996) (concluding that section 227(b)(1) of the Act "bars the use of autodialers to generate payphone compensation by calling toll-free 800 numbers, which are billed to the called party").

[81] *Integrated Path Communications Narrative Response*, *supra* note 15.

[82] *See* S. Rep. No. 116-41, at 12 ("the calling party must knowingly use an automatic telephone dialing system to intentionally place calls to covered numbers without a reasonable basis for believing it had the necessary consent to call").

[83] Dorsher Subpoena Response, *supra* note 30, at 6; *see also* Letter from Thomas H. Rowland to Thomas Dorsher (Aug. 10, 2020) (on file in EB-TCD-21-00031748) (Rowland Letter) (the letter was produced by Dorsher in response to the July 14, 2022, subpoena).

[84] Dorsher Subpoena Response, *supra* note 30, at 6 (capitalization in original).

the context of this investigation.[85] Dorsher's lawyer provided guidance "based on an understanding that ScammerBlaster contacts *residential lines*[.]"[86] In his response, Dorsher admits that toll free numbers are generally business numbers, and that he knew he was calling businesses.[87] Thus, he could not reasonably have relied on the legal opinion.[88]

25. The Dorsher Enterprise's complex calling scheme is further evidence of intentionality. The scheme consisted of two parts. First, the Dorsher Enterprise intentionally called toll free numbers to generate revenue via the agreement between ChariTel and Integrated Path, through which Integrated Path Communications credited ChariTel for calls that it made to toll free numbers.[89] ChariTel received $0.0001 per minute for calls placed to toll free numbers.[90] Second, the Dorsher Enterprise used the revenue generated from calling toll free numbers to finance the activities of "ScammerBlaster," which included TDoS attacks against alleged "scammers."[91] In his discussion with an ITG consultant, Dorsher admitted that the credits ChariTel earned through its calls to toll free numbers "help offset the cost of additional non toll free calls."[92] Dorsher's own website boasts that his calls to Toll Free Customers caused them to incur charges by the minute;[93] he cannot credibly claim otherwise now. This complex, multi-level scheme points to the Dorsher Enterprise's intentionality: Dorsher's creation of a sophisticated venture through which he generated revenue through one set of robocalls in order to fund a different but related mass calling campaign indicates an understanding of the toll free landscape, including the fact that the called parties were charged. The Dorsher Enterprise specifically called toll free numbers—and only toll free numbers—because it received compensation from Integrated Path Communications for such calls which it used to fund ScammerBlaster's activities. And as explained above, the record reveals no

[85] In a letter attached to his response, Dorsher's lawyer noted that Dorsher "does not obtain express written consent prior to contacting residential lines," and, therefore, the lawyer advised Dorsher that his calls "must be for a non-commercial purpose or a commercial purpose with no advertising or telemarketing." Rowland Letter at 1.

[86] *Id.* (emphasis added).

[87] Dorsher Subpoena Response, *supra* note 30, at 8.

[88] We are aware of no authority supporting the application of the advice-of-counsel defense in the context of a TCPA violation. Regardless, in other areas of law, the advice-of-counsel defense pertains only to a party's intent. Principles of the Law, Compliance and Enforcement for Organizations § 6.06 (2021) ("The advice-of-counsel defense is generally not used as an affirmative defense, but instead is offered to negate an element of the offense—wrongful intent."); *see also In re Geller*, 314 B.R. 800, 808 (Bankr. D.N.D. 2004) ("Reliance on attorney advice absolves a debtor of fraudulent *intent* only when that reliance was reasonable and the advice given was informed advice." (emphasis added)). In this capacity, "the advice of counsel must have been sought in good faith, from honest motives, and for good purposes, after a full and fair disclosure of all the facts within the accuser's knowledge and information, and the advice must have been followed in good faith." *See Miller v. Huron Reg'l Med. Ctr., Inc.*, 145 F. Supp. 3d 873, 885 (D.S.D. 2015) (quotations omitted). The Dorsher Enterprise presumably did not disclose that it was contacting toll free numbers because the advice addressed residential lines.

[89] Integrated Path Communications Narrative Response, *supra* note 15.

[90] *Id.*

[91] ZipDX Aff., *supra* note 24, at para. 16.

[92] *Id.*

[93] *See* Internet Archive, *About Us* (Apr. 20, 2021), https://web.archive.org/web/20210420203344/https://scammerblaster.com/about-us/ (on file in EB-TCD-21-00032187) ("Additionally, when our call-flooding tool is used on toll-free numbers, we cost the scammer approximately $4,000,000 daily" and "[t]his is accomplished by flooding toll-free numbers which are expensive for scammers to have since every incoming phone call to a foreign scammer costs money for each incoming call"); Internet Archive, *Who we are, what we do* (Feb. 21, 2021), https://web.archive.org/web/20210221213905/https://scammerblaster.com/ (on file in EB-TCD-21-00032187) ("By sending a high volume of calls . . . [this] runs up their phone bill hundreds of dollars per minute.").

reasonable grounds for the Dorsher Enterprise to believe that calls to toll-free lines—which the Commission has identified as protected by the TCPA—could be made without consent under the TCPA.

C. The $116,156,250 Forfeiture Is Warranted by the Dorsher Enterprise's Egregious Conduct

26. After considering the relevant statutory factors and the Commission's *Forfeiture Policy Statement*, we find the Dorsher Enterprise members jointly and severally liable for a total forfeiture of $116,156,250. The proposed base forfeiture and upward adjustments are consistent with our rules and precedent. We find no basis to reduce the forfeiture.

1. Dorsher Significantly Mischaracterizes the Enterprise's Conduct.

27. Under the Commission's forfeiture 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.[94] As explained in the *Notice*, the total forfeiture results from assessing a base forfeiture of $4,500 for each unlawful robocall that the Bureau verified was made without the requisite prior express consent.[95] The Commission verified 20,650 unlawful prerecorded voice message calls to toll free numbers.[96] We also found the Dorsher Enterprise's violations were egregious because it targeted toll free numbers to fund TDoS attacks, and we proposed to adjust upwardly the base forfeiture to $5,625 per violation.[97]

28. Dorsher argues that the identified conduct was not egregious; instead, he argues that he has been unfairly "lumped in with auto-warranty scam calls."[98] Dorsher asks, "[h]ow could a jury possibly be convinced that I'm on an equal plateau of those scammers who stole hundreds of millions of dollars from Americans, whereas I have never asked for money, nor do I sell any product or service?"[99] Dorsher states, "I have acted in good faith when educating the public about scams . . . and with the interests of protecting victims in view and shutting down scammers from being able to prey on innocent Americans."[100] Dorsher also states that "[i]t is assumed/implied . . . that I am responsible for TDoS attacks that have affected the telecommunications network. Oh yeah? Where is the proof? No proof of this outrageous claim exists because this has never happened."[101]

29. It did, in fact, happen—as the evidence shows. Sworn witness testimony confirms the Dorsher Enterprise made TDoS attacks.[102] ScammerBlaster itself proudly boasted of and advertised these attacks online.[103] Dorsher launched his attacks with little to no vetting that the target was actually an

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[94] 47 CFR § 1.80(b)(10), Note to paragraph (b)(10).

[95] *Notice*, *supra* note 3, at 10, para. 21.

[96] *Id.* at 7, para. 13.

[97] *Id.* at 11-12, paras. 23-25.

[98] Dorsher Subpoena Response, *supra* note 30, at 8.

[99] *Id.* at 8.

[100] *Id.* at 6.

[101] *Id.* at 8.

[102] *Id.*, at paras. 9-10 (describing Dorsher's TDoS attack against an ITG consultant).

[103] ScammerBlaster, *Call Flooding Social Security Administration Scammers* (May 12, 2022), https://www.youtube.com/watch?v=PGZMcySCKyM (video by ScammerBlaster purporting to show himself using TDoS attacks to take down call centers); *ScammerBlaster*, *Destroying Scammer Call Centers with Call Flooding*, https://scammerblaster.com/destroying-scammer-call-centers-with-call-flooding/ (last visited Apr. 14, 2022) (on file in EB-TCD-21-00031748) (describing how ScammerBlaster will flood call centers with TDoS attacks).

illicit scammer.[104] Such conduct is extremely reckless and dangerous. Moreover, Dorsher's conduct belies his claims that he acted in good faith with the sole intention of educating the public about scam calls because the Dorsher Enterprise's underlying motive behind the robocalls was to generate revenue to fund these reckless TDoS attacks.[105]

30. We also disagree that the Dorsher Enterprise is less culpable than other robocallers fined by the Commission. Each of Dorsher's calls cost the Toll Free Customer money, and the amounts are significant when aggregated across thousands of calls, many of them lasting hundreds of minutes.[106] Each robocall also imposes an opportunity cost on the Toll Free Customer. Potential clients or customers cannot reach the Toll Free Customer while the line is tied up by the robocall.[107] For example, in at least two instances, Dorsher and ChariTel made prerecorded voice message calls to AT&T's fraud protection hotline, tied up the toll free line, and made it impossible for consumers to reach AT&T's hotline to report fraud issues.[108] In some instances, a single robocall from the Dorsher Enterprise generated revenue by seizing toll free lines for up to 10 hours.[109] This can have a crippling effect on toll free businesses and customers seeking support for legitimate purposes such as AT&T's fraud assistance services, and the Commission has observed that traffic pumping imposes undue costs on consumers and harm competition.[110] Accordingly, we affirm that the Dorsher Enterprise's conduct was egregious; we find no basis to reduce the forfeiture.

2. The Dorsher Enterprise Was Not Entitled to a Warning.

31. Congress enacted the Telephone Robocall Abuse Criminal Enforcement and Deterrent (TRACED) Act in 2019 to enhance the Commission's enforcement tools to combat illegal robocalls.[111] The TRACED Act permits the FCC to issue a Notice of Apparent Liability for violations of Section 227(b) of the Act without first issuing a citation.[112]

32. Dorsher argues the Commission should have warned him before releasing the *Notice*. He states that "[t]he FCC has never issued to me any warning or indication of any concerns. . . . The FCC did not provide any indication whatsoever that there was any concern about anything going on with my operation at all, in advance of your public outing of my anti-scammer operation."[113] Dorsher cites no

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[104] *See* ZipDX Aff., *supra* note 24, at paras. 11-13 (Dorsher admitted he mistakenly targeted an ITG consultant who had attempted to contact him about a traceback).

[105] *See id.* at para. 16 ("The toll free calls help offset the costs of additional non Toll Free calls, which we do about 4-5,000 non Toll Free calls daily.").

[106] *See* Integrated Path Narrative Response, *supra* note 15 (stating per minute charges for calls to toll free numbers); Letter from Matt Nodine, AT&T Services, Inc., to Marlene H. Dortch, WC Docket No. 18-156, et al., at Attach. 6 (filed Jan. 13, 2020) (AT&T Letter) (outlining costs of toll free traffic pumping).

[107] *See* AT&T Letter at 3.

[108] AT&T Aff., *supra* note 19, at paras. 4-6.

[109] Call Detail Records, *supra* note 16.

[110] *See Connect America Fund et al.*, CC Docket No. 01-92, 26 FCC Rcd 17663, 17875-76, paras. 663 and 665 (2011) (*2011 ICC Transformation Order*). The CFCA has quantified the annual loss from traffic pumping at $4.54 billion. Communications Fraud Control Association, Fraud Loss Survey Report 2021 at 56 (2021), *available at* https://cfca.org/wp-content/uploads/2021/12/CFCA-Fraud-Loss-Survey-2021-2.pdf.

[111] TRACED Act § 3(a).

[112] *Id.*; 47 U.S.C. § 227(b)(4); *see also* 47 CFR § 1.80(d) (excepting forfeiture under section 227(b) from the citation requirement).

[113] Dorsher Subpoena response, *supra* note 30, at 6.

statutes or rules to support his argument. Nor does he argue that the Commission should have first issued him a citation.

33. We disagree with Dorsher and find the Commission's procedure was appropriate. The TCPA allows the Commission to impose a civil forfeiture in accordance with subsection 503(b)(3) (i.e., notice and opportunity for a hearing before the Commission or an administrative law judge) or subsection 503(b)(4) (i.e., a notice of apparent liability) of the Act.[114] The TRACED Act, enacted on December 30, 2019, removed the requirement to first issue a citation for violations of section 227(b) before issuing a notice of apparent liability against any person who does not hold or has applied for a FCC license, permit, certificate, or authorization.[115] Here, the Commission followed the procedures described in subsection 503(b)(4) by issuing a notice of apparent liability against the Dorsher Enterprise on July 14, 2022.[116] As the *Notice* proposed a forfeiture for apparent violations of section 227(b) that occurred after December 30, 2019, there was no need to issue a citation. Therefore, the Commission provided appropriate notice to the Dorsher Enterprise.

IV. CONCLUSION

34. Based on the record before us and in light of the applicable statutory factors, we find that Dorsher and the Dorsher Enterprise willfully and repeatedly violated the TCPA with intent, section 227(b)(1)(A)(iii) of the Act, and section 64.1200(a)(1)(iii) of the Commission's rules by making 20,650 prerecorded voice message calls between January 1, 2021, and March 2, 2021, to toll free numbers without prior express consent or an emergency purpose or other exception under the Act and our rules. For the reasons discussed in the *Notice*, we find the members of the Dorsher Enterprise jointly and severally liable.[117] We decline to cancel or reduce the $116,156,250 forfeiture proposed in the *Notice*.

V. ORDERING CLAUSES

35. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, Thomas Dorsher, ChariTel Inc, OnTel Inc, and ScammerBlaster Inc **ARE JOINTLY AND SEVERALLY LIABLE FOR A MONETARY FORFEITURE** in the amount of one hundred sixteen million, one hundred fifty-six thousand, two hundred fifty dollars ($116,156,250) for willfully and repeatedly violating section 227(b)(1)(A)(iii) of the Act and sections 64.1200(a)(1)(iii) of the Commission's rules.

36. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days after the release of this Forfeiture Order. Thomas Dorsher, ChariTel Inc, OnTel Inc, and ScammerBlaster Inc shall send electronic notification of payment to Lisa Ford, Enforcement Bureau, Federal Communications Commission, at lisa.ford@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to 47 U.S.C. § 504(a).

37. In order for Thomas Dorsher, ChariTel Inc, OnTel Inc, and ScammerBlaster Inc to pay the proposed forfeiture, each aforementioned party shall notify Lisa Ford at lisa.ford@fcc.gov of their intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. 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

[114] 47 U.S.C. § 227(b)(4)(A).

[115] TRACED Act § 3(a); 47 U.S.C. § 227(b)(4); 47 CFR § 1.80(d).

[116] *See Notice*, *supra* note 3; 47 U.S.C. § 503(b)(4); 47 CFR § 1.80(d).

[117] *Notice*, *supra* note 3, at 13-17, paras. 27-35.

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:[118]

- 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[119] or printed CORES form[120] must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to 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).[121] 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.

38. 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.[122] Questions regarding payment procedures should be directed to the

[118] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

[119] FCC Form 159 is accessible at https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159.

[120] 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.

[121] Instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

[122] *See* 47 CFR § 1.1914.

Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

39. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Thomas Dorsher, ChariTel Inc, 9017 Highway 1, Oakes, ND 58474; OnTel Inc, 611 Main Ave., Unit 112, Oakes, ND 58474; and ScammerBlaster Inc, 9017 Highway 1, Oaks, ND 58474.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Thomas Dorsher; ChariTel Inc; OnTel Inc; and ScammerBlaster Inc,* Forfeiture Order, File No. EB-TCD-21-00032187 (September 21, 2023)

The scammers behind robocalls are nothing if not persistent. But so is the Federal Communications Commission. We are not going to stop fighting the good fight to block these annoying calls from our phones. So today, we follow through on an investigation and finalize a $116 million fine against a company whose scheme was to make money off of phony toll free calls. In total, we have referred over $500 million in robocall fines to the Department of Justice for collection this year.

This week we also put providers on notice to block traffic from another offender if it fails to clean up its act—this time it is One Owl, a company that had previously popped up on our radar enabling illegal robocall traffic under the name One Eye. We know how this game works. The bad actors behind these scams know when we're on to them, like when we told providers to block One Eye's illegal traffic in May, so they set up a new entity under a new name. But we are finding new ways to stay on their trail and this notice is evidence of just that.

In addition, this week we brought on another ally in this fight. The Rhode Island Attorney General signed a Memorandum of Understanding with us to share resources to combat illegal robocalls. That means 47 state attorneys general are now working with us to stop junk calls. This is progress.

But for us to keep at it we will need some updates to the law. First, the fine we issue today we will hand over to our colleagues at the Department of Justice. But to hold those who violated our rules accountable I think this agency should have the authority it needs to go to court and collect on our own. Second, in a recent decision, the Supreme Court narrowed the definition of "autodialer" under the Telephone Consumer Protection Act, making it easier for bad actors to evade consequences under the law. This needs a fix.

Back to what we have done today. I want to thank the Robocall Response Team and staff responsible for this action, including Daniel Stepanicich, Jane van Benten, Alex Hobbs, Kristi Thompson, Victoria Randazzo, Rakesh Patel, and Loyaan Egal from the Enforcement Bureau; Kristi Thornton and Mark Stone from the Consumer and Governmental Affairs Bureau; Elizabeth Drogula, Zachary Ross, Jonathan Lechter, Erik Raven-Hansen, and David Zesiger from the Wireline Competition Bureau; Chin Yoo, Valerie Hill, Richard Mallen, and Anjali Singh from the Office of General Counsel; and Michelle Schaefer, Ed Cureg, and Kenneth Lynch from the Office of Economics and Analytics.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *In the Matter of Thomas Dorsher; ChariTel Inc; OnTel Inc; ScammerBlaster Inc*, Forfeiture Order

Last July, when we considered this matter at the NAL stage, I called Thomas Dorsher and his companies' conduct "particularly striking." Even against the backdrop of the cases we've considered in the intervening year – including our $300 million forfeiture order against auto warranty scammers – Dorsher's conduct still stands out.

So it bears repeating: in less than three months, Dorsher placed more than nine and a half million robocalls to toll free numbers. Dorsher made money off each and every one of these calls, through an access stimulation agreement at the expense of toll free subscribers. And then he used that money to fund telephone denial of service attacks – attacks that disable telephone networks, and can disrupt critical emergency services.

Dorsher's claim that he was actually trying to "shut down scammers" is meritless in the face of these facts. I commend the Enforcement Bureau for their work in revealing those facts. It also bears mention that this matter was brought to the attention of the Bureau by the Industry Traceback Group. As I have said repeatedly, there are numerous hurdles to finding these bad actors, and bringing them to account for violations of our rules. I am pleased to see another example of how, by working together, we can untangle these schemes and protect consumers.

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

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Structure and Practices of the Video Relay Service Program	)	CG Docket No. 10-51
	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: September 22, 2023 **Released: September 28, 2023**

Comment Date: [30 days after publication in the Federal Register]
Reply Comment Date: [45 days after publication in the Federal Register]

By the Commission:

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I. INTRODUCTION AND SUMMARY

1. Today, the Federal Communications Commission (Commission) acts to revitalize one of our most important disability rights initiatives—enabling functionally equivalent communication for people with disabilities whose primary language is American Sign Language (ASL).[1] By strengthening the Telecommunications Relay Services Fund's (TRS Fund or Fund) support for Video Relay Service (VRS), we ensure consumers access to highly qualified ASL interpreters. Our renewed commitment to improving VRS also will encourage innovation and enhanced service quality, responding to recent changes in how people communicate that have outlasted the pandemic. For example, with the rapid growth of video conferencing as an essential communications tool, increased Telecommunications Relay Services (TRS) funding—in tandem with the Commission's recently proposed accessibility initiatives[2]—will enable VRS providers to explore technological solutions and collaborate with video platform engineers to enable an integrated, audio-visual presence for ASL interpreters in video conferences. In addition, investing in TRS Fund support for VRS will help fulfill the promise of the Commission's 911 initiatives[3]—e.g., ensuring that every VRS user's location can automatically be identified for every 911

[1] *See* 47 U.S.C. § 225(a)(3), (b)(1); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152-53, para. 23 (2000) (*2000 TRS Order*) (explaining that VRS "will make relay services functionally equivalent to conventional telephone services for individuals whose first language is American Sign Language").

[2] *See Access to Video Conferencing; Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition of Sorenson Communications, LLC for a Limited Waiver of the Privacy Screen Rule*, CG Docket Nos. 23-161, 10-213, 03-123, Report and Order, Notice of Proposed Rulemaking, and Order, FCC 23-50 (June 12, 2023) (cited herein as *Video Conferencing Order* when referencing the Report and Order and Order and *Video Conferencing Notice* when referencing the Notice of Proposed Rulemaking).

[3] *See Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Notice of Proposed Rulemaking, FCC 22-96 (Dec. 22, 2022) (*Location-Based Routing Notice*) (location-based routing proposals); *Facilitating Implementation of Next Generation 911 Services (NG911)*, PS Docket No. 21-479, Notice of Proposed Rulemaking, FCC 23-47 (June 9, 2023) (*NG911 Notice*) (Next Generation 911 proposals).

call[4]—and facilitate longer-term work on a one-number solution for VRS, to seamlessly merge the use of relay with mainstream voice, video, and texting services.

2. *Estimating the cost of VRS*. To ensure that VRS users have access to high-quality interpreting and state-of-the-art communications technology, we make several key changes in the VRS compensation plan. First, we expand the cost-recovery criteria for research and development and certain other expense categories. Second, to correct for the wide variations in VRS providers' cost projections, due to disparate assumptions about inflation, we use a relevant cost index to adjust providers' reported historical costs in most categories by a uniform factor of 7.23%. Using the same cost index, we institute annual, automatic adjustments of VRS compensation formulas. Third, to meet the technology and service-quality challenges described above, we estimate that VRS costs for engineering, research and development, and interpreter wages will increase faster than inflation. Again resolving disparities in VRS provider cost projections, we estimate that each provider's reported historical costs in these categories will increase by a uniform factor: 75% for engineering and research and development, and 65% for interpreter wages and benefits. We incorporate these cost estimates into the revised VRS compensation formulas for the new funding period. Given the increase in investment, we clarify that the information collected from providers in annual cost reports should include specific information quantifying (1) communications assistant (CA) wages and benefits, based on uniform definitions and methods of calculating key elements such as hourly CA compensation; and (2) expenditures on improved technology.

3. *Restructuring VRS Compensation*. We also modify the VRS compensation framework to address recent changes in the relative efficiency of the providers. Where the VRS arena used to be dominated by a single, very large provider, a second competitor now handles a substantial share of VRS minutes, at a per-minute cost that, while not the same as that of the largest provider, is somewhat nearer to parity. To address the change in these providers' per-minute costs, allocate TRS Fund support more equitably, and prevent waste, we modify the current tiered rate structure for large VRS providers, reducing the number of tiers from three to two and modifying the differential between the highest and lowest tiered rates. For small VRS providers (those handling 1 million or fewer monthly minutes), we retain a separate compensation formula so that new entrants and small providers have an opportunity to innovate in the provision of VRS. In addition, we adopt a per-minute compensation additive for the provision of a specialized form of VRS for users who are deafblind.

4. *Revised compensation formulas*. The compensation plan we adopt is applicable to the five-year period from July 1, 2023, to June 30, 2028.[5] For TRS Fund Year 2023-24, the compensation formula for VRS providers handling more than 1 million VRS minutes per month is: (1) $6.27 per minute for the first 1 million minutes; and (2) $3.92 per minute for all additional monthly minutes. For VRS providers handling 1 million or fewer VRS minutes per month, the compensation formula is $7.77 per minute for all minutes. For the provision of a specialized form of VRS to certain users who are deafblind, the compensation additive is $0.19 per minute, which is added to the per-minute amount applicable to those minutes under the relevant formula described above. For each subsequent TRS Fund year through June 30, 2028, these compensation formulas will be adjusted by the Consumer and Governmental Affairs Bureau (CGB or Bureau), based on the seasonally adjusted change in the Bureau of Labor Statistics (BLS) index of "Total compensation for Private industry workers in Professional, scientific, and technical services."[6]

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[4] *See* 47 CFR § 9.14(d)(4)(ii) (requiring providers of non-fixed VRS and IP Relay providers to provide automated dispatchable location if technically feasible); *id*. § 9.14(d)(2)(iv) (911 call-routing requirement for VRS and IP Relay providers).

[5] To ensure that the higher levels of compensation under the new plan are applicable to the entire five-year period, we direct a true-up of compensation paid prior to the effective date of the Report and Order, for service provided on or after July 1, 2023.

[6] Bureau of Labor Statistics, BLS Data Viewer, Employment Cost Index, https://beta.bls.gov/dataViewer/view/timeseries/CIS20154000000000I.

5. In the Further Notice of Proposed Rulemaking (*Further Notice*) we seek further comment on providing additional compensation in special situations, such as when a Certified Deaf Interpreter is needed for a VRS call, and rule changes to facilitate the provision of specialized services.

II. BACKGROUND

A. VRS Compensation and Its History

6. Section 225 of the Communications Act of 1934, as amended (the Act), requires the Commission to ensure the availability of TRS to persons who are deaf, hard of hearing, or deafblind or have speech disabilities, "to the extent possible and in the most efficient manner."[7] TRS are defined as "telephone transmission services" enabling such persons to communicate by wire or radio "in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services."[8] VRS, a relay service that "allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment,"[9] is supported entirely by the TRS Fund.[10] VRS providers are compensated for the reasonable costs of providing VRS in accordance with payment formulas approved by the Commission.[11] In a number of decisions over the past 20 years, the Commission has addressed whether certain cost categories are "reasonable costs" eligible for recovery from the TRS Fund.[12] Reasonable costs are

[7] 47 U.S.C. § 225(b)(1).

[8] *Id*. § 225(a)(3).

[9] 47 CFR § 64.601(a)(51). Over a broadband video communications link, the registered VRS user signs to a CA, who then voices the signed language to the telephone user. When the telephone user replies, the CA signs the telephone user's voiced speech back to the registered VRS user, via the video link. *See Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5548-49, para. 2 (2011).

[10] *2000 TRS Order*, 15 FCC Rcd at 5153, para. 24; *see also 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 Relay Service*, CG Docket Nos. 03-123, 10-51, and 12-38, Notice of Proposed Rulemaking, 35 FCC Rcd 13370, 13374, para. 8 (2020) (proposing to continue supporting VRS entirely from the TRS Fund, while expanding the Fund's contribution base for support of VRS to include intrastate as well as interstate end-user revenues).

[11] *See* 47 CFR § 64.604(c)(5)(iii)(E)(*1*). The TRS Fund administrator, currently Rolka Loube Associates LLC (Rolka Loube), reviews monthly compensation requests and supporting information submitted by providers of VRS and other forms of TRS and makes monthly payments of compensation in accordance with the applicable compensation rates. In addition, the administrator annually collects cost and demand data from each provider, as well as intrastate compensation rates set by state TRS programs, and submits an annual report to the FCC that includes recommendations regarding TRS Fund compensation formulas for interstate TTY-based TRS, interstate Speech-to-Speech (STS), and interstate captioned telephone service, pursuant to the Multi-state Average Rate Structure (MARS) plan for the following TRS Fund Year, which begins July 1. *See id*. § 64.604(c)(5)(iii)(D), (E); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20149-58, paras. 16-37 (2007) (*2007 TRS Compensation Order*).

[12] *See*, *e.g.*, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571, 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12543-44, 12457-58, paras. 181, 188-190 (2004) (*2004 TRS Cost Recovery Order*); *2007 TRS Compensation Order*, 22 FCC Rcd at 20168-71, paras. 73-82; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11626-27, paras. 96-100 (2008) (*First TRS Numbering Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, CC Docket No. 98-67, Second Report and Order and Order on Reconsideration, 24

(continued….)

generally defined as those costs that providers must incur to provide relay service in accordance with mandatory minimum TRS standards.[13]

7. *Tiered Compensation Formulas*. In 2007, to ensure that VRS users could choose from a range of service offerings, despite significant disparities in VRS providers' market shares and per-minute costs, the Commission introduced a tiered compensation structure for VRS.[14] Under this approach, a VRS provider's monthly compensation payment is calculated based on the application of different per-minute amounts to each of three specified "tiers" of minutes of service. The highest per-minute amount applies to an initial tier of minutes up to a defined maximum number, a lower amount applies to the next tier, again up to a second defined maximum number of minutes, and a still lower amount applies to any minutes of service in excess of the second maximum.[15] In setting tiered compensation formulas, the Commission continued to rely on provider-reported cost, demand, and other data and assessments of such data by the TRS Fund administrator.[16] Under the tiered approach, as the Commission explained, "providers that handle a relatively small amount of minutes and therefore have relatively higher per-minute costs will receive compensation on a monthly basis that likely more accurately correlates to their actual costs"—and the same is true of providers that have more minutes and lower per-minute costs.[17]

8. *Past Adjustments of VRS Compensation*. To conserve administrative resources, allow TRS providers greater certainty for business planning, and enhance efficiency incentives, the Commission ordinarily determines VRS compensation formulas for a three- or four-year period.[18] Upon the expiration

(Continued from previous page)
FCC Rcd 791, 812-16, paras. 46-56 (2008) (*Second TRS Numbering Order*); *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, 8629-30, 8639, 8696, paras. 21-22, 39, 192 (2013) (*2013 VRS Reform Order*), *aff'd in part*, *vacated in part and remanded sub nom. Sorenson Communications*, *LLC v. FCC*, 765 F.3d 37 (D.C. Cir. 2014) (*Sorenson 2014*); *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 Order, 32 FCC Rcd 5891, 5895-903, paras. 10-22 (2017) (*2017 VRS Compensation Order*), *aff'd sub nom. Sorenson Communications*, *LLC v. FCC*, 897 F.3d 214 (D.C. Cir. 2018) (*Sorenson 2018*).

[13] *2004 TRS Cost Recovery Order*, 19 FCC Rcd at 12552, para. 199; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order on Reconsideration, 21 FCC Rcd 8050, 8057-58, paras. 15-16 (2006) (*2006 Cost Recovery Order on Reconsideration*).

[14] *See 2007 TRS Compensation Order*, 22 FCC Rcd at 20162-63, para. 52 (noting that "[f]or several years now, one provider has a dominant market share, and thus this individual provider's projected minutes and costs largely determine the rate").

[15] *2017 VRS Compensation Order*, 32 FCC Rcd at 5892, para. 2.

[16] *2007 TRS Compensation Order*, 22 FCC Rcd at 20160-61, para. 47.

[17] *Id*. at 20163, para. 54.

[18] Before 2007, this was not the practice. Instead, on an annual basis, after reviewing VRS providers' reported costs, the TRS Fund administrator proposed per-minute compensation formulas for the upcoming year based on its assessment of projected costs and demand. *See* 47 CFR § 64.604(c)(5)(iii)(E). After seeking comment on the proposed compensation levels, the Commission, or the Consumer and Governmental Affairs Bureau acting on delegated authority, then approved or modified the administrator's proposed compensation levels. *2004 TRS Cost Recovery Order*, 19 FCC Rcd at 12537-40, paras. 163-64, 167-70 (detailing the annual process for setting VRS compensation levels and the Bureau delegated authority). In 2007, the Commission began the practice of setting compensation levels for a multi-year period, setting VRS compensation for three years. *2007 TRS Compensation Order*, 22 FCC Rcd at 20164, para. 56. In 2010, the Commission reverted to setting VRS compensation levels for a one-year period, because in that year it had initiated a broad-gauged inquiry on VRS compensation. One-year extensions of those compensation levels were adopted in 2011 and 2012, while the compensation inquiry and a subsequent Further Notice of Proposed Rulemaking remained pending. *See 2013 VRS Reform Order*, 28 FCC Rcd
(continued….)

of each multi-year period, the Commission has reset the compensation formulas, and on several occasions it has also modified the tier structure as well.[19] In 2010, after identifying a substantial gap between allowable provider costs and TRS Fund compensation payments,[20] the Commission reduced the tiered compensation amounts by $1.00 per minute. The Commission made further reductions in 2013, spread over a four-year period, to bring compensation closer to reported allowable provider costs.[21] Overall, from 2010 to 2017, average per-minute compensation declined approximately 38.4%, from $6.30 to $3.88 per minute.[22]

9. Also in 2013, the Commission amended its rules in an effort to restructure VRS competition—a step that carried significant implications for provider compensation. Among other things, the Commission directed the establishment of a neutral video communications service platform. By relieving smaller VRS providers of the need to duplicate the largest provider's infrastructure, the Commission hoped to enable them to compete more effectively based on the quality of their sign-language interpretation.[23] The Commission also sought comment on how to transition from the tiered compensation structure to single-rate, market-based compensation formulas.[24]

10. In 2017, the Commission again reassessed VRS compensation policy. Recognizing that the expectations and assumptions underlying the 2013 reforms had not been borne out,[25] the Commission decided to maintain a tiered compensation structure for at least the next four years, to preserve multiple service options for VRS users.[26] The Commission again modified the tier structure, expanding the

(Continued from previous page)
at 8693, paras. 184-85. In 2013, the Commission shifted to a four-year compensation period. This approach was repeated in 2017. *Id*. at 8703-04, para. 212; *2017 VRS Compensation Order*, 32 FCC Rcd at 5921-22, para. 58.

[19] *See 2013 VRS Reform Order*, 28 FCC Rcd at 8699, 8703-06, paras. 201, 212-16; *2017 VRS Compensation Order*, 32 FCC Rcd at 5916-17, 5918-20, 5922-24, paras. 49-50, 52-54, 59-63.

[20] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CG Docket No. 03-123, 25 FCC Rcd 8689, 8694, 8695-96, paras. 9, 12 (2010) (*2010 TRS Compensation Order*).

[21] *2013 VRS Reform Order*, 28 FCC Rcd at 8703-06, paras. 212-16. The Commission also merged then-existing Tiers I (0-50,000 minutes) and II (50,001-500,000) into a new Tier I applicable to a provider's first 500,000 minutes, and split the existing Tier III (over 500,000 minutes) into Tiers II (500,001 – 1 million minutes) and III (over 1 million minutes). *Id*. at 8702, para. 208.

[22] *See* National Exchange Carrier Association, Inc., Interstate Telecommunications Relay Service Fund: Supplement to Annual Filing for TRS Contribution Factor Decrease, CG Docket Nos. 03-123 and 10-51, Exh. 1 (filed Mar. 30, 2010), https://www.fcc.gov/ecfs/document/6015546010/1 (showing projected VRS expenditures and demand for TRS Fund Year 2009-10); *see also* Rolka Loube, Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, Exh. 2 (filed May 4, 2016), https://www.fcc.gov/ecfs/document/60001737065/1 (showing projected VRS expenditures and demand for TRS Fund Year 2016-2017).

[23] *See 2013 VRS Reform Order*, 28 FCC Rcd at 8623-24, 8657, 8698-99, paras. 8, 89-90, 199. The Commission also expected that the development of a standard user-device interface would make it easier for smaller providers to compete for customers without having to replace the free devices routinely distributed by the largest VRS provider. *Id*. at 8641, para. 43.

[24] *Id*. at 8706-07, para. 217.

[25] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5905-07, paras. 27-31. The Commission had requested bids to build the platform, but no acceptable bids were received; therefore, the Commission canceled the procurement. *See id*. at 5931, para. 75. In 2017, the Commission eliminated the rules establishing the neutral video communications platform. *Id*. at 5931, para. 76.

[26] *Id*. at 5908-09, paras. 33-35.

boundaries of the lower tiers.[27] In addition, the Commission added a separate formula for "emergent providers," applicable only to those VRS providers that, at the time, had no more than 500,000 total monthly minutes.[28]

11. In setting compensation levels, the Commission sought "to limit the likelihood that any provider's total compensation will be insufficient to provide a reasonable margin over its allowable expenses, and to limit the extent of any overcompensation of a provider in relation to its allowable expenses and reasonable operating margin."[29] To permit very small providers and new entrants an opportunity to recover their higher costs, the Commission set the compensation formula for providers with less than 500,000 monthly minutes at $5.29 per minute, and maintained it at that level for the next four years.[30] Similarly, to assure cost recovery for larger providers, the Commission increased the per-minute amount for the first 1 million monthly minutes (Tier I) from $4.06 to $4.82, and increased the per-minute amount for the next 1.5 million monthly minutes (Tier II) from $3.49 to $3.97.[31] The Tier III compensation amount, applicable to monthly minutes exceeding 2.5 million, was reduced by degrees, to $2.63.[32] Since July 1, 2019, there has been no change in these compensation formulas.[33]

12. *Effect of COVID-19 Outbreak*. In 2020, following the outbreak of the COVID-19 pandemic and efforts to reduce its spread, VRS use increased. Although providers incurred additional costs in some areas, these were offset by cost savings (e.g., from reduced need for office space and related infrastructure) and the effects of increased call volumes that were not accompanied by commensurate increases in expenses.[34] As a result, providers' average allowable cost per minute declined from $2.64 in 2019 to $2.49 in 2020 and $2.53 in 2021.[35] More recently, however, as the volume of VRS traffic has reverted towards pre-pandemic levels, and as costs have increased due to inflation, providers' average allowable cost per minute increased substantially to $2.98 per minute in 2022, and is projected to increase even further to $3.50 in 2023.[36]

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[27] *Id*. at 5918, para. 52. The upper boundary of Tier I was increased from 500,000 to 1,000,000 monthly minutes. Tier II, formerly applicable to monthly minutes between 500,001 and 1,000,000, was modified to apply to monthly minutes between 1,000,001 and 2,500,000. Tier III, formerly applicable to monthly minutes exceeding 1 million, became applicable to monthly minutes exceeding 2.5 million. *Id*. at 5894, 5918, 5934, paras. 6, 52, Appx. A.

[28] *Id*. at 5916-17, para. 49. Under this approach, if a VRS provider is initially subject to the emergent provider rate and then generates monthly minutes exceeding 500,000, the provider continues to be compensated at the emergent rate for their first 500,000 monthly minutes, and is compensated at the Tier I rate for monthly minutes from 500,001 to 1 million. *Id*.

[29] *Id*. at 5922, para. 59.

[30] *Id*. at 5917, para. 50.

[31] *Id*. at 5922-23, paras 60-61.

[32] *Id*. at 5923, para. 62.

[33] *Id*. at 5921-22, para. 58.

[34] *See* Rolka Loube, 2021-2022 Rates & Demand Forecasts, Slides 20, 23 (filed June 30, 2021), https://www.fcc.gov/ecfs/document/10630145161295/2 (Rolka Loube 2021 Forecast) (detailing calendar year costs and monthly demand); Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, Exhs. 1-4, 1-4a (filed May 1, 2023) (2023 TRS Fund Annual Report). In discussing provider cost and demand, when we reference a single year we are referring to a calendar year. When discussing cost and demand for a TRS Fund Year, which runs from July 1 through June 30 of the following year, we refer to both years involved in the TRS Fund Year, e.g., TRS Fund Year 2021-22.

[35] *See* Rolka Loube 2021 Forecast at Slides 20, 23; 2023 TRS Fund Annual Report, Exh. 1.4.

[36] 2023 TRS Fund Annual Report, Exh. 1.4; Letter from Eliot Greenwald, FCC, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, Attach. (filed May 9, 2023) (2023 Cost and Demand Data) (confidential).

B. The 2021 Notice

13. In May 2021, the Commission released a Notice of Proposed Rulemaking and Order seeking comment on the adoption of a new VRS compensation plan.[37] To allow additional time for this determination, the Commission extended the expiration of the current VRS compensation plan to December 31, 2021.[38] To allow consideration in this proceeding of individual VRS providers' cost and demand data, the Bureau submitted in the record the annual cost and demand data that each VRS provider reported to the TRS Fund administrator in 2021.[39] This information, designated as highly confidential, is subject to examination by third-party consultants pursuant to a protective order.[40]

14. As an initial matter, the Commission noted that after the outbreak of the COVID-19 pandemic there had been a sharp, unanticipated increase in demand for VRS and a substantial decrease in average per-minute costs.[41] In light of this change and the resulting uncertainties regarding future VRS cost and demand, the Commission asked whether it should defer revision of the current formulas until June 2023—when the effects of the pandemic might be resolved and available cost and demand data could serve as a more reliable predictor of future cost and demand.[42] In their comments on the 2021 *Notice*, VRS providers took different positions on whether to defer a compensation reset.[43] Although the Commission did not issue a decision on the deferral issue, in the absence of Commission action, the Consumer and Governmental Affairs Bureau extended the expiration of the current plan to June 30, 2022,[44] to June 30, 2023,[45] August 31, 2023,[46] and September 30, 2023.[47] In *ex parte* letters filed in 2023, all providers now support resetting the compensation formulas for the 2023-24 Fund Year.[48]

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[37] *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*, CG Docket Nos. 03-123 and 10-51, Notice of Proposed Rulemaking and Order, 36 FCC Rcd 8802 (2021) (*Notice or May 2021 Compensation Extension Order*).

[38] *Id*. at 8817-19, paras. 40-45.

[39] *See* Letter from Eliot Greenwald, FCC, to Marlene Dortch, FCC Secretary, CG Docket Nos. 03-123 and 10-51, Attachments A, VRS Provider Expense Data 2018-22, and B, VRS Provider Demand Data 2018-22 (filed July 12, 2021) (2021 VRS Cost and Demand Data) (confidential version) (historical cost and demand data for calendar years 2018, 2019, and 2020 and projected cost and demand data for 2021 and 2022, as reported in 2021).

[40] *VRS Provider Cost and Demand Data to be Placed in the Record*, CG Docket Nos. 03-123 and 10-51, Public Notice, 36 FCC Rcd 9930 (2021); *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*, CG Docket Nos. 03-123, 10-51, and 13-24, Order and Third Protective Order, 33 FCC Rcd 6802, 6806, Appx. A, at para. 1 (CGB 2018) (*Third Protective Order*).

[41] *Notice*, 36 FCC Rcd at 8810-11, paras. 17-18.

[42] *Id*. at 8810-11, paras. 17-21.

[43] *See* Convo Comments at 4, 16-21 (supporting deferral of compensation reset); GlobalVRS Comments at 16 (opposing deferral); Sorenson Comments at 16-21 (supporting deferral); ZP Comments at 11-12 (opposing deferral).

[44] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, DA 21-1417 (CGB Nov. 12, 2021) (*November 2021 Compensation Extension Order*).

[45] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket No. 03-123 and 10-51, Order, DA 22-699, at 5, paras. 13-14 (CGB June 30, 2022) (*2022 TRS Funding Order*).

[46] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket No. 03-123 and 10-51, Order, DA 23-577, at 6, para. 14 (CGB June 30, 2023) (*2023 TRS Funding Order*).

15. Regarding the substance of a new VRS compensation plan, the Commission proposed to maintain a tiered compensation structure, explaining that developments since 2017 did not appear to justify an expectation of major changes in most VRS providers' relative per-minute costs.[49] The Commission also found no reason to depart from the Commission's longstanding policy objectives of (1) bringing TRS Fund payments into closer alignment with allowable costs and (2) preserving and promoting quality-of-service competition among multiple providers.[50] The Commission sought comment on a tentative conclusion that it would "best serve the purposes of section 225 if we structure VRS compensation to continue supporting an ecosystem in which multiple VRS providers can compete for minutes of use based on quality of service."[51] In addition, the Commission sought comment on "how cost and demand estimates should be adjusted, if at all, to account for post-COVID costs and demand," and whether projected costs were reliable enough to serve as a reasonable basis to set rates for a new multi-year rate cycle.[52] The Commission also sought comment on whether to rely on historical costs only, "in anticipation that VRS costs and demand may decrease to pre-pandemic levels once the pandemic subsides?"[53] Further, the Commission asked what labor cost adjustments, if any, should be applied.[54] The Commission also sought comment on whether and how to modify the current compensation structure, whether to revisit any prior Commission determinations on allowable costs, what rate levels should be set, how to structure the compensation period, and whether to provide for rate adjustments during that period.[55] The Commission also invited commenters to suggest alternatives to retaining a tiered-rate compensation methodology, such as adoption of a single rate.[56] The Commission urged commenters advocating such alternatives to "explain their proposals in detail, including how such proposals can deliver the benefits that the Commission has found are achievable through VRS competition."[57]

16. The Commission received six comments and four replies to the *Notice*.[58] In their comments, a coalition of advocates for the deaf and hard of hearing community (Communications Equality Advocates), speaking in general terms, strongly urges the Commission to ensure adequate compensation and improved service.[59] NCTA - The Internet and Television Association, whose

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[47] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket No. 03-123 and 10-51, Order, DA 23-801, at 2, para. 5 (CGB Aug. 31, 2023) (*August 2023 Compensation Extension Order*).

[48] *See* Letter from Jeff Rosen et al., Convo, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 4 (filed May 9, 2023) (Convo May 9 *Ex Parte*); Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Mar. 27, 2023) (Sorenson March 27 *Ex Parte*); Letter from Sherri Turpin, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Mar. 1, 2023) (ZP March 1 *Ex Parte*); Letter from Andrew Isar, GlobalVRS, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed February 24, 2023) (GlobalVRS February 24 *Ex Parte*).

[49] *Notice*, 36 FCC Rcd at 8807-08, paras. 9-12.

[50] *Id*. at 8808-09, para. 13.

[51] *Id*. at 8808-09, para. 14.

[52] *Id*. at 8811, para. 22.

[53] *Id*.

[54] *Id*.

[55] *Id*. at 8812-17, paras. 23-39.

[56] *Id*. at 8809, para. 15.

[57] *Id*.

[58] *See* Convo Comments; Communications Equality Advocates Comments; GlobalVRS Comments, NCTA Comments, Sorenson Comments; ZP Comments; Convo Reply; GlobalVRS Reply; Sorenson Reply; ZP Reply.

[59] Communications Equality Advocates Comments at 2-3.

membership includes TRS Fund contributors, urges the Commission to set rates that avoid undue burden on TRS Fund contributors and their subscribers.[60] In their comments, VRS providers oppose any reduction in average compensation, arguing that they need to incur additional costs to maintain high quality service and invest in modernizing VRS.[61] In a subsequent filing, Convo, Sorenson, and ZP jointly propose the following reforms to the VRS compensation framework: (1) adopt a 6-8 year compensation period;[62] (2) index compensation levels to account for inflation; and (3) deem allowable the costs incurred by providers for numbering, E911, outreach, and research and development to improve service beyond the mandatory minimum standards.[63]

17. Regarding the structure of compensation, Sorenson proposes an alternative to the tier structure whereby VRS providers with more than 500,000 monthly minutes would be subject to a single compensation formula based on the costs of the second-lowest-cost provider.[64] On the other hand, ZP urges the Commission to maintain a tiered structure, but with modifications to substantially increase compensation for those VRS providers with more than 2.5 million monthly minutes.[65] GlobalVRS and Convo urge the Commission to increase compensation for smaller providers so that they can continue and expand specialized services for, e.g., deafblind consumers, atypical ASL users, and non-English-speaking communities.[66] The Commission has also received approximately 1,300 express comments on the *Notice*, which generally urge the Commission to preserve and improve functional equivalency and provide equal access to the communications network for VRS users.

18. On May 9, 2023, to update the record, CGB submitted in this docket the cost and demand data that each VRS provider filed with the TRS Fund administrator in 2023.[67] This information, designated as highly confidential, is subject to examination by third-party consultants pursuant to a

[60] NCTA Comments at 1-2.

[61] ZP Comments at 14-19; Convo Comments at 15-16, n.26; Sorenson Comments at 32-39; GlobalVRS Comments at Appx. 2, Attach. at 15 (supporting outreach for specialized services as an allowable cost). Sorenson also argues for increasing the operating margin to attract new investment or entry into VRS. Sorenson Comments at 29-32.

[62] In a more recent filing, Convo advocates a four-year compensation period. *See* Convo May 9 *Ex Parte* at 4; Letters from Amanda Montgomery, Convo, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed May 25, 2023) (Convo May 25 *Ex Partes*).

[63] Letter from Jeff Rosen, Convo, Bruce Peterson, Sorenson, and Greg Hlibok, ZP, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Oct. 27, 2021) (Joint VRS Providers October 2021 *Ex Parte*). GlobalVRS expresses qualified support for the joint providers' proposal. Letter from Gabrielle Joseph, GlobalVRS, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1-2 (filed Oct. 28, 2021) (GlobalVRS October 2021 *Ex Parte*).

[64] Sorenson Comments at 56-58.

[65] ZP Comments at 10-11 (urging that the upper boundary of Tier II be increased from 2.5 million to 5 million monthly minutes).

[66] GlobalVRS Comments at 10-13 (proposing a special compensation rate for small providers offering specialized services); Convo Comments at 11-12 (discussing service improvements and expansion if the emergent tier is maintained).

[67] 2023 VRS Cost and Demand Data (confidential) (historical cost and demand for calendar years 2021 and 2022 and projected cost and demand for calendar years 2023 and 2024, as reported in 2023); *see also* Letter from Eliot Greenwald, FCC, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, Attach. (filed May 30, 2023) (2023 Non-Allowable Cost Data) (confidential) (summary of historical and projected expenses for E911 and Numbering, Research and Development, Access Software, and Outreach reported by each VRS provider to the TRS Fund administrator as non-allowable expenses); Letter from John Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed June 9, 2023) (confidential) (Sorenson Updated Cost *Ex Parte*) (updating Sorenson's cost and demand reported for 2021 through 2024).

protective order.[68] Subsequently, three VRS providers submitted updated compensation proposals. All three providers continue to advocate the expansion of cost categories related to research and development, numbering, and outreach, and increased compensation to reflect higher costs, including CA wages. ZP and Sorenson continue to advocate a 6-8 year compensation period with adjustments for inflation.[69] While Convo continues to support a multi-year compensation period, it now recommends a four-year cycle with an annual adjustment factor to address further cost increases.[70] Convo also seeks an increase of at least $1.00 in the per-minute compensation rate for emergent providers, including $0.50 a minute to cover increases in the salary and benefits paid to CAs and $0.50 to cover additional costs for CA training, research and development, numbering, and outreach.[71]

19. As an alternative to its initial proposal, ZP now recommends that the Commission increase first-year per-minute compensation formulas, under the existing tiered framework, by 23.84% across the board, to match inflation since 2017.[72] On top of that overall increase, ZP recommends further increases based on its estimates of additional costs that should be counted if allowable cost criteria are expanded.[73] Specifically, ZP estimates: for additional costs of E911 and numbering, an $0.08 per minute increase in the Emergent Provider and Tier I rates and a $0.01 per minute increase in the Tier II and Tier III rates; for outreach, a $0.09 per minute increase in all rate elements; for research and development, a $0.16 increase in the Emergent Provider rate, an $0.08 per minute increase in the Tier I rate, and a $0.01 per minute increase in the Tier II and Tier III rates.[74] ZP's proposed increases would result in the following formulas: $6.88 per minute for Emergent Providers, $6.22 per minute for Tier I; $5.03 per minute for Tier II; and $3.37 per minute for Tier III.[75]

20. Pointing to inconsistencies in how the providers have reported their costs,[76] ZP also urges the Commission *not* to base its rate decision on an average of each provider's historical and projected expenses, as past practice would dictate.[77] If the Commission does rely on such costs, ZP contends, the Commission should consider a revised version of ZP's projected costs,[78] which ZP claims are the costs ZP

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[68] *Video Relay Service Providers' Cost and Demand Data Placed in the Record*, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 22-384 (CGB May 10, 2023); *Third Protective Order*, 33 FCC Rcd at 6806, Appx. A, at para. 1.

[69] *See* Letter from Sherri Turpin, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed June 9, 2023) (ZP June 9 *Ex Parte*); Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1-2 (filed June 12, 2023) (Sorenson June 12 *Ex Parte*).

[70] Convo May 9 *Ex Parte* at 2.

[71] Convo May 25 *Ex Partes* at 1-2.

[72] *See* Letter from Sherri Turpin, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed May 23, 2023) (ZP May 23 *Ex Parte*); Letter from Sherri Turpin, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed June 1, 2023) (ZP June 1 *Ex Parte*).

[73] *See* ZP June 9 *Ex Parte*; Letter from Nicholas Degani, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed June 5, 2023) (ZP June 5 *Ex Parte*); ZP June 1 *Ex Parte*; Letter from Sherri Turpin, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed May 30, 2023) (ZP May 30 *Ex Parte*); ZP May 23 *Ex Parte*.

[74] *See* ZP June 9 *Ex Parte* at 1-3; ZP May 23 *Ex Parte* at 2-5.

[75] ZP June 9 *Ex Parte* at 2. The proposal in the ZP June 9 *Ex Parte* reflects an update to the compensation rates proposed in the ZP May 23 *Ex Parte* based on a new calculation of E911 and numbering costs. ZP's prior proposal was: $6.86 per minute for the Emergent Tier; $6.20 per minute for Tier I, $5.08 per minute for Tier II, and $3.42 per minute for Tier III. ZP May 23 *Ex Parte* at 5.

[76] Letter from Scott Delacourt, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 2-3 (filed Aug. 11, 2023) (confidential) (ZP August 11 *Ex Parte*); Letter from Scott Delacourt, ZP, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed Aug. 22, 2023) (confidential) (ZP August 22 *Ex Parte*).

[77] ZP August 11 2023 *Ex Parte* at 2.

[78] *Id*. at 3; ZP August 22 *Ex Parte*. at 1.

would incur to remain competitive going forward, in the event that Sorenson actually incurs the costs projected in its annual 2023 cost filing.[79]

21. Sorenson describes its proposal, which would increase total compensation substantially more than ZP's, as one that would permit additional research and development, increase compensation of CAs to be more competitive with community interpreting, increase wages for customer support and field staff, and increase marketing support.[80] Sorenson's plan would increase the allowed operating margin for non-emergent VRS providers to almost 18%.[81] One option Sorenson proposes is to build on ZP's June 9, 2023 proposal for increasing rates under the existing tier structure. Sorenson recommends setting the Tier I rate at $6.22 per minute; the Tier II rate at $5.03 per minute, and the Tier III rate at $4.56 per minute.[82] Alternatively, Sorenson supports adoption of a single rate of $4.86 per minute for non-emergent providers.[83] Sorenson does not take a position on an appropriate compensation rate for the Emergent Tier.[84]

22. More recently, Sorenson suggests that, to address ZP's concerns about inconsistent cost projections, the Commission should rely on 2022 actual costs as a baseline, adjust those levels for inflation, make targeted adjustments for the necessary going-forward increases to CA wages, research and development, and engineering, and provide a reasonable operating margin.[85] Sorenson claims that under this approach, when providers make their cost filings during the compensation period, the Commission will have transparency into whether providers are raising interpreter wages and making necessary engineering and research and development investments in line with the compensation levels going forward.[86]

23. On June 5, 2023, accessibility advocates representing the National Association of the Deaf (NAD), DHHCAN, and TDI filed an *ex parte* letter urging the Commission to adopt compensation levels that encourage innovation, allow providers to improve service quality, support specialized services, such as skills-based routing and the use of Certified Deaf Interpreters.[87] The accessibility advocates argue that these changes are necessary to move VRS closer to being a functionally equivalent service.[88]

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[79] ZP August 11, 2023 *Ex Parte* at 3; ZP August 22, 2023 *Ex Parte* at 1-2.

[80] *See* Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed June 15, 2023) (Sorenson June 15 *Ex Parte*); Sorenson June 12 *Ex Parte*.

[81] Sorenson June 15 *Ex Parte*; Letter from Angela Giancarlo, Sorenson, to Marlene Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed June 13, 2023) (Sorenson June 13 *Ex Parte*); Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket No. 03-123 (filed June 13, 2023); Sorenson June 12 *Ex Parte*; Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed May 18, 2023); Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed May 12, 2023) (Sorenson May 12 *Ex Parte*) (providing a report from FTI Consulting, Inc., (FTI) on operating margins for VRS and IP CTS).

[82] *See* Sorenson June 15 *Ex Parte* (updating its tiered proposal to align with ZP's proposal in the ZP June 9 *Ex Parte*); Sorenson June 12 *Ex Parte* (detailing its compensation plan).

[83] Sorenson June 12 *Ex Parte*; Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed June 22, 2023) (Sorenson June 22 *Ex Parte*).

[84] *See* Sorenson June 15 *Ex Parte*; Sorenson June 12 *Ex Parte*.

[85] Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket No. 03-123 and 10-51 at 3 (filed Aug. 21, 2023) (Sorenson Corrected August 18 *Ex Parte*).

[86] *Id*. at 4.

[87] Letter from Zainab Alkebsi, NAD and DHHCAN, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed June 5, 2023).

[88] *Id*. at 1-2.

C. Related Matters

24. On December 23, 2021, Sorenson filed a petition seeking a declaratory ruling that (1) costs associated with a VRS provider's field staff are allowable to the extent they are performing tasks that are service related and not user equipment related; and (2) field staff time is an allowable cost of providing VRS even when it is part of a longer visit during which staff may perform equipment installation and maintenance.[89] In response to a public notice seeking comment on Sorenson's petition,[90] the Commission received four comments and one reply comment.[91]

25. On March 21, 2023, ASL Services Holdings, LLC dba GlobalVRS, filed a petition seeking reimbursement, on an emergency basis, for certain costs previously incurred to provide a specialized form of VRS to persons who are deafblind, as well as full recovery, going forward, of its costs of providing VRS.[92] On April 4, 2023, the Bureau released a public notice seeking comment on GlobalVRS's petition.[93] The Commission received two comments on the GlobalVRS petition.[94] On April 28, 2023, GlobalVRS informed the Commission that it would discontinue its provision of service on June 30, 2023, absent affirmative Commission action on the Petition.[95] Subsequently, GlobalVRS notified its users that it would cease providing VRS on June 30.[96] On June 30, 2023, GlobalVRS sent a notice to its users stating that it would remain open temporarily to provide VRS and that it was working with the Commission and Sorenson to provide a seamless transition so that its customers could have continuous access to VRS.[97] On July 24, 2023, Sorenson filed a request for an expedited waiver of certain Commission rules to facilitate the porting of GlobalVRS customers to Sorenson. Sorenson explained that it was preparing to begin providing a specialized service to deafblind users, comparable to the service

[89] Petition of Sorenson Communications, LLC for Declaratory Ruling, CG Docket Nos. 10-51 and 03-123, at 1-2 (filed Dec. 23, 2021), https://www.fcc.gov/ecfs/document/122330636542/1 (Sorenson Field Staff Petition).

[90] *Comment Sought on Petition for Declaratory Ruling Filed by Sorenson Communications, LLC, on Video Relay Service Cost Allocation Methodologies*, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 21-1651 (CGB Dec. 29, 2021).

[91] Two VRS providers, Convo and GlobalVRS, oppose the request, while two IP CTS providers, Hamilton Relay and ClearCaptions, support the request. *See* Convo Field Staff Comments, CG Docket Nos. 03-123 and 10-51 (rec. Jan. 10, 2022); GlobalVRS Field Staff Comments, CG Docket Nos. 03-123 and 10-51 (rec. Jan 10, 2022); Hamilton Relay, Inc. Field Staff Comments, CG Docket Nos. 03-123 and 10-51 (rec. Jan 10, 2022); ClearCaptions, LLC Field Staff Comments, CG Docket Nos. 03-123 and 10-51 (rec. Jan 10, 2022); Sorenson Field Staff Reply, CG Docket No. 03-123 and 10-51 (rec. Jan 18, 2022).

[92] Emergency Petition of ASL Services Holdings, LLC dba GlobalVRS for DeafBlind Video Relay Services Exogenous Cost Reimbursement, CG Docket Nos. 03-123 and 10-51 (filed Mar. 21, 2023), https://www.fcc.gov/ecfs/document/10321175009780/1 (redacted).

[93] *See Comments Sought on Petition of GlobalVRS for Video Relay Service Exogenous Cost Reimbursement*, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 23-289 (CGB Apr. 4, 2023).

[94] Sorenson supports the request for additional funding to provide specialized forms of VRS to individuals who are deafblind. Sorenson DeafBlind Relay Services Petition Comments, CG Docket Nos. 03-123 and 10-51 (rec. May 8, 2023). The American Association of the DeafBlind (AADB), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), and the DeafBlind Section, National Association of the Deaf (NAD) filed joint comments requesting "that the Commission host and/or facilitate a working group or a forum for DeafBlind consumers." *See* AADB, TDI, and NAD DeafBlind Relay Services Petition Comments, CG Docket Nos. 03-123 and 10-51 (rec. May 9, 2023).

[95] Letter from Gabrielle Joseph, GlobalVRS, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Apr. 28, 2023).

[96] *See* Sorenson Communications, LLC Petition for Expedited Waiver, CG Docket Nos. 03-123 and 10-51, at 2-3, Attachs. A, B (filed July 24, 2023) (Sorenson Waiver Petition) (detailing and providing a copy of letters from GlobalVRS to its users, dated May 26 and June 8).

[97] *See id*. at 2-3, Attach. C (detailing and providing a copy of the June 30, 2023 letter).

offered by GlobalVRS.[98]

III. REPORT AND ORDER

A. The Need for a Revised Compensation Plan

26. In setting VRS compensation formulas, we first determine the relevant costs of providing service. Relying on cost and demand data reported by VRS providers to the TRS Fund administrator, the Commission estimates each provider's average per-minute cost to provide VRS (the provider's total allowable expenses divided by its total minutes), and also calculates a weighted-average per-minute cost for the industry as a whole (all providers' total allowable expenses divided by their total minutes).[99] The Commission then adds an allowed operating margin.[100]

27. In the *Notice*, noting the sudden and potentially transitory impact of the COVID-19 pandemic on demand for VRS, the Commission sought comment on whether to defer revision of the VRS compensation plan to a later time—when the effects of the pandemic had subsided and available cost and demand data could serve as a more reliable predictor of future cost and demand.[101] At that time, some commenters supported such a deferral.[102] Since then, circumstances have changed.[103] The national emergency related to the pandemic has officially ended,[104] and the record indicates that the increased demand levels experienced in calendar year 2020 and 2021, which were substantially higher than those for prior years,[105] were not repeated in 2022.[106] Further, current data indicate that the pandemic-era reduction in average per-minute costs has been reversed. Average allowable expenses, which declined from $2.64 per minute in 2019 to $2.49 per minute in 2020, and which grew only marginally to $2.52 per minute in 2021, increased by 18% in 2022, to $2.98 per minute.[107] In light of these increased costs, all VRS providers now urge the Commission to revise the compensation formulas.[108]

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[98] Sorenson Waiver Petition.

[99] *See 2007 TRS Compensation Order*, 22 FCC Rcd at 20160-61, para. 47; *2017 VRS Compensation Order*, 32 FCC Rcd at 5928, para. 69.

[100] *2017 VRS Compensation Order*, 32 FCC Rcd at 5904-05, para. 26.

[101] *See Notice*, 36 FCC Rcd at 8810-11, paras. 17-22.

[102] Sorenson Comments at 16-21 (asserting in 2021 that historical cost and demand data for 2020 are an unreliable basis for setting compensation, and that demand projections for 2021 and 2022 are speculative because it is unclear when demand will stabilize and at what level); *id.* at 1-2 (asserting cost and demand data not predominantly impacted by COVID would not be available until February 2023); Convo Comments at 16-21 (asserting in 2021 that, due to the pandemic, forward-looking cost and demand projections are unreliable due to numerous unknown factors and escalating labor costs); Convo Reply Comments at 6 (arguing rates should remain frozen until June 30, 2023, at a minimum, for COVID-related data anomalies to resolve).

[103] *See* 2023 TRS Fund Annual Report at 12-13, Exh. 1-4, 1-4a; 2023 VRS Cost and Demand Data (confidential) (historical cost and demand for calendar years 2021 and 2022 and projected cost and demand for calendar years 2023 and 2024, as reported in 2023); Sorenson Updated Cost *Ex Parte*; *see also* 2021 VRS Cost and Demand Data (confidential) (historical cost and demand data for calendar years 2018, 2019, and 2020 and projected cost and demand data for 2021 and 2022, as reported in 2021).

[104] *See* Joint Resolution, Pub. L. No. 118-3, 137 Stat. 6 (codified at 50 U.S.C. § 1621 note) (termination of national emergency concerning COVID-19).

[105] *See* 2021 VRS Cost and Demand Data, Attach. B at 5 (redacted version).

[106] 2023 TRS Fund Annual Report, Exh. 1-4a. Demand is projected to continue decreasing in 2023. *Id*. Cost and demand data are reported by providers on a calendar-year basis.

[107] These averages are derived from the allowable expenses reported on each provider's expense worksheets, which Commission staff has submitted to the record. *See* 2023 VRS Cost and Demand Data (confidential); 2021 VRS Cost and Demand Data, Att. A at 5, Att. B at 5 (redacted); *see also* Sorenson Updated Cost *Ex Parte* (confidential) (filed

(continued….)

28. As explained in section III.C., we believe the cost data now available are sufficiently reliable so that—after making appropriate adjustments to correct for disparities in the assumptions underlying each provider's projections of future costs—we can set revised compensation formulas that approximate the reasonable cost of providing VRS. Our revised VRS compensation formulas increase average provider compensation to reflect the recent increases in reported costs, as well as our expectation of further increases in certain areas, as discussed below.

B. Changes in Allowable Cost Criteria

29. In the *Notice*, the Commission sought comment on whether to revisit any of its prior determinations regarding allowable costs, asking commenters to "state specifically in what respects the Commission's prior determinations are no longer valid, describe in detail any respects in which relevant circumstances have changed in the intervening period, and explain how the outcome they seek is consistent with, and furthers the purposes of, section 225 of the Act."[109] In response to comments on a number of cost categories previously deemed non-allowable in whole or in part, we modify the current criteria for allowable costs to allow recovery of additional expenses for which the justification for disallowance is no longer valid.

1. Research and Development

30. *Background*. Currently, the TRS Fund supports research and development conducted by a TRS provider to ensure that its service meets the applicable TRS mandatory minimum standards, but providers are not permitted to recover the cost of developing TRS enhancements that exceed this criterion.[110] In adopting this limitation, the Commission reasoned that its mandatory minimum TRS standards[111] define the level of functionality that TRS providers must provide, explaining that the TRS Fund was not intended to be a "source of funding for the development of TRS services, features, and enhancements that, although perhaps desirable, are not necessary for the provision of functionally

(Continued from previous page)
by Sorenson to update its reported cost data). The averages stated in the text do not include expenses that are currently non-allowable. However, the staff also submitted to the record the non-allowable expenses reported in certain categories by each VRS provider. *See* 2023 Non-Allowable Cost Data (confidential). The above averages also do not include amounts reported as license fees paid to an affiliate. The Commission previously ruled that such amounts are not allowable, absent a showing that the transaction was arm's-length and that the accounting for such costs complies with the Commission's affiliate transaction rule. *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5902, para. 21 & n.69; *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*, CG Docket Nos. 03-123, 10-51, and 13-24, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10878-79, paras. 25-26 (2020) (*2020 IP CTS Compensation Order*). No such showings have been made by any affected providers. Appendix B to this Report and Order (confidential) shows allowable per-minute costs reported by the providers for each relevant calendar year, as well as adjustments to each provider's reported costs pursuant to the determinations in this Report and Order.

[108] *See* Convo May 9 *Ex Parte* at 4 (urging action on VRS compensation rates); Sorenson March 27 *Ex Parte* (discussing the urgent need to address VRS compensation rates); ZP March 1 *Ex Parte* (discussing the need to act on VRS Rates); GlobalVRS February 24 *Ex Parte* (discussing the impact of the VRS rate reimbursement). Commenters have had an opportunity for their outside experts to review the updated data, and several VRS providers have filed ex parte submissions that are consistent with having accessed the updated data.

[109] *Notice*, 36 FCC Rcd at 8815, para. 33.

[110] *2017 VRS Compensation Order*, 32 FCC Rcd at 5896, para. 11 (*citing 2004 TRS Cost Recovery Order*, 19 FCC Rcd at 12547-48, paras. 189-90); *2013 VRS Reform Order*, 28 FCC Rcd at 8629, para. 21. Further, because the TRS Fund provides support for relay *services* but not user equipment, allowable research and development costs do not include the costs of developing end-user equipment. The TRS Fund also does not support research and development of non-TRS products, services, tasks, or functionalities.

[111] 47 CFR § 64.604.

equivalent TRS service."[112] In 2013, recognizing the value of research and development aimed at improving the efficiency, availability, and functional equivalence of TRS, the Commission authorized such research by independent entities under Commission direction.[113] However, the Commission did not alter the restriction on provider recovery of research and development costs, expressing concerns that removing the restriction "potentially could allow such funding to be unlimited and only end up benefitting the individual provider," and that "[s]uch a mechanism would allow spending in a duplicative way, because multiple providers would be able to expend R&D funds on similar or identical enhancements and would not share the results with existing or potential competitors."[114]

31. VRS providers urge the Commission to remove the limitation on cost recovery for VRS research and development,[115] arguing that the current restriction limits their ability to explore service improvement in a number of areas, including geolocation for 911 calling, direct-dial access to 988 and N11 services, a unified phone number for both relay services and SMS messaging, integration of VRS with videoconferencing services, interoperability improvements, and seamless access across VRS providers to VRS from home, work, or mobile devices.[116] Sorenson adds that it is not easy to determine whether a given research and development project is needed for service improvements that meet mandatory minimum standards or go beyond those standards.[117]

32. *Discussion*. We revise our allowable cost criteria to allow TRS Fund support for the reasonable cost of research and development to enhance the functional equivalency of VRS. No commenter opposes this change. We agree with commenters who assert that the current criterion is unnecessarily restrictive. First, in 2013, when it authorized TRS Fund support of Commission-directed (non-provider) research to improve the efficiency, availability, and functional equivalence of TRS, the Commission recognized that TRS Fund resources can appropriately be used to support research into service improvements that may exceed the existing minimum TRS standards.[118] Authorizing providers (as well as Commission-directed entities) to conduct such research is consistent with the Commission's policy of promoting service improvement by encouraging VRS providers to compete with one another based on service quality[119]—a form of competition that logically may lead a provider to develop innovative features not already required by our rules. We find that expenses incurred by VRS providers to develop such improvements are appropriately included as part of the "reasonable cost" of service supported by the TRS Fund.

33. Second, changed circumstances support removal of the current limitation. Recent changes in how people communicate are posing new technology challenges for VRS providers. To

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[112] *2017 VRS Compensation Order*, 32 FCC Rcd at 5896, para. 11.

[113] *2013 VRS Reform Order*, 28 FCC Rcd at 8630, para. 22.

[114] *Id*. at 8629, para. 21.

[115] *See* Joint VRS Providers October 2021 *Ex Parte* at 2; Convo Comments at 15, fn. 26; Sorenson Comments at 26-28, 34; ZP Comments at 8; ZP Comments at 17-18; ZP Supplemental Comments at 3; Convo Reply at 7-8; GlobalVRS Reply at 2; Sorenson Reply at 15-17; ZP Reply at 10-11; ZP Supplemental Reply at 1-2.

[116] *See* Sorenson Comments at 26-28 (*citing* Consumer Groups CVAA Comments at 5, 16-17); ZP Comments at 8, *quoting* Letter from Zainab Alkebsi, National Association for the Deaf, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed May 13, 2021); *see also* Letter from Zainab Alkebsi, DHHCAN, to Marlene Dortch, FCC. CG Docket Nos. 03-123 and 10-51 (filed Feb. 9, 2022).

[117] Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 2 (filed Nov. 29, 2021) (Sorenson November 2021 *Ex Parte*).

[118] *2013 VRS Reform Order*, 28 FCC Rcd at 8626-27, 8630, paras. 13-14, 22.

[119] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5907, para. 31.

promote the integration of VRS with video conferencing,[120] even though it is not currently required by our rules, VRS providers need to conduct research and development on methods of achieving such integration. Further, the risk of wasting TRS Fund resources on unproductive research appears less likely today, because the Commission no longer resets compensation each year based on annual cost reporting as it did in 2004 when the current limitation on allowable research and development costs was established.[121] With compensation plans now being set for multi-year periods, providers that reduce costs during a compensation period are able to retain the resulting profit. Consequently, providers are less likely to spend money on wasteful or unnecessary research.[122]

34. Therefore, we conclude that the development of service improvements is deserving of TRS Fund support, even if such improvements exceed what is necessary for compliance with our minimum TRS standards. We stress that, as with all provider-reported expenses, expenses for research and development to improve VRS are allowable only if "reasonable."[123] In addition, expenses incurred to develop proprietary user devices or software (or any non-TRS product or service) are not recoverable from the TRS Fund. In Part III.E, we address how providers will be held accountable to ensure that when the Commission authorizes TRS Fund support for provider research to improve VRS, the amounts authorized are actually used for such purposes.

2. Number Acquisition and 911 Calling

35. *Background*. In 2008, the Commission adopted rules providing for the issuance of North American Numbering Plan (NANP) telephone numbers to VRS users and specifying how VRS providers must handle emergency calls.[124] In that rulemaking, the Commission determined that the TRS Fund *should* support provider expenses directly related to: updating and maintaining information in the TRS Numbering Directory; processing and transmitting calls made to TRS telephone numbers; routing emergency TRS calls to an appropriate Public Safety Answering Point (PSAP); and other implementation tasks directly related to facilitating ten-digit numbering and emergency call handling.[125] However, the Commission also found that the TRS Fund *should not* support: (1) costs associated with a consumer's acquisition of a telephone number for use with TRS; (2) costs associated with a TRS user's acquisition and usage of a toll-free telephone number;[126] and (3) any E911 charges that may be imposed on Interstate TRS providers under a state or local E911 funding mechanism.[127] Stating that such costs are not

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[120] *See, e.g., Video Conferencing Notice* at 28-39, paras. 68-111 (proposing rules for integrating VRS and other relay services with video conferencing).

[121] *See 2004 TRS Cost Recovery Order*, 19 FCC Rcd at 12547, para. 189.

[122] *See* Sorenson November 2021 *Ex Parte* at 3-4 ("Once the Commission establishes the rate, the Commission has capped the amount that it will disburse in funds, subject only to changes in demand. . . . [T]here is no automatic increase in the unlikely event that providers engaged in research and development that the Commission deemed to be imprudent."); Letter from Preston Wise, ZP, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 2 (filed Dec. 22, 2021) (ZP December 2021 *Ex Parte*) ("ZP also agrees . . . that 'any increase in research and development is ultimately constrained by whatever compensation rate the Commission establishes.' In other words, the rate framework the Commission adopts will, by itself and by design, deter imprudent research and development spending.").

[123] *See* 47 CFR 64.604(c)(5)(iii)(E)(*1*) ("[Compensation] formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval.").

[124] *First TRS Numbering Order*, 23 FCC Rcd 11591; *Second TRS Numbering Order*, 24 FCC Rcd 791.

[125] *Second TRS Numbering Order*, 24 FCC Rcd at 812, para. 46.

[126] Before NANP telephone numbers were routinely assigned to VRS users, some VRS providers issued toll-free numbers to VRS users. In 2008, the Commission required that all VRS users be assigned geographically appropriate NANP telephone numbers. *See id*. at 805-07, paras. 29-32.

[127] *Id*. at 812-16, paras. 46-54.

attributable to the use of relay service to facilitate a call, the Commission reasoned that they should be treated analogously to numbering costs incurred by voice service providers, which are typically passed through to customers.[128] In response to the *Notice*, several VRS providers advocated removal of these limitations.[129]

36. *Discussion*. We revise our allowable-cost criteria to permit TRS Fund support for the reasonable cost of assigning and porting NANP telephone numbers for TRS users.[130] We agree with ZP and Sorenson that precluding recovery of such costs is no longer justified.[131] Based on the current record, we conclude that voice service providers and VRS providers are not similarly situated regarding the ability to recover such costs from users. As a threshold matter, since 2008 it has become clear that, notwithstanding the view stated in the *Second TRS Numbering Order*, a VRS provider's cost of obtaining the numbers it assigns to its registered users actually is "attributable to the use of relay service to facilitate a call."[132] If relay service were not provided, these numbers would not be needed by VRS users. Further, the current record indicates that, as a practical matter, these costs are never passed on to VRS users, but rather are absorbed by VRS providers.[133] As ZP points out, while voice service providers have a billing relationship with their customers, VRS providers typically do not, and there would be little point in creating such a relationship for the sole purpose of passing through what likely would be a *de minimis* monthly charge.[134]

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[128] *See, e.g.*, *id.* at 813, para. 47.

[129] Convo Comments at 15, fn. 26; Sorenson Comments at 32-33; ZP Comments at 14-16; ZP Supplemental Comments at 2; Convo Reply at 7-8; Sorenson Reply at 17-18; ZP Reply at 9-10; ZP Supplemental Reply at 1-2.

[130] We note that last year, the Commission similarly revised its allowable-cost criteria for IP Relay to permit recovery of number assignment costs by IP Relay providers. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Petition for Rulemaking of Sprint Corporation*, CG Docket No. 03-123, RM-11820, Report and Order, FCC 22-48, at 10-11, paras. 24-25 (June 25, 2022) (*2022 IP Relay Compensation Order*).

[131] *See* Sorenson Comments at 33; ZP Comments at 14-16; Sorenson Reply at 17-18; ZP Reply at 10. However, we do not agree with ZP that, for purposes of determining allowable costs, the Commission should treat TRS as comparable to the Lifeline and Emergency Broadband Benefit programs. *See* ZP Comments at 15. The Emergency Broadband Benefit and Lifeline programs target eligible low-income consumers and are specifically designed to provide assistance to such consumers in obtaining otherwise unaffordable communications services. *See Consolidated Appropriations Act*, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904(b)(1), 134 Stat. 2130, 2135; *Bridging the Digital Divide for Low-Income Consumers et al.*, WC Docket No. 17-287 et al., Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 10886, 10887, para. 3 (2019). In contrast, the TRS program is authorized by non-discrimination legislation, Title IV of the Americans with Disabilities Act, and is intended to enable *all* individuals in the United States who are deaf, hard of hearing, deafblind, or have speech disabilities—regardless of income—to communicate by telephone in a functionally equivalent manner. 47 U.S.C. § 225.

[132] *Second TRS Numbering Order*, 24 FCC Rcd at 813, para. 48 (stating that the cost of obtaining telephone numbers is "not attributable to the use of relay service to facilitate a call").

[133] ZP Comments at 15.

[134] *Id*. In this regard, there is an important difference between traditional TTY-based TRS and Internet-based TRS. To place a call using a TTY, a consumer must subscribe to traditional telephone service, for which a telephone number is automatically issued to the subscriber (and for which the number acquisition cost is bundled into the service rate). To place a call using VRS, a consumer must subscribe to broadband Internet access service, for which no telephone number is automatically provided (unless the consumer also subscribes to VoIP service—which a VRS user would have no reason to do). In 2008, some VRS providers were also providers of wireless or Internet access service, and arguably could have billed TRS numbering costs to those VRS users with whom they had a billing relationship. However, no VRS provider currently provides wireless or Internet access service.

37. As for costs associated with acquisition and use of toll-free numbers, the record does not indicate that any VRS provider still issues toll-free numbers to registered VRS users.[135] Therefore, we do not find it necessary to revisit that question.

38. Similarly, the record does not indicate that any VRS provider is currently assessed a fee under a state or local E911 funding mechanism.[136] As a general matter, we emphasize that under the Commission's prior decisions and our determination above regarding research and development expenses, the TRS Fund supports the reasonable cost of ensuring that E911 calls placed by VRS users are handled in a functionally equivalent manner.[137] FCC rules impose numerous E911-related requirements on VRS providers, including that they provide automatic location information for mobile VRS calls to 911 "if technically feasible."[138] We clarify that the TRS Fund supports reasonable expenses incurred by VRS providers to improve their ability to quickly connect a VRS user's 911 call to the PSAP nearest the user's location and to automatically provide specific location data to such PSAP.[139]

3. Outreach

39. *Background*. TRS outreach has a dual educational focus: (1) making the general public aware of the availability and use of relay services, e.g., to prevent the uninformed rejection of TRS calls by a called party;[140] and (2) providing "non-branded" information about relay services to potential users—i.e., members of the public who are deaf or hard of hearing—to make them aware of the availability and benefits of TRS.[141]

40. Before 2013, the TRS Fund compensated TRS providers for outreach activities. However, the Commission grew concerned about the effectiveness of provider outreach.[142] Regarding VRS and IP Relay, in particular, the Commission recognized that outreach expenditures often supported "branded" marketing campaigns by competing VRS and IP Relay providers, aimed largely at inducing existing registrants to change their service provider.[143] In 2013, the Commission directed the establishment of a pilot program to provide coordinated nationwide outreach for VRS and IP Relay

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[135] In the past, before the Commission mandated assignment of NANP telephone numbers to VRS users, some VRS providers issued toll free numbers to VRS users. In 2008, the Commission put a halt to this practice. *See Second TRS Numbering Order*, 24 FCC Rcd at 805-07, paras. 29-32.

[136] Such fees are typically assessed on providers of telephone service. *See, e.g., 911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket Nos. 20-291, 9-14, Report and Order, FCC 21-80, 2021 WL 2636980 (June 25, 2021).

[137] *See Second TRS Numbering Order*, 24 FCC Rcd at 812, para. 46 (authorizing TRS Fund support for routing emergency TRS calls to an appropriate PSAP and other implementation tasks directly related to facilitating emergency call handling).

[138] 47 CFR § 9.14(d)(4).

[139] Such costs are directly related to routing TRS calls to an appropriate PSAP and facilitating emergency call handling. Thus, such costs are allowable under the criteria adopted by the Commission in 2008. *Second TRS Numbering Order*, 24 FCC Rcd at 812, para. 46.

[140] *See 2022 IP Relay Compensation Order*, para. 15; *2013 VRS Reform Order*, 28 FCC Rcd at 8632-33, paras. 27-28; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8379, 8394, para. 36 (2006).

[141] *See 2022 IP Relay Compensation Order*, para. 15; *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10875, para. 21; *2013 VRS Reform Order*, 28 FCC Rcd at 8632-33, paras. 27-28.

[142] *See 2013 VRS Reform Order*, 28 FCC Rcd at 8632-34, paras. 28-29.

[143] *Id*. at 8632-35, paras. 28-31.

through contractors or other third parties.[144] The Commission also disallowed TRS Fund support for outreach conducted by VRS and IP Relay providers.[145]

41. *Discussion*. We conclude that VRS providers' reasonable outreach expenses should be recoverable from the TRS Fund.[146] First, as a number of commenters point out,[147] the pilot National Outreach Program expired in 2017 and has not been reauthorized. Although we continue to be skeptical about the extent to which provider-conducted outreach can be effective in educating the general public,[148] we find that, in the absence of a national outreach program, the TRS Fund should support outreach by VRS providers who choose to engage in it. However, outreach expenses of this kind are allowable only to the extent that the communication focuses on educating the public about the availability and use of VRS. Expenditures on advertisements about other matters do not constitute allowable outreach expenses.

42. Second, it appears that little is accomplished by continuing to prohibit TRS Fund support of provider outreach to potential VRS users. As the Commission has previously observed, outreach to potential TRS users (unlike outreach to the general public) is not always easy to distinguish from branded marketing,[149] and branded marketing is an allowable TRS expense. To the extent that VRS providers are motivated to communicate with potential users, whether through branded marketing or otherwise, such efforts can be effective in introducing the service to new users,[150] including subgroups that may lack awareness of the availability of a service or how it can meet their needs.[151]

43. In allowing outreach, we do not reopen the door to wasteful spending. As explained earlier in connection with research and development, with compensation plans being set for multi-year periods, providers that reduce costs during a compensation period are able to retain the resulting profit. Consequently, providers are less likely to spend wastefully on unproductive outreach activity—especially

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[144] *Id*. at 8636-39, paras. 32-39.

[145] *Id*. at 8696, para. 192.

[146] Last year, the Commission revised its allowable-cost criteria for IP Relay to permit recovery of outreach costs by IP Relay providers. *2022 IP Relay Compensation Order*, paras. 14-19. All VRS providers advocate a return to TRS Fund support of provider outreach. Convo Comments at 15, fn. 26; GlobalVRS Comments at 12; ZP Comments at 16-17; ZP Supplemental Comments at 2-3; Convo Reply at 7-8; Sorenson Reply at 19-20; ZP Reply at 10; ZP Supplemental Reply at 2-3.

[147] ZP Comments at 16; Sorenson Reply at 19.

[148] *See 2017 VRS Compensation Order,* 32 FCC Rcd at 5896, para. 11; *2013 VRS Reform Order*, 28 FCC Rcd at 8634-35, 8696, paras. 31, 192 ("continued concerns regarding the effectiveness of . . . VRS providers' outreach efforts").

[149] *See 2020 IP CTS Compensation Order*, 35 FCC Rcd at 10875, para. 21. Since the Commission's 2013 determination to cease TRS Fund support for outreach by VRS providers, the amounts reported by VRS providers as outreach have decreased, while the amounts reported as allowable marketing expenses have increased. For example, for 2012, VRS providers reported, on average, $0.24 per minute for outreach and $0.04 per minute for marketing. Rolka Loube, Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, at 20 (filed May 1, 2013). For 2019, providers reported $0.08 per minute for outreach and $0.11 per minute for marketing. Rolka Loube, Interstate Telecommunications Relay Services Fund: Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, at 21 (filed May 3, 2021). For 2022-23, providers reported less than $0.001 per minute for outreach and $0.13 per minute for marketing. *See* 2023 TRS Fund Annual Report, Exh. 1-4; 2023 Cost and Demand Data.

[150] *See* GlobalVRS Comments at 15; ZP Comments at 16-17; Sorenson Reply at 19; ZP Reply at 10; *cf*. *2020 IP CTS Compensation Order*, 35 FCC Rcd at 10875, para. 21 (stating that "provider outreach for IP CTS likely serves a reasonable purpose, by educating potential IP CTS users and their families about the nature of the service").

[151] ASL Services Holding, which operates GlobalVRS, explains that "[i]t takes additional time, resources, and knowledge to be able to adequately educate specialized communities [such as the Spanish-language deaf community served by GlobalVRS] about services available to them." GlobalVRS Comments at 15.

as the resources involved are more likely to lead to increased compensation revenue if used for branded marketing.

4. User Access Software

44. *Background*. Pursuant to longstanding Commission rulings, which have been upheld twice by the D.C. Circuit, the TRS Fund does not support the provision of equipment that a consumer may use to access TRS.[152] The current record does not warrant revisiting this prohibition. However, the Commission has also stated that the prohibition on TRS Fund support for user equipment also precludes compensation of providers for "any necessary software."[153] In prior Commission decisions discussing this prohibition, the Commission did not specifically address software applications used to enable "off-the-shelf" devices such as PCs, tablets, and smartphones to connect to a TRS provider's platform. Indeed, for much of this period, most VRS user software was developed specifically for provider-designed videophones that could only be directly connected to one provider's service.[154] Today, however, consumers increasingly use off-the-shelf devices to access VRS.[155] In light of this trend, commenters urge the Commission to revisit the prohibition on TRS Fund support for VRS user software.[156]

45. *Discussion*. We revise our allowable-cost criteria to allow TRS Fund support for the reasonable cost of providing downloadable software applications that are needed to enable users to access VRS from off-the-shelf user devices. We agree with ZP that the TRS Fund should support reasonable costs incurred by VRS providers in developing, maintaining, and providing "the software necessary to allow VRS users' non-proprietary equipment to route calls and connect to VRS."[157] We allow TRS Fund recovery of VRS providers' reasonable costs directly related to the provision of software that can be downloaded and self-installed by VRS users onto off-the-shelf user devices such as mobile phones, desktop computers, and laptops running on widely available operating systems. Such costs must be incurred by any provider to enable users to connect to its service platform; therefore, they are attributable to the provision of VRS.[158] Further, recovery of the cost of software needed to connect such user devices to VRS is consistent with the Commission's policy to promote the availability of off-the-shelf IP-enabled

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[152] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 21 FCC Rcd 8063, 8071, para. 17 (2006) (*2006 TRS Order*); *see also 2007 TRS Compensation Order*, 22 FCC Rcd at 20170-71, para. 82; *2013 VRS Reform Order*, 28 FCC Rcd at 8696, paras. 193-94; *2017 VRS Compensation Order,* 32 FCC Rcd at 5897-901, paras. 12-19; *Sorenson Communications, Inc., v. FCC*, 659 F.3d 1035, 1044-45 (D.C. Cir. 2011) (*Sorenson 2011)* (statute does not require that "VRS users receive free equipment and training," only that they "pay no higher rates for calls than others pay for traditional phone services," and exclusion of CPE costs does not undermine section 225 goal of not discouraging or impairing development of improved technology); *Sorenson 2014,* 765 F.3d at 44.

[153] *2006 TRS Order*, 21 FCC Rcd at 8071, para. 17 ("Compensable expenses . . . do not include expenses for customer premises equipment—whether for the equipment itself, equipment distribution, or installation of the equipment or any necessary software.").

[154] *See, e.g.*, *2013 VRS Reform Order*, 28 FCC Rcd at 8697, para. 194 n.513 ("Most VRS software currently available is proprietary.").

[155] ZP Comments at 8; Sorenson Reply at 18 ("ZP estimates that up to 40 percent of VRS users currently use off-the-shelf technologies to access VRS. Sorenson believes the number is substantially higher."); Sorenson November 2021 *Ex Parte* at 4-5 (confidential).

[156] ZP Comments at 18-19; ZP Reply at 11 (advocating TRS Fund support of software used with non-proprietary, off-the-shelf user equipment); *see also* GlobalVRS Comments at 11; Sorenson Comments at 34-36 (urging the Commission to allow TRS Fund recovery of all user software costs); Convo Reply at 7-8; Sorenson Reply at 18-19.

[157] ZP Comments at 19.

[158] *Id*. (pointing out that "the specialized software needed to access VRS is a necessary part of the service—without which VRS cannot function").

devices for VRS use and decrease consumers' dependence on VRS equipment specifically designed for connection to a particular VRS provider.[159]

46. However, we decline Sorenson's request that we also allow recovery of costs incurred in developing, maintaining, or providing software for user devices that are distributed by one VRS provider and cannot be directly connected to other VRS providers' services.[160] While we agree with Sorenson that users need a software interface to access VRS,[161] they do not "need" proprietary devices that can be connected to and used with only one provider's service, nor do they need software designed for such devices. Although we have not prohibited providers from distributing such devices and software to consumers requesting them,[162] it is not necessary to support proprietary devices and software with TRS Fund resources.[163] Further, allowing recovery of such software costs would not advance the Commission's policy to enable users to access VRS from off-the-shelf IP-enabled devices and to avoid dependence on VRS equipment specifically designed for a particular provider's network.[164] By limiting TRS Fund support to user software that allows VRS access from off-the-shelf equipment that can be connected to any VRS provider, we promote the availability of multiple service options for consumers.

47. We recognize that it may often be difficult for a VRS provider to differentiate precisely between the portions of certain expenses that are attributable to, e.g., the development of software applications for connecting proprietary and non-proprietary equipment to the provider's platform. In cases where such expenses cannot be directly assigned, the provider should adopt a reasonable allocation method and specify the method used in its cost reports, so that it can be evaluated by the TRS Fund administrator and the Commission.[165]

5. Field Staff Issues

48. *Background*. In a petition for declaratory ruling, Sorenson urges the Commission to determine that costs incurred by a VRS provider when its staff provides in-person assistance to customers are allowable for TRS Fund compensation to the extent that the tasks performed by field staff are service

[159] *Id*.; ZP Reply at 11. In 2013, when the Commission directed development of "a generally available, non-proprietary VRS access technology reference platform" to facilitate interoperability between VRS and off-the-shelf user devices, the Commission stated that "[b]ased on our experience with that program, we may reevaluate at a later time, if necessary the need for and propriety of Fund support for the distribution and maintenance of non-proprietary VRS access technology." *2013 VRS Reform Order*, 28 FCC Rcd at 8697, para. 194 n. 513.

[160] Sorenson Comments at 34-36.

[161] *Id*. at 35 (stating that "[s]oftware on the consumer's side of the service is as necessary as the software on the network side"); *see also id*. at 2 (adding that "the advent of the iPhone demonstrated how user interfaces can revolutionize services").

[162] *See* Sorenson November 2021 *Ex Parte* at 6 ("Consumers can choose the types of endpoints that best fit their needs and should not be confined only to softphones run on devices that are not Deaf-centric, as opposed to Sorenson's Deaf-centric videophones."). Sorenson asserts that the proprietary devices it distributes offer "higher video resolutions and more screen space" than off-the-shelf platforms, but provides no details supporting this claim. *Id*. at 4. Even if true, Sorenson fails to show that such alleged advantages necessitate the availability of TRS Fund payments for such features or the software supporting them.

[163] Sorenson acknowledges that {[xxxx xx xxxx]} of its customers (as well as 100% of the customers of other providers that do not distribute proprietary devices) use VRS software running on an off-the-shelf device, either alone or in addition to using a proprietary Sorenson device. *Id*. at 4 (confidential). Since Sorenson has {[xxxx]} of all customers (as of January 2022), *id*., at least {[xxx xx xxx xx xxxx xx xxxxx]} of all VRS users use generic devices. Therefore, whatever perceived advantages proprietary devices may have, as a practical matter they provide a useful but not essential means of accessing VRS. Material set off by double brackets {[ ]} is confidential information and is redacted from the public version of this item.

[164] *2017 VRS Compensation Order*, 32 FCC Rcd at 5901, para. 19.

[165] *See, e.g.*, 47 CFR § 64.901 (Allocation of Costs).

related, not equipment related.[166] In particular, Sorenson requests that, when field staff installs user equipment, a portion of the cost of that visit is allowable if service-related tasks are also performed during the visit.[167] Among the tasks that Sorenson describes as service-related are: assisting customers to register in the User Registration Database, including assisting with self-certification and obtaining consumer acknowledgement for mandatory disclosures, setting up VRS accounts, providing instructions on tasks such as providing a Registered Location for 911 calling, assisting with using VRS on a non-proprietary device, porting between VRS providers, and training a customer to use VRS.[168] Sorenson seeks this clarification following an audit finding of the TRS Fund administrator that, in its 2019 annual cost filing, Sorenson misclassified service-related field staff costs as Operations Support costs instead of non-allowable customer premises equipment (CPE) costs.[169]

49. *Discussion*. Because the costs of installing, maintaining, and training customers to use provider-distributed devices are not recoverable through TRS Fund compensation, providers must not report the costs of field staff visits for such purposes as allowable expenses.[170] However, we clarify that the reasonable cost of *service*-related work performed by field staff during a visit to a new or current user is an allowable cost of providing VRS. Reasonable costs incurred for service-related field staff visits for the purpose of, e.g., assisting customers with registration, use of VRS on a non-proprietary device, or completing a port are allowable.[171]

50. The above clarifications also apply to the reporting of field staff costs incurred by IP CTS providers.[172] However, any change in the allowability of field staff costs related to installation and provision of IP CTS equipment[173] is beyond the scope of this proceeding.

C. Estimating Costs

1. Need for Adjustment of Provider Cost Projections

51. For the past 13 years, the Commission has established the cost basis for provider compensation by averaging VRS providers' reported historical expenses for the prior calendar year with their projected expenses for the current calendar year.[174] The Commission has found this method to be a useful way to counteract providers' tendency to overestimate future costs.[175] However, for a number of reasons specific to this proceeding, our averaging approach requires modification to achieve reasonably

[166] Sorenson Field Staff Petition; *see also* Sorenson Comments at 36-37.

[167] Sorenson Field Staff Petition.

[168] *Id*. at 1, 3.

[169] *Id*. at 5-6.

[170] Sorenson Comments at 37; Sorenson November 2021 *Ex Parte* at 14. As discussed in the previous section, costs incurred to install and maintain software for a VRS provider's proprietary user devices are also non-allowable. *See supra* III.B.4. Therefore, field staff costs related to installation, maintenance, and training of customers to use such software also must be excluded. Sorenson Field Staff Petition; *see also* Sorenson Comments at 36-37; Sorenson November 2021 *Ex Parte* at 14-15.

[171] We do not agree with GlobalVRS's assertions that field visits are never necessary for users of off-the-shelf, third-party equipment, and that field staff visits serve only to keep consumers tied to proprietary equipment. GlobalVRS Field Staff Comments at 3-5. Convo's allegations that Sorenson's field staff engage in various improper and abusive practices are better addressed in a complaint proceeding. Convo Field Staff Comments at 1-2.

[172] *See* Hamilton Field Staff Comments at 1-2; ClearCaptions Field Staff Comments at 1-2.

[173] ClearCaptions Field Staff Comments at 3-5.

[174] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5928-29, para. 69.

[175] *Id*.

accurate estimates of provider costs for the purpose of establishing VRS compensation for the new compensation period.

52. First, due to a recent increase in the general inflation rate, which does not appear to be offset by comparable efficiency improvements, the average of VRS providers' historical 2022 and projected 2023 expenses is likely to understate the costs that will be incurred by VRS providers in many expense categories in the new compensation period.[176] Second, VRS providers may incur expenses in newly allowable cost categories, which are not reflected in their current reporting of allowable costs. Third, the record indicates that, due to a shortage of qualified ASL interpreters and the challenges posed by new modes of communication, VRS providers need to substantially increase CA wages and technology spending to continue providing high-quality, functionally equivalent service.[177]

53. Finally, recent inflation[178] and other factors appear to have caused an unusual amount of uncertainty and variation in VRS providers' estimates of future costs.[179] In projecting costs for 2023 and 2024, different providers appear to have made very different assumptions about future input costs, as well as the extent to which compensation levels will increase sufficiently to justify additional spending.[180] As a result, estimating each provider's cost of providing VRS based on an average of that provider's historical and projected expenses is likely to cause discrepancies.

54. Providers suggest different approaches for addressing these concerns. Though not disputing that VRS costs have risen substantially while this proceeding has been pending, ZP argues that we should abandon any attempt to estimate current provider costs.[181] Instead, ZP recommends applying an inflation adjustment (as well as certain adjustments meant to reflect newly allowable costs) to the compensation rates set in 2017.[182] We reject this approach because it incorrectly assumes that providers' 2016-17 costs (on which the rates set in 2017 were based) remain relevant for purposes of setting compensation for 2023-24 and beyond. There is no logical or record basis for this assumption.[183] As

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[176] *See* U.S. Bureau of Labor Statistics, Consumer Price Index, https://www.bls.gov/cpi/; U.S. Bureau of Labor Statistics, Producer Price Index, https://www.bls.gov/ppi/; U.S. Bureau of Labor Statistics, Employment Cost Index, https://www.bls.gov/eci/. There is likely to be significant inflation during the 12-month lag between this 2022-23 reporting period and the 2023-24 Fund Year, which is the first year of the new compensation period.

[177] *See, e.g.*, Sorenson Corrected August 18 *Ex Parte* at 1; Letter from John Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 2-5 (filed Aug. 28, 2023) (Sorenson August 28 *Ex Parte*); Convo May 9 *Ex Parte* at 3-5.

[178] *See* U.S. Bureau of Labor Statistics, Consumer Price Index, https://www.bls.gov/cpi/; U.S. Bureau of Labor Statistics, Producer Price Index, https://www.bls.gov/ppi/; U.S. Bureau of Labor Statistics, Employment Cost Index, https://www.bls.gov/eci/.

[179] For example, with respect to CA wages and benefits (Line B.1 of providers' annual cost report), Sorenson projected that its per-minute cost would {[xxxxxxx xxx xxx xxxx xx xxxx]}, while ZP projected {[xx xx xxxxx xx xxx xxxx]}, and Convo projected {[x xx x xxxxxx]}. 2023 VRS Cost and Demand Data (confidential).

[180] *See* ZP August 10 *Ex Parte* at 3 n.8 ("Notably, comparing projected costs in any scenario is premised on a number of assumptions that may wildly vary between providers. If one assumes that inflation has been tamed and another that inflation will accelerate, that can lead to widely divergent forecasts even though only one of those providers can be correct. Similarly, if one provider assumes that rates will remain the same (and thus no provider will have the financial ability to dramatically increase its costs) and another provider assumes that the Commission will increase rates to whatever is needed to cover their costs, that can lead to one projecting a cut-rate budget and another a gold-plated budget even though only one of those providers can be correct.").

[181] *Id*. at 2.

[182] *Id*. at 3-4.

[183] This assumption underlies a number of the assertions in ZP's recent *ex partes*—e.g., that "any rate card should give ZP and Convo a share of the new revenues at least equal to its market share." Letter from Scott Delacourt, ZP, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 3 (filed Sept. 20, 2023). Due to the changes that (continued….)

discussed in detail in Part III.D.1 below, the relative per-minute costs of VRS providers are now very different than they were seven years ago. Further, as explained in Appendix D, ZP's argument that the tiered rate structure and rates of 2017 reflect immutable truths about economies of scale at different volumes of minutes is based on a flawed study.

55. Sorenson, on the other hand, suggests that we modify past practice by using historical 2022 cost, rather than an average of historical and projected cost, as a baseline for estimating future VRS cost, and apply uniform factors to adjust each provider's 2022 costs for inflation and to make the targeted, above-inflation adjustments needed in certain areas.[184] We believe this approach has merit. Historical costs are more reliably accurate,[185] and each provider's historical cost can be adjusted by a uniform factor to address inflation or other likely cost changes affecting all providers, so as not to unduly distort, or give any provider an undue advantage in, the resulting rates. We also note that, while ZP has raised concerns about some aspects of Sorenson's reported 2022 costs,[186] Sorenson has provided reasonable explanations for its 2022 cost increases.[187]

56. To address this unusual confluence of rate-setting issues,[188] we therefore adjust the costs reported in 2022 to: (1) take account of cost changes due to inflation during the 18-month time lag between calendar year 2022 (the cost reporting period) and Fund Year 2023-24 (the first year of the new compensation period); (2) add amounts sufficient to cover necessary increases in technology spending and CA wages and benefits; (3) include estimates of provider expenditures in newly allowable cost categories; and (4) address new costs incurred by Sorenson to provide video-text service. Finally, we add an appropriate operating margin.

2. Adjusting Historical Cost for Inflation

57. To ensure that compensation is sufficient to cover likely inflation-related cost increases between calendar year 2022 and Fund Year 2023-24, we increase our estimate of each provider's expenses in most categories by 7.23%, which is the change from fourth quarter 2021 to second quarter 2023 in the Bureau of Labor Statistics (BLS) index of seasonally adjusted "total compensation for private industry workers in professional, scientific, and technical services."[189]

3. Adjustments for Increased CA Wages and Technology Spending

58. We also find that providers will need to spend additional amounts in certain cost categories, beyond what they spent in 2022 (even as adjusted for inflation).

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have taken place since 2017, "old" provider revenues resulting from the current rates are disproportionately allocated in relation to provider cost. Therefore, there is no logical necessity for "new" revenues to be proportionate to providers' market shares. As Sorenson states: "There is no conceivable basis in Section 225 or economics for such a proposal, divorced from costs and operating margins." Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1-2 (filed Sept. 21, 2023).

[184] *See* Sorenson Corrected August 18 *Ex Parte* at 3-5.

[185] *See 2017 VRS Compensation Order*, 32 FCC Rcd 5927-28, para. 69.

[186] ZP August 10 *Ex Parte* at 2-3.

[187] *See* Sorenson Corrected August 18 *Ex Parte* at 6-7 (confidential).

[188] We do not anticipate that the modifications made below to address these issues will need to be repeated in subsequent compensation proceedings. The current confluence of pandemic-related effects, a sudden change in the inflation rate, shortage of skilled labor, and provider uncertainty regarding future costs is unlikely to recur, or if it does, is unlikely to coincide with the end of a compensation period.

[189] Bureau of Labor Statistics, BLS Data Viewer, Employment Cost Index, https://beta.bls.gov/dataViewer/view/timeseries/CIS2015400000000I. This adjustment uses the same index (described in more detail in Part III.G.2 below) that will be used to adjust compensation levels in subsequent years of the compensation period.

59. *Estimating CA Cost*. Several commenters report that VRS labor costs are likely to continue increasing by substantially more than the 18-month inflation adjustment described above, due to a continuing shortage of CAs.[190] All providers increased CA wages in 2022, and Sorenson and ZP both projected further wage increases, leading to higher CA cost in 2023 and 2024.[191] While we agree that a further increase in CA wages is needed, providers' projections in that regard vary widely. *See* Table 1 below. As discussed above, these disparate projections appear to be based on different assumptions about future inflation and future compensation levels.[192] To address the need for CA wages to increase substantially more than inflation, while avoiding the distorting effects caused by disparate provider projections, we estimate costs in this category by assuming that all providers' CA wages and benefits will increase by a constant percentage over historical levels.

Table 1: CA Costs Reported By Providers for 2020-24[193]

	2020	2021	2022	2023	2024	% Change 2020-21 to 2024
Convo	**{[xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx]}**
ZP	**{[xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx]}**
Sorenson	**{[xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx]}**

60. For this category only, we use Fund Year 2020-21 as the baseline for estimating increased CA cost. This is because, as shown in Table 1, CA wages were relatively stable through the end of 2021, and the wage increases provided in 2022 differed substantially among the providers. Given the wide disparity among the providers' projections of future wage increases, the Commission must resort to rough estimates. We believe Sorenson's projection, which is at the high end, is closer to being accurate than those of ZP and Convo. However, we are not convinced that CA wages will or should increase to the full extent of Sorenson's estimate.

61. Sorenson's projection is largely based on its claims that community interpreters' compensation averages $80-$100 per hour, and that CA wages must be raised closer to that level to ensure that qualified interpreters are willing to work as VRS CAs.[194] However, we question the extent to which Sorenson's estimate of $80-$100 per hour for community interpreter compensation is applicable nationwide.[195] Further, while we recognize the inherent difficulty of VRS work, working as a CA also has

[190] Sorenson June 22 *Ex Parte* at 3 (arguing that compensation should be set "to capture the full magnitude of cost increases—such as interpreter wages—experienced during Fund Year 2023[-24], which starts with July 2023"); ZP June 5 *Ex Parte* at 2 (asserting that the per-minute cost of communications assistants has also been increasing year over year, with a 13% increase in 2022 and expected increases of 24% in 2023 and 14% in 2024); Convo May 25 *Ex Partes*; Letter from Amanda Montgomery, Convo, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed Feb. 11, 2022) (Convo February 2022 *Ex Parte*); ZP December 2021 *Ex Parte* at 4; Sorenson November 2021 *Ex Parte* at 7-8; Convo Comments at 19-23; GlobalVRS Comments, Appx. 2 at 8-9.

[191] *See* 2023 VRS Cost and Demand Data (confidential).

[192] Six months after submitting its projected costs, ZP's counsel submitted an alternative set of projections. ZP August 10 *Ex Parte* at 2-4 (confidential); ZP August 22 *Ex Parte* at 1-2 (confidential). However, these projections are explicitly premised on an asserted need to match Sorenson's projected wage increases. ZP August 10 *Ex Parte* at 2-4; ZP August 22 *Ex Parte* at 1-2. Thus, they have no independent significance.

[193] Source: 2023 VRS Cost and Demand Data (confidential); 2021 VRS Cost and Demand Data (confidential).

[194] Sorenson August 28 *Ex Parte* at 2-5, Attach. A, Attach. D. Sorenson contends that, compared to community engagements, VRS work is exceptionally demanding, as CAs must be prepared to handle any kind of call, including emergencies and other emotionally taxing conversations, with no advance preparation and little pause between calls, cannot choose whom to serve, and may be subject to abusive calls. *Id*. at 4.

[195] Information from other sources appears inconsistent with Sorenson's claim. *See, e.g.*, https://www.ziprecruiter.com/Salaries/ASL-Interpreter-Salary-in-Washington,DC#Hourly (last visited Sept. 21, 2023) (citing a $59.91 hourly wage for a Video Relay Interpreter in Washington, DC, compared to an average hourly salary of $32 for ASL

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certain advantages that may make it attractive to interpreters despite lower hourly compensation. First, in general, community interpreting work is only available when a meeting has been scheduled that requires an interpreter. VRS, by contrast, is operating 24/7, and there must always be interpreters ready to handle any call that happens to be made. Thus, it is often possible for interpreters to arrange for VRS work during periods when community interpreting work is unavailable. Second, community interpreting necessitates travel, while many VRS CAs handle calls from their homes. As a result, VRS work not only is more convenient for interpreters, but also can be performed by interpreters who live in areas where community interpreting work is relatively scarce or whose personal circumstances make it difficult to work away from home.

62. Finally, as noted above, VRS providers have frequently over-projected the amount by which costs are likely to increase.[196] Taking all these factors into account, we find it reasonable to assume that the CA costs of VRS providers will rise by a percentage that equals {[xxx]} of the percentage increase projected by Sorenson. Under this approach, each provider's CA cost is estimated to be 65% higher than its CA cost in 2020-21. We note that this estimate gives substantial weight to Sorenson's projection, as 65% is substantially more than a simple average of the CA cost increases projected by the three providers.

63. We recognize that this estimate is necessarily a matter of judgment. While we are setting compensation for a five-year period, the Commission reserves the right to make adjustments in the formulas, based on a strong showing that such adjustments are needed. Thus, if CA wages are increased consistently with the above estimate, and VRS providers then conclude that further increases are needed, they may present relevant evidence for the Commission's consideration. On the other hand, to the extent that CA wages are *not* increased consistently with the above estimate, the Commission may also consider and make appropriate adjustments in light of such evidence.[197]

64. *Estimating Engineering and R&D Cost*. We find that engineering and R&D expenses[198] are likely to increase by a percentage higher than inflation, as all providers work to address the unusually demanding technology upgrades needed to meet service challenges in the next compensation period.[199]

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interpreters in Washington, DC, and nationwide); https://www.indeed.com/career/sign-language-interpreter/salaries/VA (last visited Sept. 21, 2023) (citing an average hourly salary of $30.90 for sign-language interpreters in Virginia). We also note that many of the rates cited in Sorenson's August 28 *Ex Parte* do not include travel time. If an interpreter can handle VRS calls at home, as many increasingly do, two hours of VRS work at $50 per hour would earn the interpreter $100, while a one-hour community interpreting engagement, paying $90 per hour of interpreting and requiring an additional hour of travel to and from the interpreter's home, would earn the interpreter only $90. Where travel time is compensated, hourly compensation may be substantially lower. For example, Sorenson cites that the Commonwealth of Kentucky's terms pays $50 to $60 per hour with a two-hour minimum and compensated travel time. Sorenson August 28 *Ex Parte* at 2-3 & Attach. C. At those rates, an hour of community interpreting with an hour of travel would earn the interpreter $100 to $120, the same as two hours of at-home VRS work by a CA earning $50 to $60 per hour.

[196] *See supra* para. 51.

[197] *See infra* Part III.E.

[198] Engineering and R&D are closely related aspects of technology spending: successful research and development leads to service innovations, the deployment of which increases engineering costs, and increased engineering staff and resources can also be used to expand research and development. *See* Sorenson June 28 *Ex Parte*; Sorenson June 15 *Ex Parte* (discussing the VRS cost drivers of research and development and engineering jointly).

[199] *See* Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed July 28, 2023) (Sorenson July 28 *Ex Parte*); Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 7-8 (filed Sept. 26, 2022) (raising that providers must invest in engineering resources to develop and maintain solutions for functional equivalency); ZP Comments at 11 (noting that "consumer advocates and VRS users have long called for incentivizing VRS providers to research and invest in next-generation technologies so that Americans with hearing or speech disabilities have access to the same
(continued….)

Important changes in how people communicate—such as the rapid growth of video conferencing—are posing new technology challenges for VRS providers. For example, pursuant to this year's *Video Conferencing Order* and *Video Conferencing Notice*, VRS providers must dedicate additional research, development, and engineering resources to collaboration with video platform providers, so that VRS CAs can have an integrated, audio-visual presence in video conferences.[200] In addition, with the Commission taking steps to modernize the E911 system,[201] we anticipate the deployment of new technology to automatically provide the dispatchable location of any mobile VRS user calling 911.[202] VRS providers may expend additional resources to help find and implement a one-number solution that ends the "siloing" of VRS, seamlessly merging the use of relay with mainstream voice, video, and texting services.

65. The Commission must ensure that the TRS Fund supports sufficient spending on technology to address the challenges described above, so that VRS users have functionally equivalent access to video conferencing and emergency communication. As directed by the Act, we must implement TRS in a way that both encourages the use of existing technology and does not deter the development of improved technology.[203] Further, support for emergency communications is a fundamental part of our TRS mandate.[204] The amounts that VRS providers will need to spend to address these specific challenges are not easy to quantify. Perhaps because providers have more leeway to defer spending on new technology,[205] current projections for technology spending are subject to wide variation among the providers.[206] Sorenson projects substantially increased spending on R&D and engineering in 2023 and 2024, while ZP and Convo project declines.[207] For the reasons stated above, we believe all VRS providers will need to increase spending substantially in these areas to ensure that they remain competitive in the evolving communications landscape.[208] Given the uncertainties inherent in predicting future spending on

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innovations as hearing individuals"); ZP Reply Comments at 11 ("In order to prevent people who are deaf and hard of hearing from falling behind in their use of modern communication technologies, providers need adequate financial support to undertake research and engineering costs for the development of innovative services and features that can keep pace with advancements in voice communications services."); Convo Comments at 11-12 (discussing plans to update its service platform to provide for interoperability with modern technologies and meet the needs of underserved deaf communities, if afforded sufficient compensation).

[200] *See, e.g.*, Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1-2 (Jan. 27, 2022) *January 2022 Ex Parte* (asserting that integrating VRS with commonly used video conferencing platforms "will require significant, ongoing investment by VRS providers to keep pace with the technological changes in communications").

[201] *See, e.g., Location-Based Routing Notice*, FCC 22-96 (location-based routing proposals); *NG911 Notice*, FCC 23-47 (Next Generation 911 proposals).

[202] *See* 47 CFR § 9.14(d)(4)(ii) (requiring providers of non-fixed VRS and IP Relay providers to provide automated dispatchable location if technically feasible); *Id.* § 9.14(d)(2)(iv) (911 call-routing requirement for VRS and IP Relay providers).

[203] 47 U.S.C. § 225(d)(2).

[204] *See id*. § 225(b)(1) (referring to the purposes established in 47 U.S.C. § 151, which prominently include "promoting safety of life and property through the use of wire and radio communications").

[205] *See* Convo May 25 *Ex Partes* (discussing the impact of increasing costs to its engineering budget); Sorenson November 2021 *Ex Parte* at 2 (reported research and development costs do not account for projects that were considered but abandoned).

[206] 2023 VRS Cost and Demand Data (confidential).

[207] *Id*. (projecting that in 2024, Sorenson's allowable R&D and engineering expenses will be {[xxxxx]} higher than in 2022).

[208] Despite their projections of a decline in spending on engineering and R&D, ZP and Convo agree that such increases are needed. *See* ZP Comments at 11; ZP Reply Comments at 11; Convo May 25 *Ex Partes* (discussing the impact of increasing costs to its engineering budget).

technology, we recognize that any estimate we make may be subject to error. However, we prefer to err on the side of over-predicting the amount of spending that will be necessary to ensure that VRS technology provides functionally equivalent service to consumers. While Sorenson projects a {[xxxx]} increase in technology spending, that projection was made before the Commission issued its *Video Conferencing Order* and *Video Conferencing Notice*, which pose additional technology challenges to VRS providers. We estimate that, in the first year of the new compensation period, each provider will need to increase spending on engineering and R&D by approximately 75% over the levels reported for 2022. Therefore, we further adjust each provider's estimated costs in these areas by adding 75% of the provider's reported 2022 level. The resulting adjustments to each provider's allowable costs are shown in Appendix B. As with CA costs, we note that the Commission reserves the right to make adjustments in the compensation formulas, either upward based on a strong showing that additional technology expenditures are necessary, or downward, based on evidence that the increased technology expenditures described above have not been made.[209]

4. Estimated Expenses in Newly Allowable Cost Categories

66. We also adjust estimated VRS cost to include certain expenses that were previously non-allowable and are now allowable, as discussed in Part III.B above.[210] Previously non-allowable expenses for *numbering* activities in 2022 are identified by each VRS provider in its annual cost report and are included in our cost estimates.[211] In the other categories of previously non-allowable costs discussed in Part III.B above, {[xxx xxxxxxx]} reported non-allowable expenses for 2022.[212] For the reasons stated in Part III.B.4 above, costs for customer support provided by field staff remain non-allowable to the extent that they are attributable to installation, maintenance, or customer assistance with provider-distributed devices or software for proprietary devices.[213]

67. *Outreach*. Although no significant *outreach* expenditures have been reported by VRS providers since 2020,[214] some commenters urge the Commission to adjust provider compensation to include estimates of outreach expenses that *would be* incurred if such costs are allowed—and if compensation rates are high enough to permit such discretionary spending.[215] Some commenters assert

[209] *See infra* Part III.E.

[210] Newly allowable R&D costs are included in the estimates discussed in the previous section. However, R&D costs for user devices and proprietary user software remain non-allowable. *See supra* Part III.B.1, 4.

[211] *See* 2023 Non-Allowable VRS Cost Data (confidential); *see also* ZP Comments at 15 (confidential); ZP Reply at 9-10 (confidential); Convo May 9 *Ex Parte* at 6 (confidential). The estimates in the comments and ex partes are consistent with the cost reports.

[212] *See* 2023 Non-Allowable VRS Cost Data (confidential). In the TRS Fund administrator's instructions for the annual reports filed in 2023, VRS providers were directed to report their non-allowable (as well as allowable) expenses for the specific categories of expenses for which providers had urged the Commission to expand the allowability criteria. *See* 2023 TRS Fund Annual Report, Appx. B (Annual Provider Data Request Filing Instructions) at 16-19.

[213] *See supra* Parts III.B.4, 5. Our review of the record indicates that Sorenson currently attributes service-related field staff costs to the Operations Support cost category. Sorenson Field Staff Petition at 3, n.9 (citing Sorenson Field Staff Petition, Attach. at 11). Thus, service-related field staff costs are already included in reported allowable costs.

[214] *See* 2023 Non-Allowable VRS Cost Data (confidential).

[215] ZP Comments at 15, 17 (confidential) (estimating costs for an effective outreach campaign); ZP Supplemental Comment at 2 & n.4 (confidential); Convo May 9 *Ex Parte*. For small providers, Convo suggests that for newly allowable categories there should be at least a $0.50 increase in compensation. *See* Convo June 26 *Ex Parte* at 2; Convo May 25 *Ex Partes* at 2.

that there remain a significant number of eligible TRS users who are fluent in ASL but not currently subscribed to VRS, e.g., because they currently lack access to broadband service.[216]

68. We agree that, during the next compensation period, VRS provider expenditures on outreach may increase somewhat, building on the Commission's and other federal initiatives to expand broadband access, and the expected increase in VRS availability to incarcerated persons.[217] However, we find that such expenditures are unlikely to average $0.09 per minute, as ZP estimates.[218] As a general matter, we believe VRS providers are less likely to spend substantial sums on "unbranded" outreach than "branded" marketing, as unbranded communications are less likely to result in the registration of users generating additional compensation for that provider. ZP's estimate is based on cost data for 2019 and 2020, filed by {[x xxxxx xxxxx xx xxxxxxx]},[219] and such reporting may have been due to a misclassification of the underlying activities.[220] As noted above, no significant amount of outreach expenses have been reported by providers after 2020.[221] Given the virtual absence of provider outreach at present and the relatively weak economic incentives for providers to engage in unbranded outreach rather than branded marketing, we estimate that providers' outreach spending is unlikely to exceed one-quarter of their marketing expenses, on average.

69. Further, we find no justification for the view that providers will spend on outreach at a uniform per-minute rate, as ZP suggests.[222] It seems more likely that outreach spending will represent a relatively uniform percentage of each provider's total expenses. Industry-wide, VRS providers' marketing costs (adjusted for recent inflation, as described in Part III.C.2 above) average $0.13 per minute, or 3.1% of total expenses. If outreach expenses average one-quarter of the industry-wide average marketing cost, then each provider will devote approximately 0.8% of its total expenses to outreach.[223] We therefore adjust each provider's estimated VRS cost by an amount equal to 0.8% of its total expenses.

5. Estimated Costs of Video-Text Service

70. With GlobalVRS's decision to terminate its involvement with VRS, another VRS provider, Sorenson, has undertaken efforts to prepare to offer Video-Text Service for ASL users who are deafblind. In a recent *ex parte* submission, Sorenson anticipates that it will incur a substantial amount of relatively fixed costs, which are unlikely to vary substantially with the number of minutes of service provided. Sorenson estimates these costs to include an initial capital expenditure and annually recurring

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[216] *See* Convo May 9 *Ex Parte* at 6; Letter from Amanda Montgomery, Convo, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (Nov. 18, 2021); ZP Supplemental Comments at 3; ZP Comments at 16; *see also* Joint VRS Providers October 2021 *Ex Parte*; ZP May 23 *Ex Parte* at 4.

[217] *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 (Sept. 30, 2022).

[218] *See* ZP May 23 *Ex Parte* at 4.

[219] *See* ZP Supplemental Comments at 2 & n.4 (confidential); 2021 VRS Cost and Demand Data (confidential).

[220] The difference between the 2021 and 2023 estimates appears to be due to {[xxxxxxx xxxxx xxxxxxx xxxx xxxxxx xxxxxxxxxxxx xxxxxx xxxxxxx xxxxxxx xxx xxxxxx xxxxxxxx xxxxxxxx xxxxxx xxx xxx xxxxxx xxxx x xxxxxx xxxxx xxxxxx xxxxxx xxxxx xxxxxxxx xxxxxx xxxx xx xx xxx xxx xxxxx xxxxxx]}.

[221] ZP contends that such costs would not vary significantly based on a provider's minutes of service. ZP May 23 *Ex Parte* at 4.

[222] *Id*. at 4.

[223] Because each provider's total VRS cost per minute is different, each provider's per-minute outreach expenses will be higher or lower than the average given above.

costs for field support, maintenance, testing, software development, etc.[224] We find that this cost estimate is reasonable, and we therefore increase Sorenson's adjusted annual expenses by this amount.[225]

6. Operating Margin

71. We find no reason to modify the range of reasonable VRS operating margins, currently defined as between 7.6% and 12.35%.[226] The record does not support Sorenson's argument that the allowed operating margin is insufficient to encourage capital investment in VRS.[227]

72. We decline to adjust the operating margin to 22% to reflect average operating margins for competitive telecommunications firms[228] or to 17.8% to reflect average operating margin for companies in the communications and information technologies sectors.[229] The current range of reasonable operating margins for VRS is based on an average of the margins earned in analogous industries, including government contracting and the professional service sector that includes translation and interpretation services, as well as the information technology sector.[230]

73. Sorenson does not provide a convincing explanation of its view that average margins for the competitive telecommunications firms, or for a mix of firms in the communications and information technologies sector would provide a more appropriate benchmark. As a preliminary matter, we note that Sorenson's initial filing was based on a study that included telecommunications carriers.[231] As explained in the *2017 VRS Compensation Order*, the operating margin approach was adopted because the Commission recognized that VRS providers are *unlike* the telecommunications industry, in that VRS is not a capital intensive business.[232] Any proposed benchmark that includes the operating margins of telecommunications carriers is clearly inappropriate.

74. While the most recent analysis submitted by Sorenson does purport to filter out capital-intensive companies from the sample of information and communications technology firms,[233] the use of a

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[224] Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, Attach. at 3-4 (filed July 17, 2023) (Sorenson July 17 *Ex Parte*) (confidential).

[225] *See infra* Appendix B (confidential). We note that other VRS providers are not precluded from offering this type of service. However, in response to GlobalVRS's impending exit, only Sorenson has represented that it is actively preparing to provide this service. Therefore, we adjust Sorenson's costs to reflect these estimated expenditures. Sorenson's estimated variable cost of providing this service, Sorenson July 17 *Ex Parte*, Attach. at 3-4 (confidential), is not included in this adjustment. As discussed in Part III.D.3 below, we adopt a separate compensation formula to allow recovery of such costs through an additive payment for each minute of Video-Text Service.

[226] *2017 VRS Compensation Order*, 32 FCC Rcd at 5904-05, paras. 26.

[227] *See* Sorenson Comments at 29-30. In making this argument, Sorenson relies in part on the unsupported claim that the tiered rate structure itself is a deterrent to capital investment. *See id*. at 32-39. Sorenson's additional argument—that the allowed operating margin is insufficient because some VRS-related costs are excluded from allowable provider expenses (*see id*. at 32)—is directly and more appropriately addressed (to the extent it has merit) by our modifications, described above, to the Commission's criteria for allowable VRS expenses. *See supra* Part III.B.

[228] *See* Sorenson January 2022 *Ex Parte* at 4-5.

[229] *See* Sorenson May 12 *Ex Parte* (attaching Declaration of Gregory M. Attiyeh, Brian F. Pitkin, and Steven E. Turner, FTI Consulting (Apr. 3, 2023)).

[230] *2017 VRS Compensation Order*, 32 FCC Rcd at 5904-05, paras. 25-26.

[231] *See* Sorenson January 2022 *Ex Parte* at 4-5.

[232] *2017 VRS Compensation Order*, 32 FCC Rcd at 5903, para. 23.

[233] *See* Sorenson May 12 *Ex Parte* at 1-2, Attach. at A-8–A-9, paras.17-21 (detailing the selection of benchmark companies).

benchmark based on the high technology sector remains flawed, for several reasons. First, as the Commission explained in 2017:

> While VRS certainly makes use of advanced technology, the bulk of VRS costs are labor costs, primarily salaries and benefits for interpreters, who need not be highly skilled in technology.[234]

75. This continues to be true today—and will remain so despite the technology challenges that require VRS companies to increase spending on research and development and engineering.[235] The economic profile of a VRS provider is quite different from the high technology companies analyzed by FTI.

76. Second, the FTI analysis looks at a sample of companies with net profit of up to 100%. We are not persuaded that these high-profit companies are comparable to TRS providers. Third, there are a number of important differences between the risks typically faced by IT companies and the risks involved in VRS. For example, while IT companies may be subject to unexpected, dramatic changes in demand for their products, demand for VRS has been remarkably stable over time.[236] Further, while the prices that IT companies can expect to receive for their products are subject to variation based on, e.g., changing demand and the pricing decisions of competitors, VRS providers can rely on government-established prices that are predetermined for a period of several years.

77. In short, neither Sorenson nor FTI persuasively explain why their operating margin analysis, relying on surveys of industry sectors that are markedly dissimilar to the VRS industry, should be deemed preferable to the Commission's 2017 determination of reasonable operating margins, based on data from a diverse set of industries analogous to VRS.[237]

78. In addition, according to recent census figures, typical margins for companies in a number of professional service sectors, including the interpretation services sector, are substantially lower than the numbers cited by Sorenson and are relatively similar to or below the levels of operating margin relied upon in setting the range of reasonableness.[238] The Census Bureau's survey of public companies' financial data for this sector, defined as "Professional, Scientific, and Technical Services," but excluding legal, shows that average quarterly pre-tax operating margins between 2019 and 2022 ranged from -3.06% (in 1Q2020) to 3.58% (in 3Q2020), averaging 0.09% in the 2019-22 period as a whole and -1.78% in 2022 (the most recent year).[239] The subsector that includes translation and interpretation services (but

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[234] *2017 VRS Compensation Order*, 32 FCC Rcd at 5904, para. 25.

[235] According to the Fund administrator's 2023 report, 54.6% of VRS providers' allowable expenses for 2022-23 were CA-related. 2023 TRS Fund Report, Exh. 1-4 ($1.7679/3.2378=0.546). After adjusting for inflation, average CA-related expenses ($1.86) are 51.1% of average expenses ($3.64, after adjustments for inflation and additional cost allowances such as those for research and development and engineering).

[236] *See* 2023 TRS Fund Report, Exh. 1-4.a.

[237] *2017 VRS Compensation Order*, 32 FCC Rcd at 5904-05, paras. 25-26.

[238] *See id*. at 5904, para. 25 ("[T]he Census Bureau's survey of public companies' financial data for NAICS 541, defined as "Professional, Scientific, and Technical Services," but excluding legal, shows that average quarterly pre-tax operating margins for this industry sector between 2013 and 2016 ranged from 1.8% (in 1Q2016) to 7.9% (in 2Q2013), averaging 4.6% in the 2013-16 period as a whole and 3.2% in 2016. For NAICS 5419, a subsector that includes translation and interpretation services but excludes various less analogous industry segments such as accounting, architectural and engineering, and computer systems design services, the average operating margin for the public firms included in the Census Bureau's survey ranged from 3.9% to 12.2% for the 2013-16 period and averaged 7.4% in the 2013-16 period as a whole and 7.6% in 2016.").

[239] *See* U.S. Census Bureau, Quarterly Financial Report, https://www.census.gov/econ/qfr/historic.html (last visited July 27, 2023) (U.S. Census QFRs). Data for a particular quarter can be retrieved on this web page by selecting an appropriate quarterly release at "Historical QFR Publication Financial Tables" under the heading "Historical QFR

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excludes various less analogous industry segments such as accounting, architectural and engineering, and computer systems design services,) saw an average operating margin for the public firms included in the Census Bureau's survey ranging from 0.62% (in 1Q2020) to 11.56% (in 2Q2019) for the 2019-22 period and averaging 6.67% in the 2019-22 period as a whole and 6.11% in 2022.[240] Sorenson's analysis does not address the relevant census data.

79. While the operating margins for public companies defined as "Professional, Scientific, and Technical Services," but excluding legal, have fluctuated over time (and currently are lower than when the FCC adopted the reasonableness range of 7.6% - 12.35%), we do not believe it would be beneficial to revise the reasonable range of operating margin that has guided our TRS compensation methodology over the past decade. It is also beneficial to retain consistency in the reasonable operating margin range that participants in the TRS program should expect, absent a clearer indication that operating margins for companies providing comparable services have significantly changed. The record does not establish such a significant change to operating margins when considering the complete scope of industries comparable to VRS. Therefore, we retain the current reasonableness range for the VRS operating margin.[241]

80. To maximize the likelihood that VRS operating margins for individual firms and the industry as a whole will fall within this reasonable range, we set compensation rates so that projected demand levels will result in an operating margin {[xx xx xxxxx xxxxxx xxx xx xx xxxxxxxxx xxxxxx]} for each VRS provider.

D. Compensation Structure and Formulas

81. We adopt the tentative conclusion of the *Notice* that the purposes of section 225 are best served by structuring VRS compensation to support multi-provider competition based on quality of service.[242] The record supports the Commission's prior findings that, by offering VRS users a choice

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Publication Tables." For example, data for all four quarters of 2022, as well as the first quarter of 2023, are available from the release for 2023, Quarter 1, at: https://www2.census.gov/econ/qfr/xls/qfr23q1f.xlsx. Because quarterly results can be revised over time, in compiling this information we used, for each quarter, the most recent available release that included information on that quarter. Within each release, quarterly operating margins for NAICS 541 were obtained from Table 89.0, "Income Statement for Corporations in NAICS Professional and Technical Services Sector (except Legal Services), and Professional and Technical Services Industry Group 5415, Total Assets $50 Million and Over." Operating margins were derived for each quarter by dividing line 11, "Net income (loss) from operations, by the difference between line 11 and line 7, "Net sales, receipts, and operating revenues."

[240] *See* U.S. Census QFRs. Within each release, quarterly operating margins for NAICS 5419 were obtained from Table 91.0, "Income Statement for Corporations in All Other NAICS Professional and Technical Services Industry Groups (except Legal Services), Total Assets $50 Million and Over."

[241] Sorenson's argument that the operating margin should be reassessed to take account of a previously proposed increase in federal corporate income tax applicable to the top tax bracket, from 21% to 28%, Sorenson Comments at 19, appears to be moot, as the proposed tax rate increase was not adopted. We also note that the current range of reasonable operating margins was established in 2017, based on estimates of average pre-tax operating margins for companies comparable to VRS providers. *2017 VRS Compensation Order*, 32 FCC Rcd at 5903-05, paras. 24-26. During the 2013-16 period from which the sample was drawn, corporate income tax for the top bracket was 35%—substantially higher than the current 21% and even higher than the 28% rate projected by Sorenson. *See* 47 U.S.C. § 11(b) (2017) (effective until Dec. 21, 2017); *see also* Tax Foundation, Historical U.S. Federal Corporate Income Tax Rate and Brackets, 1909-2020, https://taxfoundation.org/historical-corporate-tax-rates-brackets/ (last visited Aug. 8, 2023). Therefore, the corporate income tax burden that Sorenson claims is unfairly depressing its returns has actually decreased, not increased, since the reasonable range of margins was established by the Commission.

[242] *See* 47 U.S.C. § 225(a)(3), (b)(1); *2000 TRS Order*, 15 FCC Rcd at 5152-54, paras. 22-26 (authorizing TRS Fund-supported VRS under a regime of nationwide, multi-provider competition); *2010 TRS Compensation Order*, 25 FCC Rcd at 8697-98, para. 17; *2013 VRS Reform Order*, 28 FCC Rcd at 8622-23, para. 5 ("[I]mplementation of (continued….)

among multiple providers, the Commission can efficiently and effectively ensure that functionally equivalent VRS is available to all eligible users.[243] As a number of commenters agree, the availability of multiple service offerings encourages VRS providers to compete for customers by exceeding minimum service quality standards. In addition, a multi-provider environment encourages diverse service offerings, including specialized services and features needed by sub-groups within the sign language-using population.[244]

82. Therefore, the Commission has consistently sought to structure VRS compensation so as to maintain competitive choices for consumers while minimizing waste of TRS Fund resources. There is no simple recipe for achieving these objectives. However, the Commission has flexibility to adjust its approach as necessary to address changed circumstances.[245]

1. Compensation for Large Providers

83. *Summary*. The record of this proceeding shows that circumstances have changed materially since 2017. Specifically, the cost structures of the largest VRS providers have come closer to parity. As a result, modifications are needed to avoid overcompensating one or both of these providers. To equitably allocate TRS Fund resources and ensure the availability of functionally equivalent VRS in the most efficient manner,[246] we modify the current tier structure by eliminating the third tier.[247]

84. *Rationale for Tiering*. The essential purpose of rate tiering is "to compensate VRS providers in a manner that best reflects the financial situation" of providers with disparate cost structures.[248] In 2007, the Commission found that "one [VRS] provider has a dominant market share, and thus this individual provider's projected minutes and costs largely determine the rate."[249] Therefore, the Commission changed from a single average-cost formula to a three-tiered formula "to ensure both that, in furtherance of promoting competition, the newer providers will cover their costs, and the larger and more

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section 225 of the Act has relied heavily on competition in order to allow VRS users to choose among providers who compete on factors such as quality of service, customer service, and technological development"); *2017 VRS Compensation Order*, 32 FCC Rcd at 5907, para. 31 (explaining that the Commission "has consistently sought to encourage and preserve the availability of a competitive choice for VRS users").

[243] *See* Convo Comments at 5-8; ZP Comments at 9-10; *see also 2017 VRS Compensation Order*, 32 FCC Rcd at 5907, para. 31 (explaining that the availability of a competitive choice "provides a competitive incentive to improve VRS offerings"); *Sorenson 2018*, 897 F.3d at 229 (noting that, by permitting less efficient VRS competitors to recover their higher costs, a tiered compensation structure can promote long-run efficiency "by preventing subpar service from a monopolist who has no fear of losing customers").

[244] *See* Convo Comments at 10-12; GlobalVRS Comments at 9; Sorenson Comments at 64-70 (supporting action to incentivize the provision of specialized services); *see also 2017 VRS Compensation Order*, 32 FCC Rcd at 5908-09, para. 34 ("The presence of multiple competitors, even if less efficient than the lowest-cost provider, may enhance functional equivalence by ensuring that VRS users have a choice among diverse service offerings."); *id*. at 5910, para. 36 ("[T]here are benefits in supporting less efficient providers that meet the needs of niche populations, including people who are deaf-blind or speak Spanish, enabling the entrance of new companies that can introduce technological innovations into the VRS program, and ensuring that consumers with hearing and speech disabilities can select among multiple VRS providers—just as voice telephone users do.").

[245] *See Sw. Bell Tel. Co. v. FCC*, 168 F.3d 1344, 1352 (D.C. Cir. 1999) (*citing MCI Telecommunications Corp. v. FCC*, 675 F.2d 408, 413 (D.C. Cir. 1982)) ("The FCC is accorded broad discretion in 'selecting methods . . . to make and oversee rates.'").

[246] *See* 47 U.S.C. § 225(a)(3), (b)(1).

[247] *See Notice*, 36 FCC Rcd at 8809, para.15.

[248] *2007 TRS Compensation Order*, 22 FCC Rcd at 20162, para. 52.

[249] *Id*.

established providers are not overcompensated due to economies of scale."[250] As the Commission then explained:

> By adopting a tiered approach, providers that handle a relatively small amount of minutes and therefore have relatively higher per-minute costs will receive compensation on a monthly basis that likely more accurately correlates to their actual costs. Conversely, providers that handle a larger number of minutes, and therefore have lower per-minute costs, will also receive compensation on a monthly basis that likely more accurately correlates to their actual costs.[251]

85. Subsequent Commission decisions to retain the tier structure for VRS (rather than returning to a single rate) were premised on findings that VRS providers continued to have disparate cost structures, with one dominant provider incurring substantially lower per-minute costs than its rivals.[252] Given the persistence of such disparities, the Commission in 2017 found that if tiered rates were replaced with a single rate based on average industry-wide costs, the likely result would be to "eliminate all VRS competition."[253] Although this result could be avoided by setting a single rate at a higher level (e.g., at the cost level of the next lowest-cost provider), doing so would trade one problem for another—the lowest-cost provider would then be compensated at a rate far in excess of its actual per-minute costs.[254] The Commission reasoned that "[s]uch inefficient use of TRS Fund resources is not permitted by section 225 if there is a more efficient method of ensuring the availability of functionally equivalent service."[255] By contrast, the Commission explained:

> Under a tiered rate structure the Commission can ensure greater efficiency without sacrificing competition, by tailoring compensation rates more closely to the costs of those competitors falling within each tier.[256]

To ensure that "functionally equivalent VRS remains available and is provided in the most efficient manner with respect to TRS Fund resources,"[257] the Commission expanded the boundaries of the lower tiers and increased the differential between the highest and lowest tiered rates, from $0.57 to $2.19.[258]

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[250] *Id*. at 20163, para. 53.

[251] *Id*. at 20163, para. 54.

[252] *2013 VRS Reform Order*, 28 FCC Rcd at 8699, 8700-02, paras. 200, 204-06; *2017 VRS Compensation Order*, 32 FCC Rcd at 5905-07, paras. 27-31.

[253] *2017 VRS Compensation Order*, 32 FCC Rcd at 5907, para. 31.

[254] *Id*. at 5907-08, para. 32.

[255] *Id*.

[256] *Id*. at 5910, para. 37 (footnotes omitted).

[257] *Id*. at 5908, para. 33.

[258] At the end of Fund Year 2016-17, the tiered formulas for VRS providers with more than 500,000 monthly minutes were:
- Tier I (first 500,000 monthly minutes), $4.06;
- Tier II (second 500,000 monthly minutes), $4.06;
- Tier III (monthly minutes exceeding 1 million), $3.49.

Beginning with Fund Year 2019-20, the tiered formulas were:
- Tier I (1st million monthly minutes), $4.82;
- Tier II (next 1.5 million monthly minutes), $3.97;
- Tier III (monthly minutes exceeding 2.5 million), $2.63.

86. *Changes in Provider Costs*. In the *Notice*, the Commission proposed to maintain a tiered structure but sought comment on various possible modifications of that structure.[259] The record now confirms that such modifications are needed. Since the adoption of the *2017 VRS Compensation Order*, the cost gap between the two largest VRS providers, while still substantial, has progressively diminished.

87. From 2017 to 2022, the average per-minute cost of VRS, as reported by providers, increased by approximately 21.3%. In the same period, {[xxx xxx xxxxxx xxxx xxxxx xx xxx xxxxxxxx xxx xxxxxxxxx xx xxxx]}.[260] For 2022, ZP, which now handles {[xxxx xxx x xxxxx]} minutes per month, reported allowable costs of {[xxxxxxxx xxxxxx]}, only {[xxxx]} higher than Sorenson's reported allowable costs of {[xxxxxx xxx xxxx]} for the same period.[261] As modified above to take account of inflation, newly allowable costs, and the Commission's expectation of increased CA wages, engineering and R&D, and certain other costs, the similarity in the estimated costs of the two providers persists.[262]

88. *Effects on Tiering Rationale*. These cost changes raise significant concerns about the continuing validity of the justification for tiering that the Commission relied on in 2017. While one provider continues to handle the majority of VRS minutes, its share of minutes has dwindled, and it appears to have lost its unique cost advantage. Since 2017, the second largest provider has increased its minutes by {[xxxx]} and its market share by {[xxxx]}, and its per-minute costs are now somewhat closer to those of the largest provider.[263] Thus, the two largest providers now have somewhat similar per-minute *costs*, and yet there continues to be a substantial disparity in their shares of VRS *minutes*.

89. These changed circumstances warrant a reconsideration of the compensation structure. One alternative suggested in the record would involve compensating the two largest providers at a single rate.[264] A single-rate plan (e.g., based on the weighted average of the providers' costs) would be simple to administer. Arguably, a single-rate plan could distribute resources efficiently and equitably, ensuring that both providers earn reasonable operating margins above allowable expenses. And it would avoid the

[259] *Notice*, 36 FCC Rcd at 8808, para. 14.

[260] *See* 2023 VRS Cost and Demand Data (confidential); 2021 VRS Cost and Demand Data (confidential). {[xxxx xx xxxxxxxxxxxxx xxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxx xxxxxx xx xxx xxxxx xxxx xxx xx x xxxxxx xxx xxx xxxxx xxxxxx xxxxx xxxxxx xxxxx xxxxx xxxxxxxxxxxx]}. 2023 VRS Cost and Demand Data (confidential); 2023 VRS Cost and Demand Data (confidential). The reasons for the substantial decline in ZP's per-minute costs may not be easy to pinpoint, but they are likely a combination of ZP (1) having successfully grown its call volume, allowing it to operate on a much larger scale, and (2) having apparently completed the consolidation of the 2017 merger of its predecessor entities, enabling ZP to more fully realize the expected scale economies from that merger.

[261] *See* 2023 VRS Cost and Demand Data (confidential).

[262] With the adjustments made in Part III.C above, ZP's estimated per-minute cost is {[xxxx]}, {[xxxx]} higher than Sorenson's. *See* Appendix B (confidential). The full extent of the convergence in the per-minute costs of the two largest providers was not apparent at the time the Commission issued the *Notice*. As of 2021, when the *Notice* was issued, historical costs had been reported only through 2020. In 2019, according to the annual provider cost reports, ZP's per-minute costs were still {[xxxxx xxxxx xxx]} Sorenson's. *See* 2021 VRS Cost and Demand Data (confidential). Cost data for 2020 indicated that the percentage cost difference had narrowed to {[xxxxx]}, *see* 2021 VRS Cost and Demand Data (confidential), but the Commission (and the providers themselves) believed the 2020 data to be clouded by the effects of the pandemic, and questioned whether pandemic-influenced da were reliable enough to serve as a reasonable basis for setting future rates. *Notice*, 36 FCC Rcd at 8810-11, paras. 18-22.

[263] *See* 2023 VRS Cost and Demand Data (confidential); 2021 VRS Cost and Demand Data (confidential); *2020 IP CTS Compensation Order*, 35 FCC Rcd 10889-90, paras. 43-47 (discussing the IP CTS competitive environment conditions favoring a single rate approach).

[264] *See* Sorenson Comments at 45-47; Sorenson Reply at 20-24; Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 4 (Sept. 22, 2021); Sorenson January 2022 *Ex Parte* at 5.

growth-incentive issues that can arise under a tiered structure, due to the reduction in compensation for additional minutes of service when a provider's minutes increase beyond a tier's upper boundary.[265]

90. However, at this time we conclude it would be premature to adopt a single-rate compensation plan. First, we note that the record continues to be highly contested—and inconclusive—regarding the conditions under which tiering is or is not necessary. For example, the record contains widely varying estimates regarding the volume of minutes that a provider must achieve for economies of scale to be exhausted. Citing studies presented in previous proceedings, Sorenson continues to argue that relevant economies of scale are essentially exhausted at the level of 250,000 monthly minutes.[266] The Commission has previously found Sorenson's evidence unconvincing,[267] and Sorenson provides no new information that warrants revisiting this view. At the other extreme, ZP argues that relevant economies of scale "continue to be significant until at least 5 million monthly minutes."[268] That argument too is less than persuasive, given the limitations of the model used by ZP's expert. As explained in Appendix D, an assessment of ZP's model by FCC staff shows that a reliable estimate of industry cost functions through regression analysis is not possible on the basis of the data points provided by ZP's expert.

91. Second, setting TRS Fund compensation, like ratemaking in general, is "far from an exact science."[269] While the historical gap between the per-minute costs of the two largest providers has lessened over the last few years, it is only in the last year that their reported costs are actually similar. We cannot rule out the possibility that the similarity is unique to this historical moment and may not be repeated in future years. If the apparent narrowing of the cost differential were to be reversed during the compensation period, applying a single rate to both providers could endanger the availability of competitive choices for VRS users.

92. For these reasons, we choose to preserve a tiered compensation structure for the next period, while modifying it to reduce unnecessary inefficiency or inequity in the allocation of TRS Fund resources.[270] Specifically, we merge the current Tier II (applicable to monthly minutes between 1,000,001

[265] Sorenson Comments at 44-45, 55-56 (discussing the impact of tier boundary and investment opportunities for providers in the lowest-rate tier).

[266] *Id*. at 40-42.

[267] *See 2013 VRS Reform Order*, 28 FCC Rcd at 8699-700, para. 202; *2017 VRS Compensation Order*, 32 FCC Rcd at 5918, para. 52.

[268] ZP Supplemental Reply at 15 (redacted). The arguments of ZP and its predecessor entities regarding economies of scale seem to have evolved roughly in parallel with growth in the share of VRS minutes served by these providers. One of ZP's predecessor entities, Purple Communications, argued in 2012-13 that economies of scale are substantial even at the level of 2 million monthly minutes. *2013 VRS Reform Order*, 28 FCC Rcd at 8699-700, para. 202. In 2017, a group of small and medium-sized providers, including ZP's predecessor entities, contended that relevant economies of scale are not achieved until approximately 2.5 million monthly minutes. *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5918, para. 52 (citing Non-Dominant Providers Comments at 5).

[269] *Sorenson 2018*, 897 F.3d at 223 ("Because 'agency ratemaking is far from an exact science and involves policy determinations in which the agency is acknowledged to have expertise, courts are particularly deferential when reviewing ratemaking orders.'") (*citing Sw. Bell Tel. Co.*, 168 F.3d at 1352); *cf.* Sorenson Comments at 55 ("Ratemaking is never perfect.").

[270] In analogous situations in prior proceedings, the Commission has adopted a similarly conservative approach when weighing the imponderables involved in VRS compensation methodology. *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5919, para. 53 ("[I]f we were to allow VRS competition to be extinguished, for the sake of increasing the efficiency of VRS, we would risk depriving users of functionally equivalent VRS. . . . [W]e believe that, in the current circumstances, the benefits of such a rate reduction, through increased efficiency, are not worth the risks to functional equivalence associated with eliminating competitive choice."); *2013 VRS Reform Order*, 28 FCC Rcd at 8700-01, paras. 204-05 (lacking definitive evidence of the point where substantial economies of scale can be achieved, the Commission chooses to set tier boundaries so that any error is made on the side of preserving competition).

and 2,500,000) and Tier III (applicable to monthly minutes in excess of 2,500,000). As a result, the new plan for VRS providers with more than 1 million monthly minutes will have two tiers:

- Tier I – applicable to a provider's 1st 1 million monthly minutes; and
- Tier II – applicable to a provider's monthly minutes in excess of 1 million.

Merging the current Tiers II and III allows us to set a rate for the merged tier that is low enough to ensure that, in conjunction with the Tier I rate, providers are not over-compensated, i.e., do not earn an operating margin above the reasonable range, but still provides an incentive to continue providing additional minutes of service.[271]

93. *Compensation Rates*. Within this structure, as the Commission did in 2017, we "seek to set the rates for these tiers to limit the likelihood that any provider's total compensation will be insufficient to provide a reasonable margin over its allowable expenses."[272] We also seek to avoid overcompensating any provider, i.e., by allowing a provider to earn an operating margin above its total expenses (as determined in Part III.C) that is outside the reasonable range.[273] We achieve this by setting per-minute compensation amounts of $6.27 for Tier I minutes and $3.92 for Tier II minutes.[274] Together, these rates will enable providers subject to the tiered formula to recover their allowable expenses and earn an operating margin within the zone of reasonableness.[275] In addition, because the Tier II rate is not substantially lower than the average per-minute expenses of any provider subject to that rate, setting the rate at this level is unlikely to deter a provider from increasing its VRS minutes.[276]

94. ZP suggests that it is not necessary or advisable to set compensation formulas so as to prevent a VRS provider from earning an operating margin above the reasonable range,[277] and that to do so risks depriving VRS users of competitive choices and depriving VRS providers of the incentive to

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[271] *Cf. 2017 VRS Compensation Order*, 32 FCC Rcd at 5920-21, para. 54.

[272] *Id*. at 5922, para. 59.

[273] *Cf. id*. (stating an intent "to limit the extent of any overcompensation of a provider in relation to its allowable expenses and reasonable operating margin").

[274] *See infra* Appendix C.

[275] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5922-23, para. 60 ("A Tier I rate at this level will allow all providers subject to it to recover their allowable expenses and earn an operating margin within the zone of reasonableness."); *id*. at 5923, para. 61 ("[A]pplying [the Tier II] rate for all four years of the rate period, in conjunction with other applicable rates, will allow all providers subject to this rate to recover their allowable expenses and earn an operating margin within the zone of reasonableness we have adopted."); *id*. at 5923-24, para. 62 ("[I]n conjunction with other rates, [the Tier III rate] will allow providers that fall into this tier to earn an operating margin over allowable expenses that is within the zone of reasonableness.").

[276] *Cf. Id*. at 5923, para. 61 (the Tier II rate is set "above the allowable expenses per minute of any provider subject to the Tier II rate, thus minimizing the risk of deterring such a provider from increasing its VRS minutes"). Given the providers' current volumes of minutes, the Tier II rate is likely to apply to each additional minute of {[xxxxxxxx xxx xx xxxxxxx xxxxxx xxxxx xxx xxx xxxxx xxx x xxx xxxxx xxxx xxxxxxx xxxxxxxx xxxx xxxxx xxxx xxxxx xx xxx xxxxxx xxxxx xxxxxx xxx xxxxxxxxxxxxxxx xxxxxxxxx xxxxxxxxxx x xxxxxxxxxxxx xxxxxx xxxxxxx xxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxx xxxxxxx xxxxxx xxxxxx x xxxxxxxx xxxxx xxxxxxxxx xxx xxxxx xxxxxxx xxxxx xxx xx xxxxxxxxxxxx xx xxxxxxxxxxx xxxxxxx xxxxxxxxxxx xxxxxxx xx xxxx xx xxx xxxx xx xxx xxxx xxxxx xxx xxxxxxxxx xxxxxxxx xxxxx xxx xxxx xxxxxxx xxxxxx xxxxxx xxx xxxxxx xxxxxxxxx xxx xxxxxxxxxxxxxxxx xxxxxxxx xxxxx xxxxxxxxxxx xxxxxxxxxxxxx xxxxxx xxxxxxx xxxxxx xxxxxxxx xxxx xxxxx xxxxxxxxxxx xxxxx xxxxx xxxxxx xxxxxx xxxxx xxxx xxxxx xx xxxxxxxx xxxxx xx xxx xxx xx xx xxxx xxxxx xxxn xxxxxxxxx xx xx xxxxxx xx xxx]}. We also note that the Tier II rate is above the rate proposed by ZP for the tier {[xxxx xxxx xxx xxx xxx]} under ZP's "Community Investment" proposal. *See* ZP June 9 *Ex Parte* at 2.

[277] ZP June 5 *Ex Parte* at 3.

improve service.[278] Further, according to ZP, the Commission in 2017 did not attempt to impose such limits.[279]

95. We do not agree with ZP's contention that the Commission should not seek to limit the operating margins of VRS providers. VRS is entirely funded by contributions from telecommunications and VoIP service providers, which are generally passed on to communications rate payers. The Commission has a statutory obligation to ensure that these funds are used efficiently.[280] As with the Universal Service Fund, moreover, the Commission is the steward of the TRS Fund and is obligated to protect it from waste, fraud, and abuse.[281] To the extent that a VRS provider's operating margin exceeds the reasonable range, the additional revenues paid from the TRS Fund (and the additional contributions exacted from telecommunications providers to cover them) are wasted.[282]

96. Further, the limits we set to prevent overcompensation do not conflict with the Commission's policy in the *2017 VRS Compensation Order*. In that rulemaking, as in every recent TRS compensation proceeding, the Commission made clear that avoiding overcompensation of VRS providers is a necessary objective to ensure that TRS is provided in the most "efficient manner."[283] For example, a key benefit of the tier structure, cited in that decision, is that it allows the Commission to "set rates that permit each provider an opportunity to recover its reasonable costs of providing VRS, without overcompensating those providers who have lower actual costs because, for example, they have reached a more efficient scale of operations."[284] Further, the Commission stressed that the range of reasonable operating margins set in that decision was a range of "allowable" operating margins,[285] cautioning that "we do not thereby authorize providers to recover additional 'markup' or profit that goes beyond such reasonable allowance."[286] Indeed, there would have been little point in setting an upper limit on the reasonable range of operating margins, had the Commission intended to permit providers free rein to earn profits above that limit.

97. In 2017, while the Commission sought to reduce overcompensation, it "stopped short of reducing compensation all the way down to cost."[287] In that decision, the Commission sought to address a

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[278] *Id*. at 4.

[279] *Id*. at 3 (arguing it "is not the case" that in 2017 "the goal was to set a rate framework such that each provider recovered 10% more than its allowable costs and nothing more").

[280] *See* 47 U.S.C. § 225(b)(1).

[281] *See*, *e.g.*, *Sandwich Isles Comm'ns, Inc.*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 577, 577 para. 1 (2019) ("[A]s the steward of federal universal service funds collected from American consumers and businesses, the Commission must ensure that those funds are being used efficiently and for their intended purposes, and must prevent waste, fraud, and abuse.").

[282] Further, as Sorenson observes, to the extent that ZP's per-minute cost exceeds Sorenson's, "manipulating rates to provide a higher [operating] margin for a higher-cost provider" would be inconsistent with economic principles, as in competitive markets, "less-efficient providers are not rewarded for having higher costs." Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 at 2 (filed Sept. 1, 2023) (Sorenson September 1 *Ex Parte*).

[283] *2017 VRS Compensation Order*, 32 FCC Rcd at 5897-98, para. 13 ("[I]n this proceeding, as in the ones that preceded it, it has been the Commission's overarching goal to bring rates closer to allowable provider costs."); *id*. ("[T]oday, as in 2010 and 2013, while making progress in reducing excessive Fund expenditures, the Commission has stopped short of reducing compensation all the way down to cost.").

[284] *Id*. at 5910, para. 36.

[285] *Id*. at 5924-25, para. 26.

[286] *Id*. at 5923, para. 22.

[287] *Id*. at 5897-98, para. 13.

specific concern raised regarding tier structures: that they could limit providers' incentives to grow and increase their efficiency, especially if a provider's monthly minutes were about to cross the numerical threshold for the next tier.[288] This theoretical risk often can be addressed by "ensuring that tier boundaries are wide enough to cover a provider's likely growth during the life of the rate plan."[289] However, it appears that the Commission was uncertain whether the tier boundaries it set actually would be wide enough to completely erase this risk. Therefore, it also sought to set the rate for the next tier high enough to ensure that, if a provider did grow large enough that it came close to a tier boundary,[290] it would not be deterred from crossing that boundary.[291] Under today's circumstances, by contrast, we can set the tier boundaries wide enough to avoid this risk. By merging the existing Tiers II and III into a single tier, we completely remove any tier boundary that could affect the growth incentives of the two largest providers.[292] And by increasing the highest tier rate from $2.63 to $3.92, we eliminate any realistic possibility of deterring any provider subject to that tier from serving additional minutes.[293]

98. *Alternative Tiering Proposals*. Several alternative tier structures have been advocated by commenters in this proceeding, including the following:

- ZP's July 2021 proposal to increase the upper boundary of Tier II to 5 million monthly minutes, while maintaining the existing per-minute amounts for each tier.[294]
- Sorenson's January 2022 proposal to increase the upper boundary of Tier II to 3.5 million monthly minutes and adjusting the Tier III rate to $3.17 per minute and adjusting the Tier II rate to reflect "all of ZP's numbering, research and development, and customer service costs and the same margin."[295]
- ZP's June 2023 proposal to maintain the current tier structure while increasing all tiered rates.[296]
- Sorenson's June 2023 proposal to maintain the current tier structure while increasing all tiered rates.[297]
- Sorenson's September 2023 proposal for a two-tiered structure.[298]

99. We decline to adopt the alternatives proposed by ZP and Sorenson. As shown in Appendix C, none of them would ensure that all providers subject to tiered rates earn operating margins within the reasonable range. The initial ZP and Sorenson proposals—to expand Tier II without changing the current per-minute amounts for any tier—were made before the filing of the 2023 cost reports

[288] *Id*. at 5911, para. 38. If monthly minutes increase beyond a tier boundary, the provider faces a sudden drop in the compensation earned for each additional minute handled.

[289] *Id*. at 5911, para. 38.

[290] Under the structure set up in 2017, that would happen if a provider with less than 1 million monthly minutes grew large enough to handle more than 1 million monthly minutes, or if a provider with less than 2.5 million monthly minutes grew large enough to handle more than 2.5 million monthly minutes.

[291] *Id*. at 5911, para. 38 n.113 ("[W]e cannot determine the magnitude by which marginal costs fall below average costs. As such, we continue to take a conservative approach and map rates onto average costs. Even though doing so is likely to be somewhat over-compensatory, we believe that cost of taking this approach is preferable to the cost of setting a rate too low and deterring a provider from competing for additional minutes of use.").

[292] Both these providers have monthly minutes well above the 1 million minutes threshold between Tiers I and II.

[293] *See supra* para. 93.

[294] ZP Comments at 10-11.

[295] *See* Sorenson January 2022 *Ex Parte* at 5.

[296] ZP June 9 *Ex Parte*.

[297] Sorenson June 15 *Ex Parte*.

[298] Sorenson September 1 *Ex Parte*.

showing a substantial increase, as well as convergence, in these providers' costs. The proponents of these proposals no longer advocate their adoption.

100. As for the June 2023 proposals of ZP and Sorenson, they would do nothing to address the problems with the current tier structure, discussed above. In addition, as shown in Appendix C, both these proposals would result in excessive operating margins for one or both providers—even with providers' reported costs adjusted upward, as discussed in Part III.C above. Sorenson's September 2023 proposal also would result in excessive operating margins for both Sorenson and ZP.

2. Compensation for Small Providers

101. For VRS providers—including new entrants—that handle 1 million monthly minutes or less, we maintain a separate compensation formula. When the Commission established such a separate formula (the "emergent provider" formula, then applicable to VRS providers with up to 500,000 monthly minutes) in 2017, it was intended as a temporary measure, to allow the small providers operating at that time a reasonable window of opportunity to grow.[299] The two providers compensated under that formula during this most recent compensation period did not experience a substantial growth in traffic volume, and they incurred per-minute costs substantially higher than those of the two larger providers.[300] Nevertheless, as the Commission recognized in 2017, the availability of additional, reliable service options from smaller VRS providers can effectively reinforce service quality incentives.[301] Further, maintaining a separate compensation formula for smaller providers encourages new entry into the VRS program by potentially innovative firms.[302] Some small providers may advance the availability of TRS by focusing on specialized offerings to niche populations not served by larger providers.[303] Rather than applying a single compensation formula to all providers, regardless of size and cost structure—with the likely result of driving out the remaining small provider,[304] deterring new entry, and leaving only two VRS providers from which VRS users could choose—we preserve a separate VRS formula for the next period. We conclude that this approach is the most efficient way to maintain the availability of functionally equivalent VRS, including specialized services that may be needed by niche populations.

102. To avoid reducing any small provider's incentive to grow their business, we also raise the upper limit for application of the small-provider formula from 500,000 to 1 million monthly minutes. We are concerned that if we maintained the 500,000-minutes limit, a small provider growing its minutes above that limit may not have an opportunity to recover its allowable costs and earn a reasonable operating margin.[305] We note that, based on the record (which indicates that the current small provider has not grown substantially since 2017), it seems unlikely that any small provider or new entrant will approach the expanded limit of 1 million monthly minutes during the next compensation period. However, to address that possibility, we provide that, during the next compensation period, if a provider handled 1 million or fewer monthly minutes in June 2023 (or in the first year of operation for a new

[299] *2017 VRS Compensation Order*, 32 FCC Rcd at 5917, para. 49 (describing the emergent-provider formula as "a reasonable, temporary measure to extend the window of opportunity for new entrants, as well as for existing providers whose allowable costs currently exceed the Tier I compensation rate").

[300] *See* 2023 Cost and Demand Data (confidential); 2021 Cost and Demand Data (confidential).

[301] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5907, para. 31 (explaining that the availability of multiple service options for VRS users "provides a competitive incentive to improve VRS offerings").

[302] *Id*. at 5916-17, para. 49; *see also* GlobalVRS Comments at 9-10.

[303] *2017 VRS Compensation Order*, 32 FCC Rcd at 5916-17, para. 49; *see also* GlobalVRS Comments at 9-10.

[304] As noted earlier, one of the two small providers compensated under the "emergent provider" rate is winding down its VRS operations. *See supra* para. 25.

[305] We note that the Commission has previously deemed it likely that economies of scale in the provision of VRS are not exhausted when a VRS provider reaches 1 million minutes. *2017 VRS Compensation Order*, 32 FCC Rcd 5918, para. 52.

entrant), and if such provider subsequently exceeds 1 million monthly minutes, the small-provider formula shall continue to apply to the provider's first 1 million monthly minutes, and the large-provider formula shall apply to all monthly minutes after the first million.[306]

103. *Compensation amount*. As in previous compensation proceedings, when we set compensation formulas for small VRS providers, "there is no single 'right answer' to the question; rather, the matter is inherently a question of administrative line-drawing."[307] For VRS providers providing 1 million monthly minutes or fewer, we adopt a compensation formula of $7.77 per minute, applicable to all minutes of such providers. This formula is based on the adjusted per-minute expenses of the remaining VRS provider handling 1 million monthly minutes or fewer, and is designed to allow VRS providers with 1 million monthly minutes or fewer a reasonable opportunity to earn an operating margin within the range of reasonableness.[308] In setting this per-minute formula, we seek to ensure that VRS providers that have demonstrated some ability to grow have an opportunity to recover their expenses and earn a reasonable operating margin. This formula also provides an opportunity for very small providers and new entrants to recover their reasonable fixed or start-up expenses. However, the Commission does not guarantee cost recovery for every such provider, regardless of their per-minute costs.

3. Additional Compensation for Video-Text Service.

104. In the *Notice*, we sought comment on whether to introduce additional compensation for VRS providers who provide certain specialized forms of VRS.[309] Comments received in response to that proposal were consistently supportive of providing such additional compensation for a specialized form of VRS to ASL users who are deafblind.[310] We now prescribe additional per-minute compensation for the provision of this service, applicable to any VRS provider that chooses to offer it. Such additional compensation would be paid, in addition to the otherwise applicable per-minute amount, for each compensable minute of this specialized form of VRS.

105. We refer to this specialized form of VRS as Video-Text Service. In a typical VRS call, a deaf or hard of hearing person communicates in ASL to a CA, who then voices the message to the hearing party. The CA then signs the hearing party's voice response to the ASL user. Some ASL users who are deafblind, however, are able to sign to a CA but unable to see the signs from the CA well enough to

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[306] This is comparable to the plan adopted by the Commission in 2017 to address analogous circumstances under the emergent-provider formula. *See id*. at 5916-17, para. 49 (stating that "to maintain incentives for growth and avoid subjecting emergent providers to a sudden drop in the rate applicable to all their minutes . . . providers who are initially subject to the emergent rate and who then generate monthly minutes exceeding 500,000 shall continue to be compensated at the otherwise applicable emergent rate (rather than the Tier I rate) for their first 500,000 monthly minutes").

[307] *2013 VRS Reform Order*, 28 FCC Rcd at 8700-01, para. 204; *see also AT&T Corp. v. FCC*, 220 F.3d 607, 627 (D.C. Cir. 2000) (the Commission "has wide discretion to determine where to draw administrative lines," and can be reversed only for abuse of discretion); *Cassell v. FCC*, 154 F.3d 478, 485 (D.C. Cir. 1998) (to demonstrate abuse of discretion, a petitioner must show that "lines drawn . . . are patently unreasonable, having no relationship to the underlying regulatory problem.") (internal quotations omitted); *Hercules Inc. v. EPA*, 598 F.2d 91, 107-108 (D.C. Cir. 1978) (in evaluating agency line drawing, the court .asks "whether the agency's numbers are within a 'zone of reasonableness,' not whether its numbers are precisely right"); *Sorenson 2011*, 659 F.3d at 1046 (court is "particularly deferential when reviewing ratemaking orders because 'agency ratemaking is far from an exact science and involves policy determinations in which the agency is acknowledged to have expertise'" (quoting *Qwest Corp. v. FCC*, 258 F.3d 1191, 1206 (10th Cir. 2001) and *Sw. Bell Tel. Co.*, 168 F.3d at 1352).

[308] *See infra* Appendix C.

[309] *Notice*, 36 FCC Rcd at 8814, para. 30.

[310] *See, e.g.*, Sorenson Comments at 30 ("[T]o the extent that [VRS providers] provide more costly specialized services such as service for DeafBlind individuals, all providers should be compensated at a higher rate for providing specialized services.").

understand them. For such users, there is a special variant of VRS, in which a CA converts the other party's side of the conversation to text (instead of ASL video), which the deafblind party can read using a refreshable braille display.[311] A CA assigned to a Video-Text Service call must not only be fluent in ASL, but must also be a swift, accurate, and reliable typist.

106. Up to the present, only GlobalVRS has offered this specialized form of VRS. With GlobalVRS's announced exit from the VRS industry, Sorenson states it intends to provide Video-Text Service to users.[312] Sorenson's cost estimates indicate that, while most of the costs involved in offering this service do not vary significantly with the number of minutes served, there are some variable costs due to the higher salaries Sorenson expects to pay for those CAs equipped with the additional skills described above.[313]

107. Given our statutory responsibility to ensure the availability of TRS to persons who are deafblind[314] and the additional costs involved in providing this Video-Text Service, we conclude that additional per-minute compensation should be authorized for the provision of this service by any VRS provider choosing to offer it. As an interim measure, pending the availability of more precise cost data, we estimate the variable cost of this service based on the estimate submitted by Sorenson.[315] Sorenson anticipates that to provide Video-Text Service it will incur additional variable costs of {[xxxx]} per minute.[316] To that cost we add a {[xxxxxx]} operating margin to incentivize the provision of this specialized service, resulting in an additive of $0.19 per minute.[317] Sorenson's non-variable costs for this service will be recovered through the base compensation rate, as they are relatively unaffected by the number of minutes of Video-Text Service provided. This amount shall be paid to a VRS provider for each compensable conversation minute of Video-Text Service, in addition to the per-minute amount otherwise payable to the provider under the applicable compensation formula for an ordinary VRS call.

108. *Alternative Compensation Proposal*. In its comments, GlobalVRS proposes a "Specialized Access Small Business" (SASB) designation as an alternative compensation approach.[318] To qualify for this compensation, providers would have to (1) serve 5% or less of total program minutes and (2) provide specialized language and modality.[319] Each SASB-designated provider would be subject to an

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[311] GlobalVRS Comments, Appx. 2 at 9-10, para. 25; *see also* Sorenson Comments at 69.

[312] Sorenson July 17 *Ex Parte*; Sorenson Waiver Petition. GlobalVRS initially announced an intention to terminate its provision of VRS effective June 30, but it subsequently decided to maintain a bare-bones VRS operation to service its Video-Text customers, pending Sorenson's completion of preparations to provide an equivalent service. Letter from Gabrielle Joseph, GlobalVRS, to Marlene H. Dortch, CG Docket Nos. 03-123 and 10-51 (filed Aug. 3, 2023).

[313] Sorenson July 17 *Ex Parte*.

[314] *See* 47 U.S.C. §§ 225(a)(3); *see also id*. § 620.

[315] Sorenson July 17 *Ex Parte*, Attach. at 2-4 (confidential).

[316] *Id*., Attach. at 3-4 (confidential).

[317] *Id*. (Sorenson estimates {[xx xxxx xxxx xxx xxx xxx xxxxx xxx xxx xxxx xxxxx xxx xxxxxx xxxx xxxx xxxx xx xxxxxxxxxxx xxxxx xxxx xxxxx]} Sorenson also estimates that demand for Video-Text Service will be approximately {[xxxxx]} minutes per month.

[318] GlobalVRS Comments at 10-13. GlobalVRS explains that the SASB formula, which would replace the current emergent-provider rate, *id.* at 10, would "reimburse small providers of specialized services for the exceptional costs of engaging highly skilled trilingual interpreters, developing and providing multi-lingual training materials and training for underserved/lack of programs for specialized language/modality interpreters, deploying specific platform enhancements, and in outreach that are not currently being considered under the Commission's reimbursement structure." *Id*. at 12.

[319] *Id.*

individualized payment formula, reset annually to compensate for that provider's reported allowable costs.[320]

109. We reject this proposal for several reasons. First, it excludes larger VRS providers from receiving additional compensation for the provision of specialized services. The Commission has stated that offering VRS users a choice among multiple providers can most effectively carry out the Commission's statutory mandate to ensure that functionally equivalent VRS is available to all eligible individuals to the extent possible and in the most efficient manner.[321] By adopting a formula that encourages only small providers to offer a specialized service, we may prevent the service from being offered by a provider with greater access to the necessary resources and inputs, which may enable it to provide the service more effectively and at lower cost. Second, the method by which a provider would be compensated under GlobalVRS's proposal is more administratively burdensome (as it requires annual recalculation of the formula based on annual review of the provider's individual costs), and unlike the multi-year compensation plans generally preferred by the Commission provides no incentive for cost savings.

110. *Registration Process*. A VRS provider may provide Video-Text Service to any registered VRS user who states that they need to use the service. Registered VRS users need not have their identities re-verified by the Database administrator before using Video-Text Service. To enable the TRS User Registration Database administrator to review and pay compensation requests for this service, we direct the administrator to design and execute a field in the User Registration Database to allow a VRS provider to register a new or existing user as a registered user of Video-Text Service. Once the field is implemented, VRS providers shall update User Registration Database registrations to identify existing users of this service and additional users when they begin using this service. We direct the Consumer and Governmental Affairs Bureau to release a public notice announcing when the Database is ready to accept such updates and setting a 60-day deadline for such updates of existing VRS users. Once a user is registered in the Database, the TRS Fund administrator may presume that call detail records associated with that user are for Video-Text Service, but the administrator may review and verify payment claims in accordance with our rules.[322]

111. At this time, we do not establish additional identification requirements for Video-Text Service users. We note that the conversation process in Video-Text Service is slower than an ordinary VRS conversation—and a less satisfactory process for those VRS users who can see and understand video-transmitted signs. Therefore, we believe VRS users that do not need to receive a return communication in text will be unlikely to use this service. Further, we believe the additive rate for Video-Text Service is not so high as to significantly increase incentives for fraud and abuse, especially as the number of minutes of use of this service is very small.

112. Pending the implementation of this update, to allow Video-Text Service calls to be identified in call detail records submitted for payment, we direct the TRS Fund administrator to accept from any VRS provider offering Video-Text Service a list of telephone numbers and IP addresses assigned to users who have requested Video-Text Service. VRS providers seeking compensation for Video-Text Service shall submit such lists in accordance with instructions provided by the TRS Fund administrator. VRS providers shall provide additional information regarding such users and their Video-Text Service calls to the TRS Fund administrator, upon request, as necessary for the administrator to perform its data collection, auditing, payment claim verification, and TRS Fund payment distribution functions.[323]

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[320] *Id.* at 10-11.

[321] *Notice*, 36 FCC Rcd at 8808, para. 13.

[322] *See* 47 CFR § 64.604(c)(5)(iii)(D)(6), (E)(4).

[323] *See id*. § 64.604(c)(5)(iii)(D)-(E).

4. Other Specialized Services

113. The comments filed in response to the *Notice* generally support the provision of additional compensation for other specialized services.[324] Except in the case of Video-Text Service, however, the record is insufficient for us to make a determination as to whether, and under what circumstances, a specialized service should be supported by additional compensation. We seek additional comment on these matters in the accompanying Further Notice of Proposed Rulemaking.

5. Compensation Formulas

114. The old and new compensation formulas are set forth in Tables 2 and 3. As discussed further below, these formulas are subject to an annual adjustment factor to take account of likely cost changes. The industry weighted average compensation per minute under the new compensation formulas provides an aggregate operating margin of approximately {[xxxx]}, within the reasonable range.[325]

Table 2: Current Compensation Formulas

Tiers	Rates
Emergent: <500,000 Monthly Min.	$5.29
I: 0-1,000,000 Monthly Min.	$4.82
II: 1,000,000-2,500,000 Monthly Min.	$3.97
III: 2,500,001+ Monthly Min.	$2.63

Table 3: New Compensation Formulas

Tiers	Rates
Small Providers <1,000,000 Monthly minutes	$7.77
Tier I (1st 1,000,000 Monthly Min.)	$6.27
Tier II (all additional minutes)	$3.92
Additive for Video-Text service	$0.19

115. Looking to just the effect on the TRS Fund, in the first year of the new period the compensation plan adopted herein would result in an estimated $143 million increase in costs compared to maintaining the current compensation formulas.[326] Based on available data, it will result in an industry average operating margin within the range of reasonableness and provide an opportunity for providers to recover their costs plus earn a reasonable operating margin.

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[324] Sorenson Comments at 64-70; Sorenson urges the Commission to recognize that specialized services are key to promoting functionally equivalent communications, and to provide incremental per-minute compensation from the TRS Fund for providers that offer these services in order to compensate them efficiently and fairly for their additional costs and incentivize them to offer these essential services. Sorenson Reply at 34; GlobalVRS Reply at 2-4; Letter from Andrew O. Isar, GlobalVRS, to Marlene H. Dortch, FCC, CG Docket Nos. 10-51 and 03-123 at 1-2 (filed Sept. 30, 2021) (discussing "provision of service to underserved users that have not been reimbursed, including compensation for tri-lingual interpreters, the cost of incorporating advancements in technology to the Company's platform to meet specialized needs for Deaf Blind, specialized training, scheduling requirements for trilingual interpreters to avoid overburdening interpreters, internal Spanish sign language accreditation, development of materials for users and customer care employees, and the added time necessary to connect calls before interpreting for certain special needs users, among others.").

[325] *See* Appendix C, Tabl. 7 (confidential).

[326] *Infra* Appendix C at 62, Tabl. 6.

6. Compensation Period and Adjustments

116. We conclude that the compensation period should be five years, ending June 30, 2028. This period is long enough to give providers certainty regarding the applicable compensation formulas, provide incentives for providers to become more efficient without incurring a penalty, and mitigate any risk of creating the "rolling average" problem previously identified by the Commission regarding TRS.[327] On the other hand, the period is short enough to allow timely reassessment of the compensation formulas in response to substantial cost changes and other significant developments.[328]

117. While Sorenson, ZP, and Convo propose a longer compensation period of 6-8 years,[329] we find such an extended compensation period incompatible with the need to periodically reassess compensation formulas in response to changes in provider cost structures, possible technological innovations, or other developments. Historically, the Commission has not set TRS Fund compensation periods longer than four years.[330] Further, the VRS providers neither detail nor support their claims that increasing the compensation period to 6-8 years will affect providers' stability, opportunities to obtain loans or attract long-term investment. We are unpersuaded that any potential benefits of a longer period outweigh the benefits from reassessing compensation formulas on a five-year schedule.

118. *Adjustments for exogenous costs*. Under the current methodology, an upward adjustment for well-documented exogenous costs is available for costs that (1) belong to a category of costs that the Commission has deemed allowable, (2) result from new TRS requirements or other causes beyond the provider's control, (3) are new costs that were not factored into the applicable compensation formula, and (4) if unrecovered, would cause a provider's current costs (allowable expenses plus operating margin) to exceed its revenues.[331] We maintain this approach to exogenous cost recovery and codify these criteria in our rules. Any exogenous cost claims should be submitted to the TRS Fund administrator with the provider's annual cost report, so that the administrator can review such claims and make appropriate recommendations.[332] We delegate authority to the Consumer and Governmental Affairs Bureau to make determinations regarding timely submitted exogenous cost claims.

119. *Adjustments for future cost changes*. In the *Notice*, we sought comment on whether per-minute compensation amounts should be adjusted during the compensation period to reflect inflation and productivity.[333] We agree with Sorenson, ZP, and Convo that there should be annual adjustments for cost

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[327] *See Telecommunication Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, CC Docket No.* 90-571, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, 1806, para. 25 (1993) (noting that setting compensation levels based on averaged provider costs, if recalculated every year, could leave some providers without adequate compensation, even if they are reasonably efficient).

[328] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5921-22, para. 58; *see also 2020 IP CTS Compensation Order*, 35 FCC Rcd at 10833-34, para. 33.

[329] Joint VRS Providers October 2021 *Ex Parte* at 1. Convo has more recently advocated for a four-year compensation period. *See* Letter from Amanda Montgomery, Convo, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed May 25, 2023); Convo May 9 *Ex Parte* at 4.

[330] *See 2007 TRS Compensation Order*, 22 FCC Rcd at 20164, para. 56 (adopting a three-year compensation period); *2013 VRS Reform Order*, 28 FCC Rcd at 8704, para. 212 (adopting a four-year compensation period); *2017 VRS Compensation Order*, 32 FCC Rcd at 5921, para. 58 (adopting a four-year compensation period).

[331] *See 2017 VRS Compensation Order*, 32 FCC Rcd at 5925, para. 66.

[332] The TRS Fund administrator typically requires submission of annual cost reports in the latter part of February, to ensure that it has an opportunity to analyze provider costs before submitting its annual report, due May 1. *See* 47 CFR § 64.604(c)(5)(iii)(H).

[333] *Notice*, 36 FCC Rcd at 8817, para. 39.

changes.[334] In the past, the trend of VRS costs has been generally downward. However, in light of recent developments, including increases in general inflation indices and reports of increased wages for VRS CAs,[335] we find it reasonable to adopt an adjustment factor to ensure that the rates continue to fairly compensate providers if relevant costs continue to increase.

120. As a reference point for determining such annual adjustments, the Employment Cost Index appears best suited for tracking relevant cost changes. Specifically, we find that the seasonally adjusted index of "Total compensation for Private industry workers in Professional, scientific, and technical services,"[336] which covers translation and interpreting services (including sign language services), can serve as a reasonable proxy for the annual change in VRS costs. As interpreters, CAs fall squarely in this labor cost category, and labor and related costs for CAs, non-CA professionals, and administrative personnel make up the bulk of VRS costs.

121. We conclude that this index is better suited than the Producer Price Index or the Gross Domestic Product Chain-type Price Index (GDP-CPI), recommended by Sorenson and ZP, respectively.[337] Both these indices reflect changes in the national economy as a whole, based on a broad array of data from various product and service sectors. While these indices may be useful inflation measures for the economy as a whole, reflecting the ups and downs of so many disparate industries may not ensure that annual adjustments are reasonable. We conclude that a more reliable approach is one that tracks changes in a related industry sector.[338] Commenters agree that labor is the primary expense incurred by VRS providers and the most likely to increase over time,[339] and we find that labor costs are likely to be a key determinant of the quality of VRS as currently provided.[340] While there is no index that focuses solely on

[334] Joint VRS Providers October 2021 *Ex Parte* at 1; Sorenson Comments at 58, 63; Sorenson Reply at 33-34; ZP Comments at 13-14; ZP Reply at 8-9; *see also* GlobalVRS October 2021 *Ex Parte* at 1-2 (generally supporting the recommendations in the Joint VRS Providers October 2021 *Ex Parte*).

[335] News Release, U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Indexes – December 2021 (Jan. 13, 2022), https://www.bls.gov/news.release/archives/ppi_01132022.htm ("On an unadjusted basis, final demand prices moved up 9.7 percent in 2021, the largest calendar-year increase since data were first calculated in 2021."); News Release, U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Indexes – December 2021 (Jan. 12, 2022), https://www.bls.gov/news.release/archives/cpi_01122022.htm ("Over the last 12 months, the all items index increased 7.0 percent before seasonal adjustment."); News Release, U.S. Department of Labor, Bureau of Labor Statistics, Employment Cost Index – September 2021 (Oct. 29, 2021), https://www.bls.gov/news.release/archives/eci_10292021.htm (discussing increases in compensation costs, wages and salaries, and benefits); Convo Comments at 19 (asserting video interpreter workforce costs are escalating); Sorenson Comments at 19 (competition for highly skilled employees, such as interpreters, is expected to increase significantly); ZP December 2021 *Ex Parte* at 4 (discussing CA compensation); Sorenson November 2021 *Ex Parte* at 7-11 (discussing VRS CA wages).

[336] Bureau of Labor Statistics, BLS Data Viewer, Employment Cost Index, https://beta.bls.gov/dataViewer/view/timeseries/CIS20154000000000I.

[337] *See* Sorenson Comments at 58; ZP Comments at 14. Sorenson argues that the PPI is superior to the GDP-CPI because it measures price changes from the perspective of suppliers rather than consumers. Sorenson Comments at 58. ZP suggests that the GDP-CPI is appropriate because it is used in other Commission programs. ZP Comments at 14. More recently, ZP states that it recognizes "that there are multiple differing means of calculating inflation and that it would support a Commission decision to replace the CPI index with another neutral measure such as the GDP deflator." ZP August 22 *Ex Parte* at 3.

[338] While the PPI may be divided into industry specific indexes, neither our review nor the record finds an industry index that reflects the VRS industry as well as the industry specific Employment Cost Index adopted herein.

[339] Convo Comments at 19 (labor is the single greatest cost in providing VRS); Sorenson Comments at 6 (VRS costs are predominantly labor); ZP Comments at 13 (providing changes in labor costs as an example for indexing VRS compensation for inflation); *see also supra* note 235 (showing that more than 50% of VRS costs are CA-related).

[340] For example, the number of full-time-equivalent CAs, relative to the number of VRS calls, evidently determines how soon VRS calls are "answered" and thus how quickly the service is provided when needed, and the skill levels

(continued….)

the cost of VRS, the index we adopt here measures employment cost for a sector that includes translation and interpreting services, and thus includes employee costs for VRS as well as other highly comparable services.[341] Adopting such an index is more likely to provide a stable inflation adjustment that reflects cost changes providers are likely to incur, while excluding changes that are specific to unrelated sectors of the national economy.

122. As for productivity gains, the record provides no clear indication of the extent to which, if at all, recent VRS cost increases have been offset by productivity gains. Absent more specific data, we find it reasonable to presume no change to productivity over the rate period.

123. We delegate authority to the Consumer and Governmental Affairs Bureau to approve annual inflation adjustments of each compensation formula, beginning with Fund Year 2024-25. We direct the TRS Fund administrator to specify in its annual TRS Fund report, beginning with the report due May 1, 2024, the index values for each quarter of the previous calendar year and the last quarter of the year before that.[342] We also direct the TRS Fund administrator to propose adjustments for each per-minute amount by a percentage equal to the percentage change in the index between the first and fifth quarters specified in the report. Those adjusted compensation levels also should be used to calculate the recommended funding requirement for VRS and the relevant contribution factor.

E. Accountability Concerns

124. In adopting VRS compensation formulas for the next five years, we rely on estimates of future provider costs that, in total, exceed the most recent historical level by approximately $121.5 million, or 27%. In 2023-24, as a result, VRS compensation will be $142.5 million, or 29.5%, higher than it would be under the current formulas. This increase in compensation—which will require higher TRS Fund contributions from telecommunications and VoIP service providers—is premised on our belief that maintaining and improving VRS service quality requires a major increase in CA wages and technology spending by VRS providers. As stewards of the TRS Fund, the Commission needs to be able to assess the extent to which the increased TRS Fund support we authorize is achieving the intended results.

125. This requires the collection, review, and auditing of relevant cost data by the TRS Fund administrator.[343] Therefore, we delegate authority to the Consumer and Governmental Affairs Bureau, in coordination with the Office of the Managing Director, to work with the TRS Fund administrator to update the Interstate TRS Fund Annual Provider Data Request to align with the actions taken in this proceeding. We direct these entities to focus special effort on ensuring the collection of accurate data quantifying (1) CA wages and benefits, based on uniform definitions and methods of calculating key

(Continued from previous page)
and stress levels of the CAs employed by a VRS provider may largely determine the quality of the interpretation service a consumer receives. Sorenson November 2021 *Ex Parte* at 7-11 (discussing the need to offer competitive wages to qualified CAs to maintain service quality); Convo Comments at 19-20 (discussing the reduced CA workforce and its effect on costs).

[341] In a number of other instances where the Commission has used GDP-CPI to track cost changes in universal service programs, it has been noted that no index was available that specifically examined the costs of the funded services. *See, e.g.*, *Promoting Telehealth in Rural America*, Report and Order, WC Docket No. 17-310, 33 FCC Rcd 6574, 6583, para. 22 (2018), cited in ZP Comments at 14; *see also Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18782, para. 36 (2010).

[342] For example, in the annual report due May 1, 2024, the administrator will specify the index values for the 4th quarter of 2022 and the 1st through 4th quarters of 2023.

[343] 47 CFR § 64.604(c)(5)(iii)(D) ("TRS providers seeking compensation from the TRS Fund must provide the administrator with true and adequate data, and other historical, projected and state rate related information reasonably requested to determine the TRS Fund revenue requirements and payments."); *see also id*. § 64.604(c)(5)(iii)(D)(6).

elements such as hourly CA compensation; and (2) expenditures on improved technology. We expect that annual provider cost reports shall include detailed descriptions of ongoing, planned, recently completed, and canceled engineering and R&D projects, the purpose and intended outcome of each project, and the current or projected timeline for each project.

126. By annually collecting such specific information, the administrator will enable the Commission to review whether the increased compensation authorized herein is having the intended results of enabling service improvements that enhance functional equivalence, and to make appropriate changes in compensation at the end of—or if necessary, during—the five-year compensation period.[344] In addition, such information will help the Commission ensure that R&D supported by the TRS Fund is being used for TRS improvements, rather than projects of little or no benefit to TRS users.[345] The inclusion of this additional information and data will also ensure the Commission may address the timing of cost changes and concerns of attempted regulatory arbitrage.[346]

F. Extension of Current Formulas and True-Up

127. *Extension of Current Formulas*. In a series of Commission and Bureau orders, the current VRS compensation formulas, which originally were scheduled to expire on June 30, 2021, have been extended through September 30, 2023.[347] We grant, on our own motion, a temporary waiver to further extend the expiration date of the current formulas until the effective date of this Report and Order.

128. A Commission rule may be waived for good cause shown.[348] In particular, waiver of a rule is appropriate where the particular facts make strict enforcement of a rule inconsistent with the public interest.[349] In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[350] Waiver of a rule is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest and will not undermine the policy underlying the rule.[351]

129. We find good cause to grant this further waiver of the expiration date. If we were to let the current compensation plans expire, the cessation of payments to VRS providers could cause an interruption of the delivery of these services to consumers with disabilities who rely on them for functionally equivalent communication. Under these circumstances, it is administratively efficient and consistent with prior practice to extend the current compensation formulas.[352]

130. Therefore, we direct the TRS Fund administrator to continue compensating providers of VRS under the current compensation formulas until the effective date of this Report and Order. Under these extended formulas, VRS providers with more than 500,000 monthly minutes as of July 1, 2017,

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[344] *Cf.* Sorenson Corrected August 18 *Ex Parte* at 4-5.

[345] *See supra* Part III.B.1.

[346] *See, e.g.,* ZP August 10 *Ex Parte* at 2-3 (raising concerns about regulatory arbitrage when a provider's reported costs increase at the end of a rate cycle).

[347] *2021 VRS Compensation Extension Order*, 36 FCC Rcd at 8817-19, paras. 40-45; *November 2021 Compensation Extension Order*, DA 21-1417; *2022 TRS Funding Order*, DA 22-699, at 5, paras. 13-14; *2023 TRS Funding Order*, DA 23-577, at 7, para. 17; *2023 TRS Extension Order*, DA 23-801.

[348] 47 CFR § 1.3 (providing for suspension, amendment, or waiver of Commission rules, in whole or in part, for good cause shown).

[349] *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[350] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

[351] *Northeast Cellular*, 897 F.2d at 1166; *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127-128 (D.C. Cir. 2008).

[352] *See 2021 VRS Compensation Extension Order*, 36 FCC Rcd at 8818, para. 43.

shall be paid $4.82 per minute for a provider's first 1,000,000 monthly minutes (Tier I); $3.97 per minute for monthly minutes between 1,000,001 and 2,500,000 (Tier II); and $2.63 per minute for monthly minutes exceeding 2,500,000 (Tier III).[353] VRS providers with 500,000 or fewer monthly minutes as of July 1, 2017, shall be paid $5.29 per minute (Emergent Tier) for the provider's first 500,000 minutes, and according to the otherwise applicable tiered formula, stated above, for monthly minutes exceeding 500,000.[354] After the effective date, any compensation paid for service provided on or after July 1, 2023, shall be paid in accordance with the formulas adopted in this Report and Order.[355]

131. *True-Up of Compensation*. We also direct the TRS Fund administrator to perform a true-up, after the effective date of this Report and Order, of the VRS compensation payments made pursuant to the waiver granted above.[356] The revised compensation formulas adopted in this Report and Order are based on estimates of the costs VRS providers will incur in the 2023-24 Fund Year. Overall, these revised formulas substantially increase provider compensation to reflect recent increases in reported costs, as well as our expectation of further increases in certain areas.[357] To allow providers a reasonable opportunity to recover such increased costs, we conclude that they should be compensated under the revised formulas for all services provided during the 2023-2024 TRS Fund Year. We find that the benefits of ensuring full compensation for this Fund Year outweigh the minor administrative burden involved in such a true-up process. Accordingly, after the Report and Order becomes effective, we direct the TRS Fund administrator to make a supplemental payment to each VRS provider for all compensable minutes of service provided after June 30, 2023, for which compensation was paid under the current extended formulas, pursuant to the waivers granted above and previously. Such supplemental payment shall consist of the difference between the compensation that is applicable under this Report and Order and the compensation actually paid to the provider pursuant to the waivers granted above and previously.[358]

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Additional Compensation for Specialized Services

132. In the *Notice*, we sought comment on whether it would serve the objectives of section 225 for a VRS provider to receive additional per-minute compensation from the TRS Fund for the provision of certain specialized services.[359] In the Report and Order, we establish an additive formula for

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[353] *2017 VRS Compensation Order*, 32 FCC Rcd at 5934, Appx A.

[354] *Id.* at 5916-17, paras. 49-50.

[355] *See id.* at 5926-27 para. 68 (in the compensation order adopted July 6, where Commission waived the normal effective date, the Commission directed payment of compensation at increased rates for all service provided on or after July 1, stating that a true-up was unnecessary "[g]iven that minutes of use for the month of July have yet to be submitted for compensation").

[356] In extending the expiration date of the current compensation formulas from June 30 to August 31, 2023, the Bureau stated that its action did not preclude a true-up of compensation, should the Commission deem that necessary after determining the applicable compensation formulas. *2023 TRS Funding Order* at 7, para. 17.

[357] *See supra* Part III.A, C.

[358] This includes minutes incurred for the provision of Video-Text Service at the applicable per-minute compensation rate with the additive, provided the VRS provider submits the required Video-Text Service user information to the TRS Fund administrator for the appropriate identification of such calls. *See supra* paras. 110-112. A supplemental payment shall be paid to GlobalVRS only if, and to the extent that, the post-June 30 compensation that is applicable under this Report and Order exceeds the total post-June 30 compensation received by GlobalVRS pursuant to *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, DA 23-718 (rel. Aug. 17, 2023).

[359] *Notice*, 36 FCC Rcd at 8814, para. 30.

compensating providers of Video-Text Service to ASL users who are deafblind.[360] Here, we seek further comment on whether, and under what circumstances, we should provide additional compensation for specific types of specialized service identified by commenters, and how such compensation should be structured.

133. *Deaf Interpreters*. We seek comment on whether VRS providers should receive additional compensation for responding to a consumer's justified request that a Deaf Interpreter be added to a call.[361] According to the Registry for Interpreters for the Deaf, Inc. (RID), a "Certified Deaf Interpreter" is a holder of a certification that the individual is deaf or hard of hearing, possesses native or near native fluency in ASL, has demonstrated knowledge and understanding of interpreting, deafness, the deaf community, and deaf culture, and has specialized training or experience in the use of tools to enhance communication.[362] RID adds that Certified Deaf Interpreters are recommended for assignments where an interpreter who is deaf or hard of hearing would be beneficial, such as when the communication mode of an individual who is deaf is so unique that it cannot be adequately accessed by interpreters who are hearing.[363] The record indicates that such interpreters are sometimes needed on VRS calls to enable functionally equivalent communication in ASL. For example, Sorenson states that Deaf Interpreters "provide necessary support to consumers with limited English or ASL proficiency, or cognitive or motor disabilities."[364] It is also apparent that providing a Deaf Interpreter adds significantly to the cost of handling a VRS call where such interpreters are required. We therefore believe that providing additional compensation for such calls will advance the objective of section 225 to make functionally equivalent TRS available. We also believe such additional compensation can be implemented relatively efficiently, without adding administrative burdens disproportionate to the resulting benefits. We seek comment on our proposal and these underlying assumptions.

134. As a threshold matter, we seek comment on the extent to which Deaf Interpreters (whether "Certified" or not) are currently being used in VRS. What percentage of a VRS provider's calls and minutes involve the provision of such additional assistance? How often are Certified Deaf Interpreters requested, and how often are such requests granted? Is there evidence that VRS providers are failing to provide a Certified Deaf Interpreter when such assistance is warranted? If so, what concerns lead VRS providers to withhold such assistance—given that our allowable cost criteria do not exclude the costs of such assistance from allowable costs that may be subject to TRS Fund support?

135. If additional compensation is provided for the use of Certified Deaf Interpreters, what criteria should be applied to determine when such additional compensation is paid? Should we adopt RID's description as a definition for a Certified Deaf Interpreter? Should that definition be modified or supplemented with other pertinent information? Should we require that persons providing such assistance be certified, and if so, what bodies should be deemed qualified to issue such certifications? How should we define the occasions when a Certified Deaf Interpreter is needed for a VRS call? For example, should we adopt Sorenson's suggested criterion, authorizing additional compensation when a Certified Deaf Interpreter is needed to "provide necessary support to consumers with limited English or ASL proficiency, or cognitive or motor disabilities,"[365] or should different or more specific criteria be applicable? We also seek comment on the costs of providing this additional service, and how additional

[360] *See supra* para. 107.

[361] *Notice*, 36 FCC Rcd at 8814, para. 30.

[362] *See* Registry of Interpreters for the Deaf, Inc., *Certified Deaf Interpreters*, https://rid.org/certification/available-certifications/ (last visited Sept. 21, 2023).

[363] Registry of Interpreters for the Deaf, Inc., Standard Practice Paper, Use of a Certified Deaf Interpreter at 1 (1997), https://rid.org/about/resources/#fortheconsumer.

[364] Sorenson Comments at 64-65; *see also* Sorenson Reply at 35-36.

[365] Sorenson Comments at 64-65; *see also* Sorenson Reply at 35-36.

compensation should be determined. What additional amount, if any, would be necessary to incentivize providers to make this service available when needed? Alternatively, should the provision of Certified Deaf Interpreters when needed be mandatory for all VRS providers? We also seek comment on any changes to the call detail reporting requirements that may be needed to facilitate reporting calls that include Deaf Interpreters and to allow the TRS Fund administrator to validate those calls for compensation.

136. *Interpreting Other Than ASL*. We also seek comment on whether other methods of communication with eligible TRS users, such as cued language, should be authorized for compensation as a specialized form of VRS.[366] How many people currently use cued language? To what extent could such a service be effectively offered by VRS providers, and what are the relevant additional costs that would be incurred to provide such a service? If authorized, how should the additional reasonable costs of such a service be determined for the purpose of setting an appropriate amount of additional compensation?

137. *Skills-based Interpreting*. We further seek comment on whether VRS providers should receive additional compensation for responding to a VRS user's request to have a call routed to a CA with particular skill sets—such as particular spoken-language abilities, interpreting, transliteration, and signing styles and skills, or knowledge of specific subject matters, such as medicine, law, or technology.[367] To what extent would the provision of skills-based interpreting enable functionally equivalent communications? To what extent could such a service be effectively offered by VRS providers, and what are the relevant additional costs that would be incurred to provide such a service? Would costs vary depending on the type of skill set? How should the costs for differing skill sets be determined for setting an appropriate amount of additional compensation? How could the additional costs be verified?

138. If additional compensation is provided, what criteria should be applied to determine when such compensation is paid? What criteria should be met to determine that a CA has a particular skill set, and how should we verify that such CAs provided such skills during a call? How should we verify that the skills-based interpreting improved the call quality beyond what the user would have received from an interpreter without the identified skill set? We also seek comment on any changes to the call detail reporting requirements that may be needed to facilitate reporting calls that include skills-based interpreters and to allow the TRS Fund administrator to validate those calls for compensation.

B. Compensable Calls for VRS Users Who Are Deafblind

139. *Calls to VRS users*. We seek comment on whether the TRS Fund should support calls between a VRS user who is deafblind and another VRS user. Do such calls require the participation of a CA for functionally equivalent communication? We believe that during such a call, the VRS user who is deafblind would be signing to the other VRS user on the call and would receive a typed communication from the CA of the signed communication from the other VRS user. What are the costs and benefits of allowing such calls to be compensable from the TRS Fund? What changes, if any, would need to be implemented to a VRS provider's platform, to the TRS Numbering database, and to call details records to allow such calls to be compensated when a CA is needed? Should the Compensation Additive for calls from individuals who are deafblind apply to such calls? Or should an alternative compensation rate be

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[366] *See generally* GlobalVRS Comments, Appx. 2 at 12, para. 30 (explaining the different skill sets and training needed for those in the Spanish or Creole communities); Comments of Convo Communications, LLC at 12 (describing how the current provision of interpretation service can "disenfranchise" certain portions of the deaf community, such as those with limited English proficiency or who converse in a dialect); Letter from Esther Rimer, National Cued Speech Association, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Nov. 1, 2021).

[367] *See 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, 30 FCC Rcd 12973, 12990, para. 43 (2015).

considered for such calls? What rules, if any, would need to be revised or adopted to permit such calls to be compensable?

140. *Voice Carry Over Calls*. We also seek comment on whether voice carry over (VCO) calls between a TRS user who is deafblind and a hearing user should be compensable from the TRS Fund. In such a call, where the individual who is deafblind is using their voice, rather than ASL, the role of the CA is limited to typing the voiced communications of the other party to the call. We seek comment on how to classify such calls within the TRS program. On its face, such a call does not seem to be classifiable as VRS because no party is using ASL or other form of sign language. Should such a call be classified as an IP CTS call or a VCO IP Relay call? What are the costs and benefits to finding such calls to be compensable? Would permitting such calls allow individuals who are deafblind that use ASL, their own voice, and braille to complete all of their calls to hearing individuals on one TRS platform? Would it be an inefficient use of available VRS CAs, if no ASL is used on the call? Are there technological alternatives available on VRS platforms, such as voice-to-RTT or captioning using automatic speech recognition that would allow the other party to the call to have their voice transcribed and converted to braille without the presence of a VRS CA? If so, should such calls be considered point-to-point video calls on a VRS platform or should it be considered a compensable relay call, and if so, what compensation rate should apply to such calls?

C. Digital Equity and Inclusion

141. Finally, the Commission, as part of its continuing effort to advance digital equity for all,[368] 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[369] and benefits (if any) that may be associated with the proposals and issues discussed in this Notice. 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.

V. PROCEDURAL MATTERS

142. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[370] 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.[371] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix F.

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[368] Section 1 of the Act provides that the Commission "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.

[369] 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).

[370] *See* 5 U.S.C. § 604. 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) (FRFA).

[371] 5 U.S.C. § 605(b).

143. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes in the *Further Notice*. The IRFA is set forth in Appendix G. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Further Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

144. *Paperwork Reduction Act – Final*. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[372] 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.[373]

145. *Paperwork Reduction Act – Notice*. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on the information collection requirements proposed in this document, as required by the Paperwork Reduction Act of 1995.[374] In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.[375]

146. *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 "major" under the Congressional Review Act.[376] The Commission will send a copy of this Report and Order, Further Notice of Proposed Rulemaking, and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).[377]

147. *Comments*. 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).[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 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.

[372] Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520).

[373] Pub. L. No. 107-98 (codified at 44 U.S.C. 3506(c)(4)).

[374] Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520).

[375] Pub. L. No. 107-98 (codified at 44 U.S.C. 3506(c)(4)).

[376] 5 U.S.C. § 804(2).

[377] *Id*. § 801(a)(1)(A).

[378] *See* FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

- 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.[379]
- *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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice).

148. *Ex parte rules*. The proceeding this NPRM initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[380] 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.

VI. ORDERING CLAUSES

149. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 225, the foregoing Report and Order and Further Notice of Proposed Rulemaking IS ADOPTED and the Commission's rules are hereby AMENDED as set forth in Appendix E.

150. IT IS FURTHER ORDERED that the grant of a waiver of the expiration of the previously adopted compensation plan, as described in paragraphs 127 through 130 hereof SHALL BE EFFECTIVE upon release.

151. IT IS FURTHER ORDERED that, except as provided in paragraph 150 hereof, the Report and Order and the amendments to the Commission's rules SHALL BE EFFECTIVE [**INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**].

152. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance and Program Management, SHALL SEND a copy of Report and Order and Further Notice of Proposed Rulemaking 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).

153. IT IS FURTHER ORDERED that the Office of the Secretary, Reference Information Center, SHALL SEND a copy of the Report and Order and Further Notice of Proposed Rulemaking

[379] 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.

[380] 47 C.F.R. §§ 1.1200 *et seq*.

including the Final Regulatory Flexibility Analysis and 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

List of Commenting Parties

Comments

ASL Services Holding, LLC dba GlobalVRS (GlobalVRS)

Convo Communications, LLC (Convo)

National Association of the Deaf (NAD), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Association of Late-Deafened Adults (ALDA), Deaf Seniors of America (DSA), American Deafness and Rehabilitation Association (ADARA), Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC), Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Cerebral Palsy and Deaf Organization (CPADO), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), Hearing Loss Association of America (HLAA), National Black Deaf Advocates (NBDA), Gallaudet University Alumni Association (GUAA), Registry of Interpreters for the Deaf, Inc. (RID) (collectively, Communications Equality Advocates)

NCTA – The Internet & Television Association (NCTA)

Sorenson Communications, LLC (Sorenson)

ZP Better Together, LLC (ZP)

Reply Comments

Convo

GlobalVRS

Sorenson

ZP

Appendix B

Calculation of Provider Costs

1. *Adjustments for Inflation-Related Cost Changes*. As discussed in Part III.C.2 of the Report and Order, providers' reported expenses in all currently allowable cost categories *except* CA Wages and Benefits, Engineering, and Research and Development are estimated by applying a 7.23% adjustment factor[1] to historical 2022 expenses,[2] to account for likely inflation-related cost increases in the 18 months between the cost reporting period (CY 2022) and the first year of the new compensation period (FY 2023-24).

		Convo	ZP	Sorenson	Industry Total/ Average
(a)(1) Historical 2022 expenses in previously allowable categories other than CA, engineering, and R&D	Total expenses	{[xxxxxxxxxx]}	{[xxxxxxxxx]}	{[xxxxxxxxxx]}	$183,656,927
	Expenses per minute	{[xxxx]}	{[xxxx]}	{[xxxx]}	$1.22
(a)(2) Estimated expenses in previously allowable categories other than CA, engineering, and R&D (7.23% above 2022 cost)[3]	Total expenses	{[xxxxxxxxx]}	{[xxxxxxxxx]}	{[xxxxxxxxxxx]}	$195,337,275
	Expenses per minute	{[xxxx]}	{[xxxx]}	{[xxxx]}	$1.39
Note: Industry average per minute expenses are calculated by taking the weighted average of each provider's per minute expenses where the weight is the provider's share of total minutes.					

[1] To calculate the inflation factor the Commission used the change from fourth quarter 2021 to second quarter 2023 in the Bureau of Labor Statistics (BLS) index of seasonally adjusted "total compensation for private industry workers in professional, scientific, and technical services." Bureau of Labor Statistics, BLS Data Viewer, Employment Cost Index, https://beta.bls.gov/dataViewer/view/timeseries/CIS20154000000000I (last visited Sept. 26, 2023).

[2] Per-minute expenses for 2022 are calculated based on 2022 minutes.

[3] These categories include: expenses related to offices, relay centers and other buildings; relay center expenses other than CA wages and benefits; administrative expenses; depreciation of capital investment; and marketing and advertising expenses. For most of these categories, adjusted per-minute expenses are calculated by (1) increasing a provider's 2022 expenses in those categories by 7.23%, and then (2) dividing the result by the provider's projected 2023-24 minutes. Because VRS minutes are projected to decline somewhat from 2022 levels, the adjusted per-minute amounts are more than 7.23% higher than per-minute 2022 costs in these categories. By contrast, for relay center expenses (salary and benefits for management and staff, telecommunications expenses, etc.), adjusted per-minute expenses are determined by (1) dividing a provider's total 2022 expenses for these categories by the provider's 2022 minutes, and then (2) increasing that per-minute amount by 7.23%. This is done because expenses in the B.2-5 categories are more strongly affected by a provider's volume of minutes.

2. *Higher-Than-Inflation Cost Increases*. As discussed in Part III.C.3 of the Report and Order, expenses for CA Wages and Benefits (Relay Service Data Request (RSDR) Line B.1), Engineering (RSDR Line C.3), and Research and Development (RSDR Line C.4) are estimated by applying adjustment factors higher than inflation to historical expenses.

		Convo	ZP	Sorenson	Industry Total/ Average
(b)(1) 2020-21 CA wages and benefits	Total expenses	{[xxxxxxxxx]}	{[xxxxxxxxxx]}	{[xxxxxxxxxxx]}	$217,833,838
	Expenses per minute	{[xxxx]}	{[xxxx]}	{[xxxx]}	$1.34
(b)(2) Estimated CA wages and benefits (65% above 2020-21 cost)[4]	Total expenses	{[xxxxxxxxxx]}	{[xxxxxxxxxx]}	{[xxxxxxxxxxx]}	$311,883,940
	Expenses per minute	{[xxxx]}	{[xxxx]}	{[xxxx]}	$2.22
Note: Industry average per minute expenses are calculated by taking the weighted average of each provider's per minute expenses where the weight is the provider's share of total minutes.					

		Convo	ZP	Sorenson	Industry Total/ Average
(c)(1) 2022 engineering and R&D expenses	Total expenses	{[xxxxxxxx]}	{[xxxxxxxxx]}	{[xxxxxxxxxx]}	$29,827,236
	Expenses per minute	{[xxxxx]}	{[xxxxx]}	{[xxxx]}	$0.20
(c)(2) Estimated engineering and R&D expenses (75% above 2022 cost)[5]	Total expenses	{[xxxxxxxxx]}	{[xxxxxxxxxx]}	{[xxxxxxxxxx]}	$52,197,664
	Expenses per minute	{[xxxxx]}	{[xxxxx]}	{[xxxxx]}	$0.37
Note: Industry average per minute expenses are calculated by taking the weighted average of each provider's per minute expenses where the weight is the provider's share of total minutes.					

[4] Per-minute CA wages and benefits (RSDR Line B.1) are estimated by (1) dividing a provider's average 2020-21 expenses for the category by the provider's average 2020-21 minutes, and then (2) increasing that per-minute amount by 65%. This is done because expenses in this category are more strongly affected by a provider's volume of minutes.

[5] Per-minute expenses for engineering and R&D (RSDR Lines C.3-4) are estimated by (1) increasing a provider's total 2022 expenses for these categories by 75%, and then (2) dividing the result by the provider's projected 2023-24 minutes. Because VRS minutes are projected to decline somewhat from 2022 levels, the adjusted per-minute amounts are more than 75% higher than per-minute 2022 expenses in these categories.

3. *Newly Allowable and Other Additional Costs*. As discussed in Part III.C.4 of the Report and Order, the Commission estimates that providers will incur additional expenses in certain newly allowable categories and that Sorenson will incur expenses to provide Video-Text Service to consumers who are deafblind.

		Convo	ZP	Sorenson	Industry Total/ Average
(d) Numbering expenses	Total expenses	{[xxxxxxx]}	{[xxxxxxxx]}	{[xxxxxxxxx]}	$4,740,136
	Expenses per minute	{[xxxxx]}	{[xxxxx]}	{[xxxx]}	$0.03
(e) Outreach expenses	Total expenses	{[xxxxxxx]}	{[xxxxxxxx]}	{[xxxxxxxxx]}	$4,555,243
	Expenses per minute	{[xxxx]}	{[xxxx]}	{[xxxx]}	$0.03
(f) Video-Text Service: relatively fixed expenses	Total expenses	-	-	{[xxxxxxx]}	{[xxxxxxx]}
	Expenses per minute	-	-	{[xxxxx]}	{[xxxxx]}
Note: Industry average per minute expenses are calculated by taking the weighted average of each provider's per minute expenses where the weight is the provider's share of total minutes.					

4. *Total Estimated Expenses*. Estimated total expenses for each provider are determined by summing lines (a)(2), (b)(2), (c)(2), (d), (e), and (f) above.

	Convo	ZP	Sorenson	Industry Average
(a) Estimated expenses in previously allowable categories other than CA, engineering, and R&D (7.23% above 2022 cost)	{[xxxx]}	{[xxxx]}	{[xxxx]}	$1.39
b) Estimated CA wages and benefits (65% above 2020-21 cost)	{[xxxx]}	{[xxxx]}	{[xxxx]}	$2.22
c) Estimated engineering and R&D expenses (75% above 2022 cost)	{[xxxx]}	{[xxxx]}	{[xxxx]}	$0.37
d) Numbering expenses	{[xxxx]}	{[xxxx]}	{[xxxx]}	$0.03
e) Outreach expenses	{[xxxx]}	{[xxxx]}	{[xxxx]}	$0.03
f) Video-Text Service: relatively fixed expenses	-	-	{[xxxx]}	{[xxx]}
Totals	**{[xxxx]}**	**{[xxxx]}**	**{[xxxx]}**	{[xxxx]}

Compensation formulas are set to enable each provider to earn an operating margin within the reasonable range (7.75% to 12.35%), by targeting applicable compensation rates to yield an operating margin for each provider of 10% above estimated costs, if compensable minutes for each VRS provider approximate the volumes of minutes projected by the provider for FY 2023-24.

5. *Video-Text Service Additional Compensation*. As discussed in Part III.D.3 of the Report and Order, the Commission estimates that Sorenson will incur additional variable to provide Video-Text Service to users who are deafblind for which it adopts an additional compensation amount.

		Convo	ZP	Sorenson	Industry Total/ Average
Video-Text Service: variable expenses	Total expenses	-	-	{[xxxxx]}	{[xxxxx]}
	Expenses per minute	-	-	{[xxxxx]}	{[xxxxxx}
Note: The estimated total expense is based on Sorenson's projected monthly demand of {[xxxx]} minutes for Video-Text Service.					

Appendix C

Economic Assessment of FCC Compensation Plan and Provider Proposals

1. In this appendix, we show that the Commission's revised VRS compensation formulas will allow Convo, ZP, and Sorenson overall operating margins of at least {[xxxx]} based on actual and forecasted output levels and costs.[1] In contrast, none of the alternative proposals leads to operating margins within the zone of reasonableness for all providers.

A. Analysis of The Commission's Revised Compensation Formulas

Table 1: Per-Minute Compensation Formulas

Small Provider (<1,000,000 minutes per month)	$7.77
Large Provider (>1,000,000 minutes) Tier I (0-1,000,000 monthly min.)	$6.27
Large Provider (>1,000,000 minutes) Tier II (all minutes after 1,000,000 monthly min.)	$3.92
Additive for Video-Text Service	$0.19

2. *Compensation for Large Providers.* The Report and Order sets a tiered compensation formula for providers handling more than 1,000,000 minutes per month: $6.27 per minute for a provider's first 1,000,000 monthly minutes and $3.92 for all additional monthly minutes. A change in the compensation formula is necessary because of changes in the VRS industry since 2017. In that time the second largest provider, ZP, has expanded its market share, and its reported costs are now similar to the reported costs of the largest provider, Sorenson.[2] Therefore, the previous three-tiered compensation formula, which was designed with a middle tier to support the continued growth of a provider, while recognizing that growing providers would begin to achieve economies of scale, no longer achieves that goal. The 2023 VRS provider cost data show that continuing with a three-tiered compensation formula for the two largest providers would cause operating margins well in excess of the zone of reasonableness for the second largest provider. Providers are also eligible for a compensative additive for the provision of Video-Text Service. These minutes will receive an additional $0.19 per minute in compensation.

3. Table 2 below shows the estimated compensation revenue for each large provider in the first year. Table 3 below shows that under the new compensation formula the largest providers would earn operating margins of approximately {[xxxx xxxxxxxxxxx xxxxx xxxxxx xxxxxx xxxxxxx xxx xxxxxx xxx xxxxxx xxxxxxx xxxxxx xxxxxxxxxxxxxxxxxx xxxxxxxxxxx xxxxxxx xx xxxxxxx xxxx.]}

Table 2: Estimated Compensation (based on 2023-24 demand[3])

Provider	Estimated Revenue
ZP	{[xxxxxxxxxxx]}
Sorenson	{[xxxxxxxxxxx]}

[1] Overall operating margins are the percentage by which total estimated compensation exceeds the Commission's estimate of total allowable costs, as defined in the Report and Order.

[2] *See supra* para. 87.

[3] Demand is calculated based on VRS providers projected monthly demand estimates for July 2023 through June 2024.

Table 3: Operating Margins for Large Providers under Current and Revised Formulas

Provider	Operating Margin	
	Current Formulas	Revised Formulas
ZP	{[xxxxx]}	{[xxxx]}
Sorenson	{[xxxxxx]}	{[xxxx]}

Note: Operating margins were calculated based on the weighted average of each provider's reported allowable costs for 2022, as adjusted in the Report and Order.

4. *Compensation for Small Providers.* Under the revised compensation formula, small providers (providers with fewer than 1,000,000 monthly minutes) receive $7.77 per minute for all minutes. Small providers are also eligible for the $0.19 compensative additive for the provision of Video-Text Service. Table 4 shows the estimated revenue for Convo. Table 5 shows that under the new compensation formula Convo would earn an operating margin of {[xxxxx]}.

Table 4: Estimated Compensation (based on 2022-23 demand)

Provider	Estimated Revenue
Convo	{[xxxxxxxxxxx]}

Table 5: Operating Margins for Small Providers under Current and Revised Formulas

Provider	Operating Margin	
	Current Formulas	Revised Formulas
Convo	{[xxxxxx]}	{[xxxxx]}

Notes: Operating margins were calculated based on the weighted average of a provider's reported allowable costs for 2022, as adjusted in the Report and Order.

B. Analysis of Alternative Tiered Compensation Formulas

5. Both Sorenson and ZP have proposed tiered compensation formulas.[4] In 2022, Sorenson proposed that the boundary between Tier II and Tier III be reset at 3.5 million monthly minutes and that the compensation rate of Tier III be adjusted (Sorenson 2022 Proposal).[5] In 2023, Sorenson suggested that the tier boundaries remain the same and that each tiered rate be adjusted (Sorenson June 2023 Proposal).[6] In September 2023, Sorenson suggested an alternative tiered proposal based on an alternative calculation of provider costs. (Sorenson September 2023 Proposal).[7] In 2021, ZP proposed that the boundary between Tier II and Tier III be reset at 5 million monthly minutes, without changing the tiered rates (ZP 2021 Proposal).[8]

6. In June 2023, ZP proposed that the tier boundaries should remain the same and that each

[4] In 2021, Sorenson proposed a single rate for non-emergent providers of $3.50 per minute. Because the single rate compensation proposal was based on costs reported in 2021 and the more recent advocacy has focused on retaining tiered compensation, we do not discuss it within this section.

[5] *See* Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 5 (filed Jan. 27, 2022); Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed Jan. 28, 2022).

[6] *See* Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, (filed June 12, 2023); Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, (filed June 15, 2023) (updating its tiered proposal to align with ZP's proposal in its June 9, 2023 *Ex Parte*).

[7] Letter from John Nakahata, Sorenson, to Marlene Dortch, FCC, CG Docket No. 03-123 and 10-51 at 3 (filed September 1, 2023).

[8] *See* ZP Comments at 10-11; Letter from Gregory Hlibok, ZP to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 2 (filed Aug. 27, 2021).

tiered rate should be adjusted.[9] ZP's subsequently updated the rates adjustment in its proposal (ZP June 2023 Proposal).[10] Table 6 compares the estimated impact on the TRS Fund of the current VRS compensation formulas, the revised formulas adopted in this Report and Order, and the various alternative proposals described above.

Table 6: Approximate Impact on the TRS Fund in Year 1 (based on 2023-24 demand levels)

	Fund Expenditures	Change	Percentage Change
Current Formula	$483 million		
Adopted Formula	$626 million	$143 million	29.5%
ZP June 2023 Proposal	$618 million	$135 million	28.0%
Sorenson June 2023 Proposal	$708 million	$225 million	46.7%
Sorenson September 2023 Proposal	$657 million	$174 million	36.0%
ZP 2021 Proposal	$534 million	$51 million	10.5%
Sorenson 2022 Proposal	$540 million	$56 million	11.7%
Note: The ZP 2021 Proposal and Sorenson 2022 Proposal have not been updated by the providers to take account of updated cost and demand data reported in 2023. We include them here as they remain part of the record in this proceeding and are discussed in the Report and Order. Total may not equal sum of costs due to rounding.			

7. We also compare the operating margins for each provider and for the industry as a whole under each plan. We note that none of the alternative proposals leads to operating margins within the zone of reasonableness for all providers.

Table 7: Operating Margins (based on estimated expenses (per Appendix B) and 2023-24 demand)

	Convo	ZP	Sorenson	Industry Average
Current Formula	{[xxxxx]}	{[xxxxx]}	{[xxxxxx]}	{[xxxxxx]}
Adopted Formula	{[xxxx%]}	{[xxxx]}	{[xxxx]}	{[xxxx]}
ZP June 2023 Proposal	{[xxxxx]}	{[xxxxx]}	{[xxxx]}	{[xxxx]}
Sorenson June 2023 Proposal	{[xxxxx]}	{[xxxxx]}	{[xxxxx]}	{[xxxxx]}
Sorenson September 2023 Proposal	{[xxxx]}	{[xxxxx]}	{[xxxx]}	{[xxxxx]}
ZP 2021 Proposal	{[xxxxxx]}	{[xxxxx]}	{[xxxxx]}	{[xxxxx]}
Sorenson 2022 Proposal	{[-xxxxx]}	{[xxxx%]}	{[xxxxx]}	{[xxxxx]}
Note: The 2021 Proposals from ZP and Sorenson submitted to the Commission in 2021 have not been updated following the providers submitting new cost and demand data in 2023. We include them here as they remain part of the record in this proceeding and are discussed in the Report and Order. Sorenson does not take a position on the emergent rate in its Sorenson June 2023 Proposal, and for consistency of analysis we assume its proposal would treat the emergent rate in the same way as ZP's proposal.				

[9] *See* Letter from Sherri Turpin, ZP to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed May 23, 2023).

[10] *See* Letter from Sherri Turpin, ZP to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed June 9, 2023).

Appendix D

Staff Analysis of the ZP Regression

1. We review some limitations of the model that ZP submitted of VRS provider per minute costs (total costs divided by total minutes) and conclude that these limitations preclude reliable estimation of costs through regression analysis.[1] ZP submitted a regression model of VRS costs and requested that it be used to determine tier boundaries and rates.[2] However, we find that the model cannot be relied on due to its econometric deficiencies. We therefore take a different approach, as discussed in the Report and Order.[3]

2. The submitted model is a classic linear regression that assumes per minute costs equal the linear sum of a constant, the volume multiplied by another constant, and an error term.[4] The submitted model uses 20 observations, one observation per year for five years, from 2018 to 2022, for each of the four VRS providers. It regresses each provider's annual cost divided by its annual volume, hereafter per minute cost, on the log (base-10) of annual minutes divided by twelve, hereafter volume. The regression results indicate that volume explains most of the variation in per minute costs.[5]

3. Staff believes that the regression model is not reliable for several reasons. First, the model omits relevant explanatory variables that are likely correlated with volume. If a relevant variable is omitted, the estimated relationship between costs and volumes is incorrect.[6] For example, if a provider focuses on serving a smaller sub-population of users with more costly needs, the model will generate incorrect estimates if it does not account for this. Another example is quality of service. Consumers may gravitate to providers with higher quality service. If so, providers that spend more on quality would have higher call volumes. Leaving out variables for those qualities over which providers compete would generate incorrect results. This concern is particularly relevant in VRS where providers do not compete on price because end users do not pay for VRS service, but instead compete on quality. Omission of these or other factors that impact both costs and provider demand make the model's estimates unreliable.[7]

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[1] Reticulated Strategies LLC Supplement to Reply Comments, CG Docket Nos. 03-123 and 10-51, (rec. August 12, 2021) (filed on behalf of ZP) (ZP Supplemental Reply); *see also* Letter from Preston James Wise, ZP, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Jan. 21, 2022) ZP January 2022 *Ex Parte*.

[2] ZP Supplemental Reply*; see also* ZP January 2022 *Ex Parte*.

[3] *See supra* Report and Order, Part III.D & Appendix C.

[4] The error term is the portion of the true relationship between volume and per-minute cost that is not explained by the linear relationship with volume. Jeffery M. Wooldridge, Introductory Econometrics: A Modern Approach 71 (5th ed. 2012) (Wooldridge).

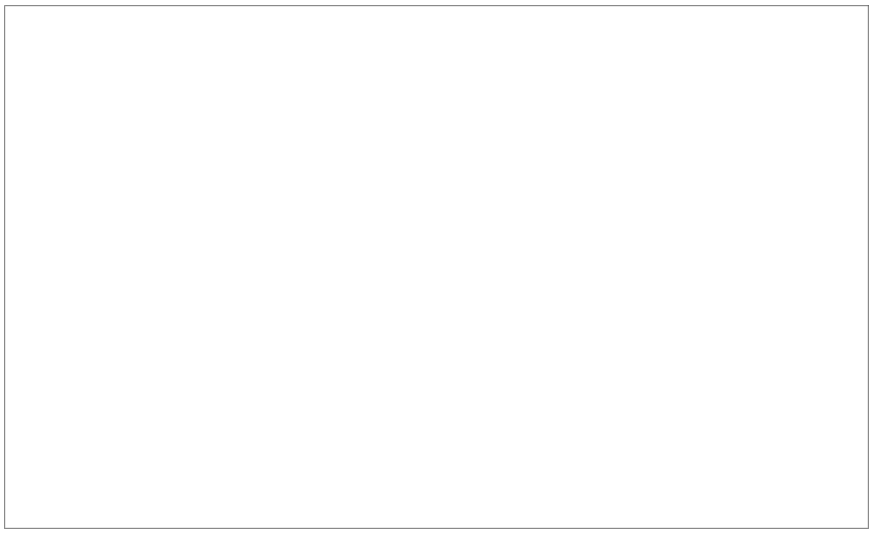
[5] ZP Supplemental Reply at n.3.

[6] "Omitted Variable Bias: The bias that arises in the OLS estimators when a relevant variable is omitted from the regression." Wooldridge, *supra* note 4, at 853.

[7] Standard practice to remedy this problem is to add the missing variables to the model. For example, a variable for quality might be average call-response time. But given the limited number of observations, adding missing explanatory variables to the model is not viable. After accounting for provider grouping, the model only has three degrees of freedom. Each control variable added to the model eliminates one degree of freedom. With more omitted variables than degrees of freedom the model is not viable. Degrees of freedom are "the number of 'free' or linearly independent observations used in the calculation of the statistic." Peter Kennedy, A Guide to Econometrics 66 (3rd ed. 1992); for a heuristic explanation, *see* Minitab, *What are degrees of freedom?* (April 8, 2016), https://blog.minitab.com/en/statistics-and-quality-data-analysis/what-are-degrees-of-freedom-in-statistics.

4. Second, observations from the same provider are not independent from each other.[8] From year-to-year, provider costs and demand are likely related to internal business practices and other industry pressures and are thus almost certainly related to each other. Figure 1 illustrates this problem, depicting data points tightly grouped together by provider with large volume ranges between providers.[9] This implies that the statistical inference tests are incorrect.[10]

{[xxxxxxxxxxxxx xxxxxxxx xxxxx xxxxxxxxxxx xxxxxxxx xxxxxxxxxx xxxxxxxxxxx x**)**



xxxxxxxxxxxxxxx.]}

5. Third, the model treats CSDVRS and Purple as one provider, ZP. The process of consolidating these firms' operations pursuant to their 2017 merger appears to have taken three years to complete, with CSDVRS and Purple filing their costs separately until 2020. During this period, there was likely some duplication of services or facilities, resulting in higher costs than would be the case for a fully consolidated provider. Counting the costs of these two providers as one throughout the merger likely inflates the predicted costs per minute. On the other hand, disaggregating ZP, for purposes of analyzing pre-2020 costs, into two providers would not resolve the problem because the providers presumably were benefiting from some economies of scale during the transitional period.[11]

[8] Random sampling requires that an "[observation] is independent of all other [observations]." Wooldridge at 856. Random sampling also means that the error terms are independent from each other. Wooldridge at 116, 353. That is, past values cannot affect future observations. Wooldridge at 374.

[9] Random sampling would imply that the portion of {[xxxxxxx]} per minute costs in 2019 that is not explained by volume is not related to the portion of per minute costs in 2020 that is not explained by volume. But the error terms have a trend over time as revealed by a test for serial correlation conducted on the three largest providers. This indicates that error terms for the same provider are related, which violates random sampling. David M. Drukker, *Testing for serial correlation in linear panel-data models*, 3 The Stata Journal 2: 168–177 (2003), https://journals.sagepub.com/doi/pdf/10.1177/1536867X0300300206.

[10] Wooldridge, *supra* note 4, at 483. For approaches to the problem *see* A. Colin Cameron & Douglas L. Miller, *A Practitioner's Guide to Cluster-Robust Inference*, 50 The Journal of Human Resources, No. 2, 317-372 (2015), http://cameron.econ.ucdavis.edu/research/Cameron_Miller_JHR_2015_February.pdf.

[11] If the model were viable, sensitivity testing would indicate how vulnerable the model's results are to different assumptions about the merged providers.

6. Thus, although the model results in small p-values for its estimates of the impact of volumes on per minute costs,[12] and a high R-squared value of 98%,[13] we cannot rely on its results due to the econometric deficiencies previously discussed.

[12] ZP Supplemental Reply at 1. P-values indicate the probability that the estimates are the result of random chance if there were no relationship between volumes and per minute costs. Thus, a low p-value suggests the likelihood of a relationship between volumes and per-minute costs.

[13] *Id*. at 1. The R-squared of a regression is the "ratio of the explained variation compared to the total variation; thus, it is interpreted as the fraction of the sample variation in [per minute costs] that is explained by [volume]." Wooldridge, *supra* note 4, at 38.

Appendix E

Final Rules

The Federal Communications Commission amends 47 CFR part 64 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, 617, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

2. The authority citation for subpart F continues to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), 616, and 620.

3. Amend § 64.601 by:

a. Redesignating paragraphs (a)(52) through (a)(56) as paragraphs (a)(53) through (a)(57); and

b. Adding new paragraph (a)(52).

The revisions and additions read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(52) ***Video-Text Service***. A specialized form of video relay service that allows people who are deafblind who use sign language and text to communicate through a video link. The video link allows the communications assistant to view and interpret a party's sign language communication and the text functionality allows the communications assistant to send text to peripheral devices employed in connection with equipment, including software, to translate, enhance, or otherwise transform advanced communications services into a form accessible to people who are deafblind. The communications assistant relays the conversation using sign language, voice, and text between the participants of the call.

* * * * *

4. Add § 64.643 to subpart F to read as follows:

§ 64.643 Compensation for Video Relay Service.

For the period from July 1, 2023, through June 30, 2028, TRS Fund compensation for the provision of Video Relay Service (VRS) shall be as described in this section.

(a) First Year. For Fund Year 2023-24, TRS Fund compensation shall be paid in accordance with the following formulas.

(1) The Compensation Amount for VRS providers handling one million conversation minutes or less in a month shall be $7.77 per minute.

(2) The Compensation Amount for VRS providers handling more than one million conversation minutes in a month shall be:

(i) $6.27 per minute for the first 1,000,000 conversation minutes each month;

(ii) $3.92 per minute for monthly conversation minutes in excess of 1,000,000.

(3) For Video-Text Service, as defined in this subpart, in addition to the applicable Compensation Amount under paragraph (a)(1) or (2) of this section, an additional Compensation Amount of $0.19 per minute shall be paid for each conversation minute.

(b) *Succeeding Years*. For each succeeding Fund Year through June 30, 2028, each per-minute Compensation Amount described in paragraph (a) of this section shall be redetermined in accordance with the following equation:

$A_{FY} = A_{FY-1} * (1+IF_{FY})$

where A_{FY} is the Compensation Amount for the new Fund Year, A_{FY-1} is the Compensation Amount for the previous Fund Year, IF_{FY} is the Inflation Adjustment Factor for the new Fund Year.

(c) *Inflation Adjustment Factor*. The Inflation Adjustment Factor for a Fund Year (IF_{FY}), to be determined annually on or before June 30, is equal to the difference between the Initial Value and the Final Value, as defined herein, divided by the Initial Value. The Initial Value and Final Value, respectively, are the values of the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services, for the following periods:

(1) Final Value - The fourth quarter of the Calendar Year ending 6 months before the beginning of the Fund Year; and

(2) Initial Value - The fourth quarter of the preceding Calendar Year.

(d) Exogenous Cost Adjustments. In addition to L_{FY}, a video relay service provider shall be paid a per-minute exogenous cost adjustment if claims for exogenous cost recovery are submitted by the provider and approved by the Commission on or before June 30. Such exogenous cost adjustment shall equal the amount of such approved claims divided by the provider's projected minutes for the Fund Year. An exogenous cost adjustment shall be paid if a video relay service provider incurs well-documented costs that:

(1) belong to a category of costs that the Commission has deemed allowable;

(2) result from new TRS requirements or other causes beyond the provider's control;

(3) are new costs that were not factored into the applicable compensation formula; and

(4) if unrecovered, would cause a provider's current allowable-expenses-plus-operating margin to exceed its revenues.

Appendix F

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*Notice*) released in May 2021.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need For, and Objectives of, the Report and Order

2. Under section 225 of the Communications Act, as amended, the Commission is tasked with ensuring Telecommunications Relay Services (TRS) are available to the extent possible and in the most efficient manner to individuals with disabilities.[4] The Commission provides compensation for the provision of TRS through the TRS Fund.[5] To determine the appropriate compensation, the Commission has adopted and periodically reviews a compensation plan for the provision of each form of TRS. Each compensation plan includes a compensation structure and formulas for determining the appropriate compensation, with various inputs, including a "reasonable cost" criteria and historical and expected demand for the provision of TRS.

3. To achieve these requirements, in the *Report and Order*, the Commission adopted a multi-year compensation plan for Video Relay Service (VRS), a form of TRS that enables persons who are deaf, hard of hearing, deafblind, or have speech disabilities who use sign language to communicate with other persons through video equipment in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services.[6] To provide the appropriate compensation for the provision of, and continued availability of VRS, the Commission adopted a compensation plan that addressed increasing costs due to inflation and the effect of the COVID-19 pandemic. It also updated the inputs for reasonable cost criteria to improve the ability of VRS providers to provide and receive compensation for VRS that is functionally equivalent. In the *Report and Order*, the Commission also recognized and adopted a compensation formula for the provision of VRS to individuals who are deafblind, as a specialized service to help ensure the continued availability of this service to the extent possible for the individuals who use this service. Finally, to address changes in the cost structures of various VRS providers, the Commission transitioned from a three-tiered rate structure to a two-tiered rate structure for larger VRS providers providing more than one million monthly minutes, while maintaining a separate compensation rate for providers providing one million or fewer monthly minutes.

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[1] 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).

[2] *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*, CG Docket Nos. 03-123 and 10-51, Notice of Proposed Rulemaking and Order, 36 FCC Rcd 8802 (2021) (*Notice*).

[3] 5 U.S.C. § 604.

[4] 47 U.S.C. § 225(b)(1). TRS are "telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio." *Id*. § 225(a)(3).

[5] 47 CFR § 64.604(c)(5)(iii).

[6] *See id*. § 64.601(a)(51); 47 U.S.C. § 225(a)(3).

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the proposed rules and policies presented 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, 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.[7]

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

D. Description and Estimate of the Number of Small Entities to Which the 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 rules adopted herein.[8] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[9] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[10] 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 SBA.[11]

8. The policies adopted in the *Report and Order* will affect obligations of VRS providers. These services can be included within the broad economic category of All Other Telecommunications. There are currently four VRS providers: ASL Services Holdings, LLC d/b/a GlobalVRS, Convo Communications, LLC, Sorenson Communications, LLC, and ZP Better Together, LLC.

9. *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.[12] 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.[13] 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.[14] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million

[7] 5 U.S.C. § 604(a)(3).

[8] *Id*. § 604(a)(4).

[9] *Id*. § 601(6).

[10] *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."

[11] 15 U.S.C. § 632.

[12] *See* U.S. Census Bureau, *2017 NAICS Definition*, *"517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[13] *Id*.

[14] *Id*.

or less as small.[15] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[16] Of those firms, 1,039 had revenue of less than $25 million.[17] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. The provider compensation plan adopted in the *Report and Order* will not create significant reporting, recordkeeping, or other compliance requirements for small entities, as the adopted rules maintain a separate compensation structure for such VRS providers. The Commission will retain the status quo of continuing to require VRS providers, including small providers, to file annual cost and demand data reports with the TRS Fund administrator.[18] The Commission clarifies the data related to engineering, research and development, and communications assistant costs that shall be collected in the providers' annual cost and demand data filing. However, there are no new or additional burdens on VRS providers to file these reports, or any additional costs to VRS providers, nor are there any requirements for small entities to hire professionals to comply with the adopted rules. While the Commission allows VRS providers to recover reasonable costs for outreach, numbering, certain software, and certain research and development costs, these allowances do not change the cost categories reported by providers.

11. Further, in the *Report and Order*, the Commission establishes an add-on rate of $0.19 per minute to encourage small and large providers to bring functionally equivalent service to deafblind VRS users. VRS providers that seek compensation for the provisioning of VRS to deafblind individuals must identify any deafblind individuals in the TRS User Registration Database. This minor database modification will be implemented through a new field in the TRS User Registration Database which will allow small and other VRS providers to register a new or existing user as an individual who is deafblind. The Commission anticipates this modification to be of minimal impact to small and other VRS providers, as it is the addition of a single new field to a database VRS users are already using and will allow them to be fully compensated for providing VRS to deafblind users. As an interim step, VRS providers must also create and submit to the TRS Fund administrator a list of VRS users who are deafblind along with their ten-digit telephone numbers and Internet Protocol (IP) addresses, as well as any additional information as requested by the TRS Fund administrator. Providing this information will allow the TRS Fund administrator to identify calls placed to or received by VRS users who are deafblind in provider-submitted call detail records and pay those providers under the payment formula that includes the add-on for service to individuals who are deafblind. While we cannot quantify the cost of compliance for small entities, the additional obligations will be outweighed by the additional compensation afforded providers serving deafblind VRS users and the benefits provided to those dependent on the services VRS provides.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. 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

[15] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[16] *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.

[17] *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.

[18] *See* 47 CFR § 64.604(c)(5)(iii)(D)(1); *2018 Further Notice*, 33 FCC Rcd at 5822-23, paras. 36-37.

other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[19]

13. The adopted compensation structure and levels will apply only to entities who are, or may become, certified by the Commission to offer VRS in accordance with its rules.[20] The Commission adopted these multi-year compensation levels to compensate providers for their reasonable cost of providing service, to reduce the burden on TRS Fund contributors and their subscribers, and to ensure that TRS is made available to the greatest extent possible and in the most efficient manner.[21] In the Report and Order, the Commission also adopted separate compensation structures for large and small providers to allow small entities the opportunity to recover their costs in providing VRS, which the record suggests are higher than for large providers who have achieved some level of economies of scale. This action by the Commission should minimize the economic impact for small entities who provide VRS.

14. Through comments provided during the rulemaking proceeding, the Commission considered various proposals from small and other entities, and the adopted rules reflect its best efforts to minimize significant economic impact on small entities. Additionally, the Commission considered alternative proposals and weighed their benefits against their potential costs to small and other entities. More specifically, the Commission considered multiple methodologies for compensating VRS providers for the provisioning of VRS including an auction, a unitary compensation rate, the current tiered compensation structure, and alternative tiered-rate structures. Further, in considering a compensation structure, the Commission evaluated specific proposals for the structure and for setting compensation levels, including only adjusting the current compensation levels to address inflation and the additional cost categories.

15. In the *Report and Order*, the Commission adjusted the allowable cost categories that it considers in determining the appropriate compensation levels for the provisioning of VRS to allow small and other providers to recover costs for outreach, research and development to enhance functional equivalency, access software, and numbering and E911, resulting in a comparatively higher compensation level for providers than if it were not to adjust these categories. These adjustments will help ensure that the provisioning of VRS is functionally equivalent. The Commission also adopted a compensation add-on for the provisioning of specialized services to VRS users who are deafblind. This add-on will help compensate providers for the reasonable cost of providing VRS specialized services to the individuals who need it for functionally equivalent communications. Small and other entities will benefit economically from the increased compensation they will receive from this change, which will enable them to grow their businesses and provide higher quality VRS products to those who rely on them.

16. These various policy changes, which are adopted in response to comments in the record, help maintain a choice of service offerings for consumers from multiple providers of various sizes. The expansion of allowable cost categories reduces the burden on small and other VRS providers to either incur these costs or reduce the quality of their service. Continuing to require that the allowable costs incurred must be reasonable provides the Commission with sufficient flexibility to ensure that the TRS Fund is not improperly burdened with unnecessary costs that could otherwise have an unintended impact on contributors to the TRS Fund. Additionally, the Commission made adjustments to its determination of the relevant costs to account for the effect of the COVID-19 pandemic on the provision of VRS and to allow for an inflation adjustment to reflect current economic realities that could otherwise impose an economic burden on VRS providers.

G. Report to Congress

17. The Commission will send a copy of the Report and Order, including this FRFA, in a

[19] 5 U.S.C. § 604(a)(6).

[20] *See* 47 CFR § 64.606(a)(2)-(3), (b)(2).

[21] *See* 47 U.S.C. § 225(b)(1).

report to Congress pursuant to the Congressional Review Act.[22] In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order*, and FRFA (or summaries thereof) will also be published in the *Federal Register*.[23]

[22] *See* 5 U.S.C. § 801(a)(1)(A).

[23] *Id*. U.S.C. § 604(b).

Appendix G

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (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 this Further Notice of Proposed Rulemaking (*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 in the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Further Notice* and the IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need For, and Objectives of, the Proposed Rules

2. Under section 225 of the Communications Act, as amended, the Commission is tasked with ensuring that telecommunications relay services (TRS) are available to the extent possible and in the most efficient manner to individuals with disabilities.[4] In the *Further Notice*, the Commission seeks comment on additional compensation for video relay service (VRS) specialized services, including the use of Certified Deaf Interpreters, other methods of communications, such as cued speech, and skills-based interpreting. The Commission proposes adding an incentive per minute compensation amount to the compensation levels to provide these services and seeks comment on alternative approaches for providing additional compensation. The incentive would be added to the per-minute compensation rate that the provider is eligible to receive for the provisioning of VRS. In considering these proposals, the Commission seeks to ensure the availability of functionally equivalent VRS, provided in the most efficient manner, and ensure that the Commission's regulations encourage the use of existing technology and do not discourage or impair the development of improved technology.[5] Providing compensation for VRS specialized services with added per-minute rates, the Commission expects to encourage the provisioning of these services to help ensure that individuals who need services beyond traditional VRS have access to the communications network in a manner that is functionally equivalent. The compensation proposal would allow providers to offer and improve the availability of these specialized services over time. The proposed limitations on the amount of compensation and the conditions for receiving the compensation would ensure that VRS with specialized services is offered in the most efficient manner.

3. The *Further Notice* also seeks comment on the need for rule changes to allow communications assistants (CA) to be present on calls between VRS users who are deafblind and another VRS user, as well as the compensability of voice carry over calls for VRS users who are deafblind. Addressing these contours of compensability and eligibility will help ensure that the provision of services to individuals who are deafblind are functionally equivalent and offered in the most efficient manner.

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[1] 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).

[2] 5 U.S.C. § 603(a).

[3] *Id*.

[4] 47 U.S.C. § 225(b)(1). TRS are "telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio." *Id*. § 225(a)(3).

[5] *Id*. § 225(a)(3), (b)(1), (d)(2).

B. Legal Basis

4. The proposed action is authorized pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152 and 225.

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 and policies, if adopted.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[8] 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.[9]

6. The proposals in the *Further Notice* will affect obligations of VRS providers. These services can be included within the broad economic category of All Other Telecommunications. There are currently four providers that have received certification to provide VRS and receive compensation from the TRS Fund for providing VRS: ASL Services Holdings, LLC d/b/a GlobalVRS, Convo Communications, LLC, Sorenson Communications, LLC, and ZP Better Together, LLC.

7. *Telecommunications Relay Service (TRS) Providers*. Telecommunications relay services enable individuals who are deaf, hard of hearing, deaf-blind, or who have a speech disability to communicate by telephone in a manner that is functionally equivalent to using voice communication services.[10] Internet-based TRS connects an individual with a hearing or a speech disability to a TRS communications assistant using an Internet Protocol-enabled device via the Internet, rather than the public switched telephone network.[11] Video Relay Service (VRS), one form of Internet-based TRS, enables people with hearing or speech disabilities who use sign language to communicate with voice telephone users over a broadband connection using a video communication device.[12] Internet Protocol Captioned Telephone Service (IP CTS) another form of Internet-based TRS, permits a person with hearing loss to have a telephone conversation while reading captions of what the other party is saying on an Internet-connected device.[13] Providers must be certified by the Commission to provide VRS and IP CTS[14] and to receive compensation from the TRS Fund for TRS provided in accordance with applicable rules.[15]

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[6] 5 U.S.C. § 603(b)(3).

[7] *Id.* § 601(6).

[8] *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."

[9] 15 U.S.C. § 632.

[10] 47 U.S.C. § 225(a)(3).

[11] 47 CFR § 64.601(a)(22). Except as authorized or required by the Commission, Internet-based TRS does not include the use of a text telephone (TTY) or RTT over an interconnected Voice over Internet Protocol service.

[12] *Id.* § 64.601(a)(51).

[13] *Id.* § 64.601(a)(23).

[14] *Id.* § 64.606(a)(2).

[15] *Id.* § 64.604(c)(5)(iii)(F).

8. Neither the Commission nor the SBA have developed a small business size standard specifically for TRS Providers. All Other Telecommunications is the closest industry with a SBA small business size standard.[16] Internet Service Providers (ISPs) and Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are included in this industry.[17] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[18] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[19] Of those firms, 1,039 had revenue of less than $25 million.[20] Based on Commission data there are ten certified Internet-based TRS providers.[21] The Commission however does not compile financial information for these providers. Nevertheless, based on available information, the Commission estimates that most providers in this industry are small entities.

9. *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.[22] 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.[23] 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.[24] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[25] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[26] Of those firms, 1,039 had revenue of less than $25 million.[27] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

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[16] *See* U.S. Census Bureau, 2017 NAICS Definition, "517919 All Other Telecommunications," https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[17] *Id*.

[18] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[19] 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.

[20] *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.

[21] *See* Internet-Based TRS Providers | Federal Communications Commission (fcc.gov), https://www.fcc.gov/general/internet-based-trs-providers (last visited February 15, 2023).

[22] *See* U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[23] *Id*.

[24] *Id*.

[25] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[26] *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.

[27] *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.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. In assessing the cost of compliance for small entities, at this time the Commission is unable to quantify the cost of compliance with any of the potential rule changes that may be adopted. Additionally, the Commission is currently not in a position to determine whether, if adopted, the proposals and matters upon which we seek comment in the *Further Notice* will require small entities to hire professionals to comply. However, as the proposed rules are essentially an expansion of an existing framework used by VRS providers, we do not anticipate that small entities will be required to hire professionals to comply with any rule modifications the Commission ultimately adopts. The Commission expects the information received in comments, including any requested cost information, will help the Commission identify and evaluate relevant compliance issues, including costs, that may impact small entities.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. 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."[28]

12. In the *Further Notice*, the Commission is taking steps to minimize the economic impact on small entities and is considering significant alternatives by proposing and seeking alternative proposals for providing compensation for VRS specialized services. The Commission will consider these proposals to maintain and improve choice among suppliers for VRS users using specialized services; help maintain functionally equivalent service; and maintain an efficient VRS market over the long term in accordance with the Commission's statutory obligations. For example, in considering the proposal to allow additional compensation for specialized services, the Commission's intent is to help ensure that VRS is provided in a manner that would allow all individuals with disabilities to have the ability to engage in functionally equivalent communications while recognizing the additional costs small and other providers will encounter to provision these services. Further, allowing such compensation is an alternative to adopting and imposing a specific requirement for VRS providers to provide such services and would help ensure specialized services are voluntarily offered and minimize the cost to providers by allowing providers the opportunity to recover costs incurred in the provision of such services beyond the cost of providing traditional VRS. In the alternative, the Commission could adopt a specific mandate for the provision of these VRS specialized services or decline to allow additional compensation, but continue to allow providers to offer specialized services at the prevailing VRS compensation level. We seek comment in the *Further Notice* on the effect these proposals will have on VRS providers that provision these specialized services.

13. The *Further Notice* seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the *Further Notice*. The Commission expects to more fully consider the economic impact on small entities, based on any comments received in response to the *Further Notice*, prior to reaching its final conclusions and adopting final rules in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

14. None.

[28] 5 U.S.C. § 603(c)(1)–(4).